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including summary



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Country report

Non-discrimination

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

Lithuania

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

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EXECUTIVE SUMMARY

1. Introduction

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

According to the general census carried out in 2011, Lithuanians account for 84.2 % of the population, with the biggest minority groups being Poles and Russians (Poles make up 6.6 % of the population and Russians account for 5.8 %, although there are certain regions where ethnic minorities form the majority). The same may be applied to religion and beliefs: 77.2 % of the population consider themselves to be Roman Catholics; 10.1 % did not indicate their religion; 4.1 % are Orthodox; and 8.6 % belong to other religious communities. Hence, Lithuania could be considered a rather homogenous country. That is supported by the results of the 2019 Eurobarometer survey on discrimination: only 18 % of Lithuanian residents think that discrimination on the basis of ethnic origin is widespread in the country (the EU average is 59 %), and just 15 % think that religious discrimination is widespread (the average in the EU is 47 %).² However, the same Eurobarometer survey shows that Lithuanian residents think that discrimination is most widespread on the basis of being Roma (48 %), sexual orientation (50 %), being perceived as too old or too young (45 %), disability (37 %) and being transgender (36 %). Attitudes towards LGB persons were among the least accepting in the EU according to the 2019 Eurobarometer survey.³

The lack of comprehensive equality data remains a barrier to assessing the real situation faced by certain vulnerable groups. A comprehensive equality data collection system has not yet been established. The data that are currently available mostly derive from various studies, public opinion surveys and data collection by administrative bodies.

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

The initiatives taken by the Parliament to protect so-called 'traditional values' do not improve the situation.⁴ Prejudice against gay people is deeply rooted in society. The issue of sexual orientation is addressed by the Law on Equal Treatment (LET), which is designed to transpose EU anti-discrimination legislation. Unfortunately, the education system is only just beginning to partly address the issue. However, there has been significant progress in recent years, with more and more people openly supporting the

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

² Special Eurobarometer 493, 'Discrimination in the European Union', May 2019, available in English at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2251>.

³ 'Eurobarometer on Discrimination 2019: the social acceptance of LGBTI people in the EU', September 2019, available in English: https://ec.europa.eu/info/sites/info/files/ebs_493_data_fact_lgbti_eu_en-1.pdf.

⁴ Draft Law Amending Article 38 of the Constitution (*Konstitucijos 38 straipsnio pakeitimo įstatymo projektas*), 17 June 2016, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/0be20cb0348411e6a222b0cd86c2adfc?jfwid=1dlo7extc9>. There have been other examples of such initiatives over the years. The Parliament adopted the Law on Strengthening the Family in 2017, which stresses that the complementarity of man and a woman is the basis of the family. Law on Strengthening the Family (*Šeimų stiprinimo įstatymas*), 19 October 2017, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/71039aa2b98511e7967a9645b537eb05>.

rights of LGBT people. In 2010, the first Pride event raised opposition,⁵ but subsequent events in 2013, 2016 and 2019 took place on the main avenue of the capital, the most recent one being the most successful, with around 10 000 participants.

The small population of Lithuanian Roma (around 2 000 persons) live in poverty and exclusion, despite 96 % of them being Lithuanian citizens.⁶ Living standards among the Roma population are much lower than the national average. The Roma community living in Kirtimai (a district of the Vilnius City Municipality) has provided the most obvious example of segregation. According to recent estimates, up to 50 Roma persons still resided in the Kirtimai settlement at the end of 2019 (as compared with 100 houses with approximately 500 residents in 2001, the absolute majority of them being Roma).⁷ Nevertheless, Roma persons still face housing problems. Their educational levels are also very low – only 2 % of the Roma population have a college or university degree, while 44 % have completed only basic education. In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019. The programme set out some measures aimed at providing social housing options to members of the Kirtimai Roma community. The implementation of the programme seems to have had some results, and more than 50 families left the settlement in 2017 to 2019, although their situation remained very vulnerable.

2. Main legislation

The principle of equality of persons is outlined in the Constitution. Although age, disability and sexual orientation are not explicitly mentioned in the constitution's equality clause, the number of grounds is non-exclusive according to the Constitutional Court of the Republic of Lithuania.⁸

The Republic of Lithuania has signed, or signed and ratified, a number of international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Council of Europe Framework Convention for the Protection of National Minorities, the European Social Charter, the UN Convention on the Rights of Persons with Disabilities (CRPD) and others. According to the Constitution, international agreements that have been ratified by Parliament form a constituent part of the legal system. The 12th protocol of ECHR has not been ratified.

⁵ In 2010, Vilnius City Municipality initially refused to grant permission for the Pride event, even if it was held away from the main street of the city. The organisers submitted a complaint to the court, and permission was granted only on the evening before the event. Due to the risk of violence targeted at the event, significant safety measures had to be put in place, such as the bussing in of participants and protection by riot police. Large numbers of protestors gathered, and the police used tear gas to prevent them from entering the area. Several persons were arrested.

Platūkytė, D. (2020), 'Pirmosios 'Baltic Pride' eitynės: sulaikyti politikai, ašarinės dujos ir maldos prie Arkikatedros' (The first 'Baltic Pride' march: arrested politicians, tear gas and prayers next to the Cathedral), available in Lithuanian at: <https://www.lrt.lt/naujienos/lietuvoje/2/1176247/pirmosios-baltic-pride-eitynes-sulaikyti-politikai-asarines-dujos-ir-maldos-prie-arkikatedros>.

⁶ VŠĮ Diversity Development Group (2015), 'Lithuania / Sociologinio tyrimo "Romų padėtis lyginant su kitais šalies gyventojais" tyrimo ataskaita', 30 April 2015, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

⁷ Committee on the Elimination of Racial Discrimination, *combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention*, due in 2018, 8 February 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcfI%2fjd5knkSMb52z2%2fJfiiU0kH%2bpSZJLncqAEiS8%2blykhrjNk0u76VpGle0uthCw0JLlQtVtMd6lx3BpW%2fb0tyDjTLN71>.

⁸ Conclusion of the Constitutional Court of the Republic of Lithuania, No. 22/94, 1995 (*Dėl Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 4, 5, 9, 14 straipsnių ir jos Ketvirtąjo protokolo 2 straipsnio atitikimo Lietuvos Respublikos Konstitucijai*), available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta990/content>.

Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

The Law on International Agreements⁹ asserts that, if an international agreement that has been ratified and enforced by the Republic of Lithuania establishes norms other than those established by the laws of the Republic of Lithuania, the provisions of the international agreement shall apply.

National anti-discrimination law consists of two major pieces of legislation: the Law on Equal Opportunities for Women and Men,¹⁰ adopted in 1998, which prohibits discrimination on the ground of sex¹¹ and established the Equal Opportunities Ombudsperson, and the Law on Equal Treatment, which added age, sexual orientation, disability, race, ethnicity and religion and beliefs to the list of non-discrimination grounds, provided additional concepts and further expanded the competence of the Ombudsperson. In 2016, both laws were amended, with the amendments entering into force on 1 January 2017.

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

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

The new Draft Law on Equal Treatment was registered in the Parliament in 2019 and is still in the process of consideration.

3. Main principles and definitions

Currently, the Law on Equal Treatment repeats the wording of the directives in most instances, without going into the details of particular provisions, hence most concepts still require judicial interpretation. Both natural and legal persons are protected from discrimination. Besides the prohibition of direct and indirect discrimination, discrimination by association, harassment, instructions to discriminate and victimisation are also considered illegal. However, harassment is not prohibited in access to or the provision of goods and services.

A landmark case was heard by the Constitutional Court on a matter referred to it by the Supreme Administrative Court, where a same-sex couple was seeking a residence permit for a third-country national who was the spouse of an EU citizen. The Administrative Court referred the case to the Constitutional Court regarding the compliance of the Law on the Legal Status of Aliens. In its 2019 conclusion, the Constitutional Court repeated its

⁹ Law on International Agreements (*Tarptautinių sutarčių įstatymas*), 1999, No. 60-1948, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5BCEC9B41811/asr>.

¹⁰ Law on Equal Opportunities for Women and Men (*Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas*), 1998, No. 112-3100, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>.

¹¹ 'Sex' and 'gender' can both be translated as *lytis* in Lithuanian. Therefore, in all legal acts, the term *lytis* might be used to refer to both sex and gender. In the official English translation of the Law on Equal Opportunities for Women and Men, the term 'sex' is used, whereas in the translation of the Law on Equal Treatment, 'gender' is used, in line with the translation of the Constitution. So far, this has not had any consequences for the application of the laws.

previous conclusions that the Constitution is an integral enactment that cannot be interpreted literally. The Court also stated that, even though sexual orientation and gender identity are not mentioned as separate grounds in the Constitution, it should be still considered that the Constitution protects persons from having their rights restricted on these grounds.¹²

Some definitions still lack clarity. For example, the phrasing of the duty to provide reasonable accommodation (initially embodied in the Law on Equal Treatment, but repeated in the Labour Code) is imprecise and somewhat narrower than that of the relevant directive. The Ombudsperson uses the understanding of 'reasonable accommodation' as phrased in the UN Convention on the Rights of Persons with Disabilities. The same understanding was used in the 2019 court case, upholding the decision of the Ombudsperson and arguing that failure to accommodate working conditions constitutes discrimination against persons with disabilities.¹³ However, a change in legislation would be needed to clearly establish the obligation of reasonable accommodation and to define the failure to comply with this obligation as discrimination.

Furthermore, the provision on genuine and determining occupational requirements in the Law on Equal Treatment is found in a list of exceptions to direct discrimination. The national provisions simply repeat the wording of the directive and do not elaborate on it. A case considering the exception was heard by the Supreme Administrative Court in 2019, as detailed in the report.

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

4. Material scope

National anti-discrimination law applies to both the public and private sectors. It should be applied in employment, education and access to goods and services on all grounds covered by the directives. In addition, national anti-discrimination law provides protection against discrimination on the grounds of social status, language, convictions and citizenship – although this applies only to EU and EEA citizens and their family members; the law does not explicitly mention partnerships (as opposed to marriage), and judicial interpretation is required regarding same-sex families.¹⁴

Part of the material scope of the directives still lacks protection by national law. The existing Law on Equal Treatment does not explicitly state that social protection and social security fall under its scope. The generally defined duty of state and municipal institutions and agencies to implement equal opportunities could theoretically be interpreted to apply to social security, and the prohibition of discrimination in access to and the provision of goods and services should apply to healthcare, since those fields are not mentioned among those where, according to the law, the principle of non-discrimination does not apply.

When it comes to social security and benefits, the practice of the Ombudsperson is inconsistent. In the past, it considered that social security did not fall under its scope.

¹² Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

¹³ Vilnius Regional Administrative Court decision, case No. eI-2472-244/2019, 3 July 2019, (*Vilniaus apygardos administracinio teismo 2019 m. liepos 3 d. sprendimas administracinėje byloje*).

¹⁴ Same-sex partnerships remain unregulated by national law.

However, since 2014, it has accepted complaints and conducted investigations in the area of social benefits, and this practice was followed throughout 2019.

5. Enforcing the law

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

In practice, associations initiate administrative proceedings with the Ombudsperson, although case law on the issue confirms that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson.¹⁵ Even though support from various associations is crucial in discrimination cases, the right of associations to engage in legal proceedings in representation of the public interest is limited in both regulation and practice. According to practice, when a complaint is received from an NGO and the rights of the organisation have not been directly infringed, the Ombudsperson may start an investigation 'on their own initiative'. Moreover, the Equal Opportunities Ombudsperson's most commonly used procedure involves a time limit for filing complaints of three months after the commission of the acts in question. Complaints lodged after the expiry of the time limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise.

Finally, one must take into account the fact that the national NGO scene is rather weak and fragmented, lacking financial and human resources. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), in addition to organisations that deal with particular grounds of discrimination.

In Lithuania, there are two options for imposing sanctions for discriminatory behaviour: judicial proceedings in criminal, administrative or civil courts or through the Equal Opportunities Ombudsperson (who can impose sanctions, but does not in any way compensate the victim). As there have been only a handful of successful discrimination cases (most of them on the ground of gender and only a few on other grounds), it is too early to provide a comprehensive answer about general trends. Currently, judicial compensation for victims of discrimination ranges from EUR 579 to 3 000, although it can be higher in cases that ended in settlement between the two parties.

In the opinion of the author of this report, the system of sanctions for discriminatory acts in Lithuania (as well as the practice of the Equal Opportunities Ombudsperson) cannot be considered effective, proportionate or dissuasive. This was highlighted by an in-depth civil society report on the status of the national equality body. As many as 23 respondents out of 30 pointed out that the sanctions set out in the current legislation were not sufficiently effective, proportionate and dissuasive, and half of the respondents

¹⁵ Supreme Administrative Court of Lithuania, No. A662-665/2010, decision of 19 April 2010 (*Vyriausiojo administracinio teismo sprendimas byloje Nr. A662-66/2010*); Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A492-2078/2013, decision of 7 November 2013.

believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions.¹⁶

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, so they can be challenged in court. In the absolute majority of cases, the Ombudsperson chooses to issue 'recommendations' to stop discriminatory actions, although these are not essentially binding. According to the Ombudsperson, most of the recommendations are followed. Until 2016, neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action and no system for administrative follow-up was in place. However, several measures to ensure the efficiency of the institution were established, including the creation of an administrative follow-up system. Since May 2017, a table of recommendations and the status of their implementation (a monitoring report) has been available on the website of the Ombudsperson.¹⁷ Of the 15 decisions mentioned in the table for monitoring in 2019, six are in the process of implementation and nine decisions have been implemented.

Twenty-two of the Ombudsperson's decisions were challenged in the courts in 2019: in nine cases, the courts refused to annul the decisions adopted by the Ombudsperson, one application to annul the Ombudsperson's decision was successful and 12 applications have not yet been analysed by the courts. The Ombudsperson has participated in a total of 28 administrative cases and has issued two conclusions in civil cases. One case where the decision of the Ombudsperson was annulled considered the interpretation of the material scope of the directives and the Law on Equal Treatment. In this case, the court elaborated on the understanding of the field of employment and occupation.¹⁸

According to the annual reports of the institution, the Ombudsperson issued a fine only a few times during its past 10 years of operation. However, such administrative sanctions cannot be considered effective, proportionate and dissuasive. Fines are provided for in the Administrative Violations Code and can range from EUR 40 to 560 (or from EUR 560 to 1 200 for repeated offences).¹⁹

6. Equality bodies

The Equal Opportunities Ombudsperson is the national anti-discrimination body, established to fulfil the requirements of the Racial Equality Directive. When the Law on Equal Treatment came into force in 2005 it expanded the mandate of the previous Ombudsperson for Equal Opportunities for Men and Women. A new institution – the Equal Opportunities Ombudsperson – was established in 2005, covering all grounds of discrimination in Directives 2000/43/EC and 2000/78/EC plus the ground of gender.

Although awareness raising was formally added to the competence of the Ombudsperson on 1 January 2017, in practice the Ombudsperson had been involved in such activities since the very beginning, participating in many awareness-raising activities outlined in governmental programmes on social inclusion and anti-discrimination. Awareness raising,

¹⁶ Andriukaitis, G., Sabatauskaitė, B. (2017), 'Lietuvos žmogaus teisių centras', *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla, Lietuvos žmogaus teisių centras*, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

¹⁷ See the website of the Equal Opportunities Ombudsperson: <http://www.lygybe.lt/lt>.

¹⁸ Supreme Administrative Court of Lithuania (*Lietuvos Vyriausiosios Administracinės Teismas*), *T.B. v. Office of the Equal Opportunities Ombudsperson*, Administrative Case No. eA-949-415/2019, decision of 5 November 2019, available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=796b8e5b-3ca2-4452-9a86-901fdcd804b2>.

¹⁹ Administrative Violations Code (*Lietuvos Respublikos Administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas*), 25 June 2015, No. XII-1869, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/asr>.

educational activities and research are carried out by the Ombudsperson alone or in partnership with other institutions and non-governmental organisations.

For the Ombudsperson, recent years have marked an important turning point in moving towards increased efficiency and strengthening the institutional structure. The institution was re-structured with four internal divisions (the legal division, equal opportunities mainstreaming division, communication division and operational management division) in addition to a financial adviser and the Ombudsperson herself. Furthermore, the institution has adopted a strategic plan since 2016, renewing it every year.

The Ombudsperson considers itself as a mixed mandate (promotional and tribunal) body, and it carries out different functions that may be attributed to a quasi-judicial body, but it also carries out education, campaigning and research activities. The Ombudsperson exercises its functions with respect to gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion. Decisions of the Equal Opportunities Ombudsperson can be overruled by a court. Applying to the Equal Opportunities Ombudsperson does not prevent a complainant from lodging a claim with a court on the same matter. The Ombudsperson often acts as a mediator in practice as, according to the Office of the Ombudsperson, peaceful resolution of discrimination is one of its main objectives.

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

The Ombudsperson started carrying out a new function in 2019: monitoring compliance with the UN Convention on the Rights of Persons with Disabilities. A commission was established to carry out this function, working alongside the Ombudsperson's Office, yet no additional funding was assigned to the Office to carry out this role in 2019.

The Office of the Equal Opportunities Ombudsperson (OEEO) is an independent institution financed from the fiscal budget, and the Ombudsperson is appointed by Parliament for a five-year term (for no more than two consecutive terms). However, since there is no board or other body, civil society is neither consulted nor involved in the appointment. Hence, the work of the institution and its political independence completely depend on the position of the head of the institution – the Ombudsperson themselves.

7. Key issues

Most of the national anti-discrimination legislation repeats the wording of the directives, without going into details of particular provisions. In the opinion of the author, transposition into national law is still insufficient concerning the following aspects:

- The existing Law on Equal Treatment does not explicitly prohibit harassment in access to and the provision of goods and services.
- The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (director, etc.) but not to its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be enforced against a broad spectrum of parties.
- The duty to provide reasonable accommodation, as it is phrased in the Law on Equal Treatment and the Labour Code, lacks precision and is somewhat more

'narrow' than that of the directive, and is, therefore, more difficult to enforce in practice, even though the Equal Opportunities Ombudsperson and the courts often refer to the UN Convention on the Rights of Persons with Disabilities. This lacuna would be remedied, however, by the adoption of the currently pending new Draft Law on Equal Treatment, which was registered in 2019. Neither the Law on Equal Treatment nor the provisions of the Labour Code explicitly state that failure to provide reasonable accommodation would constitute discrimination.

- As to the laws on self-employment, it is not precisely clear from the Law on Equal Treatment whether the directives have been adequately transposed. Self-employment is not explicitly mentioned in the Law on Equal Treatment but, on the other hand, the Labour Code is a *lex generalis* in the occupational sphere, and therefore its principles would apply in the absence of specific rules.
- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope.
- The Law on Equal Treatment has provided an exception concerning recruitment and employment by employers with an ethos based on religion or belief since June 2008. However, it is applied not only to recruitment but to education materials and other matters. The first version of the LET did not contain this exception and there is still no case law or interpretation on the matter. The exception in the Law is much broader than that of the directive, where a 'person's religion or belief constitutes a genuine, legitimate and justified occupational requirement'. It remains unclear which organisations can take advantage of this exception. There is no mention of the provision that 'difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.'
- The right for associations to engage in legal proceedings was included in the Law on Equal Treatment, repeating the wording of the directives. However, exercising this right is limited in practice. The Code of Civil Procedure states that only actual members of a particular organisation can be represented in court by that association. In theory, associations can act on behalf of the victim in administrative procedure only, but not in civil cases.
- National legislation provides protection from victimisation in the field of employment only; it does not provide protection from victimisation in other fields (education and the provision of goods and services).
- The system of sanctions must be significantly strengthened to make them effective, proportionate and dissuasive. Providing independent assistance to victims of discrimination in pursuing their complaints of discrimination does not explicitly fall within the competence of the national equality body.

Some positive examples from 2019 may be highlighted. The Constitutional Court made a decision highlighting that grounds of sexual orientation and gender identity, even if they are not mentioned in the Constitution, fall within the equality clause, interpreting a decision regarding a temporary residence permit for a third-country national based on the family reunification clause, where the third-country national was a spouse in a same-sex relationship with a Lithuanian national.²⁰ The Baltic Pride event held in 2019 received the most significant level of support since the first Baltic Pride was held in 2010, with 10 000 people taking part. However, no legal amendments to ensure the equality of LGBTIQI persons were made during 2019. The Diversity Development Group held the first Annual Conference of Diversity Charter members in Lithuania, and the Ombudsperson started developing a tool to evaluate how equal opportunities were being implemented in workplaces in 2019.

²⁰ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

The National Equality and Diversity Awards, an awareness-raising initiative implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs, has been taking place annually since 2014. The initiative is planned to be continued in future years as a tool to promote equality.

INTRODUCTION

The national legal system

The Republic of Lithuania is a unitary state. The Constitution of the Republic of Lithuania²¹ was adopted by referendum on 25 October 1992 and entered into force on 2 November 1992. Lithuania is party to a number of international agreements that guarantee protection against discrimination on various grounds. Article 138(3) of the Constitution states that international agreements that have been ratified by the Parliament form a constituent part of the legal system. According to the Law on International Agreements, if an international agreement that has been ratified and enforced by the Republic of Lithuania establishes norms other than those established by the laws of the Republic of Lithuania or by other legal acts existing or coming into force after the date of the entry into force of the international agreement, the provisions of the international agreement shall apply.

The Constitution stipulates that constitutional review in Lithuania is exercised by the Constitutional Court of the Republic of Lithuania. It ensures the supremacy of the Constitution within the legal system, as well as constitutional justice by deciding whether laws and other legal acts adopted by Parliament are in conformity with the Constitution and whether the acts adopted by the President or the Government are in compliance with the Constitution and the law.

The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is vested in the Government, groups consisting of at least one fifth of all members of the Seimas (Parliament), the courts and the President of Lithuania. The right for individuals to lodge petitions with the Constitutional Court was granted in 2019.²²

List of main legislation transposing and implementing the directives

The main law designed to implement the anti-discrimination directives is:

- The Law on Equal Treatment (LET).²³ Date of adoption: 18.11.2003. Grounds covered: gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion. The material scope of the law covers employment, access to goods or services and education.

In addition, a number of employment provisions from the Law on Equal Treatment were copied into the Labour Code. Date of adoption: 14.06.2016.²⁴

²¹ Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 1992, No. 33-1014, available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

²² Law amending Articles 106 and 107 of the Constitution of the Republic of Lithuania, 21 March 2019, No. XIII-2004, that came into force on 1 September 2019, available in English at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/786eb162508a11e98bc2ba0c0453c004?jfwid=pffih3y6p>.

²³ Law on Equal Treatment (*Lietuvos Respublikos Lygių galimybių įstatymas*), 2003, No. 114-5115, entry into force 01.01.2005; latest amendments: 11.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>.

²⁴ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, entry into force: 01.07.2017; latest amendments: 20.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

Article 29 of the Constitution declares that:

'All persons shall be equal before the law, the courts, and other State institutions and officials. A person's rights may not be restricted, nor may he be granted any privileges, on the ground of gender, race, "nationality", language, origin, social status, belief, convictions, or views.'

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

'Convictions are a broad and diverse constitutional notion, including political, economic convictions, religious feelings, cultural disposition, ethical and esthetical views etc.'²⁵

Although disability, age and sexual orientation are not explicitly mentioned in the text of the Constitution, that does not necessarily imply that rights may be restricted on the basis of disability, age or sexual orientation. The Constitutional Court stated once again in its conclusion in 2019 as well as in other conclusions before, that the Constitution is an integral enactment that cannot be interpreted literally:

'Therefore, Paragraph 2 of Article 29 of the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts, and other state institutions, i.e. the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Paragraph 1 of Article 29 of the Constitution.

... In the context of the constitutional justice case at issue, it should be noted that one of the forms of discrimination prohibited under Article 29 of the Constitution is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation; such a restriction should also be regarded as degrading human dignity.'²⁶

Constitutional provisions regarding the principle of non-discrimination have been commented upon in a ruling by the Constitutional Court, which, under Article 72 of the

²⁵ Ruling of the Constitutional Court of the Republic of Lithuania of 13 June 2000, available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta1161/content>.

²⁶ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019.
In general terms, this Conclusion concerned the issuing of a temporary residence permit to a foreign national in the context of family reunification and the constitutionality of such provision. The Court held that: 'a temporary residence permit may be issued to a foreign national who is not a citizen of a Member State of the European Union or the European Free Trade Association not exclusively in cases where an opposite-sex family member of such a foreign national resides in the Republic of Lithuania ... but also in cases where a same-sex family member of such a foreign national resides in the Republic of Lithuania, i.e. a person with whom a marriage or registered partnership has lawfully been concluded in another state and who is a citizen of the Republic of Lithuania or a foreign national (not a citizen of a Member State of the European Union or the European Free Trade Association) holding a residence permit.' The Constitutional Court elaborated on the provisions of the Constitution, taking into account the constitutional provisions on equality and referring also to international agreements and CJEU and ECtHR case law. Conclusion available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

Law on the Constitutional Court,²⁷ is binding on all governmental institutions, companies and organisations, as well as on officials and citizens.

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

'The principle of equality of persons is defined as non-discrimination. ... Discrimination is, as a rule, understood to mean changing the situation of a person or a group of persons relative to other persons without any valid reason. ... The principle of equality of persons, which is established by Article 29 of the Constitution means, in essence, a prohibition of discrimination. Discrimination is most often understood as a restriction of the rights of an individual or a granting of certain privileges according to his or her sex, race, "nationality", language, origin, social status, religion, convictions or views.'²⁸

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

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

... Consequently, a complex and not formalistic word-for-word comparison of the provisions of the Constitution and the Convention allows one to make the conclusion that Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not contradict the Constitution of the Republic of Lithuania.'²⁹

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

1) Article 25 deals with freedom of expression and prohibits the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation. Article 26 proclaims freedom of thought, conscience and religion.

2) Article 48 states that:

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

However, some clauses outline rights that are enjoyed solely by citizens of the country.

²⁷ Law on the Constitutional Court (*Lietuvos Respublikos Konstitucinio Teismo įstatymas*), 1993, No. 6-120, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.DEFB2C5600E3/asr>.

²⁸ Ruling of the Constitutional Court of the Republic of Lithuania No. 100-2791, 1998 (*Dėl Lietuvos Respublikos Seimo rinkimų įstatymo 38 straipsnio 4 dalies ir Lietuvos Respublikos savivaldybių tarybų rinkimų įstatymo 36 straipsnio 4 dalies atitikimo Lietuvos Respublikos Konstitucijai*), <http://www.lrkt.lt/en/court-acts/search/170/ta1134/content>.

²⁹ Conclusion of the Constitutional Court of the Republic of Lithuania, No. 22/94, 1995 (*Dėl Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 4, 5, 9, 14 straipsnių ir jos Ketvirtąjo protokolo 2 straipsnio atitikimo Lietuvos Respublikos Konstitucijai*), available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta990/content>.

3) Article 33 states that:

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

4) According to Article 37,

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

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

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

Regarding the enforcement of provisions of the Constitution against private individuals, the constitutional equality clause is embodied in the chapter headed 'The Individual and the State', and the jurisprudence of the Constitutional Court on Article 29 of the Constitution is rather limited. It has always been interpreted as applying to the relationship between the individual and the state and never as governing the relationship between individuals. It is therefore doubtful whether it could be enforced against private individuals.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

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

The Law on Equal Treatment covers gender, race, 'nationality',³⁰ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion.³¹

However, some laws only state the principle of equality as such, for example the Law on Education, while others provide a wide-ranging list of non-discrimination grounds. Article 2 of the Labour Code³² lists the following grounds of equality of persons involved in employment relationships: gender, sexual orientation, race, ethnicity (or, as translated in the LET, 'nationality'), language, origin, social status, belief,³³ marital and family status, intention to have a child or children, age, views and convictions, membership of political parties and non-governmental organisations, and any other characteristics that are not connected to work-related characteristics. This Article does not include citizenship as a ground, however it is included in other articles of the Labour Code, such as Article 59 (termination of employment contract by employer) and Article 75 (application of non-discrimination principle).

Article 169 of the Criminal Code prohibits severe discriminatory behaviour on the basis of various grounds:

'A person who has committed acts aimed at a certain group or members thereof on account of their ethnic background, race, sex, sexual orientation, origin or religion, social status, views or convictions, with a view to interfering with their right to participate as equals of other persons in political, economic, social, cultural or employment activity or to restrict the human rights or freedoms of such a group or its members, shall be punished with (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.'³⁴

In addition, Article 170 of the Criminal Code prohibits incitement of discrimination against certain groups of residents:

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

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

³⁰ The term used in the LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

³¹ 'Citizenship' was added to the list in 2017 as a result of the transposition of Directive 2014/54/EU and only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

³² Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

³³ The term 'belief' should be understood as covering religion.

³⁴ Criminal Code (*Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas*), 2000, No. 89-2741, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/ZpNMZQSaRN>.

'Instigates war propaganda, war or hatred, ridicule, or scorn, or instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, sexual orientation, ethnic origin, race, "nationality", citizenship, language, origin, social status, belief, convictions, views or religion' (Article 19).³⁵

2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

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

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

a) Racial or ethnic origin

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

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

Therefore, such definition implies a possibility to claim that the characteristics of race, "nationality", origin, ethnic origin and language are highly related.'³⁶

As the *Annual Report* of the Equal Opportunities Ombudsperson states:

'Legal acts of the Republic of Lithuania do not provide any definition of race, 'nationality', ethnic origin or origin, nevertheless, persons approaching the Office based on alleged discrimination on the ground of language very often indicate the grounds of 'nationality' together. Identification of the grounds is made with the help of indicated factual circumstances within the complaint. When applicants file

³⁵ Law on the Provision of Information to the Public (*Lietuvos Respublikos Visuomenės informavimo įstatymas*), No. I-1418, 1996, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.222522/asr>.

³⁶ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.
Lithuanian Equal Opportunities Ombudsperson (2015), *Annual Report for 2015*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

complaints regarding discrimination based on the ground of race or ethnic origin, they also refer to themselves as belonging to a specific ethnic, 'national' or territorial group based on their origin and describe themselves based on skin colour. Sometimes origin is defined by cultural characteristics, such as language, or a common attitude towards ethnic majority or minority. When applicants imply the grounds of 'nationality' and citizenship, they usually emphasise the connection with a specific country or belonging to an ethnic majority or minority.³⁷

In 2019, according to its annual report, the Ombudsperson's Office received 20 complaints on the grounds of race, 'nationality', citizenship, language, origin and ethnic origin. One investigation was started on the initiative of the Ombudsperson, and many consultations were provided by phone or via Facebook. Most complaints concerned alleged discrimination based on 'nationality' (12), citizenship (5) and language (7), and the rest concerned origin (4) or ethnic origin (2). Applicants who approached the Ombudsperson on the basis that they felt discriminated against because of their 'nationality' also felt discriminated against because of their language (multiple discrimination).³⁸

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

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

b) Religion and belief

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

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

The right to freely choose religion or belief is also described in the Law on Religious Communities and Associations, however it does not provide any definitions of belief, convictions or views and religion.³⁹ This leaves room for interpretation, because in the Lithuanian language these concepts are often treated as synonymous. The Constitutional Court has provided the following interpretation of convictions:

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

³⁷ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

³⁸ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

³⁹ Law on Religious Communities and Associations (*Religinių bendruomenių ir bendrijų įstatymas*), 1995, No. 89-1985, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.B4DBBD7C388A/asr>.

The freedom to have convictions means that an individual is free to form his own convictions, to choose world-view values, he is protected from any coercion, it is not permitted to exert control over his convictions. The duty of state institutions is to ensure and protect this freedom of individuals. The content of convictions is a private matter of the individual.⁴⁰

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

c) Disability

There is no legal definition of disability provided in the Law on Equal Treatment. Even though the Equal Opportunities Ombudsperson often refers to the text of the UN Convention on the Rights of Persons with Disabilities (CRPD), the only available legal definition of disability, which is provided in the Law on the Social Integration of Persons with Disabilities, is incompatible with the text of the Convention:⁴¹

'disability is a long-term worsening reduction of the state of health, diminution of participation in public life and possibilities for activity, resulting from disorder of the person's bodily functions and detrimental environmental factors.'⁴²

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

'a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.'⁴³

The United Nations Committee on the Rights of Persons with Disabilities expressed its concern 'that the definition and understanding of disability in State party laws and regulations focuses on the individual impairment, thereby neglecting the social and relational dimension of disability, including, in particular, the barriers faced by persons with disabilities', and urged Lithuania to change that.⁴⁴

⁴⁰ Ruling of the Constitutional Court of the Republic of Lithuania No. 23/98, 13 June 2000, available in English at: <http://www.lrkt.lt/dokumentai/2000/r000613.htm>.

⁴¹ The Law on the Social Integration of Persons with Disabilities has not been designed to transpose the EU non-discrimination directives into national legislation.

⁴² Law on the Social Integration of Persons with Disabilities (*Lietuvos Respublikos Neigaliųjų socialinės integracijos įstatymas*), 2004, No. 83-2983, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/vpJLLKhZKK>.

⁴³ Judgment of 11 April 2013, *Skouboe Werge and Ring*, joined cases C-335/11 and C-337/11, EU:C:2013:222, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-335/11>.

⁴⁴ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEF>

Lithuania is a party to the UN CRPD and, according to the Article 138 of the Constitution, ratified international treaties are an integral part of the national system. Theoretically, the concept of disability provided for in the CRPD should be applicable, as, in the case of any clash, the provisions of the international treaties should be applied.⁴⁵ Article 1 of the Convention states:

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

In 2015 a group of NGOs working in the field of disability submitted an *Alternative Report on Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania*.⁴⁶ According to this report, since medical definitions and a negative understanding of disability are deeply rooted in the mindset of Lithuanian society, the inconsistencies in definitions in different national laws are not beneficial and should be brought fully in line with the concept that is provided for in the CRPD.⁴⁷

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

Such recognition leads to the allocation of particular aid and social benefits to people with disabilities, but does not prevent the Equal Opportunities Ombudsperson or courts from using a wider interpretation of disability when enforcing the Law on Equal Treatment, because the Law on Equal Treatment does not provide an exact definition of disability. In practice, the Office of the Equal Opportunities Ombudsperson (OEOO) interprets disability more widely and does not limit itself to the provisions of the Law on the Social Integration of Persons with Disabilities. The author is not aware of how courts interpret disability, although in most cases on reasonable accommodation they refer to the provisions of the CRPD.

d) Age

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

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

e) Sexual orientation

[vl4q2fNHbisIoJQJExObNo%2b164VPCFXgGIA71mMejw37A6SN9XPUfu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcEo.](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=437697)

⁴⁵ Law on International Agreements (*Tarptautinių sutarčių įstatymas*), 1999, No. 60-1948, available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=437697.

⁴⁶ Lietuvos Neįgalųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, (Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania), available in Lithuanian at: <http://www.negalija.lt/wp-content/uploads/2016/02/JT-Neigaliuju-teisiu-konvencijos-Alternatyvioji-ataskaita.pdf>.

⁴⁷ Lietuvos Neįgalųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, (Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania), p. 12.

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

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

'The ECHR has repeatedly held that, just like differences based on sex, differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification (see *Smith and Grady v. United Kingdom*, appl. No. 33985/96, 33986/96, ECHR-1999, § 90; *L. and V. v. Austria*, appl. No. 39392/98, 39829/98, § 45 ECHR 2003-1, cited in *Valliantos and others v. Greece*, § 77). Where a difference in treatment is based on sex or sexual orientation the State's margin of appreciation is narrow. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *E.B. v. France*, Appl. No. 43546/02, § 93, 96; cited in *Valliantos and others v. Greece*, § 77).'⁴⁸

A rather controversial decision was made by the Ombudsperson for Equal Opportunities in 2016. In its decision, the Ombudsperson noted that sexual orientation is not defined by law, therefore it is elaborated based on the 'verbal explanations available in the public space, encyclopaedias and dictionaries'. However, it is not very clear what is meant by 'verbal explanations'. In this case, the Ombudsperson received an enquiry on whether or not information provided on the website of a company providing discounts was discriminatory based on sexual orientation. The information on the website was: 'This month, gays, *gėjoms* and faggots (*pederastai* in Lithuanian) are being given additional discounts'. The Equal Opportunities Ombudsperson initiated an investigation and analysed whether these types of discounts were creating disadvantageous conditions for persons who were not of a homosexual orientation to obtain goods and services.⁴⁹ The investigation was later terminated, as the director of the company stopped the discount on the basis that 'there was no need for such a discount in Lithuania'. In the opinion of the author, the investigation should have assessed whether the information provided about goods and services conveyed humiliation or contempt on the ground of sexual orientation, based on Article 8 of the Law on Equal Treatment.⁵⁰

Another case was referred to the Constitutional Court by the Supreme Administrative Court of Lithuania, in which a same-sex couple was seeking a residence permit for a third-country national, who was the spouse of an EU citizen. The Constitutional Court did not elaborate on the definition of 'sexual orientation', even though it is very important for the interpretation of the principle of equality. The Administrative Court referred the case to the Constitutional Court regarding the compliance of the Law on the Legal Status of Aliens. In its 2019 conclusion, the Constitutional Court repeated its previous conclusions that the Constitution is an integral enactment that cannot be interpreted literally. The Court also stated that, even though sexual orientation and gender identity are not mentioned as separate grounds in the Constitution, it should be still considered that Constitution protects persons from having their rights restricted on these grounds. The Constitutional Court referred to the CJEU case of *Coman and Others*, to international treaties and to CJEU and ECtHR case law.

⁴⁸ Supreme Court of Lithuania, *N.M. v. Lietuvos edukologijos universitetas*, civil case No. e3K-3-497-611/2016, 6 December 2016.

⁴⁹ Decision of the Equal Opportunities Ombudsperson No. (16)SI-7)SP-26, 24 March 2016 (*Lygių galimybių kontrolieriaus pažyma dėl papildomų nuolaidų taikymo*), available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2015/11/pazyma-del-galimos-diskriminacijos-lytines-orientacijos-pagrindu-teikiant-autobuso-nuomos-paslaugas.pdf>.

⁵⁰ The decision of the Ombudsperson does not even mention that the aim of the discounts might have been to discriminate against LGB persons, although the director of the company offering the discounts offered explanations during the investigation, that he understood the term *pederastas* as meaning 'boy lover, a man engaged in paederasty, homosexualist', and that the goal of the discounts was to attract the attention of clients and entertain them.

2.1.2 Multiple discrimination

In Lithuania, multiple discrimination is not prohibited by law.

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

In its *Annual Report for 2019*, the Ombudsperson notes that almost 20 % of all requests that it received concerned multiple discrimination. The report mentions that discrimination based on language was often also based on origin or ethnic origin,⁵¹ and that discrimination based on social status often also concerned discrimination based on age, as well as on convictions or views, belief, sexual orientation, religion and disability. Discrimination based on age was often related to a person's gender and other grounds.⁵²

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

The issue of multiple or intersecting discrimination in Lithuania was raised in 2014⁵³ and 2019 by the UN Committee on the Elimination of Discrimination against Women, which stated that the committee was concerned:

'That there is no legislation specifically prohibiting intersecting forms of discrimination against women and no definition of the legal concepts of gender and sex',⁵⁴

'No legislation specifically prohibiting intersecting forms of discrimination against women and no definition of the legal concepts of gender and sex.'⁵⁵

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

⁵¹ When referring to the complaints based on ethnicity, the Ombudsperson commented that people often also experienced discrimination on the ground of language, too, and that, when people submitted complaints based on language, they would mention that they had also felt discriminated against because of their nationality. According to the *Annual Report for 2019*, the Ombudsperson established the grounds based on the factual circumstances of the complaint.

Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

⁵² Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

⁵³ UN Committee on the Elimination of Discrimination against Women (2014), *Concluding observations on the fifth periodic report of Lithuania* (CEDAW/C/LTU/5), adopted by the Committee at its 58th session (30 June–18 July 2014), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en.

⁵⁴ UN Committee on the Elimination of Discrimination against Women (2019), *Concluding observations on the sixth periodic report of Lithuania* (CEDAW/C/LTU/6), adopted by the Committee at its 1734th and 1735th meetings held on 31 October 2019, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvxlfhYepfIYmW0eRMA3oVvIzfMFUxudXxInL4EdFHIw0HFwjn60mJLPeGqGmdQRPD5vfbnIv8MohKfp2Pb6LmloCFnbO1aotZA1JR3DSHj>.

⁵⁵ UN Committee on the Elimination of Discrimination against Women (2014), *Concluding observations on the fifth periodic report of Lithuania* (CEDAW/C/LTU/5), adopted by the Committee at its 58th session (30 June–18 July 2014), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en.

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

There are plans to prohibit multiple discrimination under the Law on Equal Treatment. The Ombudsperson suggested certain amendments to the Law on Equal Treatment in its *Annual Report for 2018*. The Draft Law on Equal Treatment, currently pending in the Parliament, would explicitly prohibit multiple discrimination, however no harsher sanctions would be established in cases of multiple discrimination.⁵⁶

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

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

Article 2(9) of the Law defines direct discrimination as follows:

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

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

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

b) Discrimination by association

In Lithuania, discrimination based on association with persons with particular characteristics is not explicitly prohibited in national law, therefore judicial interpretation is required on the Law on Equal Treatment, Article 2(9). The current definition of direct discrimination corresponds to the wording of the directives and could be interpreted in the light of Case C-303/06, *Coleman v. Attridge Law and Steve Law*.⁵⁷ Therefore, the wording should also be interpreted as has been established by Case C 83/14, *CHEZ Razpredelenie Bulgaria AD v. Komisija za zashtita ot diskriminatsia*, such that a person can suffer discrimination together with a certain group without belonging to it.

However, in the past, the Equal Opportunities Ombudsperson did not consider this wording to be sufficient. In 2012 it proposed adding the definition of 'associated discrimination' to the Law on Equal Treatment, stating that a person should not be discriminated against because of a certain characteristic of his or her parents or children,

⁵⁶ Draft Law on Equal Treatment (new edition) (*Lygių galimybių įstatymo Nr. IX-1826 įstatymo projektas (nauja redakcija)*), registered on 30.05.2019; available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/96f31cf082b411e98a8298567570d639?jfwid=rmpk3gwww>.

⁵⁷ Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, case C-303/06, EU:C:2008:415, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

foster child or foster parent, other family members or other legal representatives.⁵⁸ The Ombudsperson did not elaborate on any proposed wording. This proposal has not been registered as a draft law in the Parliament, however, and therefore it is uncertain whether it will be adopted in the near future.

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

Legal amendments were registered in 2019 and were submitted for consideration by the Parliament. They are currently still going through a parliamentary procedure covering and defining discrimination by association.⁵⁹

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

a) Prohibition and definition of direct discrimination

In Lithuania, direct discrimination is prohibited in national law. Article 2(9) of the Law on Equal Treatment defines direct discrimination as follows:

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

Although the definition mentions 'a person', this does not imply that it could be interpreted as excluding groups of persons from protection. The definitions in the directives concentrate on the current, past or probable future difference of treatment in a comparable situation ('one person is treated less favourably than another is, has been or would be treated in a comparable situation'). Therefore, the definition contained in the Law on Equal Treatment is in conformity with the definition in the directives, as are the grounds that are covered: a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. It is important to note that, in interpreting the Law on Equal Treatment, disability is a symmetrical ground, which means that persons without disability could be considered as being discriminated against in cases when jobs are reserved for persons with disabilities. However, no such discrimination cases are known to the author.

Under the heading 'Discriminatory Advertisements', Article 11 of the Law on Equal Treatment explicitly states that announcements that advertise job vacancies or civil service or education opportunities that give preference to candidates of a particular gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion are prohibited, with the exception of those situations set out in Article 2 (a general clause on genuine occupational requirements).

The Equal Opportunities Ombudsperson has been monitoring advertisements on a regular basis since 2016. In most of the 106 cases regarding discriminatory job vacancy announcements in 2019, when the Ombudsperson contacted employers after receiving information about such announcements, it did not begin any investigation. However, investigations were commenced in three cases, as the employers refused to amend their

⁵⁸ Lithuanian Equal Opportunities Ombudsperson (2012), *Annual Report of the Equal Opportunities Ombudsperson for 2012*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁵⁹ Draft Law on Equal Treatment (new edition) (*Lygių galimybių įstatymo Nr. IX-1826 įstatymo projektas (nauja redakcija)*), registered 30.05.2019; available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/96f31cf082b411e98a8298567570d639?jfwid=rmpk3gwww>.

job announcements.⁶⁰ The number of such announcements in 2019 was lower than in previous years, and the Ombudsperson notes that 'almost all the announcements were changed or deleted, after contacting the employers'.

When it comes to defending rights in court, the situation is different. In 2013, the Supreme Administrative Court of Lithuania upheld its reasoning in previous cases, that only those persons whose rights are or have been directly affected have a right to initiate proceedings in the court.⁶¹ Therefore, a discriminatory job advertisement could only be challenged in court by a person who directly suffered discrimination; associations or other non-governmental actors cannot challenge such advertisements, because the law does not allow them to act in defence of the public interest. However, the Ombudsperson usually responds regarding any job announcement notified to them by NGOs without having an individual person or persons claiming that their rights have been violated. If there has been a refusal to change the wording of the announcement or to remove it, the Ombudsperson may start an investigation on their own initiative.

Apparently, not all discriminatory public announcements or statements can be considered illegal. According to case law, general discriminatory oral statements would not fall under the scope of the Law on Equal Treatment. In 2008, during the EU-wide campaign 'For Diversity. Against Discrimination', an event focusing on different grounds of discrimination, among them discrimination against LGBT persons,⁶² was refused permission by the then mayor of Vilnius, who publicly stated that, while he remained in office, 'there will be no advertisements for sexual minorities'. A month previously, Vilnius City Council had amended the Rules on Disposal and Cleanness, adding broad provisions enabling it to prevent any event that might be opposed by part of the community. An LGBT organisation filed a complaint with the Equal Opportunities Ombudsperson, which refused to investigate the matter. The organisation challenged the decision at the administrative court. The court approved the reasoning of the Ombudsperson, that the public statements of officials do not fall under the scope of the Law on Equal Treatment. The case was later brought to the Supreme Administrative Court, which stated that the mayor of the city cannot be considered a 'municipal institution or agency' within the meaning of the Law on Equal Treatment, and thus a mayor's oral statements do not fall under the scope of the national anti-discrimination law. In addition, the court upheld the reasoning of the lower court, that only persons whose rights have been directly affected by particular actions or inactions of state or municipal institutions or agencies have a right to complain to the Equal Opportunities Ombudsperson.⁶³ No further action has been taken regarding the case.

The courts took a very formal and narrow approach and did not go into the substance of the statements. No references to the jurisprudence of the CJEU were made, and the courts mainly focused on the issue of whether a mayor could be considered 'a municipal agency or institution' within the meaning of the Law on Equal Treatment and under administrative law. However, in previous years, the Ombudsperson had investigated oral statements by civil servants (particularly on the ground of gender) and found them to be discriminatory.⁶⁴ Therefore, in that respect, national jurisprudence is potentially non-compliant with the directives and needs to be clarified, especially taking into account

⁶⁰ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

⁶¹ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, 7 November 2013.

⁶² For further information, see https://europa.eu/rapid/press-release_IP-08-976_en.htm.

⁶³ Supreme Administrative Court of Lithuania, case No. A⁶⁶²-665/2010, 19 April 2010.

⁶⁴ Lithuanian Equal Opportunities Ombudsperson (2008), *Annual Report of the Equal Opportunities Ombudsperson 2008*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

clarifications of the EU anti-discrimination provisions in the more recent case law of the CJEU.⁶⁵

b) Justification for direct discrimination

The Law on Equal Treatment does not generally permit the justification of direct discrimination, but it provides an exhaustive list of exceptions, specifically adjusted to particular grounds. Specific exceptions to direct discrimination as established by the Law on Equal Treatment are set out in Chapter 4.

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

'In certain cases, based on the assessment of a person's age or disability or the material conditions of people belonging to a particular social group, limited legal capacity, need for financial support, the granting of preferences for the acquisition of goods and services could be justified, although the Law on Equal Treatment does not justify the provision of such benefits. Therefore it is suggested that the Law on Equal Treatment be supplemented with provisions establishing exceptional situations in which the provision of goods and services exclusively (or primarily) to persons of certain characteristics can be justified by a legitimate aim, and the means to achieve that aim are appropriate and necessary, and such situations would not be considered a more favourable treatment.'⁶⁶

The Ombudsperson carried out an investigation in 2019, in which it recognised the requirement to indicate a specific age, family status and other private information for job seekers as legitimate and proportionate in a case where a company was looking for people to become secret buyers. The purpose was to employ persons of diverse identities, corresponding to the types of clients of a specific company, to carry out secret buyer testing. Therefore, no violation of equal opportunities was recognised during the investigation, as the required information was needed to organise (implement) the orders, but this did not have an effect on people's employment as secret buyers.⁶⁷

The draft law submitted to the Parliament in 2019 provides an exception allowing preferences to be granted to persons because of their age, disability or social status if this can be justified by a legitimate aim and if the means to achieve that aim are appropriate and necessary.

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

a) Prohibition and definition of indirect discrimination

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

The definition of indirect discrimination for the grounds covered by the Racial Equality Directive and the Employment Equality Directive is provided in Article 2(5) of the Law on Equal Treatment, where indirect discrimination is defined as follows:

⁶⁵ Judgment of 25 April, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, case C-81/12, EU:C:2013:275, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-81/12>.

⁶⁶ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

⁶⁷ Decision of the Equal Opportunities Ombudsperson, No. (19)SI-5_SP-74, 11 June 2019 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu uždarajai akcinei bendrovei "Slapto pirkėjo tyrimai" reikalaujant pateikti informaciją apie amžių tyrimo*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2019/06/19si-5sp-74.pdf>.

'Indirect discrimination means any act or omission, legal provision or assessment criterion, apparently neutral provision or practice that formally are the same but their implementation or application results or would result in de facto restrictions on the exercise of rights or extensions of privileges, preferences or advantages on the grounds of gender, race, "nationality", citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, unless that act or omission, legal provision or assessment criterion, provision or practice is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

The definition of indirect discrimination provided in national law is sufficient to achieve the goals set out in the directives, but its implementation in practice has not yet been established. There is no definition of indirect discrimination in other laws (for example, the Law on Education, the Law on the Public Service or the Law on the State Defence Service). Furthermore, it not clear how the provisions in the Law on Equal Treatment will be interpreted in the courts, since there is still very little case law on indirect discrimination.

b) Justification test for indirect discrimination

The law provides a general exception test to justify indirect discrimination: treatment must be justified by a legitimate aim, and the means of achieving that aim must be proportionate and necessary. It is far from clear how the test would be implemented in practice, since indirect discrimination case law is scarce.

The existing jurisprudence of the Constitutional Court suggests that a 'legitimate aim' must be 'constitutionally justified'.⁶⁸ However, this interpretation did not consider the wording of the Law on Equal Treatment, which was not enacted at the time of the ruling.

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

So far, no cases of indirect discrimination regarding language have been adjudicated in the courts. However, the Equal Opportunities Ombudsperson clearly states the link between requirements to know a particular language and indirect discrimination based on ethnic origin.⁶⁹ The Ombudsperson recently explained that the requirement adopted by the Minister of Education and Science to increase the number of teaching staff with less than 20 years of experience constitutes indirect discrimination based on age. One of the reasons was that this requirement was not established by law and was neither justified nor necessary.⁷⁰

⁶⁸ Ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004 (*Lietuvos Respublikos Konstitucinio Teismo 2004 m. gruodžio 13d. nutarimas 'Dėl kai kurių teisės aktų, kuriais reguliuojami valstybės tarnybos ir su ja susiję santykiai, atitikties Lietuvos Respublikos Konstitucijai'*).

⁶⁹ Lithuanian Equal Opportunities Ombudsperson (2016), *Annual Report of the Equal Opportunities Ombudsperson for 2016*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷⁰ Decision of the Equal Opportunities Ombudsperson No. (18)SI-7)SP-86, 4 September 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu Lietuvos Respublikos švietimo ir mokslo ministro 2018 m. kovo 26 d. įsakymo Nr. V-267 "Dėl Lietuvos Respublikos 2018 metų valstybės biudžeto lėšų, skirtų išlaidoms, susijusioms su pedagoginių darbuotojų skaičiaus optimizavimu, apmokėti, paskirstymo tvarkos aprašo patvirtinimo" nuostatų tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-86.pdf>.

2.3.1 Statistical evidence

a) Legal framework

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

Statistical evidence is not permitted by national law in order to establish indirect discrimination. However, the law does not explicitly prohibit the use of statistical evidence.

In general, personal data collection must proceed under the requirements of the Law on the Legal Protection of Personal Data and, since the entry into force of the new version of the Law in 16 July 2018, it must also adhere to the requirements of the General Data Protection Regulation (GDPR).⁷¹ As GDPR is directly applicable in Lithuania, the collection of personal data must be carried out in conformity with its requirements.

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

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

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

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

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

b) Practice

In Lithuania, statistical evidence is not used in practice in order to establish indirect discrimination.⁷²

⁷¹ Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/XSpzxvEjIq>.

⁷² The Ombudsperson's *Annual Report for 2019* mentions the use of data collection to establish direct discrimination in a case concerning a gender pay gap. Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

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

There is no information that would indicate a reluctance to use statistical data as evidence in court. As mentioned above, the law does not explicitly prohibit its use, but the major obstacle is the general lack of reliable qualitative statistical equality data. In 2009, the Ombudsperson produced a draft national action plan for equality data collection. It identified a need for such data in addition to the rather scarce statistical data sources that are currently available. The Ombudsperson recommended that the Government produce a national action plan for the collection of equality data 2011-2014.⁷³ However, since the plan was not finally approved, no funding was allocated to implement it.

In 2011, the Ombudsperson managed to take a small step forward, with the support of EU PROGRESS funding. It implemented a project, one outcome of which was an analysis of statistical indicators in Lithuania, and the Ombudsperson also made some recommendations.⁷⁴ The research once again highlighted the fact that an equality data collection system in Lithuania is not yet established, and the data sets managed by the Department of Statistics are insufficient. The research recommended the establishment of an inter-institutional plan for the collection of equality data as well as a working group, involving both NGOs and scientists.

In June 2018 a new Action Plan for 2018-2021 on the Implementation of the State Programme on Equal Opportunities for Women and Men 2015-2021 was adopted. It provides for the collection of data on the situation of disabled women for the purpose of monitoring the implementation of the Convention on the Rights of Persons with Disabilities.⁷⁵

In accordance with the Action Plan for Roma Integration into Lithuanian Society 2015-2020, information on Roma people was collected through a representative survey of the Roma population⁷⁶ and was compared with information from the general population census.⁷⁷ The Action Plan for the Promotion of Non-discrimination 2017-2019 based the planning of the strategic document on statistical data, and it also contained a few measures for collecting data to evaluate the situation of vulnerable groups, including the carrying out of research on the situation of persons belonging to the LGBT community in

⁷³ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷⁴ Lithuanian Equal Opportunities Ombudsperson (2011), *Statistikos rodiklių apie lygybę ir klasifikatorių diskriminacijos apraiškoms parengimas ir vertinimas (įgyvendinta remiant PROGRESS programai (projekto nr. VS/2010/0555))* (Preparation and assessment of equality statistics and discrimination classification), available in Lithuanian at: www.lygybe.lt.

⁷⁵ Order of the Minister of Social Security and Labour on the adoption of the Action Plan for 2018-2021 on the Implementation of the State Programme on Equal Opportunities for Women and Men 2015-2021, 27 June 2018, available at: <https://www.e-tar.lt/portal/lt/legalAct/571f9fe079d711e8ae2bfd1913d66d57>.

⁷⁶ VŠĮ Diversity Development Group, Petrušauskaitė, V. (2015), *'Lithuania / Sociologinio tyrimo "Romų padėtis lyginant su kitais šalies gyventojais" tyrimo ataskaita'*, 30 April 2015, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

⁷⁷ The survey was carried out at the beginning of the action plan period in 2015; a second survey was planned for 2020 and was carried out after the cut-off date for this report. VŠĮ Diversity Development Group, Kontvainė, V. (2020), *'Romų tautybės asmenų padėtis 2020'*, 30 April 2015, available in Lithuanian at: http://www.romuplatforma.lt/wp-content/uploads/2020/07/Rom%C5%B3-pad%C4%97tis-2020_TYRIMO-ATASKAITA_galutin%C4%97.pdf.

society at large and on the protection of their private life.^{78 79} The Ombudsperson released the National Overview on the Situation of Transgender People in Lithuania²⁰ in 2019.⁸⁰

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

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

In Lithuania, harassment explicitly constitutes a form of discrimination.

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

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

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

However, the prohibition of harassment does not fully comply with the EU directives, and gaps exist in the material scope: harassment is not explicitly prohibited in relation to the supply of goods and services. The Ombudsperson provided recommendations to amend the Law on Equal Treatment prohibiting harassment in the provision of goods and services.⁸¹ The *Annual Report for 2019* stated that there were some requests and consultations regarding harassment based on age in the provision of goods and services, however the law did not provide protection from harassment based on age (or other grounds) in the field of goods and services. The draft Law on Equal Treatment, which has been submitted to the Parliament, includes a prohibition of harassment and sexual harassment in the provision of goods and services.

Codes of conduct are not widespread in Lithuania; however, diversity charters were launched in around 30 companies and organisations in 2018. Some government agencies (particularly those dealing with the implementation of EU-funded programmes) as well as

⁷⁸ Order of the Minister of Social Security and Labour on the adoption of the Action Plan for the Promotion of Non-discrimination 2017-2019, 15 May 2017, available at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363>.

⁷⁹ The report on the implementation of the action plan, which was released after the cut-off date for this report, also mentions the National Overview on the Situation of Transgender People in Lithuania, which was carried out by the Ombudsperson in implementation of an EU-funded project. No national overviews of the situation of LGBT persons were planned. Ministry of Social Affairs of the Republic of Lithuania (2020), 'Nediskriminavimo skatinimo 2017-2020 metų veiksmų plano įgyvendinimo 2019 metais ataskaita', available in Lithuanian at: https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/Lygios%20galimyb%C4%97s/2019%20m_%20Nediskriminavimo%20veiksm%C5%B3%20plano%20įgyvendinimo%20ataskaita.pdf.

⁸⁰ Tamulionytė, E., Žilvinskis, A. (2019), 'Translyčių asmenų padėtis Lietuvoje: nacionalinė apžvalga' (National Overview on the Situation of Transgender People in Lithuania), available in Lithuanian at: https://lygybe.lt/data/public/uploads/2019/06/translyciu-asmenu-padetis-lietuvoje_nacionaline-apzvalga.pdf.

⁸¹ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

larger companies operate under codes of conduct in their work. However, in most cases, such codes of conduct do not have detailed provisions on non-discrimination or harassment. Very often, non-discrimination is addressed only by the general provisions on equality and impartiality that are embodied in the codes. In some instances, harassment and sexual harassment are mentioned but not defined.

While investigating complaints regarding harassment in the field of employment in 2019, the Ombudsperson referred to the *Handbook on European non-discrimination law* by FRA, stating that there is no need for a comparator to prove harassment. This essentially reflects the fact that harassment in itself is wrong because of the form it takes (verbal, non-verbal or physical abuse) and the potential effect it may have (violating human dignity).⁸² The Ombudsperson also referred to the interpretation of harassment by the Constitutional Court, stating that it is one of the forms of discrimination forbidden under the equality clause established by Article 29 of the Constitution, even though no harassment was recognised in the specific investigation.⁸³

The Constitutional Court elaborated its views on harassment in 2017:

'in the context of the constitutional justice case at issue, it needs to be emphasised that one of the forms of discrimination (including the degrading of human dignity), prohibited under Article 29 of the Constitution, is harassment, which is understood as offensive, unacceptable, or unwanted conduct that has the purpose or effect of violating a person's dignity, or of creating a hostile, intimidating, humiliating, or offensive environment for him/her on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as well as other attributes such as disability, age, or sexual orientation. It should be noted that harassment also inevitably encroaches on a person's physical or psychological inviolability, *inter alia*, disturbs his/her physical, mental, or spiritual state, restricts the expression of his/her freedom of physical activity, of his/her intellectual and creative freedoms, thus, also the expression of his/her free personality, and can make his/her relations with other persons more complicated. Harassment can lead to long-term or even permanent consequences that adversely affect a person's private and social life.'⁸⁴

b) Scope of liability for harassment

In Lithuania, where harassment is perpetrated by an employee, the employer is liable. The employee can be held liable in concrete situations, based on the law under which harassment is addressed.

The scope of liability would depend on the situation and the law under which it is addressed. If discrimination is addressed via provisions of criminal law, the liability is personal – only a direct perpetrator (whether a natural or legal person) could be liable. In contrast, the civil law provides for vicarious liability. For example, the Civil Code would allow a claim for damages against the employers for the actions caused by its employees (Article 6.264).

⁸² European Union Agency for Fundamental Rights (2010), *Handbook on European Non-discrimination Law*, p. 32, available in English: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2011-handbook-non-discrimination-law-2011_en.pdf.

⁸³ Decision of the Equal Opportunities Ombudsperson No. (19)SN-198)SP-9, 28 January 2020 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos tautybės ir kilmės pagrindu teatre (duomenys neskelbtini) tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2020/01/sprendimas-nr.-19sn-198sp-9.pdf>.

⁸⁴ Constitutional Court of the Republic of Lithuania, Conclusion of 19 December 2017 on the compliance of the actions of Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, against whom an impeachment case has been initiated, No. KT20-11/2017 available in English at: <https://www.lrkt.lt/en/court-acts/search/170/ta1778/content>.

When applying administrative sanctions, the Equal Opportunities Ombudsperson issues them to the executive body of a legal person (a director, for example) but not to its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be enforced against a broad spectrum of parties. Tenants, customers and employees cannot be held liable. In its annual reports, the Ombudsperson has recommended amending the Law on Equal Treatment with provisions explicitly extending the scope of liability of persons.⁸⁵ The same would apply for the actions of members of particular associations or trade unions – according to the Ombudsperson, the current wording does not suggest that individual members could be held liable.⁸⁶

The employee can be held liable only by an employer applying the Labour Code, as harassment based on gender or sexual harassment, discriminative actions or violations of the honour and dignity of other employees or third parties during work or at the workplace would be considered a grave violation of working duties and a reason to terminate the employment contract.⁸⁷

Harassment in the sphere of access to or the supply of goods and services should be explicitly prohibited under the Law on Equal Treatment.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

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

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

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

b) Scope of liability for instructions to discriminate

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

As mentioned in Section 2.4 above, there is both a lack of clarity and inconsistency in the case law. When applying administrative sanctions, the Equal Opportunities Ombudsperson issues them to the executive body of the relevant legal person (a director, for example) but not to its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be

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

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

⁸⁷ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

enforced against a broad spectrum of parties. Tenants, customers and employees cannot be held liable. In its annual reports for 2009 to 2011, the Ombudsperson recommended amending the Law on Equal Treatment to introduce provisions explicitly extending the scope of liability of persons.⁸⁸ Therefore, it appears that an individual employee or representative of an education institution could not be held liable under the application of the Law on Equal Treatment.

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

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

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

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

The duty to provide reasonable accommodation was initially contained in the Law on Equal Treatment, and the same wording was repeated in the Labour Code in Article 26(2).⁸⁹ However, this wording lacks precision and is somewhat 'narrower' than that of the directive. Article 7(9) of the LET states that, when applying equal treatment, employers must:

'take appropriate measures to provide conditions for disabled people to obtain work, to work, to pursue a career or to study, including adapting premises, provided that the employer would not be disproportionately burdened with duties as a result.'

The official translation of Article 5 ('Reasonable accommodation for disabled persons') of Directive 2000/78 in Lithuanian is 'Premises suitable for disabled persons'. Therefore, both the Law on Equal Treatment and the Labour Code include the duty to adapt premises, but not the duty to provide 'reasonable accommodation', which can differ depending on each person and the type of work.

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

In addition, the Law on Equal Treatment and the Labour Code neither define disability nor do they provide explanations about 'reasonable accommodation'. The only occasion when some sort of reference to 'reasonable accommodation' is made is in the previously mentioned obligation to employers to 'take appropriate measures to provide conditions for disabled people ... including adapting premises, provided that the employer would not be disproportionately burdened with duties as a result' (Article 7 LET). The term 'reasonable accommodation' is not explicitly defined in the Law on Equal Treatment.

⁸⁸ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lgybe.lt/lt/veikla/metines-ataskaitos/405>.

⁸⁹ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

It can be supposed that the personal scope in the context of reasonable accommodation does not differ from the general prohibition of non-discrimination on the ground of disability.

However, since there is neither a definition of 'disability' nor one of 'reasonable accommodation' in the Law on Equal Treatment, there is a risk that too narrow an interpretation of the duty could mean that a person may only benefit from an employer making 'reasonable accommodation' in cases where the definition of 'disability' provided in the Law on the Social Integration of Persons with Disabilities applies. Nevertheless, as mentioned before, the definition of 'disability' within the Law on the Social Integration of Persons with Disabilities has been criticised by the UN Committee on the Rights of Persons with Disabilities and has not been amended, even though it was initially planned to be amended by 2017, as indicated in the national plan for the implementation of the CRPD's recommendation.⁹⁰

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

However, the Ombudsperson applies the concept of 'individualised assessment' instead of a general rule when examining complaints, and there was a Court case in 2019 that supported the decision made by the Ombudsperson, as described in part (b) below.

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

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

However, even though there is not much case law from the courts clarifying the application of the principle of 'reasonable accommodation' within employment, the decision from 2019 seems to support the decision made by the Ombudsperson, holding the view supported by the provisions of the CRPD.

It is important to note that the Draft Law on Equal Treatment uses the term 'reasonable accommodation'; it does not merely refer to the adaptation of premises. However, it still does not define the term, nor does it set out what could be considered as a disproportionate burden.

⁹⁰ Order of the Minister of Social Security and Labour on the adoption of the Action Plan for Implementation of the Recommendations of the UN Committee on the Rights of Persons with Disabilities 2016-2020, 9 November 2016, available at: https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/socialine-integracija/neigalieji/12068_jt-rekomendaciju-igyvendinimo-planas-po-suinteresuotu-galutinis.pdf.

b) Practice and case law

Since neither the Law on Equal Treatment nor other legislation provides more details on how reasonable accommodation should be implemented in practice, there is no mechanism in place.

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

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

The Ombudsperson stressed that the 'international and national legal framework imposes an obligation on the employer to ensure that persons with disabilities would not be discriminated against when applying for a job, by ensuring that their workplace and conditions are adapted. Failure to comply with this obligation constitutes discrimination in the field of employment against persons with disabilities.'⁹¹

One such complaint was questioned in court, and the court confirmed the decision made by the Ombudsperson in 2019. The court found that, by refusing to employ the person and failing to provide reasonable accommodation, the company had violated the Law on Equal Treatment. The court elaborated on disproportionate burden and used the provision in the Law on Equal Treatment applying the concept of accommodation of premises more widely, to cover accommodation of working conditions:

'According to the court, the Company, claiming that it did not have the ability to adapt the workplace and the conditions to accommodate the employee in such a way that she would be able to work as a cashier/salesperson without harming her health, failed to demonstrate that, by slightly changing the employee's work functions (if required) and adapting the working conditions to the needs of the employee, it would experience a disproportionate burden or that such organisation of work within the Company would be impossible'.⁹²

The lack of further case law contributes to legal uncertainty over how the definition should be interpreted and what would be considered a 'disproportionate burden' for an employer. Legal criteria for 'disproportionate burden' would contribute to clarity on what the term means. The 'Analysis of discrimination in cases of denial of reasonable accommodation' carried out in 2019 reached the conclusion, based on interviews with different stakeholders, that it is wrongfully imagined that reasonable accommodation always requires huge financial resources, as there is not always a need to adapt the premises or to purchase expensive equipment. However, according to this research, reasonable accommodation would be provided more often if the laws regulating subsidies for employers allowed them to use the subsidies for individualised cases and more flexible types of reasonable accommodation, rather than just for the physical establishment of the workplace or purchasing work equipment.⁹³

⁹¹ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

⁹² Vilnius Regional Administrative Court decision, case No. eI-2472-244/2019, 3 July 2019, (*Vilniaus apygardos administracinio teismo 2019 m. liepos 3 d. sprendimas administracinėje byloje*).

⁹³ Lithuanian Disability Forum, Lithuanian Centre for Human Rights (2019), 'Galimos diskriminacijos dėl sąlygų nepritaikymo analizė' (Analysis of discrimination in cases of denial of reasonable accommodation), available

c) Definition of disability and non-discrimination protection

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

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

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

However, the CRPD provided a recommendation for Lithuania to 'Recognize the denial of reasonable accommodation as a form of discrimination on the basis of disability'.⁹⁴

As analysed in Section 2.6(b), the Equal Opportunities Ombudsperson considers that failure to ensure that the workplace and conditions are adapted/accommodated to ensure a person's access to that workplace constitutes discrimination in the field of employment against persons with disabilities.⁹⁵ Besides this, the author is not aware of cases in which the courts have elaborated on the concept of what is 'reasonable' or have given any reasoning regarding the failure to meet the duty of reasonable accommodation as direct discrimination, or where they have elaborated on the proportionality of the burden for employers.

In 2014 the first case explicitly concerning a failure to provide reasonable accommodation was adjudicated in court.⁹⁶ Although the reasoning of the court did not elaborate on the concept extensively, it acknowledged that failure to provide reasonable accommodation is direct discrimination.

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

Given that, according to the Labour Code as well as the Law on the Health and Safety of Workers, the decisions of the Disability and Working Capacity Assessment Office were binding on the employer, the choir administration dismissed the complainant on the ground that he was unable to work due to his state of health. However, when the choir performer filed a complaint with the Equal Opportunities Ombudsperson, it appeared that the position of the choir performer did not require constant standing, and that the employer had not even considered any possible adjustments of working conditions for

in Lithuanian at: http://www.ndt.lt/wp-content/uploads/2019_Diskriminacijos_del_salygu_nepritaikymo_analize_visas-galutinis.pdf.

⁹⁴ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEFvL4q2fNHbisIoJQJExObNo%2b164VPCFXgGIA71mMejw37A6SN9XPUfu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcEo>.

⁹⁵ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

⁹⁶ Vilnius Regional Court decision, Case No. 2A-557-640/2014, 27 February 2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

the complainant. The Ombudsperson stated that the employer had failed in its duty to provide reasonable accommodation, and therefore found a breach of the Law on Equal Treatment, as well as violation of Article 27 of the UN Convention on the Rights of Persons with Disabilities. The Ombudsperson admonished the employer for the violation and suggested that the victim file a court complaint.

The choir performer, V.J., applied to the county court, which found the dismissal to be direct discrimination. The case was then brought to Vilnius Regional Court.⁹⁷ The court of appeal upheld the decision of the first instance court and ruled that V.J. had been discriminated against on the basis of disability.⁹⁸ The court upheld the reasoning of the court of first instance, stating that 'although the decisions of the Disability and Working Capacity Assessment Office ... are binding on the employer, in this particular case the decision did not state that V.J. was not fit to work in that particular position.' The decision provided information about the state of health of the person as well as potential health risk factors, while it is the duty of the employer to properly assess whether those factors are present for a particular job. The employer did not provide any proof that it had tried to realistically evaluate V.J.'s ability to work or that it had considered adjusting V.J.'s working conditions in order for him to continue his work as a choir performer. Therefore, the dismissal breached the requirements of the Law on Equal Treatment and of the Law on the Social Integration of People with Disabilities, and had discriminated against V.J. on the basis of disability.

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

In 2019, as mentioned in part (b), another court held that the company concerned failed to demonstrate that slightly changing an employee's work functions (if required) and adapting the working conditions to the needs of the employee would result in a disproportionate burden or that such organisation of work within the company would be impossible.

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

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

In Lithuania, there is no duty to provide reasonable accommodation for people with disabilities outside the employment field according to the Law on Equal Treatment. However, such discrimination might be recognised in compliance with provisions of the CRPD. The concept of 'disproportionate burden' with regard to providing reasonable accommodation is not known outside the field of employment.

The Law on Education imposes a duty on state and municipal institutions to ensure opportunities to accommodate students with special needs (special educational assistance, special study aids, and social and medical care). In Article 34(3), the Law on

⁹⁷ Vilnius Regional Court decision, Case No. 2A-557-640/2014, 27 February 2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

⁹⁸ The author was not able to access the first instance decision in the public court case law search database; the decision is not publicly available.

Education provides that 'Accessibility of education is ensured by adapting the school environment, providing psychological, special pedagogical, special and social pedagogical support, supplying with technical aid measures at school and special educational measures in other ways established by law.'⁹⁹ In addition, disabled students have the right to financial support granted by the state during their studies in further education establishments and universities. The concept of 'disproportionate burden' is not regulated in the field of education.

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

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

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

⁹⁹ Law on Education (*Lietuvos Respublikos Švietimo įstatymas*), 1991, No. I-1489, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

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

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

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

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

a) Protection against discrimination

In Lithuania, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

The Law on Equal Treatment, in Article 12(24), does not explicitly distinguish between natural and legal persons, and the word 'persons' should be interpreted to encompass both legal and natural persons. This is supported by the findings of the Equal Opportunities Ombudsperson as well as by other provisions under the LET and by case law. For instance, on the provision on the shift of the burden of proof, Article 4 of the Law on Equal Treatment states that it should be applied while investigating complaints of discrimination submitted by natural and legal persons.

b) Liability for discrimination

In Lithuania, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. Both natural and legal persons are liable for discriminatory acts according to the law. Natural persons can have administrative and criminal responsibility. Legal persons bear administrative liability (the obligation to pay a fine in the case of a violation of the Law on Equal Treatment), and criminal liability based on Article 170 of the Criminal Code (incitement of hatred or hatred). Criminal liability for natural persons is covered in Article 169 of the Criminal Code (in the article on 'Discrimination on Grounds of "Nationality", Race, Sex, Descent, Religion or Belonging to Other Groups', where other grounds are also included).¹⁰⁰

When it comes to the scope of liability, there is a lack of clarity. The Law on Equal Treatment, in Articles 29 and 30, mentions persons but does not specify whether they are legal or natural persons to whom the Equal Opportunities Ombudsperson can address a decision after analysing the complaint, although the law does mention that both natural and legal persons are obliged to submit the requested information, documents, etc. However, since natural persons can also be employers and providers of goods and services, the liability should also apply to them.

¹⁰⁰ The grounds mentioned in Article 169 of the Criminal Code are: age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, and convictions or views.

It is not very clear whether, in cases of discrimination in the occupational sphere, both the employer and the employee can be held liable for discrimination. The only available case law on the matter concerns the scope of liability for sex discrimination in employment relations and the decisions of the Equal Opportunities Ombudsperson (although the outcomes may also be applied to other grounds of discrimination). Two previous decisions contradicted each other: in one case, Vilnius Regional Administrative Court stated that only employers, not their representatives, could be held liable;¹⁰¹ a month later, the Supreme Administrative Court of Lithuania ruled that, although the Law on Equal Opportunities did not *expressis verbis* provide a list of subjects who could be admonished, a systematic analysis of the Law on Equal Opportunities for Women and Men and of the jurisprudence of the Supreme Court led the court to believe that not only employers but also their representatives could be held accountable for discrimination and could be admonished by the Equal Opportunities Ombudsperson.¹⁰² This means that managers or heads of administration and other personnel with the legal capacity to represent the employer can be held accountable according to the Law on Equal Opportunities. The decision of the Supreme Administrative Court is definitely of greater importance, but this example demonstrates that the lack of clarity in national legislation might lead to inconsistencies in almost identical situations.

Another case was considered by the Court in 2019, concerning a failure to meet the requirements of reasonable accommodation. The issue of liability was addressed in the decision of the Court, which recognised the applicant's request in her complaint for a warning to be issued to a shop manager who made a decision regarding the applicant's employment. The Court referred to the official registry, according to which the chief executive officer was acting in the name of UAB Palink:

'the Manager of the shop is not a representative of the legal entity, therefore the Equal Opportunities Ombudsperson reasonably issued a warning to the company's CEO.'¹⁰³

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

a) Protection against discrimination

In Lithuania, national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination, as regulated by Articles 5 to 9 of the Law on Equal Treatment.

b) Liability for discrimination

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

The Law on Equal Treatment was designed with the particular purpose of transposing the requirements of the EU anti-discrimination directives into national legislation. The law does not make a distinction between the public and private sectors in the fields of employment, education and the provision of goods and services (Articles 6-9). In addition, it has a separate provision on public entities, Article 5, which states that:

'state and local government institutions and agencies must within the scope of their competence ensure that in all the legal acts drafted and passed by them, equal rights and treatment are laid down without regard to gender, race, "nationality",

¹⁰¹ Vilnius Regional Administrative Court, Case No. I-1278-624/2012, decision of 1 March 2012.

¹⁰² Supreme Administrative Court of Lithuania, administrative case No. A⁸⁵⁸-403/2012, decision of 2 April 2012.

¹⁰³ Vilnius Regional Administrative Court decision, Case No. eI-2472-244/2019, 3 July 2019, (*Vilniaus apygardos administracinio teismo 2019 m. liepos 3 d. sprendimas administracinėje byloje*).

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

Although the law does not explicitly mention social advantages or social protection, it does not exclude these fields either. It can be interpreted as encompassing these fields but, as described below, court interpretation might be needed for clarification.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

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

In relation to employment, the same requirements apply to the public sector as to the private sector. The main provisions of national law concerning non-discrimination in the field of employment (recruitment conditions, promotion, vocational training, etc.) are established in the Law on Equal Treatment.

According to the Law on the Legal Status of Foreigners,¹⁰⁴ foreigners granted refugee status and foreigners granted subsidiary protection are exempt from the obligation to obtain a work permit, and thus can start to work under an employment contract as soon as they receive a residence permit in Lithuania. However, before asylum status and a Lithuanian residence permit are granted, they are not allowed to work in Lithuania. Since the asylum procedure takes months, in practice most of the people concerned are not allowed to work for a year or more after arrival. This inability to work during the asylum application procedure cuts down the opportunities for integration solutions for asylum seekers from the moment of their arrival in Lithuania and, when they are granted asylum in Lithuania, it makes it more difficult for them to access the labour market.¹⁰⁵

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

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

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

Joint activity (partnership) contracts are not equated with a service or employment contract and therefore are not regulated by the Law on Equal Treatment.'¹⁰⁶

¹⁰⁴ Law on the Legal Status of Foreigners (*Įstatymas dėl užsieniečių teisinės padėties*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD>.

¹⁰⁵ Lietuvos socialinių tyrimų centras (Lithuanian Social Research Centre) and Diversity Development Group (2016), *A Study of integration policy of foreigners, granted asylum in Lithuania*, available at: <http://www.diversitygroup.lt/wp-content/uploads/2017/03/Refugee-Integration-EN.pdf>.

¹⁰⁶ Decision of the Equal Opportunities Ombudsperson No. (18)SN-129)SP-77, 10 August 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos kilmės, kalbos ir pilietybės pagrindais UAB "Dallis" vykdančią priėmimą į darbą tyrimo*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2018/08/sprendimas-nr.-77.pdf>.

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

So far, however, there have been no rulings on self-employment by the courts, and it has not been explicitly mentioned in decisions made by the Equal Opportunities Ombudsperson.

In a 2019 case, however, a court elaborated on the employment and occupation relationships that fall within the scope of the directive. The case concerned an application by a person who asked for a decision by the Ombudsperson to be repealed, obliging it to analyse the complaint regarding discrimination, based on the grounds of political views in the field of employment. The case involved a situation in which the Minister of Culture and the Lithuanian Culture and Art Council had elected the members of the Lithuanian Culture Council Meeting. The candidacy of the applicant was considered, but it was indicated during the meeting that the applicant could not be appointed as a member of the Lithuanian Culture Council Meeting because he was a member of a political party. In his opinion, this was discriminatory and could have misled the voting members of the Lithuanian Culture and Art Council, and this could have been the reason for him not being elected. The Ombudsperson rejected the application on the basis that it did not fall within the scope of the Law on Equal Treatment and that the expressions used by the cultural [data not disclosed] could not fall within the scope of the law as they could not be considered to be the employer of the appointed members of the Lithuanian Culture Council Meeting.

The Supreme Administrative Court elaborated on the scope of application of Directive 2000/78 and the Law on Equal Treatment, and based its decisions on the jurisprudence of the ECJ and the provisions of the directive, concluding that:

'thus, when deciding on the application of Article 7 of the Law on Equal Treatment, it must be assessed in every individual situation, based on the essence of the legal relationship, whether the legal relationship falls within the scope of employment (employment or occupation) regardless of whether the relationship is being formed based on the employment contract or another legal basis, but in essence corresponding to the characteristics of the employment relationship. A contrary interpretation of Article 7(1) of the Law on Equal Treatment would fail to achieve the objectives of Directive 2000/78.'¹⁰⁷

The Supreme Administrative Court of Lithuania repealed the decision of the Ombudsperson, regarding the relationship in question as an employment relationship, and obliged the Ombudsperson to analyse the complaint submitted by the applicant.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

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

¹⁰⁷ Supreme Administrative Court of Lithuania (Lietuvos Vyriausiosios Administracinės Teismas), *T.B. v. Office of the Equal Opportunities Ombudsperson*, administrative Case No. eA-949-415/2019, decision of 5 November 2019, available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=796b8e5b-3ca2-4452-9a86-901fdcd804b2>.

Article 7 of the Law on Equal Treatment has a general provision that all employers are bound by the principle of equality of persons, followed by a list of obligations. The same wording was repeated in the Labour Code, Articles 2 and 26.¹⁰⁸ In Article 11, the LET prohibits discriminatory advertisements offering job, civil service or education opportunities. Neither law explicitly includes self-employment or occupation. The Law on Income Tax,¹⁰⁹ which provides a list of activities related to self-employment or occupation (artists, performers, designers, etc.), does not have any references to anti-discrimination. On the other hand, the Labour Code is a *lex generalis* in the occupational sphere, and therefore its principles would apply in the absence of specific rules in other legislation. Under Article 21(2) of the Labour Code, natural persons may be employers. However, it remains unclear whether the provisions apply in cases where the services of self-employed persons are declined because of discriminatory attitudes.

The laws relating to specific professions, such as the Attorney Law,¹¹⁰ the Law on the Healthcare System,¹¹¹ the Accountancy Law,¹¹² the Audit Law¹¹³ and the Dentistry Law,¹¹⁴ do not contain non-discrimination clauses, definitions of discrimination or any regulations on protection against discrimination, nor do they include a direct prohibition of discrimination on the grounds covered by the directives. However, the general principles of non-discrimination established in the Constitution and in the Law on Equal Treatment should apply.

The findings of the Eurobarometer 2019 present worrying trends when it comes to accessing employment. The following criteria may put one candidate at a disadvantage when a company wants to hire someone and has a choice between two candidates with equal skills and qualifications: the candidate's age, if they are considered too young or too old (59 %), a disability (51 %), being Roma (41 %), looks (34 %) sexual orientation (being gay, lesbian or bisexual) (27 %), gender identity (being transgender) (22 %), gender or sex (21 %), sex characteristics (being intersex) (21 %), way of speaking or accent (19 %), skin colour (18 %), expression of religious belief (16 %) and ethnic origin (10 %).¹¹⁵

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

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

According to Article 7 of the Law on Equal Treatment, the actions of an employer shall be deemed discriminatory if he or she applies less (or more) favourable terms of employment, payment for work or dismissal criteria to one employee or civil servant than

¹⁰⁸ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

¹⁰⁹ Law on Income Tax (*Lietuvos Respublikos Gyventojų pajamų mokesčio įstatymas*), 2002, No. 73-3085, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.C677663D2202/wVGhEHdaRq>.

¹¹⁰ Attorney Law (*Lietuvos Respublikos Advokatūros įstatymas*), 2004, No. 50-1632, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9F4371AB03A3/asr>.

¹¹¹ Law on the Healthcare System (*Lietuvos Respublikos Sveikatos sistemos įstatymas*), 1994, No. 63-1231, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.E2B2957B9182/ykTupWhxcs>.

¹¹² Accountancy Law (*Lietuvos Respublikos Būhalterinės apskaitos įstatymas*), 2001, No.99-3515, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.43178AA9832E/eGHQNZASDS>.

¹¹³ Audit Law (*Lietuvos Respublikos Finansinių ataskaitų audito įstatymas*), 1999, No. VIII-1227, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9845F775C518/npJADmsHoX>.

¹¹⁴ Dentistry Law (*Lietuvos Respublikos Stomatologinės priežiūros (pagalbos) įstatymas*), 2004, No. 4-36, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D9F7AA1AE41F/ORZTZCmqKw>.

¹¹⁵ Special Eurobarometer 493, 'Discrimination in the European Union', May 2019, available in English at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2251>.

to another. The same wording is repeated in the Labour Code under Article 26(2). The general equality principle is also mentioned in Article 2 of the Labour Code.¹¹⁶

There are no significant court cases that can be accessed publicly on dismissal because of discrimination in 2019. However, the author of this report is aware of two court cases that ended in a settlement between the parties.¹¹⁷ One of them concerned an unfair dismissal allegedly because of discrimination on the grounds of age and gender. The parties reached a settlement at the final stage. No further details are described in the court's decision confirming the settlement, the details of which are not publicly available.

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

'in the present case, the applicant relied the dismissal of the defendant on the ground that she did not provide information on her disability (the only and clear reason mentioned in the Act). Therefore, in the Court's view, such grounds for dismissal are directly related to discrimination against the employee and cannot be a reason for inappropriate results of the trial period and have an objective substantive effect on her dismissal.'¹¹⁸

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

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

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

Article 7 of the Law on Equal Treatment obliges employers to 'provide equal working and civil service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as provide equal benefits', although the law does not provide explanations as to what the concepts 'vocational training' or 'advanced vocational training' mean. The same wording is repeated in the Labour Code under Article 26(2)(2)).¹¹⁹

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

¹¹⁶ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

¹¹⁷ Information received by the author from the Office of the Ombudsperson for Equal Opportunities, 13 December 2019.

¹¹⁸ Vilnius County Court (Vilniaus apylinkės teismas), *Viešoji įstaiga "Šeimos medicinos ir paliatyvaus gydymo centras" v. E.V.G.*, Case No. e2-23430-727/2018, 6 November 2018, available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=fb076a27-c3e1-4b09-988a-d28fef79d5b0>.

¹¹⁹ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603. Article 26, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Lithuania, national legislation prohibits discrimination in relation to membership of and involvement in workers or employers' organisations, as formulated in the directives, for all five grounds and for both private and public employment.

Article 9 of the Law on Equal Treatment repeats the wording of the directive. As there have not been any rulings on the matter yet, it is not clear how it will function in practice.

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

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

Provision of housing is included under the provisions regulating prohibition of discrimination in the field of consumer protection (access to and supply of goods and services) (Article 8 LET). This article does not explicitly mention social housing, but it is applied in practice for the provision of public services.

The existing Law on Equal Treatment, in contrast to the Law on Equal Opportunities for Women and Men,¹²⁰ does not explicitly state that social protection, including social security and healthcare, falls under the scope of the law. There are no particular provisions on this in the LET, with the exception of a general duty to implement equal opportunities (Article 5), which reads as follows:

'state and local government institutions and agencies must within the scope of their competence ensure that in all the legal acts drafted and passed by them, equal rights and treatment are laid down without regard to gender, race, "nationality", citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.'

However, the position of the Ombudsperson in this respect is not clear and consistent. In the past, the Ombudsperson considered that social security and social protection would not fall under the scope of the Law on Equal Treatment while healthcare did, since the wording of the law regarding goods and services was broad enough to include health services.¹²¹ Prior to 2014, the Ombudsperson had not investigated any social security cases with regard to grounds other than gender. However, in 2014 the Ombudsperson received 32 complaints from state pension recipients (former statutory officials and military personnel) with a general claim that they had been discriminated against because, from 2010 to 2013 (during the financial crisis), the Government reduced their state pension payments.¹²² The group claimed that they had been discriminated against in comparison to another group, that is, old-age pensioners, whose pensions remained unchanged. In spite of the fact that they based their claim on constitutional equality clauses and did not rely on the provisions of the Law on Equal Treatment, the

¹²⁰ Article 9 of the Law on Equal Opportunities for Women and Men explicitly states that discrimination on the ground of sex is prohibited in the field of social protection.

¹²¹ Lithuanian Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2016/02/lgkt-ataskaita-2010.pdf>.

¹²² An overview of the case is provided in: Lithuanian Equal Opportunities Ombudsperson (2014), *Annual Report for 2014*, pp. 74-82, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>. Decisions on the Ombudsperson's website are available only from 2015.

Ombudsperson started the investigation procedure on the basis of alleged discrimination on the ground of social status and did not reject the complaint with reference to material scope. Eventually the Ombudsperson closed the investigation without clearly stating that the regulation was discriminatory and issued a recommendation to the Parliament to enact laws that would compensate state pension recipients for their loss of income because of reduced pensions.

In addition to this, social protection is mainly regulated by the Law on State Social Security Insurance.¹²³ However, this law does not have any anti-discrimination clauses either; it does not mention religion, belief, race or ethnicity, age, disability and sexual orientation in terms of social protection. Social protection, social security and healthcare are governed by a number of other special laws that cover areas such as social state benefits,¹²⁴ health insurance and healthcare,¹²⁵ but these laws also lack non-discrimination provisions. The Law on the Healthcare System only provides a description of the principle of 'just healthcare' – as 'state-recognised healthcare conditions ensuring equal opportunities to seek health and as much as possible reducing the differences between those seeking it'. It also sets out the principles regulating healthcare activities, among which are: 'the rights of every individual to enjoy the best health possible regardless of their sex, race, ethnicity, citizenship, social status and profession'.¹²⁶ The Law on Support for the Purchase or Rental of Housing¹²⁷ only sets out a general equality principle, without mentioning specific grounds. The issue of social housing is also addressed in Section 3.2.10 ('Housing'), under paragraph (a) on 'Trends and patterns regarding housing segregation for Roma'.

Based on the practice of the Ombudsperson, as well as court practice, it can be maintained that healthcare is considered as an example of accessing goods and services and as a public service. See Section 3.2.9 concerning a court case on discrimination on the ground of disability being recognised because of a failure to ensure access to Kaunas Healthcare Clinic for persons with disabilities.¹²⁸

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

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

¹²³ Law on State Social Security Insurance (*Lietuvos Respublikos valstybinio socialinio draudimo įstatymas*), available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0F9036415DBD/SerhhipiDiF>.

¹²⁴ Law on Social State Benefits (*Valstybinių šalpų išmokų įstatymas*), 1994, No. 96-1873, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f5ee93504a6e11e6b5d09300a16a686c/owltqajZQe>.

¹²⁵ Law on the Healthcare System, (*Lietuvos Respublikos sveikatos sistemos įstatymas*), 1994, No. I-552, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.E2B2957B9182/XBicOxnVvb>.

¹²⁶ Law on the Healthcare System, (*Lietuvos Respublikos sveikatos sistemos įstatymas*), 1994, No. I-552.

¹²⁷ Law on Support for the Purchase or Rental of Housing (*Lietuvos Respublikos paramos būstui įsigyti ar išsinuomoti įstatymas*), 2014, No. 15180, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/620cd9e0584311e49df480952cc07606/bDRaAQSTha>.

¹²⁸ The decision was adopted by the Supreme Administrative Court of Lithuania after the cut-off date for this report.

Comment on the decision of the Supreme Administrative Court by the Ombudsperson, 12 June 2020, available in Lithuanian at: <https://www.lygybe.lt/lt/kontroliere-auksciausios-instancijos-teismas-leido-diskriminuoti-asmenis-su-negalia-pranesimas>.

a) Article 3(3) exception (Directive 2000/78)

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

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

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

Nevertheless, complaints regarding social benefits are likely to be investigated by the Ombudsperson, based on the duty of the state and municipal institutions and agencies to ensure that equal rights and opportunities are enshrined in all legal acts irrespective of gender, race, nationality, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, as established by Article 5 or Article 8 of the LET, which contains an obligation to ensure equal treatment in the field of consumer protection. These provisions could be interpreted as covering social benefits, since they are not mentioned among the exceptions.

National anti-discrimination law does not explicitly address social advantages. The existing Law on Equal Treatment does not explicitly state that social benefits fall under the scope of the law. In contrast, the Law on Equal Opportunities for Women and Men, which prohibits discrimination based on sex, explicitly states in Article 9 that the law covers the social protection system. There have not been any court cases regarding the application of national non-discrimination law in the field of social advantages.

Although the Equal Opportunities Ombudsperson has, on a few occasions, stated that social advantages do not fall under the scope of the Law on Equal Treatment, in 2011 it accepted a complaint concerning the sale of reduced-rate tickets to pensioners by Vilnius City Municipality.¹²⁹ In 2015, the Equal Opportunities Ombudsperson investigated a few complaints regarding kindergarten benefit schemes.¹³⁰ The municipalities of three major cities decided to solve the problem of a lack of public kindergartens by financially compensating parents who sent their children to private kindergartens (which are generally more expensive than public ones). The Ombudsperson received a few complaints that such schemes were discriminatory on the basis of social status (which covers the same material scope as other grounds). The Ombudsperson accepted the complaints and, without explicitly identifying direct or indirect discrimination, issued a recommendation that municipalities should follow the general 'duty to implement equal opportunities' as formulated under Article 5 of the Law on Equal Treatment and amend the schemes.

A complaint regarding the application of provisions to determine permanent care or constant care (assistance) and the granting of related benefits for persons with type 1 diabetes was considered in 2019. A mother of a 15-year-old submitted a complaint arguing that rules setting out the payment of benefits to underage persons that came into force in 2019 discriminated against persons with disabilities caused by diabetes. The investigation determined that the special needs of persons with type 1 diabetes were not mentioned under the rules, therefore the applicant was not eligible for the payment of benefits. The Ministry of Social Affairs and Labour and the Ministry of Health explained that, according to the Description of the Procedure for Determining the Needs for Compensation for Expenses for Special Permanent Care (Assistance) or Acquisition of a Special Car or its Adaptation, which was valid from 1 January to 24 May 2019, special

¹²⁹ Lithuanian Equal Opportunities Ombudsperson (2011), *Annual Report for 2011*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

¹³⁰ Decisions of the Equal Opportunities Ombudsperson with regard to social status, available in Lithuanian at: <http://www.lygybe.lt/lt/socialine-padetis-pazymos>.

needs were not determined based on a diagnosis of diabetes. The rules were changed during the investigation of the complaint.¹³¹

This complaint illustrated that the sphere of social advantages might be considered by the Ombudsperson to fall within the scope of the Law on Equal Treatment.

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

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

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

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

In general, all educational institutions, schools and scientific and academic institutions (public and private) are obliged under Article 6 of the Law on Equal Treatment to ensure that the principle of non-discrimination is applied in admitting students to educational institutions, awarding study grants, drafting educational programmes, selecting curricula and assessing knowledge with regard to all the grounds listed in the Law on Equal Treatment. Furthermore, the Law sets out that 'Educational establishments, other education providers as well as research and education establishments must, within their competence, ensure that education programmes, textbooks and teaching aids do not contain or propagate discrimination' on all grounds.

In addition, Article 5(1) of the Law on Education states equal opportunities as one of the principles of the education system. Jurisprudence on equality in education remains scarce, since no cases regarding discrimination in this field have been brought to court in recent years.

There has not been any major case law with regard to education in 2019. One of the complaints regarding discrimination on the ground of disabilities is described below in part (a) ('Pupils with Disabilities').

An issue of education materials being in compliance with the equality principles has been raised in previous years. In 2019, the Ombudsperson made a decision following an investigation regarding alleged discrimination based on the grounds of gender, sexual orientation and disability in the provision of education material for remote online courses for teachers on sex education, although the investigation was discontinued due to a lack of objective information – with missing confirmation from the providers of the courses on what constituted the training material. The director of the online courses and the lecturer who had prepared the content could not confirm whether the training course information provided to the Ombudsperson by the applicant was part of an online course they had organised. Moreover, the application was submitted by the Human Rights Organisation Coalition with the training course material received from an anonymous source, therefore

¹³¹ Decision of the Equal Opportunities Ombudsperson No. (19)SN-92)SP-79, 20 June 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu nustatant specialiuosius poreikius tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/06/nr.-19sn-92sp-79.pdf>.

the Ombudsperson declared they could not objectively investigate whether there had been a violation of the Law on Equal Treatment.¹³²

One of the provisions of Article 3 of LET states that the Law does not apply to the admission of persons to study at schools of religious communities and associations, schools established by them or their members, as well as establishments, enterprises and organisations whose main activity is other than academic education, which have been established with the purpose of education in an environment fostering the values of a religious community or association where refusal to admit a person is necessary in order to maintain the ethos of the said organisations. The same rules apply to the process of education as well as to the selection of personnel by these establishments. It is not clear which schools would be exempted from applying the law and in which cases, since there have not been any rulings on the issue yet. However, the debate on these exceptions in Parliament focused largely on the issue of sexual orientation. Conservative politicians stated that such provisions could be used to 'protect' schools from homosexuals. The present wording is very broad, leaving room for interpretations that could breach the requirements of the Employment Equality Directive 2000/78/EC.

a) Pupils with disabilities

In Lithuania, the general approach to education for pupils with disabilities gives rise to problems.

The education of people with disabilities is mainly regulated by the Law on the Social Integration of Persons with Disabilities (which establishes the general right to education of people with disabilities) and by the Law on Education.¹³³ The principle embodied in these laws is to support an inclusive approach towards the education of people with disabilities by partially or fully integrating children with disabilities into mainstream education. According to Article 14 of the Law on Education, the state is responsible for ensuring that children with special educational needs be given appropriate assistance at all levels of education. Articles 34 and 28(6) oblige municipalities to ensure the functioning of a sufficient and efficient network of institutions that provide assistance to children with special needs in pre-school, basic and general education, as well as to their teachers. In addition, under the Law on the Minimum and Average Care of the Child, children who have socialisation challenges can be placed into special educational socialisation institutions only in exceptional cases, for temporary periods only and paying attention to the best interests of the child.¹³⁴

The practical implementation of these principles gives rise to problems due to various reasons, such as: a substantial lack of financial and human resources; a lack of specialists; and a lack of interest by mainstream education institutions in adapting to the new model of inclusive education.¹³⁵ Besides this, Article 29(10) of the Law on Education establishes an exception for schools that significantly affects children with disabilities and their ability to access schools providing compulsory education:

¹³² Decision of the Equal Opportunities Ombudsperson No. (18)SN-193)SP-2, 4 January 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos propagavimo lyties, lytinės orientacijos ir negalios pagrindu VŠĮ "Švietimo tinklas" skelbtoje mokymo programoje*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2019/01/sprendimas-nr.-18sn-193sp-2.pdf>.

¹³³ Law on Education (*Lietuvos Respublikos švietimo įstatymas*), 1991, No. I-1489, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9A3AD08EA5D0/asr>.

¹³⁴ Law on Minimum and Average Care of the Child (*Vaiko minimalios ir vidutinės priežiūros įstatymas*), 2007, No. X-1238, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.90D8CF4E3E9F/asr>.

¹³⁵ Government decision to implement the National Programme for the Social Integration of People with Disabilities 2013–2019 (*LR Vyriausybės nutarimas Dėl Nacionalinės neįgaliųjų socialinės integracijos 2013–2019 metų programos patvirtinimo, 2012 m. Lapkričio 21 d.*), available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437985&p_query=&p_tr2=2.

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

Under the Law on Education, parents have the right to choose a form of education for their child, but only to a certain extent. If special educational/psychological institutions identify severe special needs that make a child’s education in a mainstream school impossible, that child is placed in a special school or in a class for children with special needs in a mainstream school, or is educated at home. However, in many cases, education in general schools is barely possible due to the fact that many mainstream schools lack either the infrastructure or the specialists (or both) to accommodate children who have special needs and are in need of specialist support.¹³⁶ According to the investigation implemented by the Ombudsperson for Children’s Rights, more than one third of municipalities in the country did not provide socialising classes, and 14 (out of 61) of the municipalities did not provide any type of further education opportunities for children with intellectual disabilities finishing compulsory basic education (on average, children usually finish their basic education at the age of 16).¹³⁷ According to a survey among children with disabilities and their parents, in response to a question about the best place for children with disabilities to be educated, the largest number of them (48 %) chose mainstream schools together with all other children, 32.9 % chose special schools and 17.8 % opted for special classes in mainstream schools, with 1.3 % choosing home education.¹³⁸ However, when a similar question was asked in a public opinion poll commissioned by the Ombudsperson for Children’s Rights, 37.6 % said special schools, 30.6 % said mainstream schools, 23.8 % said mainstream schools with special classes, and 1.7 % said that home would be the best place for children with special needs to be educated.¹³⁹ Parents of children with disabilities stated that they faced further problems when accessing schools: 58 % of them said there were no special schools available in their area, 25.8 % said there were no mainstream schools that would agree to accept their child with disability, and some said that the schools were not adapted to accept children with disabilities or that they had to wait for a long time.

The Department of Persons with Disabilities presents annual reports on the implementation of the Action Plan of the National Programme for the Integration of Persons with Disabilities 2013-2020. The department’s annual report for 2019 was prepared after the cut-off date for this report.¹⁴⁰ However, it is clear that the EUR 3 995 000 that was allocated was not used for restructuring the vocational training infrastructure for disabled persons by implementing modular vocational training programmes in 2019. The Action Plan on the Inclusion of Children in Learning and Multidisciplinary Education 2017-2022 envisages measures to create conditions whereby children at special needs schools can move safely to general education schools, however

¹³⁶ According to a survey carried out in 2010, 78 % of schools said that they significantly lacked educational materials for children with special needs.

¹³⁷ Certificate of investigation at the initiative of the Ombudsperson for Children’s Rights on the situation of children with disabilities in municipalities (2016), available in Lithuanian at: <http://vtaki.lt/lt/teisine-informacija/vaiko-teisiu-padeties-vertinimas/atlikti-tyrimai-ir-apibendrinimai>.

¹³⁸ Lithuanian Association of People with Disabilities, ‘Research on Access to Education, Special Education and Education Assistance for Children, evaluating Effectiveness in Implementation of the UN Convention on the Rights of Persons with Disabilities’ (2019), available in Lithuanian: http://www.ndt.lt/wp-content/uploads/%C5%A0vietimo-tyrimo-ataskaita-2019_12_31.pdf.

¹³⁹ Society’s attitude to inclusive education of children with special needs, public opinion poll, Vilnius, ordered by the Ombudsperson for Children Rights, available in Lithuanian at: <http://vtaki.lt/uploads/documents/files/apklausa%20Vilnius%20SUP%202018%2012.pdf>.

¹⁴⁰ Report on the use of appropriations for implementation in 2019 of the Action Plan measures for the National Social Integration Programme for Persons with Disabilities for 2013-2020 (2020). Department of Persons with Disabilities under the Ministry of Social Security and Labour, available in Lithuanian at: <http://www.ndt.lt/wp-content/uploads/Nacionalines-programos-veiksmu-plano-2019-%C4%AFgyvendinimas.pdf>.

it does not set out the allocation of any money for this specific measure and indicates that legal amendments were drafted and the competences of teachers were strengthened.¹⁴¹ The Action Plan also sets out allocations of money for new buildings and for adapting or providing facilities in older educational buildings for persons with disabilities, although the author is not aware of what has been achieved in 2019.

According to the Official Statistics Portal, the number of pupils with special needs in mainstream schools has slightly increased in recent years: from 34 093 in the school year 2017/2018 to 36 476 in the school year 2019/2020, while the number of pupils in special classes in mainstream schools increased from 1 110 to 1 232. The majority of changes are related to the increased number of pupils with disabilities (the term used by the Official Statistics Portal is 'pupils with disorders')¹⁴² in mainstream schools, and the number of such pupils in specialised schools and special classes also rose. The numbers of pupils with special needs in specialised schools rose from 3 396 to 3 347. The Official Statistics Portal also provides separate data on the numbers of pupils with disabilities and pupils with learning difficulties who are enrolled in each of the educational environments.¹⁴³

NGOs emphasise that, although there has been some progress in the integration of pupils with disabilities into mainstream education, when it comes to children with intellectual disabilities, the situation has got worse in recent years, in particular due to a lack of attention by the Ministry of Education.¹⁴⁴ According to the Lithuanian Disability Forum, the evaluation of inclusive education is quite negative due to a lack of specialists who can work with children with different disabilities. Therefore, children with disabilities in inclusive education do not always receive services from qualified providers. Communities of persons who are hard of hearing or who have visual impairments note that, when children who have these disabilities take part in inclusive education, they face bullying and receive a lower quality of education. Due to these experiences, most pupils chose education in specialised schools, or this is chosen for them by their parents.¹⁴⁵

In 2016, the Ombudsperson for Children's Rights Institution initiated an investigation on its own initiative into the situation of pupils with disabilities in various municipalities across the country and published a comprehensive report.¹⁴⁶ In many cases, the findings confirm the previously mentioned information provided by NGOs. Although Article 16 of the Law on the Social Integration of Persons with Disabilities states that municipalities play a key role in implementing social integration measures, more than half (34 out of 60) of municipalities do not have comprehensive integration programmes in place. In many instances the concerns of people with disabilities are addressed by the staff of social benefits departments only, and not a single municipality reported having dedicated staff covering disability issues across all fields of competence of the municipality. Very

¹⁴¹ Order of the Minister of Education on Adoption of the Action Plan on the Inclusion of Children in Learning and Multidisciplinary Education 2017-2022, 27 June 2017, No. V-527, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/aad10e305c3c11e7a53b83ca0142260e/ofSxqPUEsH>.

¹⁴² The Official Statistics Portal does not define 'pupils with disorders' but, based on the breakdown, it clearly uses the term to refer to pupils with any kinds of disabilities, including psychosocial, hearing, visual and learning disabilities.

¹⁴³ Data provided by the Official Statistics Portal on numbers of pupils with disabilities in 2017/2018 and 2019/2020: in mainstream schools: 3983 and 4036; in special classes in mainstream schools: 964 and 1010; in specialised schools: 3409 and 3347; pupils with disorders in mainstream schools: 29714 and 31384; in special classes: 145 and 221; in specialised schools: 255 and 287; pupils with learning difficulties in mainstream schools: 396 and 456; in special classes: 964 and 1010; in specialised schools: 5 and 5. Data available in Lithuanian: https://osp.stat.gov.lt/web/guest/statistiniu-rodikliu-analize?portletFormName=visualization&hash=92408d7b-fdd5-483b-807d-392ba2698b34#.

¹⁴⁴ Lietuvos Neigaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, pp. 34-35, available in Lithuanian at: <http://www.negalia.lt/wp-content/uploads/2016/02/JT-Neigaliuju-teisiu-konvencijos-Alternatyvioji-ataskaita.pdf>.

¹⁴⁵ Information provided by the Lithuanian Disability Forum, available in Lithuanian at: <https://www.lnf.lt/svietimas/?lang=lt>.

¹⁴⁶ *Report of the Ombudsperson for Children's Rights*, 2016-03- No. (6.7.-2014-16) PR, available in Lithuanian at: <http://www3.lrs.lt/docs2/DFFLQRXU.PDF>.

few municipalities established a commission or other collective body to specifically tackle a wide range of disability issues. The Ombudsperson concluded that the right to education is not fully ensured at local level, either in pre-school education¹⁴⁷ or in general education. According to the report, a significant share of pupils with disabilities do not attend pre-school education institutions, especially in rural areas. Attendance at pre-school education establishments is 67 % on average across the country, while the percentage of pupils with disabilities who attend pre-school education varies from 4 % to 47 % in different municipalities. The access to general (basic) education is also not fully ensured, mostly due to a lack of specialists and additional support services, as well as the fact that significant numbers of schools are not accessible to pupils with special needs. Many municipalities were not able to provide comprehensive information on the state of accessibility in local schools. It is estimated that only a third of schools are made at least partially accessible. Some municipalities provided information that schools are accessible. In reality, however, accessibility is ensured only on the first floor of the school, no elevators for wheelchair users have been installed, etc.

According to the *Annual Report of the Ombudsperson for Children's Rights 2019*, various difficulties are faced by school communities due to the insufficient provisions of the Law on Education and other legal acts guaranteeing access to education for pupils with special needs, ensuring that school environments are accessible, providing educational assistance and providing technical and special teaching aids. Most of the time, problem solving depends on the perseverance of parents.¹⁴⁸

When it comes to education at universities and colleges, although there has been significant progress, and each student who has a diagnosed working capacity of less than 45 % is given financial assistance, the percentage of students with disabilities is only about 0.5 % of the total number of students, with the number dropping each year. The number of students with disabilities who received financial support decreased from 935 in 2016 to 686 in 2018, and the number of students with special needs who have received support to ensure the accessibility of their studies has also decreased, from 800 in 2016 to 527 in 2018.¹⁴⁹ According to the data available for 2019, the number of students who received support in 2019 was around 550.¹⁵⁰ Only a limited number of universities and higher education institutions are fully accessible to people with disabilities.

The 'Evaluation of Accessibility of the Physical Environment for Persons with Disabilities within Higher Education and Vocational Education Schools', a piece of research carried out by the Lithuanian Association of People with Disabilities in 2019, indicates that many higher and vocational education establishments are still inaccessible for persons with disabilities. Using a questionnaire, the Association evaluated 130 (90 %) of the 143 educational institutions that assessed themselves as accessible or partly accessible and declared that 18 % of them were in fact completely inaccessible for persons with disabilities; that 18 % were fully accessible (33 % according to the education institutions themselves); that 5 % were partly accessible, such that people with disabilities can move around with assistance (23 % according to the institutions' self-evaluation); that 55 % were only partly accessible, with some elements of infrastructure not having been

¹⁴⁷ Pre-school education is not obligatory in Lithuania, although pre-primary education is mandatory for children aged six to seven (or five to six in exceptional cases).

¹⁴⁸ *Annual Report of the Ombudsperson for Children's Rights 2019* (2020), No. (4-36), available in Lithuanian at: <http://vtaki.lt/lt/administracine-informacija/veiklos-ataskaitos>.

¹⁴⁹ Information on implementation of the Action Plan for 2016-2018 of the National Programme for the Integration of Persons with Disabilities 2013-2019, available in Lithuanian at: <http://www.ndt.lt/nacionaline-programa/>.

¹⁵⁰ Summarised information from the conference 'Is higher education available to students with special needs?' 16 December 2019, available in Lithuanian at: <https://vsf.lrv.lt/lt/naujienuos/ar-aukstasis-mokslas-atviras-specialiuju-poreikiu-turintiems-studentams>.

adapted (44 % according to self-evaluation); and that, in 4 % of institutions, it was not possible to move between different levels of the premises.¹⁵¹

The Ombudsperson has analysed one complaint that received significant public attention in 2019. The applicant submitted a complaint because of a discriminatory assessment of her professional capacity. A journalism student at Vilnius University, she had participated in a professional internship with *Atspindžiai*, a Kaišiadoriai regional newspaper. After the internship, the student read her internship evaluation form, signed by the editor of the newspaper, and noted the score of 9, with the comment: 'The student fell short of attaining 10, as her broader opportunities are limited by lack of movement'. The Ombudsperson declared that such a comment and evaluation constituted direct discrimination because of the person's disability. However, the investigation was terminated, as the University's Internship Evaluation Commission annulled the evaluation made by the editor of the newspaper.

The author of this report is aware that a draft law amending the Law on Education in relation to its discriminatory provisions has been prepared by a working group within the Ministry of Education, Science and Sports. The same information is noted within a report by the Ombudsperson for Children's Rights.¹⁵² However, the draft law has not yet been registered and/or submitted to the Parliament.

b) Trends and patterns regarding Roma pupils

In Lithuania, there have been specific patterns in education regarding Roma pupils, such as segregation. However, according to a nationwide investigation by the Institution of the Ombudsperson for Children's Rights, nationwide segregation policies could not be identified.¹⁵³

In relation to the issues surrounding the education of Roma, the latest general census data indicated that half of Lithuanian Roma had not finished basic education. According to the later reports, the number of Romani pupils slightly increased in 2017, but the figure was lower in 2019. The number of pupils rose from 419 in 2015/2016¹⁵⁴ to 463 in 2016/2017, with most of the pupils still being in primary education (43 %), but the numbers have slightly increased in basic (38 %) and secondary education (17 %).¹⁵⁵ The pupil numbers for 2019 were 432 in general education schools and 20 in vocational schools.¹⁵⁶

Despite positive developments, the acquisition of primary and secondary education remains a challenge for the majority of Roma pupils. The reasons why Roma children face difficulties with learning in schools (which are often simplified to 'unwillingness to learn') are complex. Many Roma children already face learning difficulties at primary level. The lack of preparation for school (weak motor skills and an absence of pre-school education), a lack of social skills and weak Lithuanian language skills are often referred

¹⁵¹ Evaluation of Accessibility of Physical Environment for Persons with Disabilities within Higher Education and Vocational Education Schools, Lithuanian Association of People with Disabilities, ordered by the Department of Disabilities, available in Lithuanian at: http://www.ndt.lt/wp-content/uploads/Auk%C5%A1t%C5%B3j%C5%B3-mokykl%C5%B3-tyrimo-ataskaita_galutin%C4%97.pdf.

¹⁵² *Annual Report of the Ombudsperson for Children's Rights 2019* (2020), No. (4-36), available in Lithuanian at: <http://vtaki.lt/lt/administracine-informacija/veiklos-ataskaitos>.

¹⁵³ Decision of the Ombudsperson for Children's Rights (*LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo*), 19 August 2014, No. (6.1- 2013-329) PR-156, available in Lithuanian at: <https://www3.lrs.lt/docs2/VAQOPBJE.PDF>.

¹⁵⁴ Petrušauskaitė V. (2016), *Romų situacijos Lietuvoje apžvalga* (Overview of the situation of Roma people in Lithuania), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹⁵⁵ Education Development Centre (2017), *Rekomendacijos dėl romų vaikų įtraukiojo ugdymo stiprinimo* (Recommendations on strengthening inclusive education of Roma children), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹⁵⁶ Information obtained on the Roma Platform, available in Lithuanian at: <http://www.romuplatforma.lt/svietimas/>.

to as the main causes of the complicated adaptation of Roma children in school. These factors, together with the limited ability of parents to help a child at home (a large proportion of Roma parents are illiterate or only completed primary school), determine the falling behind of Roma children at school – children start to lag behind their classmates quite quickly and cannot do their homework independently. Unsuccessful learning experiences begin to emerge quickly (such as missing lessons and behavioural problems), and unresolved problems often make it more difficult to involve children in the educational process.¹⁵⁷

Pre-primary education is compulsory for everybody from the age of six. However, according to the legislation, compulsory pre-school education (from birth until 6 years of age) can be assigned to a child who is raised in a family at risk, or when parents lack social and/or positive parenting skills; to children with an established disability whose parents are not able to meet their special needs; or when parents are experiencing difficulties that prevent them from meeting the child's natural, cultural, social and cognitive needs.¹⁵⁸ The author does not have any information on how or if these provisions are applied among members of the Roma community.

According to the research, which focused on the Roma community in the largest Roma settlement (Kirtimai) in the outskirts of Vilnius,¹⁵⁹ the low expectations of all parties (schools, government institutions, NGOs and the Roma themselves) and the ethnic dimension were the prevailing elements of the educational experience of Roma children. The lack of human and financial resources and the lack of will to solve the diverse social problems surrounding the Roma, as well as a prevailing negative attitude towards the Roma community (by all actors, including Roma themselves) are reproducing poverty and illiteracy in the next generation of Roma. Despite various measures applied by the state in order to increase their level of integration, society continues to have a negative opinion of the Roma community, negative stereotypes of Roma also persist in schools.

The data from 2008 indicated that pre-schooling was rare, and most Roma children (69 %) did not attend pre-school establishments or groups and did not participate in after-school activities. Although a state-funded Roma Community Centre is functioning in the Kirtimai Roma community and provides various activities, mostly focused on preserving the cultural heritage of the community, these are not sufficient for pupils to acquire the necessary social skills that would contribute to their adaptation to the school environment. Nevertheless, the number of people residing in the settlement has significantly decreased with the implementation of Vilnius City Municipality's programme. The number of people still residing in the settlement in 2019 was up to 50, of whom 13 were children – eight of pre-primary or pre-school age and five of school age.¹⁶⁰ In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.¹⁶¹ This programme sets out a number of measures aimed at providing educational assistance to Kirtimai pupils and various additional services for pre-school and informal education activities. The total planned budget for these measures is EUR 352 500, and the programme established a process for constant monitoring. Only two monitoring meetings took place in the second half of 2019, and

¹⁵⁷ Education Development Centre (2017), *Rekomendacijos dėl romų vaikų įtraukiojo ugdymo stiprinimo* (Recommendations on strengthening inclusive education of Roma children), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹⁵⁸ Order of the Minister of Science and Education and the Minister of Security and Labour on the Adoption of the Description of Establishing and Assigning Compulsory Pre-School Education, 26 April 2012, No. V-735/A1-208, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.423753/asr>.

¹⁵⁹ Petrušauskaitė V. (2014), *Ankstyvas Romų pasitraukimas iš švietimo sistemos Vilniaus mieste: švietimo lauko analizė* (Early Withdrawal of Roma Children in the Educational System in Vilnius: An educational field analysis), doctoral thesis, published by Lietuvos socialinių tyrimų centras, available in Lithuanian at: http://vddb.library.lt/fedora/get/LT-eLABa-0001:E.02~2014~D_20140117_113027-98649/DS.005.0.01.ETD.

¹⁶⁰ Information received by the author from the Department of National Minorities, 9 March 2019.

¹⁶¹ Vilnius Kirtimai Roma Community Integration into Society Programme 2016–2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

there were no meetings in 2018. According to information on the implementation of the action plan in Vilnius City Municipality, attendance by Roma pupils increased by 65 % during 2018/2019.

According to the report that Lithuania submitted to the UN Committee on the Elimination of Racial Discrimination in 2018, when implementing the Action Plan for Roma Integration into Lithuanian Society 2015-2020, the Ministry of Science and Education intensified training for teachers, heads of schools, education support specialists and specialists at municipal education units in 2017, as envisaged in the action plan, as well as organising long-term activities targeted at improving competence and developing the necessary skills for understanding the needs of Roma children and organising inclusive education while taking cultural diversity into account. The Education Development Centre organised a series of training sessions consisting of two days of introductory training, practical training and one day of reflection activities. Training programmes of this kind were also planned over the period from 2018 to 2020.¹⁶² However, according to information received at a monitoring meeting for the Roma integration programme at the Department of National Minorities, no such activities were carried out in 2019.¹⁶³

In 2015 the Ministry of Culture approved a new Action Plan for Roma Integration into Lithuanian Society 2015-2020.¹⁶⁴ The action plan sets out various measures including educational assistance (for school pupils as well as adult education), vocational training, additional state language training, basic employment skills training and healthcare assistance measures. However, a significant part of the planned measures must be implemented as part of the regular functions of particular institutions (employment exchange, municipalities, etc.). In 2016, the re-established Department of National Minorities was appointed as the monitoring and coordinating body for the plan. According to the representative of the department, the plan itself does not have a separate budget, and all of its activities are being implemented by the participating institutions using their regular resources.

The Action Plan for Roma Integration into Lithuanian Society 2015-2020 contained measures to reduce the incidence of early school drop-out, including assistance in schools and assistance to children and parents, but these measures were not implemented in 2019.¹⁶⁵

No investigations or analysis regarding discrimination against Roma persons or segregation in education were carried out in 2019.

An investigation regarding a possibly segregated class (3č) for different ages of Roma children within Saulėtekis school was carried out in 2011 by the Equal Opportunities Ombudsperson. The Ombudsperson issued a recommendation for Saulėtekis secondary school to integrate children attending class 3č in other classes in the school.¹⁶⁶ The decision also referred to the decision of the ECtHR in *Oršuš and other v. Croatia*, No.

¹⁶² Committee on the Elimination of Racial Discrimination, *combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention*, due in 2018, 8 February 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMccqfI%2fid5knkSMb52z2%2fJJfiiU0kH%2bpSZJLncqAEiS8%2blykhrajNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

¹⁶³ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015-2020, held on 7 February 2020 in the Department of National Minorities.

¹⁶⁴ Order of the Minister of Culture No. IV-48 of 29 January 2015 on approval of the Action Plan for Roma Integration into Lithuanian Society 2015-2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015-2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. IV-48), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

¹⁶⁵ Information received by the author from the Department of National Minorities on implementation of the action plan in 2019, 9 March 2019.

¹⁶⁶ Lithuanian Equal Opportunities Ombudsperson (2011), *Annual Report for 2011*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2015/12/lqkt-ataskaita-2011.pdf>.

15766/03, in which the Court held that segregation of Romani children into separate classes based on language was unlawful discrimination.

In 2014, the Ombudsperson for Children's Rights, in response to information in the media about two municipalities, launched an investigation aimed at evaluating possible segregation patterns involving Romani children being placed in educational institutions for children with severe or substantially severe special educational needs (so-called 'special schools').¹⁶⁷ The investigation discovered that at least 50 Romani children were being schooled in such institutions across the country by the end of 2013, which amounts to almost 9 % of all Romani pupils in Lithuania. However, in two particular municipalities that came under investigation, most of the Romani children were being schooled in educational institutions for children with severe or substantially severe special educational needs: in one municipality the percentage was 67 % of all Romani pupils within the territory of the municipality (10 out of 15 children); in the other, the percentage was 92 % (out of 11 Roma children, 10 were schooled in the institution). In many cases the children were members of the same family.

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

The Ombudsperson requested an expert evaluation, which concluded that one child out of 22 children who were placed in special schools in the two municipalities did not demonstrate severe special needs, and there was no need for their placement in a special school. However, all the other children would have still been able to study in regular schools with an adjusted curriculum and special assistance, and the final decision to move the children to special schools was made by their parents. The Ombudsperson for Children's Rights observed that the education system of special schools partly encourages Roma parents to take their children to special schools, but if their social assistance requirements are met in other ways, at least some of the pupils who are currently attending special schools could be integrated into the general education system.

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

¹⁶⁷ Decision of the Ombudsperson for Children's Rights (*LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo*), 19 August 2014 No. (6.1- 2013-329) PR-156, available in Lithuanian at: <http://www3.lrs.lt/docs2/VAQQPBJE.PDF>.

on the list of priorities of the relevant institutions, and sufficient resources should be allocated to solve the complex issues surrounding Roma education problems.

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

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

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

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

On the basis of the practice of the Ombudsperson, it can be concluded that the Ombudsperson interprets the duty to ‘ensure equal access to all consumers’ as also being a duty to make goods and services accessible to persons with disabilities. It has been noted in earlier reports that not ensuring access to goods and services for persons with disabilities has previously been recognised as discrimination in the practice of the Ombudsperson, and this remained the case throughout 2019. It was recognised that providers of goods and services had to ensure access to buildings and premises and to improve accessibility within buildings. This responsibility applied to café owners,¹⁶⁸ Kaunas District Court and health service providers, for example.

One of the decisions made by the Ombudsperson, regarding access to healthcare services for persons with disabilities in Kaunas Healthcare Clinic, was challenged in court. The clinic admitted that the building was old and was not accessible to persons with disabilities, and the Ombudsperson found a breach of the Law on Equal Treatment. The Vilnius Regional Administrative Court maintained that the decision of the Ombudsperson was valid, noting that the burden of proof had shifted to the service provider, regardless of the reasons why the clinic could not ensure access for persons with movement disability. The court further noted:

‘as rightfully noted by the Office [of the Ombudsperson], the arguments of the Applicant [the clinic] that they did not have an aim and a motive to discriminate against the person or that the clinic building was old, etc., did not negate the violation and did not justify its action (inaction).’^{169 170}

¹⁶⁸ Decision of the Equal Opportunities Ombudsperson No. (19)SN-134)SP-98, 27 September 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas restorane "Ararat" tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/10/sprendimas-19sn-134sp-98.pdf>.

¹⁶⁹ Vilnius Regional Administrative Court (Vilnius apygardos administracinis teismas), *Kauno miesto poliklinika v. Office of the Equal Opportunities Ombudsperson*, administrative case No. eI-651-1063/2019, decision of 15 May 2019.

¹⁷⁰ The decision of the Vilnius Regional Administrative Court was appealed. The decision, which was adopted by the Supreme Administrative Court of Lithuania after the cut-off date for this report, annulled the decision of the Ombudsperson in 2020. The court returned the case to the Ombudsperson for re-examination. Supreme Administrative Court of Lithuania (*Lietuvos Vyriausybės Administracinis Teismas*), *Kauno miesto poliklinika v. Office of the Equal Opportunities Ombudsperson*, administrative case No. eA-2124-1062/2020, decision of 10 June 2020, available at: <https://eteismai.lt/byla/76617947393338/eA-2124-1062/2020>.

There are no exceptions in the Law on Equal Treatment that would allow differences in treatment on the grounds of age and disability in the provision of financial services. However, the Law on Insurance¹⁷¹ does allow differential treatment on the grounds of age as well as state of health when calculating insurance risks, adding that there should not be discrimination within a group at a particular risk level.

A very interesting decision was adopted in 2019 regarding the treatment of an elderly person in the provision of credit card services, including travel insurance. The decision had an impact on the branch of the bank in Lithuania, and it might also be meaningful for the application of the principle of equal treatment in other countries. The 78-year-old person, having received a credit card, was informed that he would not be able to receive all the services usually granted to credit card holders because of his age, and in particular the travel insurance normally provided together with the credit card. The Ombudsperson concluded that the travel insurance was an indivisible part of the service that was systematically provided to credit card holders as a component part of issuing the credit card. The insurance service was provided by the insurance company on the basis of a cooperation agreement between the bank and the insurance company. The Ombudsperson concluded that:

'the bank, by providing a credit card issuance service and together with it an integral travel insurance service for the credit card holder, which is assessed as an integral credit card benefit, has limited the age of persons covered by travel insurance to 75 years and by doing so, without any legitimate reason, did not provide the applicant with the additional benefit - travel insurance service - due to his age.'¹⁷²

Religious communities or associations, as well as associations established by these religious communities or their members, are not obliged to follow the Law on Equal Treatment in providing goods and services when the purpose of this provision is of a religious character. The author is not aware of situations when this exception has been applied in practice. However, since the wording of this provision is rather broad and vague, there is enough room for interpretations that could be used to justify discrimination against LGBT+ persons. For example, a same-sex couple might be refused service at a community centre run by a religious community, or a child of a same-sex couple might not be accepted at a children's day-care centre. However, as has already been stated, the author of this report is not aware of any such situations in practice.

As described above, the Equal Opportunities Ombudsperson proposed to amend the Law on Equal Treatment with provisions covering exceptions whereby the provision of goods and services exclusively (or primarily) to persons with certain characteristics would be justified as a legitimate aim, to be achieved by appropriate and necessary measures, such that these cases would not be considered as less favourable treatment.¹⁷³ These provisions are included in the Draft Law on the Law on Equal Treatment, which was registered in the Parliament in 2019.

a) Distinction between goods and services available publicly or privately

In Lithuania, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants or banks) and those that are only available privately (e.g. limited to members of a private association).

¹⁷¹ Law on Insurance (*Draudimo įstatymas*), 2003, No. 94-4246, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=386840.

¹⁷² Decision of the Equal Opportunities Ombudsperson No. (19) SN-61) SP-66, 21 May 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos amžiaus pagrindu teikiant kelionių draudimo paslaugas vyresnio amžiaus kreditinių kortelių savininkams*).

¹⁷³ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*.

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

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

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

'when implementing equal treatment, a seller or producer of goods or a service provider, without regard to gender, race, "nationality", citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must: provide consumers with equal access to the same products, goods and services, **including housing**, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value.'¹⁷⁴

The law does not distinguish between citizens and third-country nationals, therefore protection is applied to all.

According to the information provided about the investigations carried out by the Equal Opportunities Ombudsperson in 2019, there has been only one investigation regarding alleged discrimination in housing. A person of Romanian origin submitted a complaint after trying to rent an apartment, saying that she had been discriminated against because of her 'nationality' – Romanian. The agent representing the owner of the flat argued that he did not want to rent a flat to a person with whom he would not be able to hold a conversation in Lithuanian, but said that he would not refuse to do so through an interpreter. The Ombudsperson stated that, despite the fact that language is one of the grounds of non-discrimination under the Law on Equal Treatment, the language requirement was an essential condition for the flat rental, and that all persons who would not be able to have a conversation with the owner would have been in a similar position. The Ombudsperson added that the flat would have been rented to the applicant if they had known Lithuanian or had acquired an interpreter.¹⁷⁵

The author has been informed of a number of instances when refugees and migrants have been discriminated against by local property owners when they tried to rent accommodation. The same situation was reported to be still ongoing during the monitoring meeting for the Action Plan for Roma Integration into Lithuanian Society 2015-2020. On at least a few occasions, landlords have refused to rent premises to refugees, migrants or Roma people. No cases have been reported to the Ombudsperson, however.

Unfortunately, the national anti-discrimination measures do not specifically address the issue of migrants being discriminated against in relation to housing. Despite the lack of case law or formal complaints, preventive work and assistance would be beneficial. The Law on Equal Treatment includes a general duty to implement equal opportunities (Article 5), which could be interpreted to include housing provided by local government institutions. It reads as follows:

'State and local government institutions and agencies must within the scope of their competence ensure that in all the legal acts drafted and passed by them, equal rights and treatment are laid down without regard to gender, race, "nationality",

¹⁷⁴ Law on Equal Treatment (*Lietuvos Respublikos Lygių galimybių įstatymas*), 2003, No. 114-5115, entry into force 01.01.2005; latest amendments: 11.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>.

¹⁷⁵ Decision of the Equal Opportunities Ombudsperson No. (16)SN-78)SP-73, 5 June 2019, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/09/2019-06-05-nr.-73.pdf>.

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

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

The Ombudsperson also issued recommendations to amend the Draft Law on Support for the Acquisition or Rental of Housing, registered by the Ministry of Social Security and Labour.¹⁷⁶ According to the Ombudsperson's assessment, due to a lack of respect for the individual needs of persons with disabilities, they are not fully entitled to participate in state housing programmes.¹⁷⁷

It is not yet clear if the court would accept the interpretation of Article 8 as also encompassing social housing. No court cases with regard to discrimination in the field of housing have been brought to court.

a) Trends and patterns regarding housing segregation for Roma

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

In general, Lithuanian Roma live a settled life. Over half of Roma indicate that they have been living in their current city, town or village for over 20 years.¹⁷⁸ Under the Action Plan for Roma Integration into Lithuanian Society 2015-2020, approved by the Ministry of Culture in 2015,¹⁷⁹ sociological research was carried out among Roma, and this has provided a more reliable overview of their housing situation.¹⁸⁰ More than 500 Roma participated in the research (close to 25 % of the general Roma population).

In contrast to the general population, most Lithuanian Roma live in premises that they do not own (69 %, in comparison to a national average of only 9 %), and 38 % live in social housing (the national average is 1 %). About a fifth of the Lithuanian Roma population live in premises without paying rent (in illegal housing, staying at relatives, etc.), in contrast to a national average of 4 %. Not surprisingly, therefore, living standards among Roma are much lower than the national average: the Roma live in much more crowded premises (12.6 m² per person, in contrast to an average 26.2 m²), and more than half of their premises are not equipped with a bathtub, shower or toilet (the national average is

¹⁷⁶ The amended draft law, which improved the conditions for the provision of financial assistance for persons with disabilities and their families, was adopted in 2019.

¹⁷⁷ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

¹⁷⁸ Socialinių tyrimų instituto etninių tyrimų centras (Institution for Social Research, Centre for Ethnic Studies) (2008), *Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje*, available in Lithuanian at: http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padetis-tyrimas-2008_ataskaita.pdf.

¹⁷⁹ Order of the Minister of Culture No. IV-48 of 29 January 2015 on the Approval of the Action Plan for Roma Integration into Lithuanian Society 2015–2020 (*Lietuvos Respublikos Kultūros ministro 2015 m. sausio 29 d. įsakymas Nr. IV-48 Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

¹⁸⁰ VŠĮ Diversity Development Group (2015), *Sociologinio tyrimo 'Romų padėtis lyginant su kitais šalies gyventojais' tyrimo ataskaita* (Report on the situation of Roma in comparison to other residents of the country), available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

15 %). Overall, 68 % of Roma residents express concerns about the quality of their housing (in comparison to 29 % of the general population).

The Roma community living in Kirtimai (a district of Vilnius City Municipality), is the most obvious example of segregation. The number of Roma residents in this slum-like settlement has been steadily decreasing in recent years.

In 2018, 24 Roma families were given compensation for rent, six Roma families were offered social housing¹⁸¹ and four Roma families were offered social housing in 2019.¹⁸² According to representatives of the Roma community, quite a big number of people emigrated to other towns or countries, because of the living conditions and constant police searches.¹⁸³

According to Lithuania's report to the Committee on the Elimination of Racial Discrimination, the number of houses and residents in the Kirtimai settlement was constantly declining: in 2017 the settlement consisted of 45 houses with just over 200 residents (in comparison to 100 houses with approximately 500 residents in 2001).¹⁸⁴ The Roma Community Centre and Department of National Minorities estimates that around 150 to 155 persons reside in Kirtimai settlement, as at the beginning of 2019.¹⁸⁵ By the end of 2019, only 50 persons (about seven households) still resided in the Kirtimai district.¹⁸⁶

The Kirtimai Roma community were forced to settle in the outskirts of Vilnius during the Soviet occupation by the state actors and, after independence, houses that the Roma built for themselves on state-owned land were not legalised. This was a unique situation, which is not replicated in any other part of the country. Most of the buildings therefore remained illegal and were constantly threatened with demolition or were in the process of being demolished. On at least a few occasions in the past, the way in which these demolitions were carried out was not in line with European Convention on Human Rights (ECHR) standards. However, the current administration of Vilnius City Municipality has tried to ensure that people are provided with social housing or rent compensation before demolitions are initiated by the State Territorial Planning and Construction Inspectorate. However, the Roma Community Centre and the Lithuanian Roma Community Centre raised concerns several times in 2018 and 2019 regarding families being evicted without alternative housing being provided.¹⁸⁷

Standards of living, housing and sanitation in Kirtimai were unsatisfactory. A previous investigation by the Parliamentary Ombudsman found that the policies of social integration conducted by Vilnius City Municipality were neither effective nor properly

¹⁸¹ Information received by the author from the Department of National Minorities, 13 May 2019.

¹⁸² Information received by the author from the Department of National Minorities, 9 March 2020.

¹⁸³ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 22 January 2019 in the Department of National Minorities.

¹⁸⁴ Committee on the Elimination of Racial Discrimination, *combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention*, due in 2018, 8 February 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcfI%2fjd5knkSMb52z2%2fJfiiU0kH%2bpSZJLncqAEiS8%2blykhrjNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

¹⁸⁵ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 22 January 2019 in the Department of National Minorities.

¹⁸⁶ Information received by the author provided by the Department of National Minorities, 9 March 2020.

¹⁸⁷ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 7 February 2020 in the Department of National Minorities.

funded or managed, thus increasing the segregation of the Kirtimai Roma community and keeping their housing conditions unsatisfactory.¹⁸⁸

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

'continue its efforts to facilitate the access of Roma to adequate housing, including access to social housing and subsidies for house rental, and complete the resettlement of the Roma households living in the Kirtimai neighbourhood. It also recommends that the State party strengthen coordination mechanisms in order to ensure that no house is demolished unless alternative housing or monetary compensation has been provided to the inhabitants.'¹⁸⁹

In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.¹⁹⁰ The programme sets out a number of measures aimed at providing social housing options to members of the Kirtimai Roma community. According to representatives of the municipality, the aim of the programme's housing measures was to adopt a new approach, avoiding forced evictions as had taken place in previous years (since most of the buildings in the settlement were built without permits, the previous city administration conducted forced evictions and the demolition of new buildings on state-owned land), and instead offering incentives, such as financial support for rent or social housing options, to those who voluntarily agree to leave the settlement. An estimated 30 families who volunteer to leave the settlement should receive EUR 44 160 in compensation/subsidies over a period of three years. The action plan seems to be working, as according to the information received from the Department of National Minorities, an estimated 62 families (around 225 persons) have moved out from Kirtimai since 2016, having been provided with compensation for rent or with social housing. Another 14 families had enquired about social housing over 2017 and 2018, and nine more families had rented an apartment in the private sector with rent compensation provided to them by the municipality. Another 38 families in the Roma community are on the list of applicants for social housing.¹⁹¹

¹⁸⁸ *Annual Report of the Seimas [Parliamentary] Ombudsman 2009*, available in Lithuanian at: <http://www.lrski.lt/lt/seimo-kontrolieriu-veikla/metines-seimo-kontrolieriu-veiklos-ataskaitos/76-metine-seimo-kontrolieriu-veiklos-ataskaita-2009.html>.

¹⁸⁹ Committee on the Elimination of Racial Discrimination (2019), *Concluding observations on the combined ninth and tenth periodic reports of Lithuania*, CERD/C/LTU/CO/9-10, 10 May 2019, available in English at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/CERD_C_LTU_CO_9-10_34868_E.pdf.

¹⁹⁰ Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

¹⁹¹ Information presented during a meeting of Vilnius City Municipality's Roma Integration Working Group on 29 October 2019.

4 EXCEPTIONS

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

- 1) 'restrictions on the grounds of age as established by law where it is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- 2) requirement to know the state language, as established by law;
- 3) prohibition of participation in political activities in cases specified by law;
- 4) different rights applied on the basis of citizenship, as established by law;
- 5) special measures in the field of healthcare, safety at work, employment and the labour market as established by law with the view of creating and applying conditions and opportunities guaranteeing and promoting integration into the working environment;
- 6) special temporary measures, established by law, which are taken to ensure equality and prevent violation of equal treatment on the grounds of gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion;¹⁹²
- 7) where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, a particular human characteristic constitutes an essential [*genuine* – author] and determining occupational requirement, provided that the aim is legitimate, and the requirement is proportionate;
- 8) where the legal regulation of restrictions, special requirements or conditions with regard to a person's social status are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
[According to Article 2(8), 'social status' is defined as the status of a person based on his/her past or present education, qualifications, income or property ownership, dependence on social assistance schemes as well as any other characteristics related to the financial situation of a person.]
- 9) organisation of special sports competitions for people with disabilities.'

In addition to this list, Article 3 of the Law on Equal Treatment states that the Law does not apply to a wide range of activities in relation to ethos-based organisations (membership, employment, educational activities) and/or education materials providing traditional religious teaching, and that it also does not apply in the spheres of family and private life. These provisions are described in Section 4.2 below.

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

4.1 Genuine and determining occupational requirements (Article 4)

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

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

¹⁹² However, special temporary measures are not defined in any other laws, except for those identified in relation to a person's disability. It is also unclear whether all of them could be identified as temporary measures.

The Equal Opportunities Ombudsperson has summarised complaints received in 2018 in which applicants complained about language requirements (knowledge of foreign languages) for a specific job. One of the examples concerned a job vacancy as an administrator with a requirement to know English and Russian. The Ombudsperson concluded that knowledge of foreign languages could be held as a genuine and determining occupational requirement, and that the aim (of providing services) would be reached through appropriate and proportionate measures – including a requirement to know English and Russian, being the most common foreign languages among clients in Vilnius. Therefore, no violation of equal treatment was recognised.¹⁹³

An important decision was made in 2019, in which the Court recognised, as per the request of the Equal Opportunities Ombudsperson, that the decision of Vilnius City Municipality to set a special requirement for the director of the Verkiai and Pavilniai Park Directorate to ride a bike constituted a violation of equal opportunities. In a previous decision, in 2017, the Equal Opportunities Ombudsperson had recognised this as indirect discrimination on the ground of disability and had recommended that the municipality amend the requirements. The Vilnius Regional Administrative Court concluded 'that the Ombudsperson reasonably stated in their decision that the requirement established in the Job Description for the Director of the Directorate to be able to ride a bicycle cannot be related to the performance of functions. The Court concludes that, for persons who, due to the nature of their disability, are not able to ride a bicycle, the Job Description establishes a *de facto* restriction on the exercise of their rights equally in comparison with other persons to apply for the position offered in the announcement.'¹⁹⁴

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

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

According to Article 3 of the Law on Equal Treatment, the law would not apply to teachers, employees or members of religious communities, associations or centres, nor would it apply to associations or legal persons (whose ethos was based on a religion or belief and that had been established to serve its purposes) established by these religious communities or their members where, by reason of the nature of the activities of these entities, or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement with regard to the organisation's ethos. Additionally, the LET provides these organisations and institutions with the right to require individuals working for them to act in good faith and with loyalty to the organisation's ethos, as allowed by the directive.

Similar wording is repeated in Article 26 of the Labour Code.¹⁹⁵

The first version of the Law on Equal Treatment did not contain such an exception, and there is no case law or interpretation on the matter. There is also no information available about whether such practices existed before the country adopted the directive, and in which organisations and to what extent they were used, since none of this was discussed in Parliament when the amendments were passed.

¹⁹³ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

¹⁹⁴ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), *Office of the Equal Opportunities Ombudsperson v. Vilnius City Municipality*, administrative case No. I-4523-789/2019, decision of 3 October 2019.

¹⁹⁵ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

It is not clear which organisations can take advantage of this exception. There are a few non-profit organisations directly established by the Lithuanian Bishops' Conference (Lithuanian Caritas, Family Centre of Lithuania), as well as shelter homes, children's day centres, cultural and youth organisations, media portals and educational institutions (school and pre-school educational establishments) that are linked to the Catholic church or that claim to represent Christian values. The wording of the national provisions is very broad and can be interpreted widely. This is hardly compatible with the goals of the directive, and could eliminate LGBT people from certain areas of public life. Some members of Parliament who are notorious for opposing homosexuality and protecting 'traditional values' identified the connection between these provisions and the issue of sexual orientation during discussions of the amendments to the Law, stating that the exception could be used as a 'self-defence tool' for eliminating people of a 'non-traditional' sexual orientation from schools and the education system in general.¹⁹⁶

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

In opinion of the author, the Law on Equal Treatment could be amended, as the current exception is broader than that provided in the directive, where a 'person's religion or belief constitute a genuine, legitimate and justified occupational requirement'. Moreover, it is important to note that, in compliance with the directive, 'difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground', therefore it would be useful to review the Law on Equal Treatment and to consider adding that 'difference in treatment should not justify discrimination on another ground'. The Draft Law on Equal Treatment has been registered in the Parliament; however, it is unclear what provisions will finally be adopted. One of the issues criticised by some members of Parliament and the Government was the removal of certain exceptions. This particularly applies to ethos-based exceptions in the provision of goods and services, and suggestions have been submitted accordingly.¹⁹⁷

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

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

There is no case law on the subject. However, conflict with respect to the ground of sexual orientation might arise in the future, since the initial debate on the amendment to the Law focused on homosexuality rather than on religion or belief. The Catholic church played a significant role in the introduction of the provisions.¹⁹⁸ The openly negative attitude of church-affiliated organisations towards the LGBT community in Lithuania should be borne in mind. Conflict might also arise in relation to the ground of gender, as the Lithuanian Bishops' Conference expressed their opposition to separating gender from sex when expressing their opposition to the ratification of the Council of Europe

¹⁹⁶ Transcript of the plenary session of the Parliament of the Republic of Lithuania of 18 September 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

¹⁹⁷ Draft Law amending the Law on Equal Treatment No. IX-1826 (new edition), No. XIIIIP-3512, 30 May 2019, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/96f31cf082b411e98a8298567570d639>.

¹⁹⁸ The Minister of Social Security and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Bishops' Conference, and that the draft law and these particular provisions were approved by the Lithuanian Bishops' Conference. Transcript of the plenary session of the Parliament of the Republic of Lithuania of 18 September 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

Convention on preventing and combating violence against women and domestic violence.¹⁹⁹

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

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

These exceptions might cause problems, as some educational materials provided by teachers of religious classes have been recognised as discriminatory on the ground of sexual orientation.²⁰⁰ Therefore, in a particular case, no exceptions were applied. Nevertheless, for clarity, the Law on Equal Treatment should also include the text of the directive, which says difference of treatment 'should not justify discrimination on another ground.'

– Religious institutions affecting employment in state-funded entities

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

According to Article 31(5) of the Law on Education, in order to become a religious education teacher, a person must have a permit (appointment), issued by the traditional religious community or by the community leadership in order to teach religion.²⁰¹

In the case of the Catholic church, this is also regulated by an agreement with the Holy See,²⁰² which states that a person wishing to teach religion must have a written appointment letter from the local bishop (*missio canonica*). This applies to all schools (state and private), as well as other institutions in the formal education system. So far, this issue has not been raised in the courts. However, as was proven in 2017 by a case considered by the Equal Opportunities Ombudsperson, the content of religion classes and educational material used by particular church-approved teachers may be recognised as discriminatory towards the LGBT community. The case concerned the visual and spoken content used by a (Roman Catholic) teacher of a religion class, who, during a lessons for 10th-year pupils in Telšiai Žemaitė Gymnasium portrayed homosexuality and gays as persons practising sadomasochism for fun and as child abusers, and described them as serial killers who ate the body parts of their victims. The Ombudsperson recognised such behaviour as violating the Law on Equal Treatment and recommended that the director halt any actions that violated equal opportunities.²⁰³

Therefore, it would not be surprising if candidates for the position of a religion teacher could be discriminated against, not only on the ground of religion but on the basis of

¹⁹⁹ Lithuanian Bishops' Conference, 'Regarding a proposal to submit the Convention on preventing and combating violence against women and domestic violence for ratification', No. 1-513/17, 25 October 2017.

²⁰⁰ Decision of the Equal Opportunities Ombudsperson of 13 June 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2017/06/sprendimas-telsiu-gimnazija-nr.-58.pdf>.

²⁰¹ Law on Education (*Lietuvos Respublikos Švietimo įstatymas*), 1991, No. I-1489, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9A3AD08EA5D0/rOjIwFTTrMT>.

²⁰² International Agreement between Lithuania and Holy See (*Lietuvos Respublikos ir Šventojo Sosto sutartis 'Dėl bendradarbiavimo švietimo ir kultūros srityje'*), 9 August 2000, No. 67-2024, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106813>.

²⁰³ Decision of the Equal Opportunities Ombudsperson of 13 June 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2017/06/sprendimas-telsiu-gimnazija-nr.-58.pdf>.

their sexual orientation as well. In practice, it is highly likely that an openly LGBT person would not be employed as a teacher of religion in a public school on the ground of his or her sexual orientation.

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

In Lithuania, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78). Even though it is not mentioned as an exception in relation to discrimination, the laws include different age and health requirements for statutory professions and include disability as a reason for dismissal of a person serving in the military.

The Law on Equal Treatment does not explicitly provide an exception for the armed forces in relation to age or disability discrimination. In this case, the general rule on genuine occupational requirements would apply. However, when it comes to laws governing particular statutory professions, there are a number of exceptions concerning age and health requirements. According to the Law on the Organisation of the National Defence System and Military Service,²⁰⁴ the minimum age of acceptance for military service is 18 years (upon request of the person; the usual age is 19). Retirement ages vary, depending on the rank and status acquired by the person in armed service (Article 45), from 40 to 65 years of age.²⁰⁵ The law provides rules for dismissal when a person is not able to perform the duties of a soldier due to disability. This is mentioned in the same sentence as established dependence on alcohol or narcotic, toxic or psychotropic substances (Article 38(1)(8)) and health conditions (Article 38(2)(5)).

Other laws provide special requirements for persons joining certain statutory institutions. According to the Law on the Internal Service Statute,²⁰⁶ the general age range for persons willing to join the internal service system (which includes the police, customs and emergency services) is from 18 to 60. Retirement ages vary from 50 to 65, depending on seniority (rank), and it can be postponed by up to five years.

In order to be accepted into and serve in the internal services, certain health requirements must be fulfilled. An extensive list of health criteria (from a person's height and body index to particular diseases) has been adopted by order of the Minister of Health and the Minister of the Interior.²⁰⁷ However, the Minister of the Interior or the head of a particular institution, acting on behalf of the Minister, has the power to set additional requirements relating to a person's physical or intellectual abilities or practical skills, depending on the requirements for specific positions in a particular institution.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

²⁰⁴ Law on the Organisation of the National Defence System and Military Service (*Krašto sistemos organizavimo ir karo tarnybos įstatymas*), 1998, No. 49-1325, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.15C705E93776/FWqggnGARR>.

²⁰⁵ Members of the professional military service are released to the reserve: soldiers and sailors from the age of 40, junior and senior officers from 56, general officers from 58, and military chaplains from 65.

²⁰⁶ Law on Amendment of the Internal Service Statute (*Vidaus tarnybos statuto pakeitimo įstatymas. Vidaus tarnybos statutas*), 29 June 2018, No. XIII-1381, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/96842d9088f511e8af589337bf1eb893/ohTueGHNNH>.

²⁰⁷ Order of the Minister of Interior and Minister of Health of 21 October 2003, No. 1V-380/V-618, on the approval of health requirements for persons being admitted to statutory internal service (*Lietuvos Respublikos Vidaus reikalų ministro ir Lietuvos Respublikos Sveikatos apsaugos ministro įsakymas Dėl Sveikatos būklės reikalavimų asmenims, pretenduojantiems į vidaus tarnybą, pageidaujantiems mokytis vidaus reikalų profesinio mokymo įstaigose, kitose švietimo įstaigose Vidaus reikalų ministerijos siuntimu, bei vidaus tarnybos sistemos pareigūnams sąvado patvirtinimo*, 2003 m. spalio 21 d. Nr. 1V-380/V-618), available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.220127/asr>.

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

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

In Lithuania, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law. Citizenship was added to the list of protected grounds in Article 2 of the LET in 2017 as a result of the transposition of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. However, the ground of citizenship is explicitly defined as only applying to citizens of EU and EEA countries and their family members.

Potential problems might arise because of the requirements that indirectly discriminate against persons on the grounds of nationality. A complaint analysed by the Ombudsperson for Equal Opportunities in 2019 illustrates this: a person who was a citizen of the Federal Republic of Germany submitted a complaint as he wanted to participate in a public procurement process but could not do so since he could not obtain the required joint certificate issued by the State Enterprise Centre of Registers, as he was not a citizen of the Republic of Lithuania. During the course of the investigation, it was found out that the service is in fact provided to citizens of Lithuania and also to foreign nationals, but only those with a certificate confirming their right to permanently reside in Lithuania issued from 1 March 2019, in accordance with Article 14(3) of the Law on the Legal Status of Aliens. The applicant had a certificate that had been issued prior to that date and that was still valid. The Ombudsperson found that the State Enterprise Centre of Registers had breached the Law on Equal Treatment.²⁰⁸

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

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

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

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

²⁰⁸ Decision of the Equal Opportunities Ombudsperson No. (19)SN-140)SP-106, 17 October 2019 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos pilietybės pagrindu VĮ Registrų centrui teikiant paslaugas tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/10/sprendimas-19-106.pdf>.

The concepts of 'nationality' (as in ethnicity) and racial and ethnic origin have not been developed in the decisions of the Ombudsperson and, as mentioned above, have been treated as interrelated concepts. There were complaints investigated in the past on the grounds of origin, language and citizenship or 'nationality' (ethnicity) and citizenship, which were often evaluated as inter-related concepts.

A complaint regarding discrimination in the provision of services on the grounds of 'nationality' (ethnicity), submitted by a Romanian national regarding the refusal to rent them a flat, was investigated in 2019. The investigation was terminated due to lack of objective data about the alleged violation.²⁰⁹

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

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

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

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

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

Article 158 of the Labour Code contains a general statement on special provisions for health and safety at work for separate groups, including pregnant employees, those who recently gave birth or who are breastfeeding, persons under 18 years old and disabled people. The article refers to the Law on the Safety and Health of Workers, which is the main national law regulating the health and safety issues of workers. The provisions of Article 38 of the Law on Safety and Health are rather limited in relation to disability. They provide that certain guarantees apply, as covered in legislation, and that they can be regulated by collective or employment contracts. Article 38 also provides that a person with disability can be appointed to work overtime or night shifts only if this is not forbidden by the healthcare institution and only with the agreement of the employee; Article 38(2) states that the conclusion of the healthcare institution regarding the abilities of a person with a disability to work in a specific job is binding on the employer and the employee.²¹⁰

The Labour Code does not regulate other grounds. The Disability and Working Capacity Assessment Office under the Ministry of Social Security and Labour (*Neįgalumo ir darbingumo nustatymo tarnyba (NDNT)*) assesses whether the employment of a disabled person in a particular position will result in a risk to the health and safety of that person. If it is not possible to accommodate the working environment to the person concerned or if the assessment entirely rules out certain forms of work for them, the employer is obliged to dismiss the disabled person from that position. However, this does not depend solely on the interpretation of the employer and the decision of the Working Capacity Assessment Office. In one case, the court concluded that measures must be taken to

²⁰⁹ Decision of the Equal Opportunities Ombudsperson No. (19)SN-140)SP-106, 5 June 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos tautybės pagrindu teikiant būsto nuomos paslaugas tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/09/2019-06-05-nr.-73.pdf>.

²¹⁰ Law on the Safety and Health of Workers (*Darbuotojų saugos ir sveikatos įstatymas*), 31 July 2003, No. IX-1672, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/vumbtbwaKN>.

realistically evaluate a person's ability to work or to consider adjusting their working conditions, according to the doctor's or healthcare institution's conclusion.²¹¹ A similar decision was made by a court in 2019, which explicitly stated that:

'the order of the Minister of Healthcare No. 301 of 31 May, regarding Preventive Healthcare Examinations in Healthcare institutions, that approved the Compulsory Health Examination of Persons Working in Workplaces with a Description of Potential Occupational Risks (exposure to harmful factors and / or hazardous work) regulates the obligation of the employer to provide safe and healthy working conditions for employees with disabilities and procedures for their implementation. No. 19(3) of the Description specifies that the decisions regarding the ability of persons with disabilities or persons who have partially lost their ability to work are made by the family doctor or occupational doctor after receiving the recommendations of the Working Capacity Assessment Office and the assessment of a doctor who has appropriate professional qualifications.'²¹²

The conclusion can therefore be made, based on a number of cases, that some employers use an argument for the dismissal of persons with disabilities based on the health and safety regulations without assessing the individual situation of the employee or the accommodation of working conditions. The individual assessment can be made by the family doctor or an occupational doctor.

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

4.6.1 Direct discrimination

In Lithuania, national law provides an exception for direct discrimination on the ground of age, under Article 2(9)(1)) of the Law on Equal Treatment.

a) Justification of direct discrimination on the ground of age

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

There were two cases in the courts in 2019 regarding unfair dismissal of persons because of their age that were settled by the parties, thus they cannot be analysed in detail as the decisions are not publicly available.

These restrictions are usually addressed in decisions of the Ombudsperson. In 2018, the Ombudsperson concluded that the requirement set out by the Minister of Education and Science to increase the number of teaching staff with less than 20 years of experience constituted indirect discrimination based on age. One of the reasons for this was that the requirement was not established by law and was neither justified nor necessary.²¹³

²¹¹ Vilnius Regional Court decision of 27 February 2014, case No. 2A-557-640/2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

²¹² Vilnius Regional Administrative Court decision, case No. eI-2472-244/2019, 3 July 2019, (*Vilniaus apygardos administracinio teismo 2019 m. liepos 3 d. sprendimas administracinėje byloje*).

²¹³ Decision of the Equal Opportunities Ombudsperson No. (18)SI-7)SP-86, 4 September 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu Lietuvos Respublikos švietimo ir mokslo ministro 2018 m. kovo 26 d. įsakymo Nr. V-267 "Dėl Lietuvos Respublikos 2018 metų valstybės biudžeto lėšų, skirtų išlaidoms, susijusioms su pedagoginių darbuotojų skaičiaus optimizavimu, apmokėti,*

Investigations carried out by the Ombudsperson in 2019 were mostly related to violations of equal opportunities law by indicating the required ages of candidates in job announcements, or to discrimination on the grounds of age at the time of recruitment. One of the complaints concerned a situation where the applicant was asked questions about their age and/or family status.

b) Permitted differences of treatment based on age

In Lithuania, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78, provided that the restrictions on the grounds of age are established by law, are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 2(9) of the Law on Equal Treatment).

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

Age-based exceptions have been challenged in the past. For example, 2012 provisions setting an age limit for university lecturers and heads of department under the Law on Higher Education were amended following a recommendation of the Equal Opportunities Ombudsperson.²¹⁴

In 2019, a complaint was analysed by the Ombudsperson regarding alleged discrimination on the grounds of gender, age and other grounds in determining the evaluation criteria for providing support for economic activity, following the rules established by the Ministry of Agriculture for supporting economic start-ups in rural areas. According to these rules, additional points were awarded to applications submitted by women (5 points out of 100), to persons who received subsidies under the Law on Financial Incentives for Young Families Acquiring their First Home (15 points) and to persons aged up to 29 (10 points), with 5 points going to persons between the ages of 30 and 40 and to those aged 54 and over. The Ombudsperson referred to proportionality of preferential treatment, which may be allowed according to EU law and national law (e.g. for women in rural areas or young farmers). However, this should be applied without substantially restricting the opportunities for other groups to apply for support. The overall score for persons up to 29 years of age was disproportionately higher, as they were among those who could also receive subsidies for acquiring their first home, which were available to persons up to the age of 35. The Ombudsperson recognised this benefit as disproportionate, therefore infringing the principles of equal opportunities. The Ombudsperson recommended that the Minister of Agriculture amend the rules for providing support, ensuring that they did not disproportionately restrict older people's access to support.²¹⁵ The recommendation of the Ombudsperson was implemented by reducing the number of points for persons receiving subsidies under the Law on Financial Incentives for Young Families Acquiring their First Home to five.²¹⁶

paskirstymo tvarkos aprašo patvirtinimo" nuostatų tyrimo), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-86.pdf>.

²¹⁴ Lithuanian Equal Opportunities Ombudsperson (2013), *Annual Report for 2012*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2015/12/lgkt-ataskaita-2012.pdf>.

²¹⁵ Decision of the Equal Opportunities Ombudsperson, No. (19)SN-95)SP-76, 11 June 2019 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos lyties ir amžiaus pagrindu teikiant paramą ekonominės veiklos vykdymui tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/06/19sn-95sp-76.pdf>.

²¹⁶ Rules of Support amended by Order of the Minister of Agriculture, No. 3D-582, 23 October 2019, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/a7023820f59a11e99681cd81dcdca52c>.

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

In Lithuania, national law allows occupational pension schemes to fix the ages for admission to the scheme or entitlement to benefits, taking up the option provided for by Article 2(9) of the Law on Equal Treatment.

Generally, the question of occupational pensions is not of great relevance in a national context, since such pensions are not popular and no occupational pension funds have been established under the Law on Accumulation of Occupational Pensions.²¹⁷ According to this law, a person may, from the age of 16, be a part of an association establishing an occupational pension fund and may be entitled to a professional pension from the age established by the professional pension fund requirements, but that age cannot be more than five years lower than the general state pension age established by the Law on State Social Insurance Pensions (Article 32(1)). According to the Law on Social Insurance Pensions, from 2026 the state pension age will be 65 for everybody. In 2019 the state pension age was 62 years and 8 months for women and 63 years and 10 months for men.

4.6.2 Special conditions for young people and older workers

In Lithuania, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

Article 48 of the Law on Support for Employment states that special programmes to increase employment can be organised for the prevention of unemployment and the integration of immigrants and national minorities into the labour market, with special programmes envisaged for a number of groups, among other measures. The Law specifies the groups to which special programmes can be addressed, among which are persons over 40 years old. The Law also sets conditions under which special subsidies can be provided to employers to employ persons falling into certain categories, based on their age, disability level, duration of unemployment, qualifications, etc. Among the groups mentioned are unemployed persons up to the age of 29, or those over 50.²¹⁸

The Law on the Safety and Health of Workers sets specific requirements for the working conditions of persons under 18, including requirements on working time, length of the working day, rest breaks, etc. These are described in more detail in the resolution adopted by the Government.²¹⁹

Several special provisions for young people and older people are embodied in the Labour Code. Under Article 57, in the event of a reduction in the number of employees, the following employees have a right of priority in retaining their job: those who sustained an injury or contracted an occupational disease at the workplace; those who are raising more than three children (including adopted children), who are raising children (or adopted children) under 14 years of age on their own, or who care for other family members; those who have less than 55 per cent working capacity, or family members who have reached retirement age and who have been assessed in accordance with the procedure established by law as having high or moderate special needs; persons whose continuous length of service at that workplace is at least 10 years, with the exception of

²¹⁷ Law on Accumulation of Occupational Pensions (*Lietuvos Respublikos profesinių pensijų kaupimo įstatymas*, 2006, No. X-745), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.103565D95E60/asr>.

²¹⁸ Law on Support for Employment (*Lietuvos Respublikos Užimtumo įstatymas*), 21 June 2016, No. XII-2470, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/422c8b5042b811e6a8ae9e1795984391/ykuWYDCfti>.

²¹⁹ Law on the Safety and Health of Workers (*Lietuvos Respublikos darbuotojų saugos ir sveikatos įstatymas*), *Valstybės žinios*, 16 July 2003, No. 70-3170), available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/vumbtbwaKN>.

employees who have become entitled to the full old-age pension or are in receipt thereof; those who will be entitled to the old-age pension in not more than three years' time; persons whose right of priority has been established by a collective agreement; and those who have been elected as board members of representatives of employees, acting on the employer's level.

Employees who have health issues or a disability have a right to flexible (reduced) working hours (Article 40), as well as an option to request remote working (Article 52). Some persons are guaranteed a longer warning time should their employment contract be terminated by their employer: persons who have less than five years left before retirement age and persons with disabilities have double the usual time, and persons who have less than two years left to retirement age are guaranteed triple the length of warning time (Article 57).

There was a complaint examined by the Ombudsperson for Equal Opportunities regarding a special employment programme for persons of 30 to 50 years of age who had been recipients of social assistance in 2017. It was found to be discriminatory against younger or older recipients of social assistance and not to be backed by any statistics that would justify such a differential treatment of a particular age group.²²⁰

4.6.3 Minimum and maximum age requirements

In Lithuania, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

Children younger than 16 are generally forbidden from working, except in certain straightforward jobs consistent with their physical abilities, and in jobs that would not have a negative impact on a child's safety, health or physical, mental, moral or social development under the conditions established by the Law on the Safety and Health of Workers and the resolution adopted by the Government.²²¹

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

For specific professions, the age of competency differs, with the minimum age often set at 18; this is usually dependent on a material condition for carrying out the work in question. The general minimum age for self-employment is 18, but in specific cases it can differ, according to the special requirements for various types of self-employment, for example requirements for training or experience for the proper performance of the activity. Besides this, self-employment is also possible from the age of 14 if the child has the permission of their parents or legal guardians.

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

²²⁰ Decision of the Equal Opportunities Ombudsperson No. (17)SN-174)SP-73, 11 October 2017 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos dėl amžiaus Alytaus miesto savivaldybės tarybos 2017 m. birželio 29 d. sprendimu patvirtintos užimtumo didinimo 2017 m. programos nuostatose tyrimo*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2017/10/sprendimas-nr.-17sn-174sp-73.pdf>.

²²¹ Law on the Safety and Health of Workers (*Darbuotojų saugos ir sveikatos įstatymas*), 31 July 2003, No. IX-1672, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/bqzXFBqJUI>.

4.6.4 Retirement

a) State pension age

In Lithuania, there is a state pension age at which individuals must begin to collect their state pensions.

If an individual wishes to work beyond the state pension age, the pension cannot be deferred.

An individual can collect a pension and still work.

In 2019, the pension age in Lithuania was 62 years and 8 months for women and 63 years and 10 months for men. It will reach 65 years for both women and men in 2026.²²² Reaching the pension age does not preclude a person from continuing working. According to the jurisprudence of the Constitutional Court on the matter, gaining one constitutional right (to a pension) cannot deprive a person from exercising another constitutional right, such as the right to work or the right to own property.²²³

During the period of economic crisis in Lithuania (2009-2011 in particular), state pensions were reduced for most pensioners. However, the reduction for pensioners who were still working was more substantial than it was for others. This regulation was subsequently declared as unconstitutional by the Constitutional Court, which stated that, when there is an especially grave economic and financial situation in the state and when, due to this, there is a necessity temporarily to reduce the pensions that are awarded and paid in order to secure the vitally important interests of society and the state and to protect other constitutional values, it is not permitted to establish any such legal regulation whereby the old-age pension or disability pension awarded and paid to the persons who have a certain job or conduct a certain business may be reduced due to this to a greater extent compared with those people who do not have any job and do not conduct any business.²²⁴ According to the Constitutional Court, having created (by means of the disputed legal regulation) the preconditions for reducing the state pensions of state pension recipients who have a certain job or who conduct a certain business to a greater extent than for those state pension recipients who do not have any job or do not conduct any business, due to the fact that the former group have a certain job or conduct a certain business, the legislator restricted their right to freely choose a job or business, which is enshrined in Article 48(1) of the Constitution.²²⁵

Thus, when a person reaches the age when they are entitled to a state pension, this cannot be considered as a legitimate reason to terminate their employment. The anti-

²²² Law on State Social Insurance Pensions (*Lietuvos Respublikos socialinio draudimo pensijų įstatymas*), *Valstybės žinios*, 3 August 1994, No. 59-1153), available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5901/hZdFnXHwTK?jfwid=eilnnqua9>.

²²³ Ruling of the Constitutional Court of the Republic of Lithuania No. 113-5057, 25 November 2002 (*Lietuvos Respublikos Konstitucinio teismo 2002 m. lapkričio mėn. 25 d. nutarimas Dėl Lietuvos Respublikos diplomatinės tarnybos įstatymo 69 straipsnio 2 dalies, Lietuvos Respublikos valstybinio socialinio draudimo įstatymo 4 straipsnio (2000 m. kovo 16 d. redakcija) 1 dalies 9 punkto ir Lietuvos Respublikos valstybinių socialinio draudimo pensijų įstatymo 2 straipsnio (1999 m. gruodžio 16 d. redakcija) 1 dalies 5 punkto bei 23 straipsnio (1994 m. gruodžio 21 d., 2000 m. gruodžio 21 d., 2001 m. gegužės 8 d. redakcijos) atitikties Lietuvos Respublikos Konstitucijai*), *Valstybės žinios*, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1213/content>.

²²⁴ Constitutional Court of the Republic of Lithuania, decision of 20 April 2010 (*LR Konstitucinio Teismo 2010 m. balandžio 20 d. sprendimas Dėl Konstitucinio Teismo 2002 m. lapkričio 25 d., 2003 m. gruodžio 3 d., 2006 m. sausio 16 d., 2007 m. rugsėjo 26 d., 2007 m. spalio 22 d., 2007 m. lapkričio 22 d., 2008 m. gruodžio 24 d. nutarimų ir 2009 m. sausio 15 d. sprendimo nuostatų, susijusių su pensijų ir atlyginimų mažinimu per ekonomikos krizę, išaiškinimo*), available in English at: <http://lrkt.lt/en/court-acts/search/170/ta932/content>.

²²⁵ Constitutional Court of the Republic of Lithuania, ruling on the recalculation and payment of pensions upon the occurrence of an especially difficult economic and financial situation in the state, 6 February 2012, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1073/content>.

discrimination provisions in Article 56 of the Labour Code explicitly state that an employment contract can be terminated upon the request of the employee if they reach the old-age pension age. According to Article 2 of the Labour Code, discrimination on the basis of age is prohibited in principle. Article 26 repeats a number of provisions on the prohibition of discrimination that were previously contained only in the Law on Equal Treatment.

b) Occupational pension schemes

In Lithuania, there is an age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

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

Occupational pensions cannot be realised in practice yet, as no occupational pension funds have been established since the introduction of the first version of the Law on the Accumulation of Occupational Pensions. It is clear from articles in the media that discussions were opened about the need to establish occupational pension funds after the private funds reform carried out in 2019.²²⁶ In theory, a person could be entitled to a professional pension from the age established by the professional pension fund requirements, but that age cannot be more than five years lower than the general state pension age established by the Law on State Social Insurance Pensions (Article 32(1)). In 2019, it could not be lower than 57 years and 8 months for women or 58 years and 10 months for men.

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

c) State imposed mandatory retirement ages

In Lithuania, there are state-imposed mandatory retirement ages, which are only applied to particular professions and public service.

The general rule is that compulsory retirement is not imposed. However, there are requirements for particular professions (mostly public sector or state officials), which set a maximum age of employment. For instance, in general, the maximum retirement age for civil servants is 65, although it can be extended for a period of up to two years if the civil servant signs a fixed-term employment contract for mentoring (transfer of work experience).²²⁷ This age limit does not apply to civil servants of political (personal) confidence (defined as 'a civil servant recruited for a term of office of the appointing state politician or the appointing collegiate state institution or for a term specified in other laws'), nor does it apply to acting public servants.

There is a compulsory maximum age limit for particular professions. For example, according to the Law on Courts, judges are appointed until the age of 65, with the possibility of continuing their term to complete the hearing of a case or until the hearing is postponed.²²⁸ Some changes were introduced and came into effect that allowed judges to be appointed for a shorter period of time, however these will not be further examined here, as they are not related to the pension age. According to the Law on Diplomacy, the maximum age of a diplomat is 65, and this can only be extended by two

²²⁶ Deveikis J., 'Lietuvoje siūloma naujovė: antrąją pensijų pakopą galėtų pakeisti profesiniai fondai' (Innovation proposed in Lithuania: the second pillar pensions could be replaced by an occupational pension fund), 2019, LRT, available in Lithuanian at: <https://www.lrt.lt/naujienos/verslas/4/247089/lietuvoje-siuloma-naujove-antraja-pensiju-pakopa-galetu-pakeisti-profesiniai-fondai>.

²²⁷ Law on Public Service (*Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/ZHYTvxLXv>.

²²⁸ Law on Courts (*Lietuvos Respublikos teismų įstatymas*), *Valstybės žinios*, 17 June 1994, No. 46-851, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.522B3E415B52/xbHTIEYFdQ>.

years. Again, the limit does not apply to civil servants of political confidence.²²⁹ Prosecutors must retire at the age of 65,²³⁰ and bailiffs must retire at the age of 70.²³¹

Similar rules apply to other state officials and to particular professionals such as pilots and ship captains, as well as the chief administrators of universities and other educational and scientific institutions. Whether all these requirements are necessary, proportionate and seek a legitimate aim is questionable. However, there is no public discussion about the issue.

d) Retirement ages imposed by employers

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

e) Employment rights applicable to all workers irrespective of age

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

Age cannot be a legitimate reason for an employer to unilaterally terminate a working contract. The Labour Code provides people who have no more than five years until they reach pension age with additional guarantees. There are some additional guarantees, such as a longer warning period. When the employment contract is terminated at the initiative of the employer, this period can be doubled to two months for those who have five years until they reach the pension age, or tripled to three months for those who have three years until pension age. In the event of a reduction in the number of employees on economic or technological grounds or due to the restructuring of the workplace, employees who are entitled to receive the old-age pension in no more than three years' time will enjoy a priority right to job retention, unless they have reached retirement age (Article 57).

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

f) Compliance of national law with CJEU case law

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

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

²²⁹ Law on Diplomatic Service (*Lietuvos Respublikos diplomatinės tarnybos įstatymas*), *Valstybės žinios*, 15 January 1999, No. 7-140, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.70992/asr>.

²³⁰ Law on the Prosecutor's Office (*Lietuvos Respublikos prokuratūros įstatymas*), *Valstybės žinios*, 19 October 1994, No. 81-1514, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.3EB53577EFCA/asr>.

²³¹ Law on Bailiffs, *Valstybės žinios*, 29 May 2002, No. 53-2042, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.94F5702CA0F1/asr>.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

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

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

b) Age taken into account for redundancy compensation

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

Although age is taken into account to the extent that the amount of compensation depends on the length of time that the worker has been employed in the company or institution concerned, compensation does not vary for those who have worked in the same place for more than a year (Articles 56, 57 and 60 of the Labour Code). The additional long-term employment redundancy compensation is paid by the State Social Fund if the contract is terminated at the initiative of the employer. The long-term employment redundancy compensation varies, depending on the number of years for which the person has worked in the same place: they receive 77.58 % of their average monthly salary if they have worked for 5 to 10 years, 77.58 % of their average salary for two months if they have worked for 10 to 20 years, or 77.58 % of their average salary for three months if they have worked for 20 years or longer.

Employees who have reached the permitted pension age are also entitled to compensation when their contract is terminated at their initiative (Article 56(1)).

4.7 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Lithuania, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. The only exceptions that the author is aware of are related to the requirements for background checks on pilots and the requirement to check their health upon request, which are related to the aviation safety requirements established in Articles 47 and 66 of the Law on Aviation.²³²

4.8 Any other exceptions

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

²³² Law on Aviation (*Lietuvos Respublikos aviacijos įstatymas*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9D2F66B96EBC/bBCfDUIGYv>.

The requirement to know the state language and a prohibition on participation in political activities are listed as exceptions (see, for instance, Article 9 of the Law on Public Service),²³³ and exceptions are elaborated in other laws. For example, the Equal Opportunities Ombudsperson has to suspend their membership in a political party (Article 18(4) of the Law on Equal Treatment), and persons serving in the armed forces cannot be members of a political party (Article 36 of the Law on the Organisation of the National Defence System and Military Service).²³⁴ However, there are no specific exceptions in the field of private employment.

²³³ Law on Public Service (*Lietuvos Respublikos Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.

²³⁴ Law on the Organisation of the National Defence System and Military Service (*Krašto sistemos organizavimo ir karo tarnybos įstatymas*), 1998, No. 49-1325, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.15C705E93776/FWgggnGARr>.

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

a) Scope for positive action measures

In Lithuania, positive action is permitted in national law in respect of disability, gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Article 2(9) of the Law on Equal Treatment provides exceptions to direct discrimination legislation that could be interpreted as allowing positive action:

- (1) special measures applied in healthcare, safety at work, employment and the labour market when striving to create and implement conditions and opportunities guaranteeing and promoting the integration of disabled persons into the work environment;
- (2) special temporary measures applied in an attempt to ensure equality and prohibit violation of equal treatment on the basis of gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

The concept of positive action is not widely discussed at national level. Although different measures, which vary in scope and form, exist in practice, a consistent legal/political approach is lacking. This issue was highlighted by the Equal Opportunities Ombudsperson.²³⁵ The Ombudsperson identified the need for a comprehensive approach to positive action measures, as well as highlighting the fact that the country lacks a clear mechanism for the implementation of positive measures. The Ombudsperson recommended that a law on positive action be passed.

In its *Annual Reports* for 2017 to 2019, the Ombudsperson recommends amending the Law on Equal Treatment so as to establish exceptions within the Law to allow for certain benefits for persons with disabilities, persons of certain ages, those in certain financial conditions or those with limited legal capacity when accessing goods or services. The report indicated that 'justification of such advantages is not established by Law' and recommended amending the Law so as to add an exception whereby access to goods and services may be provided only (or primarily) to persons of certain characteristics, when that can be justified by a legitimate aim and when the means of achieving that aim are appropriate and necessary.²³⁶

There is no legislation that deals with positive action measures, and a definition of such measures is not provided in national law. A ruling of the Constitutional Court²³⁷ made some time before the Law on Equal Treatment was passed gives some idea as to how positive action measures may be applied in practice. According to the Constitutional Court, a legal regulation that treats certain groups of people differently in order to achieve positive and socially meaningful goals is not regarded as discrimination. In addition, special requirements or certain conditions relating to a group that are linked to the specificities of a particular employment position do not constitute discriminatory restrictions – for example, the laws that set out certain requirements in respect of the

²³⁵ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²³⁶ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

²³⁷ Ruling of the Constitutional Court of the Republic of Lithuania No. 100-2791, 1998, *Lietuvos Respublikos Konstitucinio teismo 1998 m. Lapkričio 11 d. nutarimas Dėl Lietuvos Respublikos Seimo rinkimų įstatymo 38 straipsnio 4 dalies ir Lietuvos Respublikos savivaldybių tarybų rinkimų įstatymo 36 straipsnio 4 dalies atitikimo Lietuvos Respublikos Konstitucijai*.

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

'this principle (principle of equality) obligates one to apply a uniform legal assessment to homogeneous facts and prohibits against any arbitrary assessment of essentially homogeneous facts (the Constitutional Court's ruling of 24 January 1996). This is the principle of a formal legal equality. This constitutional principle does not deny the fact that different legal regulations may be established in respect to categories of certain persons that are in different situations.'²³⁸

The Law on Equal Treatment requires state and municipal institutions to draft measures ensuring equal opportunities:²³⁹

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

This might be considered as some sort of equality mainstreaming obligation; however, it is brief, it is not elaborated upon, and no control mechanism has been put in place. Therefore, it is not surprising that when the Ombudsperson made an independent survey of 13 ministries and 60 municipalities in 2015, the results were rather disappointing.²⁴⁰ According to the results of the research, very few institutions had any understanding of equality mainstreaming in general or saw the ensuring of equal opportunities as their obligation (or function) at all. In many instances, municipalities declared completely irrelevant activities (such as promoting sport, healthy lifestyle activities and local community projects, redeveloping cemeteries and building a dovecot) as something pertinent to the promotion of equal opportunities. The situation is slightly more positive in respect of the ministries and in relation to the promotion of gender equality. However, the measures that were listed were still not relevant in many ways. In most cases, the duty to promote equal opportunities is understood as an obligation to refrain from discrimination. In 2019 the Equal Opportunities Ombudsperson started developing an initiative for different entities to self-evaluate the level of implementation of equal opportunities among them – if they have special measures. The initiative is called the Equal Opportunities Ruler.²⁴¹

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

²³⁸ Ruling of the Constitutional Court of the Republic of Lithuania No. 12/99-27/99-29/99-1/2000-2/2000, 8 May 2000, <https://www.lrkt.lt/en/court-acts/search/170/ta1160/content>.

²³⁹ Law on Equal Treatment (*Lygių galimybių įstatymas*, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>.

²⁴⁰ Notice of Equal Opportunities Ombudsperson of 22 June 2015, No. (15)SN-98 (*Lygių galimybių kontrolieriaus 2015-06-22 d. pažyma Nr. (15)SN-98)SP Dėl nepriklausomos apžvalgos atlikimo apie priemones lygioms galimybės užtikrinti valstybės ir savivaldos institucijų strateginiuose planuose*) concerning the initiation of an independent review of efforts by governmental and municipal institutions to ensure equal opportunities in their strategic plans.

²⁴¹ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

disproportionate when it came to older persons.²⁴² The competition was, however, amended in 2018, so that priority would be given to 'applicants who have been registered in rural areas for more than one year, applicants younger than 40 or older than 54 and if applicant is a woman', with five extra points awarded during evaluation. The expert of the Office of the Equal Opportunities Ombudsperson commented that, in the given circumstances, the measures taken were proportionate and justified.²⁴³

The Labour Code, which entered into force in 2017, introduced an obligation on public and private entities employing more than 50 employees to adopt measures aimed at promoting and implementing equality policies in the workplace (Article 26).²⁴⁴ Following these legislative amendments, and noting its duty to carry out preventive educational activities and activities encouraging the implementation of equal opportunities, the Equal Opportunities Ombudsperson introduced recommendations, with training for companies and employers on how to create equality plans. This may be found at www.lygybesplanai.lt.²⁴⁵

The Law on Employment creates a system of additional support measures to ensure employment for persons with disabilities, unqualified workers, long-term unemployed persons, unemployed persons over 50 and under 29, unemployed persons starting their first job according to their qualifications, and persons with refugee status or subsidiary or temporary protection. Subsidies are allocated to employers who employ the above-mentioned categories of persons, and they are also granted for providing reasonable accommodation in the workplace for persons with disabilities and for creating posts for persons with disabilities and all others who are mentioned in the law. There are also various types of support for certain categories of persons themselves.²⁴⁶ Measures for integrating national minorities and immigrants into the labour market are also provided for under this law.

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

Currently, support related to the employment of the above-mentioned groups is regulated under a procedure approved by the Minister of Social Security and Labour, according to which special employment plans are to be produced for individuals when they register at an employment exchange. In cases where they are not employed within

²⁴² Decision of the Equal Opportunities Ombudsperson No. (16)SN-203)SP-136, 15 December 2016 (*Lygių galimybių kontrolieriaus pažyma dėl galimos diskriminacijos amžiaus pagrindu skiriant paramą tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2016/12/16sn-203sp-136.pdf>; decision of the Equal Opportunities Ombudsperson No. (18)SN-123)SP-88, 11 September 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas BĮ Studijų kokybės vertinimo centre tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-18sn-123sp-88.pdf>.

²⁴³ Delfi.lt (2018), 'Moterys paramą gaus lengviau, bet tai nebus', 10.10.2018, available in Lithuanian at: <https://www.delfi.lt/agro/agroverslo-naujienos/moterys-parama-gaus-lengviau-bet-tai-nebus-diskriminacija.d?id=79268351>.

²⁴⁴ Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

²⁴⁵ Lithuanian Equal Opportunities Ombudsperson, '2018 – the year of promoting equality in Labour Market', available in Lithuanian at: <https://www.lygybe.lt/lt/naujienos/2018-ieji-ir-lygybes-darbo-rinkoje-skatinimo-metai/1026>.

²⁴⁶ Law on Support for Employment (*Lietuvos Respublikos Užimtumo įstatymas*), 21 June 2016, No. XII-2470, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/422c8b5042b811e6a8ae9e1795984391/asr>.

three months of their date of registration, measures are taken to provide or adapt jobs for them. Jobs may be established or adapted in any organisation or enterprise that demonstrates continuous activity. As mentioned earlier, people with disabilities are entitled to additional support and guarantees in the employment market under the Labour Code.

b) Quotas in employment for people with disabilities

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

6 REMEDIES AND ENFORCEMENT

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

a) Available procedures for enforcing the principle of equal treatment

In Lithuania, the following procedures exist for enforcing the principle of equal treatment before the civil and administrative courts. Criminal procedure is also possible in cases of discrimination, but this is rarely or never applied. There is also the quasi-judicial procedure of filing a complaint with the Equal Opportunities Ombudsperson, which is considered to be an administrative procedure.²⁴⁷

The Constitution guarantees the right of every person to appeal to a court for the protection of the constitutional rights that have been violated. The general principle of equality of persons is embodied in a number of laws, including the Civil Code and the Labour Code. According to Article 12(1) of the Law on Equal Treatment, each person whose equal opportunities have been violated has a right to file a complaint to the Ombudsperson. This does not preclude the person from having the right to defend his or her rights in court. Therefore, in cases of violation of the principle of equal treatment, any person can address the court (under administrative or civil jurisdiction, depending on the matter at hand). The court offers the only option for a person to receive some sort of compensation for discriminatory actions and suffered harm, because none of the other available procedures provides compensation to the victims.

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

According to the information provided by the State Labour Inspectorate on its website, the labour dispute commissions received 7 579 requests in 2019 (compared to 6 712 in 2018). Out of the 7 398 requests that have been analysed, 10 concerned or partially concerned discrimination in employment (compared with 13 in 2018).²⁴⁸

People who believe that their rights have been infringed by individual administrative actions or by the actions (or omissions) of civil servants or municipal employees in the sphere of public administration – including in relation to social protection, social advantages, education and access to and the supply of goods and services available to the public – have the right to file a complaint with the Administrative Disputes Commission under the Law on Administrative Disputes Commissions, or with the administrative courts under the Law on Administrative Procedure. Actions (or omissions) by civil servants or municipal employees in the sphere of public administration can also

²⁴⁷ There are further theoretical options that are not used in practice, such as filing a complaint to the Parliamentary Ombudsman when human rights violations have been committed by state officials or institutions, or to the State Labour Inspectorate in cases of labour law violations. However, the Parliamentary Ombudsman would not duplicate the function of the Equal Opportunities Ombudsperson.

²⁴⁸ Lithuanian State Labour Inspectorate, 'An Overview of Activity of Labour Dispute Commissions in 2018', available in Lithuanian at: https://www.vdi.lt/Forms/Tema.aspx?Tema_ID=63.

be challenged at the Seimas (Parliamentary) Ombudsmen's Office. According to the Constitution:

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

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

However, the most widely used option in practice is to file a complaint to the Equal Opportunities Ombudsperson. The Equal Opportunities Ombudsperson was established by the Law on Equal Treatment, which expanded the mandate of the previous institution (the Office of Equal Opportunities for Men and Women) by including additional grounds of discrimination and expanding the competence of the Ombudsperson. Since 2005, the Equal Opportunities Ombudsperson is considered to be the national equality body in terms of Article 13 of the Racial Equality Directive 2000/43/EC. Complaints should be made in writing: the complainant or her or his representative may send a complaint to the Ombudsperson by post or email, bring it to the office in person or fill in an electronic form online.²⁴⁹ If a complaint has been received orally or by telephone, or if the Equal Opportunities Ombudsperson has found indications of a violation of equal rights in the mass media or other sources of information, the Ombudsperson may also initiate an investigation. In addition, Ombudsperson may decide to investigate anonymous complaints. The general rule is that complaints must be investigated within three months after being received, although an extra month can be added if the case is complicated and the Ombudsperson decides that this is necessary.

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

The Ombudsperson often acts as a mediator in practice as, according to the Office, peaceful resolution of discrimination is one of its main objectives.²⁵⁰ On the other hand, such activities by the Ombudsperson have never provided compensation to the victim. In the absolute majority of cases, the Ombudsperson chooses to issue 'recommendations', which are not binding. In practice, according to the Ombudsperson, most of the recommendations are followed. However, until 2016 it was difficult to assess whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action, and no system for administrative follow-up was in place before 2016. However, a number of measures to ensure the efficiency of the institution were established in 2016, including the creation of an administrative follow-up system. Since May 2017, a table of recommendations and

²⁴⁹ The complaint form can be found at: <https://lygybe.lt/lt/skundu-tyrimas/skundu-pateikimas-ir-tyrimas/410>. However, the online form is temporarily unavailable.

²⁵⁰ See the annual reports of the Equal Opportunities Ombudsperson from 2008 to 2019, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

the status of their implementation (a monitoring report) have been available on the website of the Ombudsperson.²⁵¹ According to the table of recommendations, out of 15 decisions mentioned in the table for monitoring in 2019, six are in the process of implementation and nine have been implemented. A decision was not implemented in one case brought to Vilnius Regional Court, questioning the finding of the Ombudsperson that there had been a violation of equal treatment regarding access to health services in a Kaunas clinic on the ground of disability, due to the inaccessibility of the building.²⁵²

Although the Ombudsperson has a right to impose administrative sanctions (fines), according to the annual reports of the institution, the Ombudsperson has issued a fine on only one or two occasions during its past 10 years of operation. There might have been more cases when fines were given, judging from information from media articles, but they are not mentioned in the annual reports.²⁵³ One of the cases when an administrative fine of an unspecified amount was imposed in 2008 concerned discrimination in the field of employment – a person did not receive a job because of discrimination based on their age.²⁵⁴

b) Barriers and other deterrents faced by litigants seeking redress

First of all, it must be emphasised that the only way for victims of discrimination to get some sort of compensation for the harm that they have suffered is to pursue the case in court or before a labour dispute commission. In practice, a person who wishes to initiate court proceedings will have to consult a lawyer. Legal services are relatively expensive, thus the issue of unequal access to justice by different social groups does exist. Although there is a system of state-supported legal aid, only a limited number of persons can receive it, and there are few independent legal aid clinics (mostly staffed by law students), so the legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court. Furthermore, when filing complaints to courts, applicants need to pay a court fee, although applicants may get this back should their trial be successful.

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

Labour dispute commissions analyse the complaints that they receive over the course of a month. It is possible to apply to the commissions within three months of an event or within one month in cases of unfair dismissal.

²⁵¹ See the website of the Equal Opportunities Ombudsperson at: <http://www.lygybe.lt/lt>. Clicking on 'Monitoring the implementation of decisions' (*Sprendimų vykdymo stebėseną*) leads to the Google document: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

²⁵² In 2019, Vilnius Regional Court recognised that discrimination had taken place and refused to annul the decision of the Ombudsperson. However, this decision was overturned by the Supreme Administrative Court in 2020 (after the cut-off date for this report). Vilnius Regional Administrative Court (Vilnius apygardos administracinis teismas), *Kauno miesto poliklinika v. Office of the Equal Opportunities Ombudsperson*, Administrative Case No. eI-651-1063/2019, decision of 15 May 2019. Supreme Administrative Court of Lithuania (*Lietuvos Vyriausybės Administracinis Teismas*), *Kauno miesto poliklinika v. Office of the Equal Opportunities Ombudsperson*, Administrative Case No. eA-2124-1062/2020, decision of 10 June 2020, available in Lithuanian at: <https://eteismai.lt/byla/76617947393338/eA-2124-1062/2020>.

²⁵³ The staff of the institution claim that fines have in fact been issued at least a few times.

²⁵⁴ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2008*, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2015/12/lqkt-ataskaita-2008.pdf>.

An interesting decision was adopted in a discrimination case by a labour dispute commission against UAB Manpower Lit as the provider of temporary workers to an EU body, the European Institute for Gender Equality, which was operating in Vilnius in 2018. The case subsequently went to court, which made a final decision in 2019. The labour dispute commission recognised in 2018 that the European Institute for Gender Equality was discriminating against its employees on the basis of their temporary work contracts by paying them lower salaries than they would have been paid if employed directly by the EIGE, the user of the service provided by Manpower Lit, and it decided to award the employees the unpaid part of their salary. The labour dispute commission recognised that the temporary employees performed the same functions as the permanent employees. Vilnius County Court and Vilnius Regional Court both left the main part of the decisions unchanged and ruled that there had been discrimination against the temporary employees.²⁵⁵

No special conciliation procedures for cases of discrimination exist at national level. Mediation in discrimination disputes is not covered in national law either. In practice, however, the Equal Opportunities Ombudsperson sometimes acts as a mediator, but this procedure is not formalised, and therefore the outcome of the mediation is neither binding nor compensatory. Labour dispute commissions can also function as mediators. The new Law on Mediation entered into force on 1 January 2019.

In practice, associations often initiate administrative proceedings with the Ombudsperson, although case law on the issue has confirmed that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson.²⁵⁶ It must be admitted that the Office of the Ombudsperson has not been consistent in this approach in the past. However, recent practice is that, when the complaint is received from an NGO and the rights of the organisation have not been directly infringed, the Ombudsperson may start an investigation 'on its own initiative'.

In addition, the procedure at the Equal Opportunities Ombudsperson, which is the one most commonly used, has a time limit for filing complaints of three months after the commission of the acts in question. Complaints lodged after the expiry of this time limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise.

c) Number of discrimination cases brought to justice

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

Exact statistics on the number of cases related to discrimination are not available. The author is aware of no more than 30 to 35 relevant²⁵⁷ cases that were brought to court, concerning various grounds (other than gender), and discrimination was established by the courts and the perpetrators sanctioned only on a few occasions.

²⁵⁵ Vilnius Regional Court, *UAB „Manpower Lit“ v. E. S., M. L., M. P., V. V. ir R. V.*, third party: European Institute for Gender Equality, civil Case No. e2A-1796-852/2019, 20 June 2019, available in Lithuanian at: <https://eteismai.lt/byla/141601180473070/e2A-1796-852/2019?word=defektinio%20akto%20sura%C5%A1ymas>.

²⁵⁶ Supreme Administrative Court of Lithuania, Case No. A⁶²-665/2010, decision of 19 April 2010; Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

²⁵⁷ This means those cases that deal with the scope of EU anti-discrimination law and are not necessarily based on the provisions of the Law on Equal Treatment. In most cases, the decisions of the Equal Opportunities Ombudsperson have been questioned in court – as happened 22 times. In two cases, the Ombudsperson was an applicant, and in two a third party. Some cases, which can be found in non-detailed research on the Courts database, are related to violations of the Labour Code, without clear reference to the Law on Equal Treatment. However, it is impossible to have a clear view of all discrimination-related cases through a search engine, as some of the decisions cannot be found on the database, although the author has received information about them through civil society organisations, the media and the Ombudsperson's Office.

The Labour Inspectorate provides an overview of information regarding labour disputes in courts, noting that seven cases of discrimination in employment were heard in 2019.²⁵⁸

d) Registration of discrimination cases by national courts

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

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

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

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

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

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

Article 12(2) of the Law on Equal Treatment states that associations whose field of activity, as stated in their founding documents, encompasses the representation of victims of discrimination on a particular ground of discrimination in court have the right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedures, in a manner prescribed by law. However, procedural legislation is not consistent with this wording.

The latest amendments to the Law on the Proceedings of Administrative Cases do not mention associations among the list of possible representatives of persons in an administrative procedure, unless they are representing the association itself or its members.²⁵⁹

When it comes to civil proceedings, a similar provision in the Code of Civil Procedure has a narrower wording. Article 56(1)(6) states that such associations may engage in judicial proceedings on behalf of their members only and that they must be represented by a person holding a law degree or by a member of the Bar. Although this particular provision has not been tested in the courts in any civil cases yet, an unofficial interpretation provided by the Ministry of Justice²⁶⁰ suggested a narrow interpretation of this provision as well, in that a victim can be represented by an association only if he or she is formally a member of that organisation. Hence it seems that there is an inconsistency between the wording of the Law on Equal Treatment and that of the Code of Civil Procedure.

²⁵⁸ See information provided by the Labour Inspectorate for 2019, available in Lithuanian at: https://www.vdi.lt/Forms/Tema.aspx?Tema_ID=63.

²⁵⁹ Law on the Proceedings of Administrative Cases (*Lietuvos Respublikos Administracinių bylų teisenos įstatymas*), 1999, No. 13-308, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.67B5099C5848/IThvemJyiH>.

²⁶⁰ Official Letter from the Ministry of Justice, 10 November 2011, No. (1.11) 7R-9117, replying to an inquiry dated 18 October 2011.

According to Article 56(1)(5)) of the Code of Civil Procedure, trade unions can engage in a civil procedure only on behalf of their members and in labour disputes only. According to the Law on Trade Unions,²⁶¹ a trade union is established if it has no less than 20 founders, or if the founders in the enterprise, establishment or organisation would comprise not less than one tenth of all the employees (and one tenth of all the employees would account for not less than three employees), the articles of association are approved and the governing bodies have been elected at a meeting of the trade union. In addition to this, it must have elected governing bodies and must have adopted a decision on its registered office.

In the past, it was fairly common for associations to initiate administrative proceedings with the Office of the Equal Opportunities Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, and the Ombudsperson would start an investigation of their complaint. However, in 2010, a court ruled that only persons whose rights were directly affected by particular decisions had the right to appeal to the Ombudsperson.²⁶² According to the court's interpretation, associations can thus lodge a complaint with the Ombudsperson only when their rights have been directly violated. This was reaffirmed in 2013, when the Supreme Administrative Court ruled that, although an association could initiate an investigation (by informing the Ombudsperson), they did not have a right to complain unless the rights of the association had been directly affected.²⁶³ However, in practice, such situations are handled in a less formal way. In 2019, two complaints on the ground of disability were submitted by organisations representing persons with disabilities. Usually in such cases, the Ombudsperson would 'start an investigation on its own initiative' after 'receiving information'. In some situations, associations are involved in legal court actions as third parties, even when they try to initiate a legal action in support of victims of discrimination.

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

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

The wording of Article 12(2) of the Law on Equal Treatment states that associations whose field of activity, as stated in their founding documents, encompasses the representation of victims of discrimination on a particular ground of discrimination in court have the right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedures, in a manner prescribed by law.

However, how this right might be implemented in practice is not clear. The Code of Civil Procedure allows an association, as a third party, to get involved in both civil and administrative proceedings in support of a victim (Article 47 of the Code of Civil Procedure), and to provide certain evidence and expert opinion (Article 61 of the Code of Civil Procedure). Under the Code of Civil Procedure (which is also applied in labour disputes), an association could be involved in a discrimination case in support of the victim if the case concerned the rights and responsibilities of the association. In all cases it is up to the court to decide whether the organisation has a legitimate interest in participating as a third party in support of the complainant.

²⁶¹ Law on Trade Unions (*Lietuvos Respublikos Profesinių sąjungų įstatymas*), No. 34-933, 21 November 1991, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.ABF3AEE57087/asr>.

²⁶² Supreme Administrative Court of Lithuania, decision in case No. A⁶⁶²-665/2010, 19 April 2010.

²⁶³ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

According to the interpretation by the Supreme Administrative Court, associations can take part in an administrative procedure only when their rights have been directly violated.²⁶⁴

There have been very few cases when equality and non-discrimination NGOs have started judicial proceedings on behalf of a particular victim and, in general, national equality organisations lack sufficient resources and legal skills. If the rights of a particular person have been violated, NGOs would usually provide assistance, such as help to find a lawyer, and would participate in support of the victim (applicant).

c) Actio popularis

In Lithuania, national procedural legislation does not clearly allow associations, organisations or trade unions to act in the public interest on their own behalf without a specific victim to support or represent (*actio popularis*). However, further judicial interpretation on this is required, as no other provisions have been adopted allowing associations to submit complaints to courts in representing a public interest.

Article 49(2) of the Code of Civil Procedure mentions that, in cases prescribed by law, a prosecutor, state institutions or 'other persons' do have a right to pursue *actio popularis*. The same can be said of the administrative procedure. Article 55(1) of the Law on the Proceedings of Administrative Cases mentions that, in cases prescribed by law, a prosecutor, state institution or natural person has a right to pursue *actio popularis*. However, no additional law that would allow associations to act in the public interest exists at national level, therefore these provisions remain theoretical and need judicial clarification.

A case from 2013 gives a fairly good example of the possible challenges. The European Foundation of Human Rights (EFHR), a Vilnius-based association, filed a complaint to the Equal Opportunities Ombudsperson in September 2012. It complained about a discriminatory job advertisement in an online job search portal, where a private company placed an advertisement looking for a female salesperson to work at a women's clothes shop. The EFHR claimed that the job advertisement was discriminatory, because no objective criteria were provided explaining why such a position could not be offered to men. The Equal Opportunities Ombudsperson started an investigation but then stopped it due to the 'lack of objective data about a violation of anti-discrimination legislation', as the company in question did not respond to queries.

The EFHR filed a complaint with Vilnius Regional Administrative Court. The court of first instance supported the complainant and ruled that the decision of the Ombudsperson was not objectively justified. The Ombudsperson appealed and the Supreme Administrative Court of Lithuania overruled the decision of the court of first instance. The Supreme Administrative Court took a very formal approach and did not look into the material substance of the case in its entirety. It stated that an administrative act that does not affect the rights of any person may not be the subject of administrative procedure. The court emphasised that the Law on the Proceedings of Administrative Cases does allow specific subjects to act in the public interest, however this right may only be exercised by specific subjects, as defined by law, and only in cases outlined in specific legislation. Neither the Law on the Proceedings of Administrative Cases nor anti-discrimination legislation explicitly allows associations to act in defence of the public interest, therefore the complainant did not have legal standing in the case.²⁶⁵ The decisions of the Supreme Administrative Court are final and are not subject to appeal. Furthermore, the Supreme Administrative Court is responsible for developing uniform

²⁶⁴ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative Case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

²⁶⁵ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative Case No. A⁴⁹²-2078/2013, 7 November 2013.

practice among the administrative courts in the interpretation and application of statutes and other legal acts.

d) Class action

According to the Code of Civil Procedure (Article 441⁴(2)),²⁶⁶ associations or trade unions are allowed to act directly in the interests of more than one individual victim for class action claims that are directly related to the aims and scope of activities of an association or trade union if at least 10 parties to the class action are members of an association or trade union.

The Code allows class action through the representation of a lawyer.²⁶⁷ A group of claimants must consist of no less than 20 natural or legal persons and they must be represented in court by a lawyer. An organisation (association or a trade union) may act on behalf of a group of claimants if (1) the matter of the class action is consistent with the goals and interest of the organisation, (2) no less than 10 members of the group pursuing the class action are members of the organisation, and (3) it hires a lawyer who will represent the group in court. However, as the provisions on class action came into force only recently, there have been only a few cases (on the protection of consumer rights), and none concerning discrimination.

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

The Law on the Proceedings of Administrative Cases (Article 126⁸) allows associations and trade unions to act in the interests of a class action together with a lawyer acting for the group concerned.²⁶⁸

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

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

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

The Code of Civil Procedure sets out the general rule that the burden of proof falls upon the applicant. However, Article 182(4) of the Code contains a provision that states that parties are not obliged to prove circumstances that are presumed by law. Since there is a provision on the shift of the burden of proof in the Law on Equal Treatment, these provisions are used together to convince the court to shift the burden of proof. There were attempts to include a shift in burden of proof in the Code of Civil Procedure in the past, but they were dismissed by the Parliament.²⁶⁹ Nevertheless, court cases reaffirm that the courts generally do accept the shift in the burden of proof in discrimination cases.²⁷⁰ The Law on the Proceedings of Administrative Cases does not explicitly mention

²⁶⁶ Code of Civil Procedure (*Lietuvos Respublikos civilinio proceso kodeksas*), 2002, amendments related to class action made mainly in 2014, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/AISJIVkyji>.

²⁶⁷ The amendments came into effect on 1 January 2015.

²⁶⁸ Law on the Proceedings of Administrative Cases (*Lietuvos Respublikos Administracinių bylų teisenos įstatymas*), 1999, No. 13-308, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.67B5099C5848/IThvemJyiH>.

²⁶⁹ Transcript of the plenary session of the Parliament of the Republic of Lithuania of 27 June 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811.

²⁷⁰ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), 'Eglės sanatorija' v. *Lygių galmybių kontrolieriaus tarnyba*, Case No. I-2531-643/2018, 9 July 2018.

burden of proof in discrimination cases, but it contains a clause referring to presumptions regulated by other provisions in Article 57(3).

The Supreme Court of Lithuania elaborated on the burden of proof in a case in 2019 concerning the different salary coefficient for non-pedagogical employees compared with pedagogical employees. The claimants argued that there had been discrimination on the ground of social status. The Court upheld the decision of the lower courts that it could not be considered that the non-pedagogical functions were of the same or equal value as pedagogical functions in schools, and therefore these functions could not be compared. The Supreme Court also upheld the decision of the lower courts not to shift the burden of proof as, although the case considered whether there had been unfair payment of salaries, this did not amount to discrimination as the different positions could not be compared.²⁷¹

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

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

Article 7(8) of the Law on Equal Treatment repeats the wording of the directives, saying that an employer is obliged to take necessary measures to ensure that employees are protected against dismissal or other adverse treatment that could occur as a reaction to a complaint or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

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

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

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

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

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

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

Under Article 6.250(2) of the Civil Code, non-pecuniary damages can be claimed in a civil case only in cases prescribed by law; Article 6.263(3) establishes that, 'In cases established by laws, a person shall also be liable to compensation for damage caused by

²⁷¹ Supreme Court of Lithuania (*Lietuvos Aukščiausioji Teisma*), Civil Case No. E3K-3-44-248/2019, available in Lithuanian at: <https://eteismai.lt/byla/9416711429196/e3K-3-44-248/2019>.

the actions of another person or by the action of things in his custody.’ A person has the right to bring a civil action against an employer and to claim compensation in the case of discrimination in a workplace or can claim pecuniary or non-pecuniary damages by submitting a complaint to a labour dispute commission. Therefore, the claimant is able to seek compensation in two ways – either by claiming violation of the Labour Code (in the field of employment) or by claiming violation of the Law on Equal Treatment (in employment and other fields). Article 13 of the Law on Equal Treatment explicitly states that persons have the right to claim pecuniary and non-pecuniary damages if they have suffered from discrimination.

Although only the courts can compensate for damages, the procedure at the Equal Opportunities Ombudsperson remains much more widely used in practice. According to Article 29(2) of the Law on Equal Treatment, having completed an investigation, the Ombudsperson may take the following decisions:

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

When the Ombudsperson examines cases of administrative offences, they can impose a fine for violations of the Law on Equal Treatment and the Law on Equal Opportunities for Women and Men in accordance with Article 81 of the Administrative Violations Code.

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

Although the Equal Opportunities Ombudsperson has been given the authority to investigate complaints of discrimination, the decisions of the Ombudsperson do not include granting any form of compensation (including reinstatement) to the victim of discrimination for the damage caused. In practice, the Ombudsperson usually issues a recommendation (which is essentially non-binding) to stop discriminatory actions or occasionally warns those who have committed violations. According to the annual reports of the institution, during the past 10 years of its operation, the Ombudsperson issued only two fines;²⁷² other instances can be found, however, via media articles. The amount of the fine issued in 2008 is not indicated; the fine issued in 2014 was of LTL 1000 (EUR 290) and concerned an advertisement that degraded women.²⁷³ Fines can range

²⁷² The staff of the institution claim that fines have in fact been issued at least a few times.

²⁷³ 'A 1000 Lt fine for a discriminatory meat ad' ('Už diskriminuojančią mėsos reklamą skirta 1000 Lt bauda'), 3 December 2014, available in Lithuanian at: <https://www.lygybe.lt/index.php/lt/pranesimai-ziniasklaidai/uz-diskriminuojancia-mesos-reklama-skirta-1000-lt-bauda/253>.

from EUR 40 to 560 (or from EUR 560 to 1 200 for repeat offences) and are provided for in the Administrative Violations Code (Article 81).

In the past, the former Ombudsperson stated numerous times in the Office's annual reports that they did not consider a fine to be an effective solution to discriminatory situations. The author notes, however, that, if the Ombudsperson issued fines, they could be challenged in court, which would result in litigation, thus placing an extra burden on the Ombudsperson's staff. However, other decisions of the Ombudsperson are currently challenged in court.

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

Finally, Lithuanian criminal law provides protection from severe discriminatory acts amounting to crimes, and also provides sanctions. Article 169 of the Criminal Code provides sanctions for severe discriminatory behaviour comprising (a) community service; (b) a fine; (c) detention; or (d) imprisonment for up to three years. However, it is not clear from the vague wording of the Criminal Code exactly which discriminatory actions amount to crimes and, to the knowledge of the author, only one investigation on the basis of this article has been started since 2003, and no sanctions have been brought. Therefore, the criminal provisions are not used in practice to sanction perpetrators; they lack clarity and need judicial interpretation.

b) Compensation – maximum and average amounts

Since there have been only a handful of successful discrimination cases (most of them on the basis of gender discrimination and only a few on other grounds), it is still too early to provide a comprehensive overview of general trends. The Labour Code sets limits for compensation in cases of unlawful dismissal, and these limits are different in cases when a person can be reinstated and in those when a person cannot be reinstated. When unlawful dismissal has been recognised, the competent body shall make an order to reinstate an employee and to pay them an average wage for the period of involuntary damage starting from the date of dismissal (but for no longer than one year), as well as pecuniary and non-pecuniary damages (Article 218(2)). When a person cannot be reinstated in their employment for reasons established in the Labour Code, the competent body shall order the payment of an average wage for the period of involuntary damage starting from the date of dismissal (but for no longer than one year), as well as pecuniary and non-pecuniary damages. There is also compensation equal to the average salary for every two years of employment, but for no more than the average salary of six employees (Article 218(4)). Therefore, the compensation can vary, from the average salary for 12 months to that of 18 months, together with the other pecuniary and non-pecuniary damages.

According to the law, there is no limit on compensation for non-pecuniary damages suffered because of discriminatory behaviour, and therefore decisions depend on individual cases. During the first case of discrimination that was brought to the court, the court awarded a Roma woman EUR 830 in compensation for not being hired.²⁷⁴ In 2011, the court of first instance awarded EUR 7 802 to a man who had allegedly been discriminated against on the basis of sexual orientation,²⁷⁵ however the court of appeal overruled the decision entirely and concluded that there had been no discrimination at

²⁷⁴ 2nd County Court of Vilnius, *S. Marcinkevič v. UAB Disona*, No. 2-1189-545/2008, 30 June 2008.

²⁷⁵ 2nd County Court of Vilnius, *Vilnius College v. A.Z.*, Civil Case No. 2-101-294/2011, 31 March 2011.

all.²⁷⁶ In 2014, a man was awarded EUR 579 for discriminatory dismissal on the basis of disability (overruling the decision of the court of first instance to award EUR 2 027).²⁷⁷ In 2018, a woman was awarded EUR 3 000 for unlawful dismissal (discriminatory on the grounds of disability) for being forced to miss working days from the time of her dismissal until the adoption of the Court's decision, plus EUR 48.96 for every day until the full implementation of the court's decision for five days a week up to a maximum period of one year.

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

The author of this report is aware of legal cases concerning discrimination that ended in amicable settlements. The compensation in such cases can be twice as high as compensation awarded by the courts, or even higher.

c) Assessment of the sanctions

In the opinion of the author of this report, the system of sanctions for discriminatory acts in Lithuania cannot be considered effective, proportionate or dissuasive. Firstly, they are very rarely issued. However, even if the Ombudsperson did issue fines, such administrative sanctions can hardly be considered effective, proportionate and dissuasive, even though they have been increased. They do not depend on the revenue of the offender, for instance, and they are also rather limited in their nature. In addition, the decisions of the Ombudsperson do not seek to compensate the victim.

In 2014, this issue was raised by the UN Committee on the Elimination of Discrimination against Women, which stated that the limited application of administrative sanctions by the Ombudsman in cases of sex- and gender-based discrimination was causing great concern.²⁷⁸

In 2014, the new Ombudsperson (a temporary substitute, because the post of the Ombudsperson was vacant throughout 2014) identified the issue of sanctions in its annual report. According to the Ombudsperson, the current situation and sanctions, as defined by the Administrative Violations Code, did not constitute effective, proportionate or dissuasive sanctions, as required by the directives. The Ombudsperson also recommended that the Parliament should expand the current list of sanctions and allow multiple sanctions, to ensure the discontinuation of discriminatory acts and also to serve as dissuasive sanctions.²⁷⁹

This was also highlighted by an in-depth report published in 2017 on the status of the national equality body, which was based on interviews with key stakeholders (such as decision makers and representatives of civil society, academia and state and municipal institutions).²⁸⁰ As many as 23 respondents out of 30 pointed out that the sanctions and

²⁷⁶ Vilnius Regional Court, *Vilnius College v. A.Z.*, Civil Case No. 2A-2140-464/2011, 11 November 2011, available in Lithuanian at: <https://eteismai.lt/byla/238747699876412/2A-2140-464/2011>.

²⁷⁷ Vilnius Regional Administrative Court (Vilnius apygardos administracinis teismas), *Edmundas Buklis and Ramunė Šidlauskaitė v. State of Lithuania, Vilnius City Municipality and Vilnius District Municipality*; third parties: Lithuanian Disability Forum and Office of the Equal Opportunities Ombudsperson, Administrative Case No. eI-1659-331/2018, decision of 28 April 2018.

²⁷⁸ UN Committee on the Elimination of Discrimination against Women (2014), *Concluding observations on the fifth periodic report of Lithuania* (CEDAW/C/LTU/5), adopted by the Committee at its fifty-eighth session, 30 June-18 July 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en.

²⁷⁹ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²⁸⁰ Andriukaitis, G., Sabatauskaitė, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at:

penalties set out in the current legislation were not sufficiently effective, proportionate and dissuasive. In addition, half the respondents said that they believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions, and only a third said that the statutory powers were sufficient. A third of respondents commented on possible ways of strengthening the impact of the Ombudsperson's decisions.

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

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

The Equal Opportunities Ombudsperson is the main national institution dealing with equality and non-discrimination and is the national anti-discrimination body established in order to fulfil the requirements of the Racial Equality Directive. When the Law on Equal Treatment came into force in 2005, it expanded the mandate of the previous Ombudsperson for Equal Opportunities of Men and Women, which was functioning on the basis of the Law on Equal Opportunities for Women and Men. Thus, a new institution – the Equal Opportunities Ombudsperson – covering all grounds of discrimination contained in Directives 2000/43/EC and 2000/78/EC as well as the ground of gender, started operating on 1 January 2005.

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

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

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

The institution of the Equal Opportunities Ombudsperson was initially established based on international commitments to the UN regarding gender equality, and was further expanded based on the requirements of the Racial Equality Directive and the Employment Equality Directive – and, most recently, in relation to the UN Convention on the Rights of Persons with Disabilities.

Therefore, the existence of the institution is widely seen by politicians as a commitment to international human rights standards and obligations, rather than resulting from a genuine need for development in equality from within the country. Open hostility to the existence of the institution has been avoided for a considerable time. However, in 2018, the Ombudsperson received a written request and was invited to the Parliament to provide answers regarding the 'Support' campaign, which had been implemented by the institution with the aims of inspiring the public to support women who open up about the experience of abuse and violence and of avoiding victim-blaming attitudes. Various different people (a friend, the mother, a judge, a police officer, the children's rights protection service and a priest) were depicted in a campaign video as blaming the victim, using the words victims said they had heard during research.²⁸¹ The Ombudsperson was invited to a plenary session in the Parliament and had to answer questions on whether,

²⁸¹ 'Support' campaign, video by the Office of the Equal Opportunities Ombudsperson, available in Lithuanian at: https://www.youtube.com/watch?time_continue=15&v=2KrHsqiwnQY.

through its campaign, the Ombudsperson was not undermining state institutions, discrediting society's trust in state institutions and the state itself or violating the rights of religious persons.²⁸² During the campaign, the Ombudsperson was widely criticised by church-affiliated groups and NGOs for violating 'traditional values'. However, following the criticism, the Ombudsperson has received support from around 50 specialised centres, women's organisations and human rights organisations,²⁸³ and a number of politicians, including both Opposition and Government-supporting members of the Parliament, expressed their support.

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

The Ombudsperson was granted a new role from July 2019 to monitor the UN Convention on the Rights of Persons with Disabilities. In relation to this function, a new Commission for Monitoring the Rights of Persons with Disabilities was established. The *Annual Report for 2019* states that no sufficient funding was granted for the implementation of the new function,²⁸⁴ and the additional EUR 22 000 for the newly granted functions was allocated to the Ombudsperson's Office only from 2020.²⁸⁵

Public support for the national equality body remains rather limited. It is certain that most of the human rights NGOs support the existence of the institution as such, but the general public still lack knowledge and understanding of its role, as reported in previous reports. More than half of the population in Lithuania say that, if they were discriminated against or harassed, they would exercise their rights and would report the discrimination to the police (37 %) or to the national Equal Opportunities Office (35 %).²⁸⁶ On the other hand, when people are actually discriminated against, they rarely report the fact: according to a public opinion poll, 95 % of individuals who said they had been victims of human rights violations did not complain to any institution.²⁸⁷

There has been definite improvement since the appointment of the Ombudsperson in 2015 – the efficiency of the institution has increased, its work has become much more open to the public, its role has become much more visible in the media and, during the last few years, it has instigated a few widely discussed awareness-raising campaigns and has spoken out against discriminatory attitudes expressed by high-level politicians. According to the public opinion poll authorised by the Ombudsperson in 2018, 73.7 % of persons indicated that they had heard of the Equal Opportunities Ombudsperson, and 28 % responded that they would contact the Ombudsperson in the case of discrimination. However, it should be noted that the level of trust in the Ombudsperson has fallen from 29.1 % in 2017 to 24.1 % in 2018.²⁸⁸

²⁸² Transcript of the plenary session of the Parliament of the Republic of Lithuania of 13 November 2018, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/91184541e7f911e894a78279b4c56611>.

²⁸³ Letter from NGOs to the Parliament of the Republic of Lithuania, 13 November 2018, available in Lithuanian at: <http://manoteises.lt/wp-content/uploads/2018/11/D%C4%97L-LR-Lygi%C5%B3-galimybi%C5%B3-kontrolieriaus-tarnybos-vykdytos-kampanijos-%E2%80%9EPalaikyk%E2%80%9C.pdf>.

²⁸⁴ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

²⁸⁵ 2019-2020 Changes within state budget appropriations according to appropriation managers (*2019-2020 metų valstybės biudžeto asignavimų pokyčiai pagal asignavimų valdytojus*), available in Lithuanian at: <http://finmin.lrv.lt/uploads/finmin/documents/files/2020-01-13%202020-2019%20did%20maz.pdf>.

²⁸⁶ European Commission, Eurobarometer survey, 'Discrimination in the EU in 2015', available online at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68110>.

²⁸⁷ Human Rights Monitoring Institute, public opinion poll on how society evaluates the situation of human rights in Lithuania, conducted by Vilnius from 3 to 12 October 2014, available online at: <http://www.hrmi.lt/musu-darbai/tyrimai/178/visuomenes-nuomones-apklausa/>.

²⁸⁸ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita.pdf>.

c) Institutional architecture

In Lithuania, the designated body forms part of a body with multiple mandates.

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

In 2010 the Government issued a decision to assign an additional function to the OEOO,²⁸⁹ obliging it to 'monitor the implementation of the provisions of the UN CRPD related to safeguarding equal opportunities'.

Organisations representing the interests of people with disabilities criticised the decision and described the mechanism for monitoring the implementation of the CRPD in Lithuania as inefficient, given that no sufficient human and financial resources had been allocated for monitoring adherence to the Convention. Recommendations 67 and 68 of the UN Committee on the Rights of Persons with Disabilities²⁹⁰ stated that the OEOO and the Council for the Affairs of the Disabled, which had been appointed to function as Lithuania's independent monitoring mechanisms, were 'not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights'.

Amendments to the Law on Equal Treatment were made in 2018, adding the monitoring of the CRPD to the mandate of the Ombudsperson. However, it is too early to conclude how this function is being carried out, as the amended Law entered into force only on 1 July 2019.²⁹¹ It is not clear from the strategic plan whether this function of the Ombudsperson's Office was granted any budget at all.

In its concluding observations, the UN Committee on the Elimination of Discrimination against Women noted that there was a low number of complaints by women and girls with disabilities.²⁹²

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

i) Status of the body

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

²⁸⁹ Government of the Republic of Lithuania, Decision No. 1739 on the Implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, 8 December 2010, available online at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D9347683010E>.

²⁹⁰ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, 11 May 2016, available in English at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fLTU%2fCO%2f1&Lang=en.

²⁹¹ Law amending the Law on Equal Treatment, No. IX-1826, Articles 1, 16 and 17, and introducing Article 15-1 (*Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 1, 16 ir 17 straipsnių pakeitimo ir įstatymo papildymo 15-1 straipsniu įstatymas*), 11 December 2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/b52da81002c211e9a5eaf2cd290f1944>.

²⁹² UN Committee on the Elimination of Discrimination against Women (2019), *Concluding observations on the sixth periodic report of Lithuania* (CEDAW/C/LTU/6), adopted by the Committee at its 1734th and 1735th meetings held on 31 October 2019, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvXlfhYepfIYmW0eRMA3oVvIzFMFUXudXxInL4EdFHIw0HFwjn60mJLPFeGqGmdQRPD5vfbnIv8MohKfp2Pb6LmloCFnbO1aotZA1JR3DSHj>.

The Ombudsperson is appointed by Parliament for a term of five years. The current head of the institution advocated placing a limit of two consecutive terms, and amendments made in 2017 introduced the provision that the same person cannot be appointed for more than two terms in a row. The current appointment procedure does not involve civil society. Since there is no duty to follow the principle of pluralism or to consult any board or body when appointing the Ombudsperson, the Speaker of the Parliament suggests a candidate for Parliament to vote on, without consulting civil society. According to the jurisprudence, the Parliament is entirely autonomous when deciding upon the candidate, and the decision of the Parliament cannot be overruled by a court.²⁹³

The requirements for the candidate, as set out in the Law on Equal Treatment, are that they have an impeccable reputation, a university degree in law and a minimum of 10 years' experience in law. The requirement of 'impeccable reputation' is not explained in detail in the Law on Equal Treatment. However, it is elaborated upon in detail in Article 4 of the Law on Public Service, which states that a person would not be considered as having an 'impeccable reputation' if he or she had a current conviction record for a serious crime, a crime of corruption or crimes against the state service, had previously been dismissed from a state office or work or had lost the ability to carry out independent activities due to particular violations and a period of three years from that dismissal has not passed, if he or she had been dismissed or removed from an appointed office having breached an oath or pledge, was a member of an organisation forbidden by law, etc.²⁹⁴ Therefore, the requirement is not entirely subjective.

Before the Ombudsperson takes up office, she or he is obliged to take an oath to honour the Lithuanian state, impartiality and the rule of law. In addition, the candidate must end his or her membership of any political party before taking the oath. The independence of the Ombudsperson is also ensured by the provision that prohibits the Ombudsperson from having any other job or involvement in any profit-making activities, with the exception of creative or educational work. The term of the Ombudsperson can be terminated by Parliament only if the Ombudsperson is ill for a certain period of time, as specified by law, if the Ombudsperson breaches the Constitution or if the Ombudsperson is convicted of a criminal offence. Previously, the Parliament could dismiss the Ombudsperson if he or she failed to pass a confidence vote, but this provision was removed from 1 January 2017, thus strengthening the Ombudsperson's independence.

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

The OEEO is financed from its pre-approved budget; thus, its financial independence is also ensured by law. The Ombudsperson has a right to use its general funding according to its needs and priorities, and neither the Government nor the Parliament has any control over this. The Ombudsperson is fully in charge of the institution and has a right to use the allocated funding according to the needs of the institution as well as to manage staff, to hire or fire personnel, etc.²⁹⁵

²⁹³ Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*), Case No. eI-9300-811/2015, *D.G.-K. v. Lithuanian Parliament, Lithuanian State*.

²⁹⁴ Law on Public Service (*Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.

²⁹⁵ Decision of the Seimas (Parliament) of the Republic of Lithuania on the approval of the Equal Opportunities Ombudsperson's Internal Procedure Act (*Lietuvos Respublikos Seimo nutarimas Dėl Moterų ir vyrų lygių*

However, this does not mean that the funding for each year remains unchanged. Every year, the Parliament votes for the budget proposed by the Government, and thus the Parliament may cut the budget of the Office. Overall, the budget of the institution has increased by EUR 6 000 (from EUR 402 000 in 2018 to EUR 408 000 in 2019). Out of this sum, the staff budget was EUR 357 000 (compared to EUR 272 000 in 2018).²⁹⁶ According to the institution's annual report, the annual budget for the Office was EUR 426 000.

In addition, the OEOO applies and receives substantial additional funding for particular projects from EU structural funding or programmes financed by the European Commission, totalling approximately EUR 459 400. The institution employed 17 civil servants in 2019, reduced to 16 in the middle of the year (two fewer staff than in 2018), with four temporarily employed persons for implementation of EU projects.

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

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

ii) Independence of the body

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

galimybių kontrolieriaus tarnybos pavadinimo pakeitimo ir Lygių galimybių kontrolieriaus tarnybos nuostatų patvirtinimo), Valstybės žinios, 26 November 2003, No. 111-4930.

²⁹⁶ Law of the Republic of Lithuania on the Approval of Financial Indicators of the State Budget and Municipal Budgets of 2019 (*Lietuvos Respublikos 2019 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas*), TAR, 20 December 2018, No. 20968, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/1efb1a80044811e9a5eaf2cd290f1944>.

This was highlighted by an in-depth report published in 2017 on the status of the national equality body, which was based on interviews with key stakeholders (such as decision makers and representatives of civil society, academia and state and municipal institutions).²⁹⁷ Respondents were asked to evaluate the independence of the OEEO on a scale of 1 to 10. The average score given by the 29 respondents was 5.91.

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

e) Grounds covered by the designated body/bodies

The Ombudsperson exercises its functions with respect to all grounds covered by the Law on Equal Treatment: gender, race, 'nationality',²⁹⁸ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion.²⁹⁹

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

On the basis of the number of inquiries and complaints received, the Ombudsperson has recommended expanding the definition of social status so as to include family status³⁰⁰ and also to include the ground of gender identity as a protected ground.³⁰¹

A balance between the Ombudsperson's work in relation to gender and in relation to other grounds listed in Article 13 of the directive (or all grounds in general) is not discussed in public or reflected in the Ombudsperson's own strategic plans³⁰² or annual reports.³⁰³ The grounds of gender and disability are mentioned in the strategy, however other measures cover all grounds. The strategy for 2019-2021 mentions various projects, among them EU-funded projects, covering all grounds or the implementation of equal opportunities in business, with a few projects relating to gender equality and one project on LGBT* rights. The legal staff of the institution specialise in particular grounds, although when it comes to other areas (such as awareness raising, research, etc.) it appears that the expertise does not relate to the specifics of different grounds and debates, meaning that it is not possible to ascertain whether sufficient attention is given to each ground – with the exception of the Commission for Monitoring the Rights of

²⁹⁷ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimybu_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁹⁸ The term used in the LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

²⁹⁹ 'Citizenship' was added to the list in 2017 as a result of the transposition of Directive 2014/54/EU and only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

³⁰⁰ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

³⁰¹ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m._veiklos_ataskaita.pdf.

³⁰² The strategic action plans of the Office of the Equal Opportunities Ombudsperson for 2016–2021 are available in Lithuanian at: <https://lygybe.lt/lt/administracine-informacija/planavimo-dokumentai/366>.

³⁰³ The Equal Opportunities Ombudsperson's annual reports are available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

Persons with Disabilities, the majority of whose members (four) are appointed by organisations of persons with disabilities, with one member from the Ombudsperson's Office.³⁰⁴

The Ombudsperson continues to function in a rather reactive way when investigating complaints, addressing issues that arise from complaints, but also tries to address different issues, carrying out opinion polls, research and overviews. The number of investigations into complaints on different grounds cannot be considered a sufficient measure to assess whether all grounds receive equivalent attention.

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

In accordance with Article 17 of the Law on Equal Treatment, the competence of the Equal Opportunities Ombudsperson encompasses:

- 1) investigating complaints regarding direct and indirect discrimination, harassment and sexual harassment and providing objective and impartial advice with regard to this function;
- 2) reporting on the implementation of this Law to Parliament and submitting recommendations to governmental and municipal institutions and organisations on the revision of legal acts and priorities in the policy of implementation of equal rights;
- 3) conducting independent research related to complaints of discrimination and drafting independent reports and overviews of the situation regarding discrimination;
- 4) conducting awareness raising, educational and preventive work;
- 5) exchanging information with analogous institutions in other Member States, other institutions of foreign countries and international organisations;
- 6) monitoring the UN Convention on the Rights of Persons with Disabilities (since 1 July 2019).

i) Independent assistance to victims

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

According to the Law on Equal Treatment, the Equal Opportunities Ombudsperson 'provides independent consultations' with regard to various inquiries. The procedure, possible outcomes, length or scope of these consultations is not detailed in the Law or any other act. Therefore, in the opinion of the author, individual victims do not know what exactly to expect from these consultations. It entirely depends on the attitude and position of a particular consultant. It is apparent from the Office's annual reports that consultations are provided by the legal department. Although this is the only provision that could be interpreted as 'independent assistance' to victims of discrimination, it is rather vague. Since most discrimination complaints reach the Ombudsperson first, in practice, the Ombudsperson carries out consultancy work and potentially advises the applicants on which procedural approach to use to pursue justice. On a few occasions,

³⁰⁴ Order of the Ombudsperson for Equal Opportunities on the Approval of Regulations on the Commission for Monitoring the Rights of Persons with Disabilities under the Office of the Ombudsperson for Equal Opportunities (*Lygių galimybių kontrolieriaus įsakymas dėl žmonių su negalia stebėsenos komisijos prie Lygių galimybių kontrolieriaus tarnybos nuostatų patvirtinimo*), 31 May 2019, No. V-18, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2019/06/zmoniu-su-negalia-teisiu-stebesenos-komisijos-nuostatai-.pdf>.

the OEOO has been involved in judicial proceedings as an expert witness on the side of the complainant, providing its expertise on the matter or as an independent institution providing expert conclusions (conclusions were submitted on two cases in 2019). In most cases, however, it is involved as a defendant when complaints are submitted to the courts to rebut a decision of the Ombudsperson (22 cases in 2019). In some other cases, the Office has acted as a claimant (twice in 2019) or as a third party (twice in 2019).³⁰⁵

In practice, according to the representatives of the Office, the staff devote much of their time to providing consultations and information to ensure that victims of discrimination receive free consultations on possible actions in each situation. Indeed, both the law and the staff of the Office perceive these consultation activities as fulfilling the function of 'assisting victims', as required by the Racial Equality Directive. According to the respondents to the stakeholder survey in 2016, the ability of victims of discrimination to take advantage of the services of the Office to remedy their rights could give them a sense of security and provide at least a theoretical possibility of assistance and hope (in the opinion of nine respondents). Quite a few of the respondents said that the Office was open and ready to provide information, but some did not know what specific assistance the OEOO provided to victims of discrimination (nine respondents). When asked to evaluate the efficiency of the assistance provided to victims of discrimination, harassment and sexual harassment on a scale of 1 to 10, one third of respondents said that they could not give an evaluation, and the rest rated the efficiency of the assistance provided at 5.92.³⁰⁶

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

In the opinion of the author, the lack of available effective, proportionate and dissuasive sanctions and legal tools that would help to fully enforce the Ombudsperson's recommendations results in a situation that does not always serve the victims well.³⁰⁷

It is hard to evaluate the effectiveness of the consultations provided, as no monitoring mechanism has been created for this. The annual reports mention the numbers of inquiries and complaints received. The *Annual Report for 2019* stressed that the lawyers of the OEOO consulted 840 persons (778 by phone and 62 during visits to the Office).³⁰⁸ The annual reports indicate that, in many instances, people want to share their stories, but they do not want to submit complaints; sometimes, they simply ask for advice.

The strategic document mentions one of the objectives: to increase the number of persons addressing the Ombudsperson regarding the alleged violation of equal opportunities. However, the resources being formally allocated for implementation of this function are not mentioned.³⁰⁹ The *Annual Report for 2019* highlighted the increase in consultations provided and a need to increase the provision of this service, ensuring the human resources required for it.³¹⁰

³⁰⁵ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*.

³⁰⁶ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimybu_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

³⁰⁷ For more details, please see Section 7(h).

³⁰⁸ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

³⁰⁹ Lithuanian Equal Opportunities Ombudsperson (2019), *Strategic Action Plan for 2019-2021*, adopted on 11 January 2019, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/01/strateginis-2019-2021-m.pdf>.

³¹⁰ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

ii) Independent surveys and reports

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

The publications,³¹¹ surveys and other analyses³¹² that have been carried out can be found on the Ombudsperson's website.

In 2019 the Ombudsperson produced an 'Overview of Equal Opportunities in the Labour Market' and 'Recommendations for Representatives of Institutions on the Provision of Assistance to Women who have Suffered from Domestic Violence'. In 2018, the Ombudsperson commissioned an opinion poll to assess 'A National Overview of the Situation of Transgender Persons in Lithuania', and 'An Overview of Textbooks and other Teaching Materials' from the perspective of gender.

In addition to the above-mentioned reports, the Ombudsperson's Office has produced three independent overviews and/or reports. The OEEO has submitted an 'Additional Information Report on the State Party's Submission to the CERD Committee', and the other two reports/overviews concerned the ground of gender.³¹³

The *Annual Report for 2019* has yet again indicated that not enough equal opportunities statistics are collected in Lithuania to assess the situation of persons with disabilities. Many of the independent overviews carried out by the Ombudsperson are funded by EU projects, therefore they cannot rely on strategic planning based on Government funding.

The *Annual Report for 2019* also indicated that, even though the official statistics on equal opportunities have revealed some improvement, systemic problems still exist and are not likely to diminish.

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

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

iii) Recommendations

The Equal Opportunities Ombudsperson has authority to make independent recommendations on discrimination issues. This can be done as a result of investigations of complaints (Article 29(2)), the Ombudsperson can provide conclusions and recommendations on any discrimination-related issues with regard to the implementation of the law, as well as making proposals to state and municipal institutions and agencies of the Republic of Lithuania concerning the improvement of legal acts and priorities for the implementation of equal rights policy (Article 17(2)). Furthermore, the Ombudsman can include recommendations in the annual report that it submits to the Parliament (Article 23).

³¹¹ Publications by the Equal Opportunities Ombudsperson, see <https://lygybe.lt/lt/tarnybos-leidiniai>.

³¹² Surveys and analysis either commissioned or carried out by the Equal Opportunities Ombudsperson, see <https://lygybe.lt/lt/tyrimailygybessrityje>.

³¹³ Independent overviews and/or reports can be accessed at: <https://lygybe.lt/lt/veikla/nepriklausomos-apzvalgios/1119>.

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

The Equal Opportunities Ombudsperson usually makes recommendations to stop discriminatory behaviour and to carry out certain actions to do this, following the investigation of a particular complaint. Recommendations are essentially non-binding but, according to the Ombudsperson, its recommendations to stop discriminatory behaviour or to change certain practices are usually adhered to without dispute. Until 2016 it was difficult to estimate whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action, and no system for administrative follow-up was in place. After administrative changes in 2016, follow-up of recommendations has been introduced for decisions taken from 2017. A table showing the status of implementation (a monitoring report) and the status of each recommendation can be viewed online by the general public.³¹⁴ In practice, these recommendations are followed up by staff in the legal department of the Office (comprising five civil servants in 2019).

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

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

On stakeholder perception, representatives of the academic community, NGOs and state and municipal institutions were asked whether the Office of the Equal Opportunities Ombudsperson was active enough in submitting proposals on possible legislative improvements. Almost half of the respondents believed that it was not active enough, and most respondents commented that the Office of the Equal Opportunities Ombudsperson should be more active in making suggestions on possible improvements of legal acts, but also pointed out that more human resources would be necessary to fulfil this function.³¹⁵

iv) Other competences

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

³¹⁴ Equal Opportunities Ombudsperson, 'The implementation of the decisions of the Equal Opportunities Ombudsperson', available at: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

³¹⁵ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

institutions and companies and initiated a #NewStandards campaign, which was presented at HR Week, one of the biggest HR management conferences. The Ombudsperson also introduced the Equal Opportunities Wings initiative, which allows organisations to evaluate their achievements in the field of equal opportunities.

The Ombudsperson was involved by the Government in implementing and/or monitoring a number of action plans and strategies implemented now and previously. The most recent are the Action Plan for the Promotion of Non-discrimination for 2015-2020³¹⁶ and the Action Plan for Roma Integration into Lithuanian Society 2015-2020.³¹⁷ Therefore, the Government considered the Ombudsperson as the de facto key institution for awareness raising and the promotion of equal opportunities, despite the fact that the law provides for a much narrower, mainly quasi-judicial mandate and the fact that, until 2017, awareness raising was not part of the de jure mandate of the Ombudsperson.

It should be noted that awareness raising, and the promotion of equal treatment are considered by stakeholders as very important tasks of the OEOO. When asked if awareness-raising and discrimination prevention activities should be included as part of the mandate of the Office, as many as 77 % of respondents to the stakeholder survey replied that it should, and only 13 % of respondents believed that it should not. Respondents said that educational activities carried out by the Office had the strongest impact on safeguarding equal treatment, followed by complaint investigation activities (13 out of 30 respondents).³¹⁸

The worrying trend is that many promotional activities have to be carried out without funding from the state budget. They are mostly implemented thanks to the additional funding received by the OEOO, in cooperation with civil society organisations and other institutions. Seven different projects were implemented, continuing with the integration of equal opportunities and awareness-raising activities. The UN Committee on the Elimination of Racial Discrimination recommended in its recent concluding observations 'that the State party allocate sufficient funding to the Office of the Equal Opportunities Ombudsperson so that it can take up its preventive and education competences.'³¹⁹

Besides the functions described above, Article 17(3) says that the Ombudsperson shall exchange any available information with other institutions and bodies functioning in the Republic of Lithuania or other states or international organisations.

As per the amendments of 11 December 2018, the Equal Opportunities Ombudsperson has been monitoring compliance with the UN Convention on the Rights of Persons with Disabilities since 1 July 2019.

³¹⁶ Decision of the Government of the Republic of Lithuania (*Lietuvos Respublikos 2015 m. sausio 28 d. nutarimas Nr. 46 Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCsahNOQf>.

³¹⁷ Order of the Minister of Culture of 29 January 2015 No. ĮV-48 on approval of the Action Plan for Roma Integration into Lithuanian Society 2015–2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. ĮV-48), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682/asr>.

³¹⁸ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

³¹⁹ UN Committee on the Elimination of All Forms of Racial Discrimination (2019), *Concluding observations on the combined ninth and tenth periodic reports of Lithuania* (CERD/C/LTU/9-10), adopted by the Committee of the Elimination of Racial Discrimination at its 2735th meeting, held on 9 May 2019, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcfI%2fd5knlrIizFYCajC%2bxSue9PUllcjFnMqvTC4%2b6VhhJlvm6HvJojahtlmleyBxciERuZE9s88q4AS0RqOpjIMUGJ2Hser0c0WoTEYT1oQnKOVBK0SQ%3d%3d>.

g) Legal standing of the designated body/bodies

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

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

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

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

The Ombudsperson has participated in 28 administrative cases and has submitted two conclusions in civil cases. In 22 cases it participated as a defendant, in two as an applicant and in two as a third party. There were 22 cases when the decisions of the Ombudsperson were challenged in the courts: in nine cases, the courts refused to annul the decision adopted by the Ombudsperson, one application was granted to annul the decision of the Ombudsperson, and 12 applications had not yet been considered by the courts in 2019.³²⁰ No information about the grounds that were addressed in the court cases is provided in the Ombudsperson's annual report. Some cases are presented in Section 12.2 of this report, and others elsewhere in the report. One case where the decision of the Ombudsperson was repealed considered the interpretation of the material scope of the directives and the Law on Equal Treatment: the court elaborated on the understanding of the field of employment and occupation and obliged the Ombudsperson to analyse the complaint submitted by the applicant.

h) Quasi-judicial competences

In Lithuania, the designated body is a quasi-judicial institution. Its functions are mostly regulated by Articles 24 to 30 of the Law on Equal Treatment. It also has other functions, as described in this report; therefore, it is a mixed-type institution. For many years, the handling of complaints has been the main function of the institution, therefore most of its human resources were allocated to this task. After restructuring in 2016, the legal department was reduced to five people.

Despite the fact that the Ombudsperson has been involved in many promotional-type activities, from a legal point of view, the main function of the Office of the Ombudsperson has always been quasi-judicial. Although, in 2017, awareness-raising, promotional and preventive work were finally added to the list of competences of the institution, the Law on Equal Treatment still places most emphasis on the quasi-judicial work of the body and contains procedural requirements as well as a list of possible investigation outcomes. Not only can the Ombudsperson investigate complaints, but it can also issue administrative sanctions in accordance with the Administrative Violations Code.

³²⁰ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

According to the law, the Ombudsperson may take the following decisions:

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

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

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

The decisions of the Ombudsperson can be appealed to the Administrative Disputes Commission or the courts, and they have been appealed in court 22 times. The Administrative Disputes Commission has analysed four complaints regarding decisions of the Ombudsperson, but all four complaints were recognised as unfounded.³²¹ There is no procedure to appeal decisions to the Ombudsperson itself.

The decisions of the Equal Opportunities Ombudsperson do not include compensation for damages to the victim of discrimination. In practice, the Ombudsperson usually issues a recommendation (which is essentially non-binding) to stop discriminatory actions and occasionally admonishes those who commit violations.

Although, according to the Ombudsperson, its recommendations to stop discriminatory behaviour or change certain practices are usually adhered to without dispute, until 2016 it was difficult to estimate whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action and no system for administrative follow-up was in place. However, a number of measures to ensure the efficiency of the institution were established in 2016, including the creation of an administrative follow-up system. The follow-up procedure is hence a rather new practice, and its methods are currently being developed.

³²¹ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

The Equal Opportunities Ombudsperson has a right to apply binding administrative sanctions. According to its annual reports, during its years of operation the Ombudsperson has issued a fine only a couple of times.³²² Fines can range from EUR 40 to 560 (or EUR 560 to 1 200 for repeated offences) and are provided for in the Administrative Violations Code (Article 81). However, the Administrative Violations Code provides that the initial fine issued should be for half the minimum amount (which would be EUR 20 for a violation of the Law on Equal Treatment), and only if the offender does not voluntarily pay this fine can a further (bigger) fine be imposed. The former Ombudsperson stated numerous times in the Office's previous annual reports that it did not consider a fine to be an effective solution to discriminatory situations.

In 2014, this issue was raised by the UN Committee on the Elimination of Discrimination against Women, which stated that the 'limited application of administrative sanctions by the Ombudsman in cases of sex- and gender-based discrimination' caused great concern.³²³ In the past, the Ombudsperson recommended that the Parliament should expand the list of sanctions and allow multiple sanctions in order to ensure the discontinuation of discriminatory acts and also to serve as dissuasive sanctions.³²⁴ No major legal changes were made in expanding the list of sanctions or in allowing multiple sanctions up to 2019. In 2014, the Ombudsperson herself (a temporary substitute) identified the issue of sanctions in the annual report. According to the Ombudsperson, the current situation and sanctions, as defined by the Administrative Violations Code, do not constitute effective, proportionate or dissuasive sanctions, as required by the directives.

In the opinion of the author, the sanctions imposed by the Equal Opportunities Ombudsperson are not effective, proportionate or dissuasive. The need to review the mechanism for enforcing sanctions and decisions by the Equal Opportunities Ombudsperson is supported by the 2016 stakeholder survey results.³²⁵ As many as half of the respondents believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions, and as many as 23 respondents out of 30 pointed out that the sanctions and penalties set out in legislation were not sufficiently effective, proportionate and dissuasive.

According to the staff of the Ombudsperson, its recommendations are followed in most situations. However, the lack of available effective, proportionate and dissuasive sanctions, the lack of a variety of decisions to be taken and the lack of legal tools to enforce the Ombudsperson's recommendations may be contributing to the lack of respect for the authority of the Ombudsperson. This can be illustrated by a case in 2017, when the mayor of the capital city, Vilnius, publicly stated that he would not follow the Ombudsperson's recommendation and would put it in the bottom drawer of his desk, calling it 'absurd' and 'an example of bureaucratic stupidity'.³²⁶ The case reached the courts, which upheld the decision of the Ombudsperson. The Ombudsperson had issued a

³²² Around one to three times according to the annual reports available to the public from 2008 to 2018, although the staff of the institution claim that fines have in fact been issued at least a few times.

³²³ UN Committee on the Elimination of Discrimination against Women (2014), *Concluding observations on the fifth periodic report of Lithuania* (CEDAW/C/LTU/5), adopted by the Committee at its fifty-eighth session, 30 June-18 July 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en.

³²⁴ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

³²⁵ Andriukaitis, G., Sabatauskaitė, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

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

recommendation to Vilnius City Municipality to change the requirements of a job description for the director of the Pavilniai Regional Park Administration, which stated that riding a bicycle was a professional requirement of the job. According to the Ombudsperson, the internal rules and procedures at the park administration did not require the director to conduct on-site visits to inaccessible park locations, so this requirement was not objective and necessary and therefore it was discriminatory – the Ombudsperson found indirect discrimination after investigation of a complaint. Since the mayor publicly ridiculed the recommendation and refused to take it into consideration, the Ombudsperson then called upon the administrative court to consider whether the administrative enactment of the municipality was in conformity with the provisions of the Law on Equal Treatment or the Law on Equal Opportunities. The court of first instance dismissed the claim (for procedural reasons).³²⁷ The case was then appealed to Supreme Administrative Court, which returned the case to the court of first instance on 17 July 2019.

In 2019, the Vilnius Regional Administrative Court recognised, as per the request of the Equal Opportunities Ombudsperson, that the decision of Vilnius City Municipality to set a special requirement for the director of the Verkiiai and Pavilniai Park Directorate to ride a bike constituted a violation of equal opportunities (see more in Section 4.1).³²⁸

According to the table showing the implementation status of the 15 decisions adopted by the Equal Opportunities Ombudsperson in 2019, six are listed as being in the process of implementation, and nine decisions have been implemented.³²⁹

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

In Lithuania, the equality body registers the number of complaints of discrimination made and the number of decisions (by ground, field, type of discrimination, etc.). These data are available to the public.

The data on the number of complaints and other inquiries is usually provided in the annual reports of the Ombudsperson. Decisions are uploaded on the website of the Ombudsperson, grouped by grounds of discrimination.³³⁰ In the past, this data was not systematically provided to the public (the Ombudsperson would, however, include excerpts from its decisions in its annual reports). However, from the beginning of 2015 the situation started to improve, and the Ombudsperson began publishing some of its decisions online. The trend continued in 2016, and almost all decisions are now being regularly uploaded to the official website of the institution.

In 2019, the Ombudsperson received 232 complaints (the same total as in 2018), 551 written inquiries (an increase from the 460 such inquiries in the previous year) and 163 inquiries via Facebook (compared with 255 in 2018), and it started 15 investigations on its own initiative (compared with 34 in 2018).³³¹ It is common practice for the Ombudsperson to start an investigation 'on its own initiative' after receiving particular information, either from an NGO or from an individual. The majority of investigations in 2019 concerned discrimination in the labour market (8) and consumer rights protection (7).

³²⁷ Vilnius Regional Administrative Court, decision of 4 October 2017, Case No. I-3795-596/2017.

³²⁸ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), *Office of the Equal Opportunities Ombudsperson v. Vilnius City Municipality*, administrative Case No. I-4523-789/2019, decision of 3 October 2019.

³²⁹ Equal Opportunities Ombudsperson, 'The implementation of the decisions of the Equal Opportunities Ombudsperson', available at: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

³³⁰ Official website of the Equal Opportunities Ombudsperson, decisions of the Ombudsperson, available in Lithuanian at: <https://lygybe.lt/lt/veikla/kontrolieriaus-sprendimai/369>.

³³¹ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*.

Turning to the number of inquiries and complaints, as every year, gender (318 instances, or 32 %), disability (126) and age (89) were the grounds on which the highest number of complaints and inquiries were received in 2019. Significantly fewer inquiries were received regarding other grounds: there were 36 on ethnic origin, 33 on social status, 22 on religion, 18 on convictions or views, and 17 on sexual orientation.

The biggest number of consultations provided concerned the ground of disability: 352 out of 840, or 42 %.

The number of investigations according to the various grounds was as follows in 2019: 65 on gender, 21 on race, 'nationality', citizenship, language, origin or ethnic origin, 17 on social status, 16 on belief, conviction or views and religion, 29 on age, 41 on disability, and 4 on sexual orientation. However, it is important to note that 20 % of all investigations concerned multiple grounds.³³²

j) Stakeholder engagement

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

Cooperation with a wider circle of stakeholders increased after 2007 and gained significance in recent years when the informal national equality and diversity forum,³³³ a network of various equality organisations representing different discrimination grounds, was established under the auspices of the Ombudsperson. This network helps to organise the annual national equality and diversity awards event³³⁴ – an example of good practice, which means that the topic of equality hits the headlines at least for a short while.

In 2019, as in previous years, the Ombudsperson organised or helped to organise a number of public awareness-raising activities, events, discussions and training programmes. The Ombudsperson made significant efforts to reach out to municipalities and a number of other institutions. The Office signed a cooperation agreement with the Conference of Lithuanian University Rectors to continue cooperation in ensuring that equal opportunities are implemented in universities. The signing of a cooperation agreement with the chairman of the board of the Bank of Lithuania aimed to ensure equal opportunities in provision of financial services. The Office has also continued its cooperation with the Ministry of Social Affairs and the State Labour Inspectorate in promoting equal opportunities standards in employment and the roll-out of the newly introduced New Standards initiative (see www.naujistandartai.lt). Strengthening collaboration with various stakeholders is listed among the priorities in the institution's strategic plan.³³⁵

In addition to this, the Ombudsperson was involved in organising the Human Rights Forum in 2019, in cooperation with academia (Vytautas Magnus University), other state

³³² Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf.

³³³ National Equality and Diversity Forum website: <http://nlif.lt/apie-foruma/>.

³³⁴ See <http://nlif.lt/category/nauienos/apdovanojimai/>.

³³⁵ Lithuanian Equal Opportunities Ombudsperson (2019), *Strategic Action Plan for 2019-2021*, adopted by Order of the Office of the Ombudsperson No. V-46, 29 December 2017, adopted on 11 January 2019, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/01/strateginis-2019-2021-m..pdf>.

institutions (the Ministry of Foreign Affairs), the Coalition of Human Rights Organisations and the Lithuanian Disability Forum.

In 2017 the Ombudsperson initiated the establishment of a consultative board, consisting of academia, experts, activists and representatives of trade unions, which would advise the Ombudsperson. This consultative board was formed by the Ombudsperson and functions on a voluntary basis. It is not regulated under the Law on Equal Treatment.³³⁶ As has already been mentioned, the Commission for Monitoring the Rights of Persons with Disabilities was established in 2019 alongside the Office of the Equal Opportunities Ombudsperson after the Ombudsperson was granted a new function from July 2019 to monitor the UN Convention on the Rights of Persons with Disabilities, as regulated by Article 15¹ of the Law on Equal Treatment.³³⁷ The work of this Commission is very important for independently monitoring implementation of the UN Convention on the Rights of Persons with Disabilities. The members of the Commission are paid and are appointed by the Ombudsperson, selected from among candidates suggested by organisations of people with disabilities, with one person provided by the Ombudsperson's Office. However, according to the Ombudsperson's annual report, no budget has been allocated for the implementation of this function, therefore the Ombudsperson revoked the appointment of its staff member to the Commission. Under the law, the Office is also supposed to provide technical support for the Commission work.

k) Roma and Travellers

As has been noted in previous years, there has been a lack of complaints from Roma people throughout the years. No complaints were made by Roma people from 2012 to 2014, and only a few complaints were made from 2015 to 2017. No complaints were made in 2018 or 2019. Representatives of the Office of the Equal Opportunities Ombudsperson have been involved in the working group monitoring the Action Plan for Roma Integration into Lithuanian Society 2015-2020. They attend the working group's annual meetings, where concerns have been raised regarding prevalent discrimination against Roma persons, mostly in housing and employment, although no complaints were submitted or investigations started on the initiative of the Ombudsperson. However, representatives of the Office met members of the Roma community during various events and meetings organised by Roma organisations and other organisations working with Roma people, and encouragement was given to report cases of discrimination. No complaints were submitted regarding discrimination against Roma people, although the Office provided consultations, most of them regarding access to goods and services, access to services provided by state institutions, integration into the labour market and other labour-related matters, housing rental issues and other issues relevant to the Roma community.³³⁸

Roma issues were not explicitly mentioned in the strategic plan of the Office of the Equal Opportunities Ombudsperson for 2019-2021.³³⁹

³³⁶ Lithuanian Equal Opportunities Ombudsperson, Order of the Ombudsperson establishing the Working Regulations of the Independent Board of Equal Opportunities Experts, No. V-24, 19 May 2017.

³³⁷ Order of the Ombudsperson for Equal Opportunities on the Approval of Regulations on the Commission for Monitoring the Rights of Persons with Disabilities under the Office of the Ombudsperson for Equal Opportunities (*Lygių galimybių kontrolieriaus įsakymas dėl žmonių su negalia stebėsenos komisijos prie Lygių galimybių kontrolieriaus tarnybos nuostatų patvirtinimo*), 31 May 2019, No. V-18, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2019/06/zmoniu-su-negalia-teisiu-stebesenos-komisijos-nuostatai-.pdf>.

³³⁸ Lithuanian Equal Opportunities Ombudsperson, information presented during a meeting of Vilnius City Municipality's Roma Integration Work Group on 29 October 2019.
Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*.

³³⁹ Lithuanian Equal Opportunities Ombudsperson, *Strategic Action Plan for 2019-2021*, adopted by Order of the Ombudsperson No. V-3, 11 January 2019, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/01/strateginis-2019-2021-m..pdf>.

8 IMPLEMENTATION ISSUES

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

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

A number of awareness-raising initiatives have been implemented, mostly by the Office of the Equal Opportunities Ombudsperson and/or non-governmental organisations, to disseminate information about legal protection from discrimination.

The Ombudsperson's website and Facebook page are being updated on a regular basis, a number of awareness-raising campaigns have been organised, and almost all the decisions of the Ombudsperson are being uploaded online. The Facebook page is used not only for communication, but for holding consultations on discrimination. The implementation of recommendations made by the Ombudsperson after investigations of complaints can be observed by the public.

The Ministry of Social Affairs and Labour initiated a video-based campaign in 2019, and the Ombudsperson introduced a new 'Wings of Equal Opportunities' standard, allowing different employers to self-evaluate their progress in the field of equal opportunities.

The worrying trend is that many promotional activities have to be carried out without funding from the state budget. In 2019, the UN Committee on the Elimination of Racial Discrimination therefore recommended in its concluding observations 'that the State party allocate sufficient funding to the Office of the Equal Opportunities Ombudsperson so that it can take up its preventive and education competences.'

Initiatives are often also implemented by civil society organisations, mostly without funding from the state budget.

Two non-governmental organisations are involved in awareness-raising activities funded through the Action Plan for the Promotion of Non-discrimination 2017-2019, which has been extended to 2020.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Most of the initiatives aimed at fostering dialogue with NGOs in the past were taken by the Ombudsperson. In practice, the Ombudsperson is involved in various projects organised in cooperation with NGOs to implement national anti-discrimination measures. For example, the Human Rights Monitoring Institute presented a training course for employers on non-discrimination and equal opportunities in 2019. Awareness raising, educational activities and research are conducted by the Ombudsperson or in partnership and cooperation with other institutions and non-governmental organisations. One must take into account that the national NGO scene is rather fragmented, and the Government does not take NGOs as seriously as partners. NGOs operate on very limited human and financial resources, and there is no government policy on the development of this sector. There are no NGOs that specialise only in anti-discrimination work. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), and there are organisations that work on particular grounds (women's rights, rights of people with disabilities, LGBT rights, etc.), but there are almost no ethnic-minority NGOs working on lobbying or policy making in the sphere of equal opportunities.

According to the author's understanding, one of the projects implementing the Action Plan for the Promotion of Non-Discrimination is being carried out by the Equal Opportunities Ombudsperson in cooperation with two non-governmental organisations.

There is no more information available on the wider involvement of NGOs in conducting activities to promote principles of equal treatment, despite initiatives taken by the Equal Opportunities Ombudsperson. NGOs are not involved in monitoring the action plan. No monitoring sessions have been organised and as noted, most of the provisions of the action plan are related to work implemented by different state institutions without the plan being adopted. Thus, it can be said that the Government has not implemented the directives properly in this respect.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Codes of practice to give effect to the principle of equal treatment in workplace practice and workforce monitoring are not commonly implemented in the country. The Ombudsperson's Office developed an 'equal opportunities ruler', measuring equal opportunities in the workplace in 2019, although it was not finalised in 2019. However, a number of companies joined diversity charters in 2018, and in 2019 the first Annual Conference for Diversity Charters was organised by the Diversity Development Group, an NGO. The Equal Opportunities Ombudsperson launched a website for employers on equality plans (<http://www.lygybesplanai.lt/>) and has promoted equal opportunities in the labour market. These initiatives continued to encourage other companies and employers to implement similar practices.

- d) Addressing the situation of Roma and Travellers

There is no single body or entity appointed on the national level to address Roma issues. Even though the Department of National Minorities is coordinating the implementation of the Action Plan for Roma Integration into Lithuanian Society 2015-2020, it does not have any role to oblige certain institutions to take actions. The situation of Roma is addressed by many institutions from different angles – the municipalities (mainly social, housing and employment issues), the Department of National Minorities (various functions – from funding the non-formal education of children to carrying out research and/or funding cultural activities), the Equal Opportunities Ombudsperson and others. In 2015 the Ministry of Culture approved the Action Plan for Roma Integration into Lithuanian Society 2015-2020,³⁴⁰ which is described in other chapters of this report. The action plan sets out various measures, but a significant part of these must be implemented as part of the regular functions of particular institutions (employment exchange, municipalities, etc.).³⁴¹

At least two large-scale EU-funded projects have been taking place in 2019, involving various Roma organisations and aimed at improving access to employment (involving training sessions, consultation and legal aid during a four-year project, with a total budget of EUR 866 000).

The Department of National Minorities has been actively working on 10 out of 14 measures provided in the action plan, contributing EUR 80 850 from the national budget,

³⁴⁰ Order of the Minister of Culture of 29 January 2015 No. ĮV-48 on approval of the Action Plan for Roma Integration into Lithuanian Society 2015-2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. ĮV-48), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682/asr>.

³⁴¹ For more details, see Sections 3.2.8(b) and 3.2.10.

including EUR 68 000 in 2019.³⁴² The Department of National Minorities has also provided funding for educational measures for the integration of Roma children in 2019 (EUR 60 000). However, those amounts were acknowledged as being too low by organisations working in the field, as they did not include sufficient funding for the implementation of after-school activities.³⁴³

The National Employment Service promoted the integration and employment of job-seeking Roma people in 2019, implementing general programmes for persons who had been unemployed for a long time and assisting people to obtain qualifications.

According to the National Employment Service, there were 441 Romani persons seeking jobs in Lithuania in 2019, 172 of them being registered with Vilnius City Municipality, and 89 of them were successfully employed by the end of the year countrywide. In addition, eight people obtained individual activity licences, and nine people started their own businesses. These activities, based on the Action Plan for 2015-2020, are still in progress. The National Employment Service has organised consultations, services and informational meetings for 441 Roma job seekers. The National Employment Service has also organised seminars for employers, with 10 seminars organised with 254 participating employers, who were said still to have many negative attitudes towards Roma people.³⁴⁴

Research³⁴⁵ carried out in 2018 that was presented to the working group monitoring the implementation of the action plan showed that the vaccination of Roma children (against tuberculosis, hepatitis B, pneumococcal infection, measles, mumps, rubella, diphtheria, tetanus, pertussis and polio) is insufficient in all European states, as well as globally. The number of vaccinated Roma children is significantly lower, at 18-50 % for different vaccines, compared with levels among children within the general population in Lithuania (95 %). The Health Ministry has stressed the need for awareness raising within the Roma community about the importance of vaccination.³⁴⁶

Vilnius City Municipality continued to carry out the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019 (with a budget of EUR 900 000).³⁴⁷ The programme set out a number of measures aimed at providing social housing options to Kirtimai Roma community members who agree to leave the settlement, providing educational assistance to Kirtimai pupils and employment access assistance. However, a large proportion of the measures are targeting drug prevention and policing, which, on the one hand, is an attempt to solve the problem of drug production and drug sales activity at the settlement, but on the other hand further criminalises the whole community. A total of EUR 927 948 was planned for the implementation of the programme during a three-year period, and the results from the end of 2019 suggest that the plan has been making progress, since financial support for renting housing and a social housing assistance programme have funded over 50 families leaving the Kirtimai Roma settlement. Two meetings were held to monitor the implementation of the programme in 2019 after more than a year of working group meetings, and participants at the working group were promised that they would be invited to submit proposals for

³⁴² Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 7 February 2020 in the Department of National Minorities.

³⁴³ Information received by the author from the Department of National Minorities, 9 March 2020.

³⁴⁴ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 7 February 2020 in the Department of National Minorities.

³⁴⁵ Centre for Infectious Diseases and AIDS, analysis of data on target group children vaccination rate, 2018, available in Lithuanian at: <http://skiepai.ulac.lt/upload/files/2019/05/06/skiepu-leidinys-5.pdf>.

³⁴⁶ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 7 February 2020 in the Department of National Minorities.

³⁴⁷ Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

the creation of a further action plan, continuing with the integration of Roma people. Currently, the slum-like settlement consists of approximately 50 residents in seven households (compared with 500 a decade ago). According to the Roma Community Centre, many of the people who had been living in the settlement are currently still serving prison sentences and would remain homeless upon their return.³⁴⁸

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

All draft laws in Lithuania have to go through a certain procedure, partly in order to evaluate their compliance with EU law. In one way or another, the main laws regulating the various fields of life have already been adapted in compliance with the equality provisions contained in Directives 2000/78 and 2000/43. Some provisions of laws, regulations and rules that are still in force are contrary to the principles of equality but, since no legal audit has been undertaken and there is no review mechanism for all this legislation, these inconsistencies emerge on a case-by-case basis.

There is no special mechanism ensuring that all laws do not violate the principle of equality. However, there are general principles on conflict between laws, such as *lex superior derogat legi inferiori* (a law higher in the hierarchy repeals the lower one). The Labour Code is considered a higher law than the Law on Equal Treatment, for example. Another valid principle in cases of conflict between laws is *lex posterior derogat legi priori* (more recent rules prevail over less recent rules). The principle of *lex specialis derogat legi generali* can be applied, but only when two laws or sets of rules with contradictory provisions are at the same level in the hierarchy.

Moreover, the principle of non-discrimination is enshrined in the Constitution. According to the Constitution, the Constitutional Court ensures constitutional legality by deciding whether laws and other legal acts adopted by the Parliament are in compliance with the Constitution and whether the acts adopted by the President or the Government comply with the Constitution and legislation. Of course, any lower-level acts must be in compliance with the Constitution, international treaties and laws. Therefore, all lower legal acts must be in compliance with the principle of equality.

The Constitutional Court adopted a landmark decision in 2019, following the CJEU's decision on *Coman and Others* (C-673/16). The Constitutional Court considered the constitutionality of the Law on the Legal Status of Aliens, which was referred to it by the Supreme Administrative Court of Lithuania. The applicant, a third-country national, was refused a temporary residence permit on the basis of family reunification by the Migration Department, which argued that same-sex marriages and partnerships are not recognised in Lithuania. The applicant was a spouse married to a Lithuanian national, the marriage having been concluded in Denmark.

The Constitutional Court found that the Law on the Legal Status of Aliens, under which residence permits could be issued on the basis of family reunification, was not incompatible with the Constitution. It stated in its conclusion that the Constitution is an integral enactment that cannot be interpreted literally and that, 'in the context of the constitutional justice case at issue, it should be noted that one of the forms of discrimination prohibited under Article 29 of the Constitution is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation;

³⁴⁸ Information presented during a meeting of Vilnius City Municipality's Roma Integration Work Group on 29 October 2019.

such a restriction should also be regarded as degrading human dignity.³⁴⁹ The Constitutional Court noted that, by law, a residence permit may be issued to a foreign national who is not a citizen of a Member State of the EU or the European Free Trade Association, and that this is not exclusively in cases where an opposite-sex family member of such a foreign national resides in the Republic of Lithuania, i.e. a person with whom a marriage or registered partnership has lawfully been concluded in another state and who is a citizen of the Republic of Lithuania or a foreign national holding a residence permit, but also in cases where a same-sex family member of such a foreign national resides in the Republic of Lithuania.³⁵⁰

Each year, the Ombudsperson assesses different orders or even laws and their compliance with the provisions of the Law on Equal Treatment and makes recommendations to amend them, to the Government, to ministries, or to the Parliament. Among other investigations that the Ombudsperson carried out in 2019, it addressed the compliance of acts adopted by ministries with the principle of equal treatment.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

There is no special mechanism to ensure that contracts, collective agreements, internal rules or undertakings are in line with anti-discrimination law.

Article 26 of the Labour Code sets a number of obligations for employers: to ensure the implementation of gender equality and non-discrimination principles; to apply the same selection criteria, ensuring that working conditions and the opportunities to improve one's qualifications are equal; to take the necessary measures to ensure that employees do not experience harassment or sexual harassment and that instructions to discriminate are not given; and to protect employees from other hostile behaviour. There is also an obligation for employers that employ more than 50 employees to adopt measures aimed at promoting and implementing equality policies in the workplace. Even though some of these obligations on employers are set out by the Law on Equal Treatment and the Labour Code, no formal mechanisms have been created to monitor their implementation and therefore to check whether the policies adopted are sufficient and effective and are being implemented in practice.

³⁴⁹ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

³⁵⁰ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

9 COORDINATION AT NATIONAL LEVEL

In May 2017 an Action Plan for the Promotion of Non-discrimination 2017-2019 was adopted by the Ministry of Social Security and Labour.³⁵¹ It replaced the previous version of the Action Plan for the Promotion of Non-discrimination for 2015-2020, which was approved by the Government, but which was formally discontinued at the end of 2016.³⁵² The cancellation of non-discrimination programmes prior to their dates of implementation is not an unusual practice and has happened in the past. This time, however, the action plan was taken from Government level to the level of the Ministry of Social Security and Labour. Moreover, previous plans would be allocated a certain budget (or planned budget), while the current plan envisages the implementation of all the measures outlined using the regular resources of the institutions involved and potential EU structural funding.

However, the action plan has been largely criticised by non-governmental organisations, international institutions and different groups affected by discrimination. Its shortcomings have even been recognised by representatives of the coordinating Ministry of Social Affairs and Labour, which described it as more or less a plan made up of activities that are usually carried out by institutions, but without any strategic approach.³⁵³

The Equal Opportunities Ombudsperson, who has a significant role in the plan, expressed doubt about its efficiency, given that no additional funding was allocated for its activities in the framework of the plan in 2017.³⁵⁴ However, underfunding has been a fairly regular practice in the past. The previous action plan in 2016 was given only 35 % of its original budget, according to rough estimates. The previous version of the plan, the Inter-institutional Action Plan for the Promotion of Non-discrimination 2012-2014,³⁵⁵ was not implemented in full – in 2014 it received EUR 51 627 (or 44.3 % of the initially planned funding), and in 2013 it received 59 % of its initial budget, which was, however, an improvement on the position in 2012, when the figure was only 35 %. In this respect, 2015 was an exception (97 % of the funding was actually allocated), although the total budget for anti-discrimination measures that year was only EUR 192 000.

The Ministry of Social Security and Labour is the coordinating institution, while the Equal Opportunities Ombudsperson, the Department of National Minorities under the Government and the Department of Affairs of the Disabled under the Ministry of Social Security and Labour are the main institutions involved in the implementation of the plan.

The current version of the Action Plan for the Promotion of Non-discrimination 2017-2020 sets out improvements to legislation, awareness raising and education, research and the strengthening of inter-institutional cooperation as key areas of activity.

The Equal Opportunities Ombudsperson implements many of the activities set out in the plan. They include measures such as amending legislation, awareness raising and education, research, the strengthening of inter-institutional cooperation and non-discrimination in the labour market as key areas of activity.

³⁵¹ Order of the Minister of Social Security and Labour on the adoption of the Action Plan for the Promotion of Non-discrimination 2017-2019, 15 May 2017, available at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCsaHNOQf>.

³⁵² Decision of the Government of the Republic of Lithuania (*Lietuvos Respublikos 2015 m. sausio 28 d. nutarimas Nr. 46 Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCsaHNOQf>.

³⁵³ 'Equal Opportunities in the Labour Market: Overview of the Situation' (2019), available in Lithuanian at: https://lygybe.lt/data/public/uploads/2019/12/lg-situacijos-apzvalga_sgm-2019.pdf.

³⁵⁴ Lithuanian Equal Opportunities Ombudsperson (2017), *Annual Report for 2017*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

³⁵⁵ Decision of the Government of the Republic of Lithuania (*Lietuvos Respublikos Vyriausybės nutarimas 'Nediskriminavimo skatinimo 2012–2014 metų tarpinstitucinio veiklos plano patvirtinimo', 2011-11-02*) Valstybės žinios, 10 November 2011, No. 134-6362, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523.

The sufficiency of the efforts made to fight discrimination can be evaluated according to the results of the 2019 Eurobarometer survey. According to 24 % of respondents, these efforts have been effective, 26 % think that the efforts have not been effective, and 40 % believe them to have been moderately effective.³⁵⁶

A report on implementation of the action plan was prepared by the Ministry of Social Affairs and Labour for the first time in 2019, covering only the year 2019, even though the plan has been implemented since 2017. According to the report, it is difficult to estimate the total budget. However, the report says that most of the activities planned for 2019 have been implemented and that the majority of them have been awareness-raising and educational activities. Most of the activities have been financed from the general budgetary assignments given to the specific institutions involved in the implementation of the plan, with some funding coming from EU structural funds.³⁵⁷

No monitoring measures involving civil society organisations were envisaged in the plan. Therefore, an independent assessment and evaluation of its implementation, along with suggestions, would be useful.

It is important to mention that there are separate action plans covering the issues specific to certain groups, such as the Action Plan for the Integration of Persons with Disabilities and the Action Plan for Roma Integration into Lithuanian Society, which are coordinated by different institutions.

³⁵⁶ Special Eurobarometer 493, 'Discrimination in the European Union', May 2019, available in English at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2251>.

³⁵⁷ Report on the implementation of the Action Plan for the Promotion of Non-discrimination 2017-2020 in 2019, available in Lithuanian at: https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/Lygios%20galimybe%C4%97s/2019%20m_%20Nediskriminavimo%20veiksm%C5%B3%20plano%20igyvendinimo%20ataskaita.pdf.

10 CURRENT BEST PRACTICES

The following measures could be identified as good practices in 2019:

- In the autumn of 2019, the Diversity Development Group, an NGO, organised the first conference of the Lithuanian Diversity Charter. As was noted in a previous report, the country's businesses signed a 'Diversity Charter' in 2018, with a public commitment to fostering a culture of equality.
- For the purpose of monitoring the CRPD, the Commission of People with Disabilities was established alongside the Office of the Equal Opportunities Ombudsperson, following amendments to the Law on Equal Treatment. However, no additional funding was provided for the Commission's work.
- The Equal Opportunities Ombudsperson continued to support a website on equality plans for employers (<http://www.lygybesplanai.lt/>) and carried out a number of activities to promote equal opportunities in the labour market.
- Two strategic cases were brought to the ECtHR in 2019 in the field of non-discrimination with the expectation of advancing equal opportunities, even though justice was not achieved at a national level: one case was initiated by the neopagan community Romuva regarding the Parliament's refusal to recognise it as a state religion. Another case regarding discrimination and free speech concerned the fairy-tale book 'Amber Heart', the distribution of which was terminated in 2014. It later returned to the shelves with a note that its contents might be detrimental to minors, because two of the fairy tales included narratives involving same-sex couples. The latter case exhausted all the national remedies available, reaching the Supreme Court twice.
- The National Equality and Diversity Awards, an awareness-raising initiative implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs working with vulnerable groups, which has been taking place annually since 2014, was continued. In March 2019, the winners from among various nominees were presented with awards for their achievements in the field of promoting equality or protecting people from discrimination. The award ceremony was broadcasted live on national television and received substantial media attention and social media coverage. A number of organisations, companies and institutions participated in the selection of nominees, in voting and in organising and presenting the awards. Organisers are planning to continue the initiative in future years, as the awards function as a tool to raise awareness and carry out promotional activities. The awards were mainly financed by the Office of the Equal Opportunities Ombudsperson.
- There has been significant progress in recent years, with more and more people openly supporting the rights of LGBT people. In 2019, the fourth Baltic Pride event was organised by the national LGBT organisation, LGKL. Since the first Pride event took place in 2010 in the face of huge opposition, subsequent events in 2013, 2016 and 2019 were held in the main avenue of the capital, the latest one being the most successful, with around 10 000 participants. This has not yet resulted in major legal changes, although court practice has been leading towards more equal treatment of LGBT persons.
- A Human Rights Forum was held on 10 December 2019, organised by Vytautas Magnus University, a number of civil society organisations (including the Coalition of Human Rights Organisations and the Lithuanian Disability Forum) and state institutions (the Ministry of Foreign Affairs, the Equal Opportunities Ombudsperson and the Seimas Ombudsmen's Office), and many different stakeholders were invited. Many activities covered non-discrimination issues.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

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

- The existing Law on Equal Treatment does not explicitly prohibit harassment in access to and the provision of goods and services (Article 8); it only does so in respect to employment and education (Articles 6 and 7), as in Article 3(1)(h)) of Directive 2000/43/EC – see Section 1.4 of this report. Parliamentary consideration of the Draft Law on Equal Treatment, which would remedy this, among other things, began in 2019. The bill is still pending, however.
- The duty to provide reasonable accommodation (Article 5 of Directive 2000/78/EC), as it is phrased in Article 7(1)(9) of the LET and Article 26(2)(6) of the Labour Code, lacks precision and is somewhat more ‘narrow’ than that contained in the directive, in that it only comprises a duty to adapt premises, and it is therefore more difficult to enforce in practice, even though the Equal Opportunities Ombudsperson and the courts often refer to the UN Convention on the Rights of Persons with Disabilities. For more information, please see Section 2.6. Amendments are also contained in the draft Law on Equal Treatment, which was registered in 2019.
- The Law on Equal Treatment does not clearly prohibit discrimination in the field of self-employment and occupation, as required under Article 3(1)(a)) of Directive 2000/78/EC and 3(1)(a)) of Directive 2000/43/EC (see Section 3.2.1).
- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope, as in Article 3(1)(e)) of Directive 2000/43/EC. For more information, please see Section 3.2.6-3.2.7.
- The Law on Equal Treatment has provided an exception concerning recruitment and employment by employers with an ethos based on religion or belief since June 2008, in accordance with Article 4(2) of Directive 2000/78/EC. However, Article 3 of the LET sets out other spheres where the Law on Equal Treatment shall not be applied in relation to religion and ethos, including in the provision of goods and services, access to education, the content of education programmes and education. This may be in breach of Article 3(1)(g) and (h) of Directive 2000/43/EC.³⁵⁸ The first version of the LET did not contain this exception and there is still no case law or interpretation on the matter. There is also no information available about whether such practices existed before the adoption of the directive in the country, which organisations used them and to what extent. Besides, the exception in the Law is much broader than that of Directive 2000/78/EC, in which a ‘person’s religion or belief constitute a genuine, legitimate and justified occupational requirement’. There is no mention of the provision that ‘difference of treatment ... should not justify discrimination on another ground.’ It therefore seems that, if

³⁵⁸ The relevant provisions of the LET read as follows (official translation): ‘The provisions of this Law shall not apply to: 3) cases where religious communities and associations, as well as organisations established by them or their members, the founding documents or equivalent documents of which specify that their ethos is based on religion or belief, supply products, goods and services for religious or belief purposes; 4) the admission of persons to study at schools of religious communities and associations, schools established by them or their members, as well as establishments, enterprises and organisations whose main activity is other than academic education, which have been established with the purpose of education in an environment fostering the values of a religious community or association where refusal to admit a person is necessary in order to maintain the ethos of the said organisations; 5) the content of education programmes, textbooks and teaching aids where religious instruction of traditional religious communities and associations is provided; 8) education and training where the application of the provisions of this Law is inconsistent with the striving of communities of state or private pre-school education establishments, general education schools or other educational establishments, the founding documents or equivalent documents of which specify that their ethos is based on religion or belief, to educate children in an environment fostering the values of a religious community or association.’

these provisions are to be applied according to the letter of the law, the whole Law on Equal Treatment becomes inapplicable in the areas mentioned, including in relation to the prohibition of discrimination on the grounds of race or ethnic origin. Such a broad exception might be incompatible with the provisions of the directive (see Section 4.2).

- National legislation provides protection from victimisation in the field of employment only; it does not provide protection from victimisation in other fields (education and the provision of goods and services) and might be in breach of Article 9 of Directive 2000/43 (see Section 6.4).
- Providing independent assistance to victims of discrimination in pursuing their complaints of discrimination does not explicitly fall within the competence of the national equality body – the Equal Opportunities Ombudsperson – according to the law. The current wording speaks about ‘providing impartial and objective consultations with regards to investigation of complaints’ only, which might not fully transpose Article 13(2) of Directive 2000/43. For more information, please see Section 7(f)(i) of this report.
- Sanctions must be significantly strengthened to make them effective, proportionate and dissuasive, in the opinion of the author of this report. The quasi-judicial function of the Ombudsperson does not benefit victims of discrimination, and sanctions imposed by the Ombudsperson are not effective, proportionate and dissuasive which might be in breach of Article 15 of Directive 2000/43. Compensations are awarded in few cases reaching the courts, administrative fines are rarely applied by the Ombudsperson in practice and recommendations are provided in most of the situations, without the possibility to ensure their implementation, if refused by the party responsible. For more information, please see Sections 6.5 and 7(i)(h).

11.2 Other issues of concern

Article 29(10) of the Law on Education establishes an exception for schools that significantly affects children with disabilities and their ability to access schools providing compulsory education, in such a way as to be considered discriminatory:

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

Neither the Law on Equal Treatment nor the provisions of the Labour Code explicitly state that failure to provide reasonable accommodation would constitute discrimination (see Section 2.6). Amendments were registered in 2019, however, to include this in both the Law on Equal Treatment and the Labour Code.

The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (e.g. the director) but not to its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be enforced against a broad spectrum of parties. Tenants, customers and employees cannot be held liable. For more information, please see Sections 2.2, 2.4 and 2.5 of this report.

The right for associations to engage in legal proceedings was included in the Law on Equal Treatment, repeating the wording of the directives. However, exercising this right is limited in practice. The Code of Civil Procedure states that only actual members of a particular organisation can be represented in court by that association. In theory, associations can act on behalf of the victim in administrative proceedings only, but not in civil cases. For more information, please see Section 6.2.

The author has been informed of a number of instances when refugees and migrants have been discriminated against by local property owners when they tried to rent housing. The same situation was reported to be still ongoing during the monitoring meeting for the Action Plan for Roma Integration into Lithuanian Society 2015-2020. On at least a few occasions, landlords have refused to rent premises to refugees, migrants or Roma people. No cases have been reported to the Ombudsperson.

The problematic provision within the Law on the Protection of Minors against the Detrimental Effect of Public Information remains in force. Article 4(2)(16) states that any information that 'encourages a concept of marriage and family other than the one stipulated in the Constitution of the Republic of Lithuania or in the Civil Code of the Republic of Lithuania' is detrimental to minors and therefore should be restricted. This provision has been subjected to constant criticism by major international human rights and LGBT organisations.³⁵⁹ In 2014, major local TV broadcasters refused to broadcast a social commercial, which showed same-sex couples talking about their relationship and explaining that same-sex couples can also be considered families, with one person wearing a T-shirt with the slogan 'For family diversity'. They refused to show the advert, explaining that it might be considered as being in breach of the Law on the Protection of Minors against the Detrimental Effect of Public Information. Another example is the censorship of a book of fairy tales, which contained a story of same-sex love. The book was published by the Lithuanian University of Educational Sciences, which was later ordered to remove it from bookstores. The case is pending in the Lithuanian courts. In addition, the Inspector of Journalist Ethics concluded that two fairy tales promoting tolerance for same-sex couples were harmful to minors and should be marked by the index 'N-14', indicating that the stories were suitable only for readers aged 14 or over. The issue of applying the law arose again in 2019, when a group of people wrote a letter to the National Broadcaster LRT regarding a special programme called 'Spalvos' (Colours), showing two dads who used surrogacy in the course of family planning. The programme was investigated by the Radio and Television Commission of Lithuania.

The current Parliament has included a principle of complementarity of man and woman within the family in the Law on Strengthening the Family and in the Civil Code. The laws were amended to ensure the so-called 'protection of traditional values'. There are various other initiatives that find their way through the Parliament in relation to the 'protection of traditional values', including the restriction (prohibition) of the right to an abortion, the exclusion of the clause on sex re-assignment in the Civil Code, attempts to describe two partners of the same sex as a non-family and a joint venture, and so on.

It would be useful to unify the grounds of non-discrimination in the Labour Code and the Law on Equal Treatment – adding family status among prohibited grounds, even if it is not mentioned by the directives. Based on the number of requests received, the Equal Opportunities Ombudsperson recommends including family status among the prohibited grounds or including it in the definition of social status.³⁶⁰ Family status is mentioned in the Labour Code.

³⁵⁹ Law on the Protection of Minors against the Detrimental Effect of Public Information (*Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas*), available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS_410367.

³⁶⁰ Lithuanian Equal Opportunities Ombudsperson (2020), *Annual Report for 2019*, available in Lithuanian at: https://lygybe.lt/data/public/uploads/2020/03/lr_lygiu_galimybiu_kontrolieriaus_2019_m_veiklos_ataskaita.pdf;

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

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

12 LATEST DEVELOPMENTS IN 2019

12.1 Legislative amendments

Legal amendments to the Law on Equal Treatment came into force on 1 July 2019, broadening its aim to include the monitoring of compliance with the UN CRPD³⁶¹ (Article 1 LET) and the competence of the Equal Opportunities Ombudsperson – including the monitoring of the CRPD (Article 17(4)).

For the purpose of monitoring the CRPD, the Commission of People with Disabilities was established alongside the Office of the Equal Opportunities Ombudsperson (Articles 1 and 15-1). The Commission of People with Disabilities is supposed to comprise five members, four of them representing associations of people with disabilities and one being a representative of the Office of the Equal Opportunities Ombudsperson. Article 15-1 elaborates on the appointment procedure for the Commission, its working principles, and its role in monitoring compliance with the CRPD and rights. The Commission also sets duties for other legal persons, organisations and institutions to analyse its recommendations and respond regarding the results. It was apparent from the Ombudsperson's annual report that no funding was granted in 2019 to carry out the work of the Commission. However, this funding was granted for 2020 under the law allocating the budget.

The draft Law on Equal Treatment, which introduces a number of changes, was registered in the Parliament in 2019, and the procedure for its consideration has begun, however it has not yet been voted on. The law would broaden the list of discrimination grounds, expand the competence of the Equal Opportunities Ombudsperson, introduce a longer list of decisions that the Ombudsperson may take after analysing a complaint regarding discrimination-based violations, add an exception of discrimination and allow the Ombudsperson to address the administrative courts, as well as calling upon the Parliament to address the Constitutional Court.³⁶²

12.2 Case law

A few cases were brought to the court in 2019, some of which questioned decisions taken by the Equal Opportunities Ombudsperson. Cases with some significance for the interpretation of the principle of equal treatment are mentioned below.

Name of the court: Constitutional Court of the Republic of Lithuania

Date of decision: 11 January 2019

Name of the parties: The Supreme Administrative Court of Lithuania, The Parliament of the Republic of Lithuania

Reference number: KT3-N1/2019

Link: <https://www.lrkt.lt/en/court-acts/search/170/ta1915/content>

Brief summary: The Constitutional Court was referred a case by the Administrative Court, in which a same-sex couple was seeking a residence permit for a third-country national, who was the spouse of an EU citizen. The Administrative Court referred the case to the Constitutional Court regarding the compliance of the Law on the Legal Status of Aliens. In its 2019 conclusion, the Constitutional Court repeated its previous conclusions that the Constitution is an integral enactment that cannot be interpreted literally. The Court also stated that, even though sexual orientation and gender identity are not

³⁶¹ Law amending the Law on Equal Treatment, No. IX-1826, Articles 1, 16 and 17, and introducing Article 15-1 (*Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 1, 16 ir 17 straipsnių pakeitimo ir įstatymo papildymo 15-1 straipsniu įstatymas*), 11 December 2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/b52da81002c211e9a5eaf2cd290f1944>.

³⁶² Draft Law on Equal Opportunities, No. IX-1826 (*Lygių galimybių įstatymo Nr. IX-1826 pakeitimo įstatymo projektas (nauja redakcija)*), 30 May 2019, No. XIII P-3512, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/96f31cf082b411e98a8298567570d639?jfwid=rmpk3gwww>.

mentioned as separate grounds in the Constitution, it should be still considered that the Constitution protects persons from having their rights restricted on these grounds. The Constitutional Court referred to the CJEU case of *Coman and Others*, to international treaties and to CJEU and ECHR case law.

'therefore, Paragraph 2 of Article 29 of the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts, and other state institutions, i.e. the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Paragraph 1 of Article 29 of the Constitution.

... In the context of the constitutional justice case at issue, it should be noted that one of the forms of discrimination prohibited under Article 29 of the Constitution is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation; such a restriction should also be regarded as degrading human dignity.'³⁶³

Based on the decision of the Constitutional Court, interpreting the provisions of the Constitution and the Law on the Legal Status of Aliens, the Supreme Administrative Court of Lithuania annulled the decision of the Migration Department not to grant a residence permit to the spouse of the Lithuanian citizen in 2016, and it obliged the Migration Department to examine the request to grant the applicant a residence permit.³⁶⁴

Name of the court: Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas)

Date of decision: 3 October 2019

Name of the parties: *Office of the Equal Opportunities Ombudsperson v. Vilnius City Municipality*

Reference number: I-4523-789/2019

Link: <https://eteismai.lt/byla/102452301735006/I-4523-789/2019>

Brief summary: An important decision was made in 2019 in interpreting the determining occupational requirements. The court recognised, as per the request of the Equal Opportunities Ombudsperson, that the decision of Vilnius City Municipality to set a special requirement for the director of the Verkiai and Pavilniai Park Directorate to ride a bike constituted a violation of equal opportunities.

The Equal Opportunities Ombudsperson previously in 2017 in its decision recognised this as indirect discrimination on the ground of disability. The Ombudsperson had issued a recommendation to Vilnius City Municipality to change the requirements of a job description for the director of the Pavilniai Regional Park Administration, which stated that riding a bicycle was a professional requirement of the job. According to the Ombudsperson, the internal rules and procedures at the park administration did not require the director to conduct on-site visits to inaccessible park locations, so this requirement was not objective and necessary and therefore it was discriminatory – the Ombudsperson found indirect discrimination after investigation of a complaint. The mayor of Vilnius publicly stated that he would not follow the Ombudsperson's recommendation and would put it in the bottom drawer of his desk, calling it 'absurd' and 'an example of bureaucratic stupidity'.³⁶⁵ Since the mayor publicly ridiculed the recommendation and refused to take it into consideration, the Ombudsperson then made a decision to call upon the administrative court to determine whether the administrative enactment of the municipality was in conformity with the provisions of the Law on Equal

³⁶³ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019, available in English at: <https://www.lrkt.lt/en/court-acts/search/170/ta1915/content>.

³⁶⁴ Supreme Administrative Court of Lithuania, 20 March 2019, No. EA-3227-624/2019, available in Lithuanian at: <https://eteismai.lt/byla/221530326285810/EA-3227-624/2019>.

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

Treatment or the Law on Equal Opportunities. The court of first instance dismissed the claim (for procedural reasons).³⁶⁶ The case was then appealed to Supreme Administrative Court, which returned the case to the court of first instance on 17 July 2019.

On 3 October 2019, the Vilnius Regional Administrative Court concluded 'that the Ombudsperson reasonably stated in their decision that the requirement established in the Job Description for the Director of the Directorate to be able to ride a bicycle cannot be related to the performance of functions. The Court concludes that, for persons who, due to the nature of their disability, are not able to ride a bicycle, the Job Description establishes a *de facto* restriction on the exercise of their rights equally in comparison with other persons to apply for the position offered in the announcement.'³⁶⁷

Name of the court: Supreme Administrative Court of Lithuania

Date of decision: 5 November 2019

Name of the parties: *T.B. v. Office of the Equal Opportunities Ombudsperson*

Reference number: eA-949-415/2019

Link: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=796b8e5b-3ca2-4452-9a86-901fdcd804b2>

Brief summary: An important decision was made by the Supreme Administrative Court, elaborating on the content of employment and occupational relationships and referring to Directive 2000/78. The decision may affect the actions taken regarding complaints analysed by the Ombudsperson in the future that may previously have been rejected on the basis that they did not fall within the scope of the law.

The case concerned an application by a person who asked for a decision by the Ombudsperson to be annulled, obliging the Ombudsperson to analyse the complaint, which concerned discrimination based on the grounds of political views in the field of employment. The case involved a situation in which the Minister of Culture and the Lithuanian Culture and Art Council had elected the members of the Lithuanian Culture Council Meeting. The candidacy of the applicant was considered, but it was indicated during the meeting that the applicant could not be appointed as a member of Lithuanian Culture Council Meeting because he was a member of a political party. In his opinion, this was discriminatory and could have misled the voting members of the Lithuanian Culture and Art Council, and this could have been the reason for him not being elected. The application to the Ombudsperson was rejected on the basis that it did not fall within the scope of the Law on Equal Treatment and that the expressions used by the cultural (data undisclosed) did not concern the employer of the members of the Lithuanian Culture Council Meeting.

The Supreme Administrative Court of Lithuania elaborated on the scope of application of Directive 2000/78 and the Law on Equal Treatment, and based its decisions on the jurisprudence of the ECJ and the provisions of the directive, concluding that:

'thus, when deciding on the application of Article 7 of the Law on Equal Treatment, it must be assessed in every individual situation, based on the essence of the legal relationship, whether the legal relationship falls within the scope of employment (employment or occupation) regardless of whether the relationship is being formed based on the employment contract or another legal basis, but in essence corresponding to the characteristics of the employment relationship. A contrary interpretation of Article 7(1) of the Law on Equal Treatment would fail to achieve the objectives of Directive 2000/78.'³⁶⁸

³⁶⁶ Vilnius Regional Administrative Court, decision of 4 October 2017, Case No. I-3795-596/2017.

³⁶⁷ Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*), *Office of the Equal Opportunities Ombudsperson v. Vilnius City Municipality*, administrative Case No. I-4523-789/2019, decision of 3 October 2019.

³⁶⁸ Supreme Administrative Court of Lithuania (*Lietuvos Vyriausiosios Administracinis Teismas*), *T.B. v. Office of the Equal Opportunities Ombudsperson*, administrative Case No. eA-949-415/2019, decision of 5 November 2019, available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=796b8e5b-3ca2-4452-9a86-901fdcd804b2>.

'thus, according to the panel of judges, the relationship between a member of the Lithuanian Culture Council and the Government (which exercises its powers through the Ministry of Culture during the selection process) is of a permanent, continuous, subordinate manner, that in essence corresponds to the characteristics of an employment relationship, and therefore it could be considered as employment (occupational, professional activity) in accordance with Article 7 of the Law on Equal Treatment.'

The Supreme Administrative Court of Lithuania repealed the decision of the Ombudsperson and obliged it to analyse the complaint submitted by the applicant.

Name of the court: Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas)

Date of decision: 3 July 2019

Name of the parties: AB "Palink" v. Office of the Equal Opportunities Ombudsperson

Reference number: eI-2472-244/2019

Link: -

Brief summary: The company, owning a chain of shops in Lithuania, appealed to the Vilnius Regional Administrative Court to annul the decision of the Ombudsperson, by which the shop was found to be in breach of the Law on Equal Treatment, because of the refusal to provide reasonable accommodation to a person seeking to be employed by the company. Even though the provisions of the Law on Equal Treatment are not harmonised with the directive and use a more narrow term of 'adapting premises', instead of 'reasonable accommodation', both the Ombudsperson and the Court referred to the CRPD.

The court shifted the burden of proof and held that the applicant, in seeking to prove that M.K. (the person applying for the position of cashier-salesperson) had not been discriminated against during the recruitment process, had to prove that the job description of cashier-salesperson was not compatible with the ability to carry out work functions of the person with disability, given their health conclusions, in comparison with a person without disability, and that the job description would be impossible to change in a manner that would not disproportionately burden the employer. Therefore, the applicant, holding that M.K., according to the job description of a cashier-salesperson, would have to constantly carry out loading functions (i.e. carrying out loading functions on a full-time, daily basis), had to prove that there was no possibility of changing the job description in a manner that would make it possible not to allocate the loading functions to M.K. The court stated:

'According to the court, the Company, claiming that it did not have the ability to adapt the workplace and the conditions to accommodate the employee in such a way that she would be able to work as a cashier/salesperson without harming her health, failed to demonstrate that, by slightly changing the employee's work functions (if required) and adapting the working conditions to the needs of the employee, it would experience a disproportionate burden or that such organisation of work within the Company would be impossible'.³⁶⁹

12.3 Cases brought by Roma and Travellers

To the knowledge of the author of this report, no cases of discrimination against Roma were brought before the courts from 2015 to 2019. No complaints regarding discrimination against Roma were brought to the Equal Opportunities Ombudsperson or were commenced by the Ombudsperson in 2019.

³⁶⁹ Vilnius Regional Administrative Court decision, Case No. eI-2472-244/2019, 3 July 2019, (Vilniaus apygardos administracinio teismo 2019 m. liepos 3 d. sprendimas administracinėje byloje).

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Lithuania
Date: 31 December 2019

Title of the law: Law on Equal Treatment

Abbreviation: LET

Date of adoption: 18.11.2003

Latest relevant amendment: 11.12.2018

Entry into force: 01.01.2005

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>

Grounds covered: gender, race, "nationality",³⁷⁰ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion

Civil/administrative law

Material scope: private and public employment, access to goods or services (including housing), education

Principal content: The main national law, implementing Directives, prohibition of direct and indirect discrimination, harassment, instruction to discriminate and regulation of competences of a specialised body

Title of the law: Law on Equal Opportunities for Women and Men

Abbreviation: LEOWM

Date of adoption: 01.12.1998

Latest relevant amendment: 11.05.2017

Entry into force: 01.03.1999

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>

Grounds covered: gender

Civil/administrative law

Material scope: employment, access to goods or services, education, social protection, including social security

Principal content: prohibition of direct and indirect discrimination, harassment based on gender, sexual harassment and instruction to discriminate

Title of the law: Law on Social Integration of People with Disabilities

Abbreviation: LSIPD

Date of adoption: 28.11.1991

Latest relevant amendment: 18.10.2018

Entry into force: 31.12.1991

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/ToFjWDnFJH>

Grounds covered: Disability

Civil/administrative law

Material scope: private and public employment, access to goods or services (including housing), education, social protection

Principal content: Prohibition of discrimination on the ground of disability, various measures on social inclusion, provision of services etc.

Title of the law: Labour Code

Abbreviation: LC

Date of adoption: 14.09.2016

Latest relevant amendment: 20.12.2018

Entry into force: 01.07.2017

Web link:

<https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>

³⁷⁰ The term used in the LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

Grounds covered: gender, race, "nationality", citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, family and marital status, membership of political parties or other organisations

Civil law

Material scope: Employment

Principal content: General prohibition of discrimination in employment, duties for employers

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Lithuania

Date: 31 December 2019

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14.05.1993	27.04.1995	No derogations / reservations	Accepted	Yes
Protocol 12, ECHR	No	No	NA	NA	NA
Revised European Social Charter	08.09.1997	15.05.2001	No derogations / reservations	Ratified collective complaints protocol	Yes
International Covenant on Civil and Political Rights	12.03.1991	20.11.1991	No derogations / reservations	Accepted	Yes
Framework Convention for the Protection of National Minorities	17.02.2002	17.02.2002	No derogations / reservations	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	12.03.1991	20.11.1991	No derogations / reservations	Accepted	Yes
Convention on the Elimination of All Forms of Racial Discrimination	10.11.1998	10.11.1998	No derogations / reservations	Accepted	Yes
ILO Convention No. 111 on Discrimination	27.13.1996	27.13.1996	No derogations / reservations	Accepted	Yes

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	08.01.1992	03.07.1995	No derogations / reservations	Accepted	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	27.05.2010	No derogations / reservations	Accepted	Yes

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