



**REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC**

COUNTRY REPORT 2008

LITHUANIA

GEDIMINAS ANDRIUKAITIS

State of affairs up to 31 December 2008

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

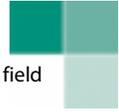
Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

the Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of
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<http://www.non-discrimination.net/en/law/NationalLegislation/country-reportsEN.jsp>

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

The Republic of Lithuania is a Unitarian state. *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania]¹ was adopted by referendum on 25 October 1992 and entered into force on 2 November 1992. Article 29 of the Constitution declares that “all people are equal before the law, the courts and other state institutions and officers. A person’s rights may not be restricted in any way and s/he may not be granted any privileges on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions.” Although disability, age and sexual orientation are not explicitly mentioned in the text of the Constitution, this does not imply that rights may be restricted on the basis of disability, age or sexual orientation.

Lithuania is a party to a number of international agreements, which guarantee protection against discrimination on these grounds. Article 138(3) of the Constitution stipulates that international agreements which have been ratified by the *Seimas* [Parliament] form a constituent part of the legal system. The Law on International Agreements² asserts that if an international agreement, which has been ratified and enforced by the Republic of Lithuania, establishes norms other than those established by the laws of the Republic of Lithuania or other legal acts existing or coming into force after the date of the entry into force of the international agreement, the provisions of the international agreement shall apply.

The Republic of Lithuania has signed, or has signed and ratified, a number of international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe Framework Convention for the Protection of National Minorities. A major international instrument relevant to the field of employment is the 1996 European Social Charter (revised), which was ratified by the Lithuanian Parliament with some reservations in 2001.³ The reservations mostly concern the employment of foreign workers, the right of elderly people to social security and the right to be protected against poverty and social segregation. On 30 March 2007 the Ministry of Social Security and Labour signed the Convention on the Rights of Persons with Disabilities. This convention had not been ratified by the Parliament of the Republic of Lithuania yet.

¹ Lietuvos Respublikos Konstitucija. Official publication Valstybės Žinios, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

² Lietuvos Respublikos Tarptautinių sutarčių įstatymas [Law on International Agreements]. Official publication, Valstybės žinios, 1999, No. 60-1948.

³ Lietuvos Respublikos įstatymas Dėl 1996 metų Europos socialinės chartijos (pataisytos) ratifikavimo [Law on Ratification of European Social Charter]. Official publication, Valstybės žinios, 2001, No. 49-1699.

The Constitution of the Republic of Lithuania stipulates that constitutional control in Lithuania is exercised by *Konstitucinis teismas* [the Constitutional Court]. The Law on the Constitutional Court passed on 3 February 1993 regulates the activities of the Constitutional Court.⁴ The Constitutional Court ensures the supremacy of the Constitution within the legal system, as well as constitutional justice, by deciding whether laws and other legal acts adopted by the Parliament are in conformity with the Constitution and whether the acts adopted by the President or the government of Lithuania are in compliance with the Constitution and laws.

The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is vested in: (1) the government, groups consisting of at least one fifth of all Seimas members and the courts for cases concerning a law or other act adopted by the Seimas; (2) groups consisting of at least one fifth of all Seimas members and the courts for cases concerning an act of the President of Lithuania; and (3) groups consisting of at least one fifth of all Seimas members, the courts and the President of Lithuania for cases concerning governmental acts. Lithuania is the only Baltic state where the rights to lodge petitions with the Constitutional Court is not enjoyed by individuals.

The Constitutional principle of equality of persons is repeated in various laws. However the most important legal enactment in this respect is the *Lietuvos Respublikos Lygių galimybių įstatymas* [Law on Equal Treatment of the Republic of Lithuania],⁵ which was designed with the purpose of transposing the requirements of the EU anti-discrimination Directives 2000/43/EC (Racial Equality Directive) and 2000/78/EC (Employment Equality Directive) in the national legislation. The law protects persons from discrimination on the grounds of gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status in the fields of employment, access to goods and services, education. Although the law does not explicitly mention housing, social advantages and social protection, it does not exclude these fields either. It can be interpreted to encompass these fields, however, there is no practice on these issues yet.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Please clearly and briefly indicate whether the Member State had taken advantage of the option to defer implementation of Directive 2000/78 EC to 2 December 2006 in relation to age and disability?

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

⁴ Lietuvos Respublikos Konstitucinio Teismo įstatymas [the Law on the Constitutional Court]. Official publication, Valstybės žinios (Official Publication), 1993, No. 6-120.

⁵ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132



This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The Law on Equal Treatment was designated to ensure the implementation of EU anti-discrimination directives in to national legislation. The law was passed on 18 of November, 2003 and came into force on 1st of January 2005. Initially it covered age, sexual orientation, disability, race, ethnicity, religion and beliefs. It was criticised by NGOs for being not in line with the directives on various aspects. The latest amendments of June 2008, formally eliminated significant parts of the implementation drawbacks and also expanded the list of protected grounds, adding social status, language and convictions. The current Law in most cases repeats the wording of Directives, not going into details of particular provisions. However, the transposition is still insufficient with regards to the following aspects:

- The existing Law on Equal Treatment does not explicitly state, that social protection, social security and healthcare fall under the scope of this law. The generally defined duty to implement equal opportunities can be interpreted in a way, that it must be applied in the fields of social security and healthcare as well, since these fields are not mentioned among those, where, according to the law, the principle of non-discrimination is not applied. However, without existing case-law as well as cases at the Equal Opportunities Ombudsperson institution, it is hard to tell whether this interpretation is right.
- The Equal Opportunities Ombudsperson Institution – the national equality body – covers all grounds of discrimination embodied in directives 2000/43/EC, 2000/78/EC and other grounds of discrimination. However, providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys or drafting independent reports does not fall under the competence of the Ombudsperson.
- The right for associations to engage in legal proceedings was included into the Law on Equal Treatment only recently. However, it cannot be considered effective in practice, due to legal gaps in other procedural legislation.
- The requirement to establish the shift of the burden of proof in discrimination cases was transposed to the national law only partially, since additional amendments to procedural legislation are needed.
- The duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. However, the wording of it lacks precision and is somewhat “softer” than that of the Directive. Failure to provide reasonable accommodation could not be considered as discrimination.
- In relation to laws governing self-employment, it is not precisely clear from the Law on Equal Treatment, whether the transposition of the Directives is sufficient. The laws, governing particular professions should be detailed to include relevant anti-discrimination provisions. Case-law concerning self-employment remains non-existent.
- A system of effective, proportionate and dissuasive sanctions must be strengthened.

- The Law on Equal Treatment provides an exception, concerning occupation and involvement in employers with an ethos based on religion or belief, since June 2008. The first edition of the Law did not contain the exception, thus there is no case law or interpretation on the matter. There is also no information available whether such practices had existed before the adoption of the directive in the country, in which organizations and to what extent they were used. The list of organisations, which could take advantage of such exception remains not clear. The wording of national provision is very broad and can be interpreted widely. For instance, in favour of discriminating homosexuals (as it was suggested during discussions in the Parliament during the adoption of these provisions). Hardly such vague provisions of national legislation are compatible with the goals of the Directive.

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences)

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

The national anti-discrimination case law is scarce. Only one case was partially based on the Law on Equal Treatment – the law that transposes the requirements of the Directives.

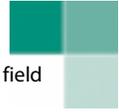
Name of the court: Vilniaus miesto 2-sis apylinkės teismas [2nd District Court of Vilnius City];

Date of decision: 30 June 2008;

Name of the parties: S. Marcinkevič v. UAB Disona

Reference number: 2-1189-545/2008.

Brief Summary: This is a landmark case where direct discrimination was established for the first time in the court. The case of discrimination against a Roma woman was brought to the court at the end of 2007. A Vilnius based human rights advocacy NGO assisted Roma women, by exercising situation testing method, to prove that discrimination did actually happen at the recruitment of the women at a café. A Lithuanian woman of a similar age as the complainant was sent to the café a few hours later after the Roma woman was told that the place is no longer vacant. The Lithuanian woman was immediately accepted. The results from the situation testing were approved by a bailiff and later used in court to successfully challenge discriminatory behaviour.



The NGO took part in the proceedings as a third party in support of the victim, however, an attorney was nonetheless required, and who directly represented the victim in legal proceedings. The Equal Opportunities Ombudsperson Institution took part in the proceedings as an expert, providing its finding on the case.

Eventually the court ruled in favour of the applicant establishing direct discrimination and in accordance with the Labour Code awarded her with a compensation of 2864,98 Litass (approximately 830 Euros).

So far this remains the only case of compensation for a victim of discrimination and a financial penalty for perpetrator.



1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

The principle of equality of persons is embodied in Chapter 2 of the *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania]⁶ under the heading “Individual and the State”. Article 29 of the Constitution states, that: ‘All persons shall be equal before the law, the court, and other State institutions and officials. The rights of the human being 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.’⁷

Other Constitutional clauses, related to equality and non-discrimination are the following. Article 25, on freedom of expression, prohibits the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation. Article 26 of the Constitution proclaims freedom of thought, conscience and religion.

Constitutional provisions regarding the principle of non-discrimination have been commented upon in a ruling by the Constitutional Court which, according to Article 72 of the Law on the Constitutional Court of the Republic of Lithuania⁸ is binding on all governmental institutions, companies, and organisations, as well as officials and citizens. In its Ruling of 11 November 1998, “In compliance with Part 4 of Article 38 of the Republic of Lithuania’s Law on Elections to the Seimas and with Part 4 of Article 36 of the Republic of Lithuania’s Law on Elections to Local Government with the Constitution of the Republic of Lithuania”,⁹ the Constitutional Court stated: “*The general principle of equality of persons is laid down in Article 29 of the Constitution: ‘All persons shall be equal before the law, the courts and other State institutions and officers. A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions.’ 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 granting certain privileges according to his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions.*”

⁶ The Constitution was adopted by referendum on 25 October .10.1992 and entered into force on 2 November 02.11.1992.

⁷ Lietuvos Respublikos Konstitucija. Official publication *Valstybės Žinios*, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

⁸ Lietuvos Respublikos Konstitucinio Teismo įstatymas [Law on the Constitutional Court]. Official publication, *Valstybės žinios*, 1993, No. 6-120.

⁹ 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. Official publication, *Valstybės žinios*, 1998, No. 100-2791.



Thus material scope of constitutional provisions differs from that of directives. It does not explicitly mentioned age, disability or sexual orientation, however includes nationality, language, social status, convictions or opinions. However, as the Constitutional Court in many of its rulings stated, Constitution is a solid enactment, which cannot be interpreted literally. Thus although there is a lack of Constitutional jurisprudence, interpreting the principle of equality of persons, it cannot be presupposed that aforementioned grounds are not covered by the Constitution. It must be added, that Constitutional grounds of non-discrimination were scarcely interpreted by the Court. For example, no case-law is know to the author of this report, which would elaborate on “convictions”. However, from the opinion of the author of this report as well as some scientists, this should refer to political views of a person.

b) Are constitutional anti-discrimination provisions directly applicable?

The *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania] has stated on many occasions, that constitutional provisions are directly applicable and each individual may defend his or her rights on the basis of the Constitution.¹⁰ Any person whose constitutional rights or freedoms were violated has the right to appeal to a court. Thus not only anti-discrimination provisions, but entire Constitution is directly applicable. Every individual has the right to appeal to a court or other competent institution for the protection of rights which have been violated under the Constitution. Nevertheless, the cases when complainants base their demands directly and solely on the relevant provisions of the Constitution are rare in practice.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

The constitutional equality clause is embodied in the Chapter “Individual and the State”. The jurisprudence of the Constitutional Court on Article 29 of the Constitution is rather limited. In all instances it was interpreted in the situation when the relationship of individual v. state was involved. It has never been interpreted as governing the relationship between individuals. Thus it is doubtful, that it could be enforced against private persons.

¹⁰ ‘The Constitution shall be an integral and directly applicable act. Everyone may defend his rights by invoking the Constitution.’ (Article 6 of the Constitution).



2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The general principle of equality of persons embodied in the Constitution is repeated in a number of laws, for example *Darbo Kodeksas* [Labour Code], *Civilinis kodeksas* [Civil Code] of the Republic of Lithuania. Some of the laws only state the principle of equality as such, while other provide a wide-ranging list of non-discrimination grounds. Article 2 of the Labour Code of the Republic of Lithuania¹¹ lists the following grounds of equality of labour subjects: gender, sexual orientation, race, ethnicity, language, origin, citizenship, social status, belief, marital and family status, age, views and convictions, membership in political parties and non-governmental organisations, any other characteristics, not related to work related characteristics.

Article 169 of the *Baudžiamasis Kodeksas* [Criminal Code] of the Republic of Lithuania 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.’¹²

Additionally, Article 170 of the Criminal Code also prohibits incitement against certain groups of residents: ‘A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, 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’.¹³

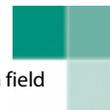
The *Visuomenės informavimo pakeitimo įstatymas* [Law on the Provision of Information to the Public] prohibits the publishing of information which ‘instigates war or hatred, sneer, scorn, instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, *sexual orientation*, race, nationality, language, origins, social status, religion, beliefs or standpoints’ (Article 19).¹⁴

¹¹ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264

¹² Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141

¹³ Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141

¹⁴ Lithuania/Lietuvos Respublikos Visuomenės informavimo pakeitimo įstatymas. Official publication *Valstybės Žinios*, 2006, Nr. 82-3254. Text in English available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382



However, the most important legal enactment on discrimination, implementing the EU anti-discrimination legislation is the *Lietuvos Respublikos Lygių galimybių įstatymas* [Law on Equal Treatment of the Republic of Lithuania].¹⁵ The law came into force on 1 January 2005 and was designated particularly to ensure the implementation of EU Antidiscrimination directives in the national legislation. The period to implement the both EU anti-discrimination directives passed for Lithuania in 2005. Since adoption of the law it was criticized by human rights NGOs for being not in line with the requirements of EU law. Only in June 2008 significant part of transposition drawbacks were finally eliminated.¹⁶

However, latest amendment not only addressed implementation drawbacks, but also added additional grounds of discrimination – language, social status and convictions. The rationale behind this was to repeat the grounds, which are explicitly mentioned in the Constitution. Thus from June 2008 the Law on Equal Treatment covers the following grounds: gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

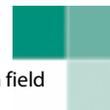
- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation? Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

There are no laws which provide definitions of racial or ethnic origin, religion or belief, age and sexual orientation. The Law on Equal Treatment does not provide definitions of the grounds of discrimination, with the exception of social status only, which is described as: *educational background and qualification, obtained by a natural person, as well as his or her owned property, income, dependence on a state aid as it is described by other laws as well as other factors, related to persons financial (economical) situation.* The Law on Equal Treatment additionally gives only definitions of equal opportunities, the violation of equal opportunities, direct and indirect discrimination and harassment.

The definitions of racial or ethnic origin are not set out in any sources of law; neither civil, nor criminal. The low level of judicial practice in this field leaves a lot of space for interpretation. No information on attempts to define racial or ethnic origin during parliamentary discussions is available.

¹⁵ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=324132

¹⁶ Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=324132



The right of freedom of religion is also described in the *Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas* [Law on Religious Communities and Associations of the Republic of Lithuania].¹⁷ However, this law also does not provide definitions for religion, beliefs or convictions, what leaves space for misinterpretation. The explicit definitions of religion, faith and convictions should be consolidated in legal acts. In practice these grounds of discrimination are often confused. Unfortunately, such gaps in obligatory definitions are not only in laws regulating discrimination issues, but also in other national laws.

The Labour Code only defines age as a protected ground in employment relationships. The Code states that: “A person shall acquire full legal capacity in labour relations and has the ability to acquire labour rights and undertake labour duties when s/he reaches the age of 16 years. Exceptions shall be established by this Code and other labour laws.”

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a ‘religion’; or a “disability”, sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?*

The definition of disability is provided in *Neįgaliųjų socialinės integracijos įstatymas* [the Law on the Social Integration of the Disabled].¹⁸ Although the law does not address discrimination, the definition of disability it provides may be used in equality issues too, since it is the only available legal definition (the Law of Equal Treatment does not provide definitions of grounds). “Disability is a long-term worsening reduction of the state of health on the basis of a disorder of the physical structure and functions, and diminution of participation in public life and of possibilities for activity”. This definition substantially fulfils the definition given by the European Court of Justice in case C-13/05, Chacón Navas. Nevertheless, it should be noted that the European Court of Justice (ECJ) addresses not only physical, but also mental or psychological impairments. These aspects are not covered by the definition in the Lithuanian Law on the Social Integration of Disabled Persons. On the other hand, the Lithuanian definition is broader than that of ECJ which only refers to impairments impacting on professional life.

No other legislation, defining the aforementioned grounds of non-discrimination can be identified at national level. The recital 17 of Directive 2000/78/EC is not reflected in the national legislation against discrimination.

c) *Are there any restrictions related to the scope of ‘age’ as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Age is not defined in the law on Equal Treatment, thus there is no set age limit, below which the anti-discrimination law would not be applicable. However, The Labour Code only defines age as a protected ground in employment relationships.

¹⁷ Lithuania/Religinių bendruomenių ir bendrijų įstatymas [Law on Religious Communities and Associations]. Official publication, Valstybės žinios, 1995, No. 89-1985. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=289917

¹⁸ Lithuania/Lietuvos Respublikos Neįgaliųjų socialinės integracijos įstatymas, Official publication *Valstybės Žinios*, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=330987

The Code states that: “A person shall acquire full legal capacity in labour relations and has the ability to acquire labour rights and undertake labour duties when s/he reaches the age of 16 years. Exceptions shall be established by this Code and other labour laws.” Thus when it comes to employment, the scope would be limited. However, this was not established in practice by courts, due to the lack of case-law.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
- *Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

There are no legal rules or plans for the adoption of rules in the field of anti-discrimination which deal with cases of multiple discrimination. No information about case law in this area is available either.

Lygių galimybių kontrolierius [Equal Opportunities Ombudsperson], takes into account situations of multiple discrimination. In its reports a few examples of gender and age as well as religion and ethnicity combination are mentioned.¹⁹ However, there are no special rules or procedures regarding investigation of such cases.

First of all, a system of data collection must be established, in order to evaluate the real scale of multiple discrimination at national level. Only then additional legislation should be considered. However, since all developments in the national anti-discrimination law took place only because of EU laws, it is hard to believe, that initiative regarding new anti-discrimination law would come from national level.

- e) *How have multiple discrimination cases involving one of Art. 13 grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

There have not been any multiple discrimination cases. Only one case of discrimination on the ground of ethnicity was adjudicated. A Roma woman successfully claimed discrimination in access to employment, however, her gender did not play a role in that particular situation (she was applying to a dishwashers position, which is typically occupied by women)²⁰.

The fact that Equal Opportunities Ombudsperson is taking into consideration multiple discrimination situations does not benefit the victims of discrimination as well as does not result in application of greater sanctions. The Ombudsperson is not addressing the multiple discrimination cases systematically. It only occasionally refers to the concept in its annual reports, explaining, that such situations may arise, however it never found a case of multiple discrimination in practice.

¹⁹ The Equal Opportunities Ombudsperson annual reports 2005 - 2008. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>

²⁰ The case is described in detail under the “Cases” section of this report.



2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

The prohibition of discrimination based on assumed characteristics is not explicitly mentioned in the Law on Equal Treatment or any other legal enactment. Until the latest amendments took place in June, 2008, the definition of direct discrimination excluded any interpretations in favour of inclusion of assumed discrimination. Since the latest amendment took place, the definition of direct discrimination corresponds to the wording of Directives and can be interpreted to include assumed discrimination. However, this issue was not raised in practice.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

The national law does not explicitly prohibit discrimination based on association with person with particular characteristics. Before the latest amendments took place (June 17 2008), the definition of direct discrimination had excluded possibility of prohibiting associated discrimination. However, present definition of direct discrimination corresponds to the wording of Directives and thus can be interpreted in the light of Case C-303/06 Coleman v Attridge Law and Steve Law.

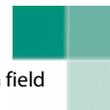
2.2 Direct discrimination (Article 2(2)(a))

- a) *How is direct discrimination defined in national law?*

The Law on Equal Treatment (Article 2., Para. 7) defines direct discrimination as follows: *“Direct discrimination shall be taken to occur when on the basis of gender, age, sexual orientation, disability, racial or ethnic origin, language, social status, religion or beliefs, a person is treated less favourably than another is, has been or would be treated in a comparable situation, except for the following cases provided for by the law:<...>”*

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”). The definitions contained in the Law on Equal Treatment are in conformity with the definitions in the Directives and those provided in relation to particular grounds: a person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

- b) *Are discriminatory statements or discriminatory job vacancies announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*



Article 11 of the Law on Equal Treatment,²¹ under the heading “Discriminatory advertisements”, explicitly states, that announcements which give preferences to candidates of particular gender, age, sexual orientation, disability, racial or ethnic origin, language, social status, religion or beliefs constitute the breach of equal treatment, with the exception to situations as set by Article 2 Paragraph 7 of this law (general clause on genuine occupational requirement). However, this provision is limited to published advertisements and it is doubtful that it could be interpreted to include discriminatory statements in practice. However, there is no case-law on the matter yet.

There have been no cases regarding discriminatory announcements at courts yet. However, Equal Opportunities Ombudsperson exercises the monitoring of job advertisements on a permanent basis. Even when there is no direct complainant the Ombudsperson usually finds “the breach of equal opportunities” if a discriminatory advertisement is found. The Ombudsperson then contacts the perpetrator and issues a recommendation to stop discriminatory practice. According to the Ombudsperson, the recommendations are usually followed without disputes. However, the breach in such cases is not categorized as direct discrimination.

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The Law on Equal Treatment does not permit justification of direct discrimination generally, but provides an exhaustive list of exceptions, specifically adjusted to particular grounds. According to the law, the following is not considered direct discrimination:

- 1) restrictions on grounds of age, set by law, when such practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- 2) requirements, set by law, to know the State language;
- 3) prohibition from taking part in political activities, as set by law;
- 4) different rights applied on the basis of citizenship, as set by law;
- 5) special measures applied in the spheres of healthcare, safety at work, employment and the labour market while striving to create and apply conditions and opportunities guaranteeing and promoting integration policies into the labour environment;
- 6) special temporary measures applied while striving to ensure equality and hinder the violation of equal treatment on the basis of gender, age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language, social status. On the other hand, special measures or special temporarily measures, that can be used as basis for positive action are not detailed in other laws (with exception to disability).
- 7) by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, specific characteristic of a person constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

²¹ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.



- 8) When restrictions, special requirements or conditions with regards to persons social status are regulated by law, which is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. According to the Article 2 Par. 6 “social status” is defined as status of a person, based on his/her past or present education, qualification, income or property ownership, dependence on social assistance schemes as well as any other characteristics, related to financial situation of a person.
- 9) Organization of special sports competitions for persons with disabilities.

Thus in most cases the Law on Equal Treatment requires that exceptions regarding particular grounds must be set by laws, is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary

- d) *In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?*

There are no provisions, which specify a comparison with respect to “less favourable treatment” in relation to age discrimination.

2.2.1 Situation Testing

- a) *Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court?. For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation?*

Procedural legislation does not explicitly prohibit the use of situation testing. However, there are no laws which specifically mention it as a possibility or set conditions for its admissibility either. During civil procedure, evidence is considered to be any factual data, accepted by the court, which can prove or disprove each party’s argument.²² The same concept is applied in administrative procedures. A court may accept evidence, based on the usage of situational testing, however it would not be treated as evidence of higher probative value.

- b) *Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

There has been only one case of the use of situational testing in practice, that is known to the author of this report. The lack of case law as well as legal certainty regarding procedural conditions and methodology of its use might hinder the usage of situational testing in practice. It seems that developments in other countries do not influence Lithuanian national law, as no provisions concerning situational testing have been adopted recently or are set to be adopted.

- c) *Outline important case-law within the national legal system on this issue.*

²² Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.



So far there has been only one case of discrimination, brought to the court. The complainant successfully challenged racial discrimination with the help of situation testing methodology.²³ The case of discrimination against a Roma woman was brought to the court at the end of 2007. A Vilnius based human rights advocacy NGO – Human Rights Monitoring Institute – assisted Roma women, by exercising situation testing method, to prove that discrimination did actually happen at the recruitment of the women at a café. A Lithuanian woman of a similar age as the complainant was sent to the cafe a few hours later after the Roma woman was told that the place is no longer vacant. The Lithuanian woman was immediately accepted. The results from the situation testing were approved by a bailiff and later used in court to successfully challenge discriminatory behaviour. The NGO took part in the proceedings as a third party in support of the victim, however, an attorney was nonetheless required, and who directly represented the victim in legal proceedings. The Equal Opportunities Ombudsperson Institution took part in the proceedings as an expert, providing its finding on the case.

d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs, equality body, etc)*

The situation testing model was used in practice only once. A human rights advocacy NGO exercised it. Bailiff was addressed to approve the results from the testing. Later an NGO participated in the proceedings as a third party in support of the victim.

²³ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.



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

a) *How is indirect discrimination defined in national law?*

Definition of indirect discrimination for the grounds covered by the Racial Equality and Employment Equality Directives is provided in the Law on Equal Treatment, where indirect discrimination is defined as follows: *“Indirect discrimination shall be taken to occur where an action or inaction, legal norm or value criterion, apparently neutral provision or practice are formally equal, but in implementing or adopting them an actual restriction of the enjoyment of rights or the provision of privileges, priority or advantage for persons of a certain age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or conviction, language or social status can, do or might emerge, unless this action or inaction, legal norm or value criterion, apparently neutral provision or practice are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”*.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

The law provides a general exception test to justify indirect discriminations: treatment must be justified by a legitimate aim and the means of achieving that aim must be proportionate and necessary. The implementation of the test in practice is far from being clear, since no indirect discrimination case law exist in practice. However, from existing jurisprudence of the Constitutional Court, it seems that term “legitimate aim” must be “constitutionally justified”, which presupposes that it has the same values as general principle of equality.²⁴ However, this interpretation was not provided considering the wording of the Law on Equal Treatment particularly.

c) *Is this compatible with the Directives?*

The definition of indirect discrimination, provided in the national law is sufficient to achieve the goals, set in the Directives, however its implementation in practice is not established yet. There is no definition of indirect discrimination contained in other laws (the Law on Education, the Law on Public Service or the Law on the State Defence Service, etc.). Amendments to these laws should be made in order to preserve a unified system for protection against discrimination.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

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

e) *Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?*

²⁴ Lithuania/Lietuvos Respublikos Konstitucinis Teismo 2004 m. gruodžio 13d. nutarimas „Dėl kai kurių teisės aktų, kuriais reguliuojami valstybės tarnybos ir su ja susiję santykiai, atitikties Lietuvos Respublikos Konstitucijai“.



Language is certainly an instrument for discrimination on the grounds of racial or ethnic origin. However, the general justification test, contained in the definition of indirect discrimination creates a situation whereby it is only through interpretation by the courts or other judicial or administrative bodies in concrete cases that language can be judged to be indirect discrimination on the grounds of racial or ethnic origin.

No cases of indirect discrimination regarding language have been adjudicated in practice.

2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*

The national law does not prohibit the use of statistical evidence. However the Code of Civil Procedure and the Law on Administrative Procedure do not provide an exhaustive list of types of evidence which can be presented to a court or other competent institution in order to prove someone's position. Thus no special conditions for using statistical evidence to establish indirect discrimination are required, although due to the lack of case law in the field of discrimination it is not possible to state whether use of this evidence has been advantageous or not.

- b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

There is no information which could indicate reluctance to use statistical data as evidence in court.

- c) *Please illustrate the most important case law in this area.*

The case law remains non-existent.

- d) *Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

There are no legal provisions permitting or prohibiting the usage of data collection in cases of discrimination. In general, the collection of personal data must proceed under the strict requirements outlined by the Law on the Legal Protection of Personal Data.²⁵ In order to collect data legally, the consent of the person concerned is required. Other requirements might be also necessary. For instance, in employment, the collection of data by employers in respect of specific features of employees would be legal only if the employer does not consider the requirement of law mentioned above.

²⁵ Lithuania / Asmens duomenų teisinės apsaugos įstatymas, Official Publication, Valstybės Žinios., 1996, Nr. 63-1479, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=314940 .



According to the Law on the Legal Protection of Personal Data, all information concerning the specific physiological, psychological, economic, cultural or social features of a person is considered as personal data. The Law also provides a definition of “special personal data”, which is data, related to person’s race, ethnicity, political, religious, philosophical or other views, membership in trade unions, data, related to persons health, sexual life as well as information about previous criminal conviction of a person. Such data can only be managed with a written consent of a person. The general rule is that it is forbidden to collect and manage such data. However, in case of litigation the law explicitly provides an exception. “Special data” can also be used for statistical purposes, only when strict anonymity is ensured. There are no other provisions in the Law on the Legal Protection of Personal Data, concerning the usage of ethnic data with the purpose of designing positive action measures.

The lack of proper statistical data is one of the obstacles to assess discrimination at national level. Competent institutions use statistical data to design positive action measures, however, this is not extensive and covers only relatively small amount of data, mostly taken from public opinion surveys. These surveys are usually performed by private companies on the basis of service contracts. Competent institutions (Department of Statistics etc.) lack capacity and financial resources to manage large scale data collection.

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

A definition of harassment, provided in the Law on Equal Treatment is compatible with the definition outlined in the Directives (covering all five grounds of discrimination): “Harassment shall be deemed to be undesirable conduct when, on the basis of age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language or social status, a person seeks to violate or violates the dignity of another and seeks to create or creates an intimidating, hostile and degrading or offensive environment.”

Specific forms of harassment on a number of grounds are also punishable under the Criminal Code and the Code of Administrative Violations. The Criminal Code, provides a definition of unlawful conduct comparable to unlawful harassment: “Article 169. Discrimination on the basis of nationality, race, sex, origin or religion. A person who has committed acts aimed at a certain group or members thereof on account of their nationality, race, sex, origin or religion 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 three years.”²⁶

²⁶ Lithuania / Lietuvos Respublikos Baudžiamojo kodekso 60, 129, 135 ir 138 straipsnių papildymo įstatymo projektas, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=322032&p_query=&p_tr2= .



This particular provision of the Criminal Code has rarely been used in practice.²⁷ Additionally, Article 170 of the Criminal Code also prohibits incitement or encouragement to discriminate against groups of persons or against a specific person, on account of various grounds.²⁸ Most of the criminal investigations with racist motivation are started on the basis of this article.

b) *Is harassment prohibited as a form of discrimination?*

The Law on Equal Treatment explicitly states, that harassment is a form of discrimination.

c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

Codes of practice are not applied in practice in Lithuanian legal system. Thus, no codes of practice on harassment exist and none are forthcoming.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case-law) prohibit instructions to discriminate?

If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The Law on Equal Treatment defines discrimination as follows: “Discrimination – direct, indirect discrimination, harassment, instruction to discriminate *on the basis of age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language or social status*”. Thus it is considered as discrimination.

There are no specific provisions, regarding liability of a legal person for instructions to discriminate. Criminal legislation contains provisions that would encompass “giving instructions to discriminate” on a number of grounds; however, as it was mentioned, these provisions have never been applied in practice in this context.

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. does national law define what would be a “disproportionate burden” for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

²⁷ Lithuania/Lietuvos Respublikos Generalinės Prokuratūra, Nusikalstamų veikų, padaromų dėl rasinės, etninės, tautinės, religinės neapykantos, kitokios netolerancijos ir diskriminavimo, ikiteisminio tyrimo rezultatų, problematikos, tendencijų ir prevencijos priemonių apibendrinimas, 2008-12-31, Nr. 12.14-41. Available in Lithuanian at:

<http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx> .

²⁸ Ibid.

Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

The duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. However, the wording of it lacks precision and is somewhat “softer” than that of the Directive. The Article 7 of the law states that while 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 adjusting premises, provided that the employer would not be disproportionately burdened with duties as a result.”²⁹ The provision has never been interpreted in practice neither by courts, nor at the Equal Opportunities Ombudsperson institution. Thus it is not clear, how it will be interpreted and how it should be applied in practice.

The law also does not provide any criteria to assess the duty as well as evaluate if it might be disproportionate. Thus financial assistance from the state in this respect is also not taken into account. In addition, the Law on Equal Treatment provides neither definition of disability, nor defines “reasonable accommodation”. It can be presupposed, that personal scope in the context of reasonable accommodation does not differ from general prohibition of non-discrimination on the ground of disability.

b) Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?

Specific system of additional support is established in the field of education. The Law on Education makes provides possibilities to accommodate students with special needs (special educational assistance, special study aids, social and medical care). Also Additionally, disabled students have the right to financial support granted by the state during their studies in higher education establishments and universities. However, the concept of “disproportionate burden” is not know in this realm

c) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?

As it was mentioned, there is no case law that could prove, that failure to meet the duty of reasonable accommodation counts as discrimination. The national provision, which transposes the requirement of the Directive is far from being clear and precise on this issue. It can be interpreted in various ways.

²⁹ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132



Additionally, there is no clear mechanism provided in the national law for the enforcement of such duty in practice.

d) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?

The duty to provide reasonable accommodation is not applied in respect of any other grounds.

e) Does the national law clearly provides for the shift of the burden of proof, when claiming the right to reasonable accommodation?

The shift of the burden of proof in cases of discrimination on the grounds, listed in Article 13 Directives was formally introduced to the Law on Equal Treatment only recently.³⁰ Current wording states, that shift of the burden of proof should be applied “*in courts, as well as in other institutions while investigating complaints regarding discrimination*”. Thus, in theory, if failure to provide reasonable accommodation would be interpreted as “discrimination”, the shift should be applied.

f) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

The law on the Integration of the Disabled³¹ requires the adaptation of the environment in a disability-accessible way. However it does not have any provisions on sanctions or supervision mechanism. Thus it is doubtful that failure to comply with this legislation can be considered as discrimination. In theory, one could use provisions of the Law on Equal treatment, which imposes the general duty on service providers and state and municipal institutions to implement equal opportunities, but it has never been done in practice.

g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

The previously mentioned law on the Integration of the Disabled³² guidelines on integration of the disabled for municipalities, state institutions as well as educational institutions and broad spectrum of other subjects. This also encompasses general duty to provide accommodation in a wide range of fields (employment, goods and services, transport, housing, education, etc.). Accessibility is defined very broadly, encompassing various fields. However it does not foresee a supervision mechanism.

³⁰ The latest amendment took place on 17.06.2008.

³¹ Lithuania/Lietuvos Respublikos Neįgaliųjų socialinės integracijos įstatymas, Official publication *Valstybės Žinios*, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987

³² Lithuania/Lietuvos Respublikos Neįgaliųjų socialinės integracijos įstatymas, Official publication *Valstybės Žinios*, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987



h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

There are various provisions in different laws, concerning people with disabilities and providing them with particular rights.

For instance, persons with disabilities are entitled to additional support and guarantees in the employment market according to the Employment Code.³³ The system of giving additional support to employers employing disabled people is created on the basis of the Law for the Support of Employment.³⁴ Disabled people are included in the list of unemployed people who have the right to additional support. According to the rules for providing additional support to unemployed people in the labour market, the employer can receive special subsidies if s/he creates additional workplaces for disabled people. This law does not assist employers who retain an employee who has become disabled while in post. In this case the general rules provided in the Employment Code must be applied.

Secondly, the specific system of additional support is established in the field of education. The Law on Education³⁵ makes provision for the creation of possibilities for students with special needs (special educational assistance, special study aids, social and medical care). Students with disabilities have the right to financial support granted by the state during their studies in higher education establishments and universities.

There are other provisions in other legislation (concerning the territorial planning, etc.), however, they cannot be enforced through the Law on Equal Treatment.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

National legislation has already created a system for encouraging employers to employ people with disabilities. As mentioned above, disabled people are included in the list of unemployed persons who have the right to additional support. According to the rules relating to unemployed people who are entitled to additional support in the labour market, the employer may receive special subsidies if s/he creates additional workplaces for disabled people. However, it should be noted that these subsidies are still not sufficient.

The Law on Social Enterprises³⁶ passed in creates incentives for employers to employ people with disabilities.

³³ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264

³⁴ Lithuania/ Užimtumo rėmimo įstatymas, Official publication *Valstybės Žinios*, 2006, Nr. 73-2762 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349684

³⁵ Lithuania/Lietuvos Respublikos Švietimo įstatymas. Official publication *Valstybės Žinios*, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350527

³⁶ Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas (Law on Social Enterprises). Official publication, *Valstybės žinios*, 2005, No. 85-3137.



This Law also creates the basis for establishing social enterprises for disabled people. One of the goals of the amendments was to provide social enterprises for disabled people with a specific status. A social enterprise for disabled people is a specific type of social enterprise. In order to register this type of social enterprise, it is necessary to comply with certain criteria listed in the Law on Social Enterprises which states that no less than 50 per cent of the average annual number of employees recorded in the register of employees must belong to target groups of disabled people.

A social enterprise for disabled people has the same rights and duties as any other social enterprise, but it can receive additional financial support from the State. The law provides for financial support by the State to social enterprises in order to compensate for additional expenses related to employees from the target group (specific groups who are supported by the State, including people with disabilities) and lower productivity, limited efficiency, etc. Additionally, according to the Supplement to the Law on Profit Tax, the profit of social enterprises is taxed at a rate of 0 per cent, if these enterprises meet specific requirements. The Law on Public Procurement³⁷ simplifies purchases from companies which employ disabled people. The latest version of the Law on Public Procurement gives a right to the organisation to reserve a right to take a part in public purchase only for social enterprises for disabled people.

b) Would such activities be considered to constitute employment under national law?

The privileges of social enterprises are intended to further the professional integration of disabled people. Working in such an enterprise is considered to be equivalent to employment under national legislation.

³⁷ Viešųjų pirkimų įstatymas (Law on Public Procurement). Official publication, Valstybės žinios, 2005, No.X-471.



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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

There are no differences between Lithuanian nationals and other persons in cases of discrimination. Anyone may lodge a complaint of discrimination with the Equal Opportunities Ombudsman and everyone is entitled to a court hearing in cases of discrimination. The purpose of the Law on Equal Treatment is to ensure the application of human rights provisions laid down in the Constitution and to prohibit any direct or indirect discrimination based on age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

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

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Law on Equal Treatment does not explicitly distinguish between natural and legal persons. However, the phrase “persons” should be interpreted to encompass both legal and natural. This is supported by the practice of Equal Opportunities Ombudsperson institution, as well as other provisions of the law. For instance, 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 complaint regarding discrimination lodge by natural and legal persons.

Both natural and legal persons are liable for discriminatory acts. Natural persons can have administrative and criminal responsibility. Legal persons bear administrative liability (obligation to pay a fine in the case of violation of the Law on Equal Treatment) and criminal liability on the basis of the Article 170 of the Criminal Code

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

First of all, the national case-law on the subject is almost non-existent. Thus it is hardly possible to predict how it would be treated in practice. Only one case of discrimination was adjudicated at court. However, the scope of liability would depend on the situation and the law by which it is addressed. If discrimination is addressed via provisions of the criminal law, the liability is personal – only direct perpetrator (natural and legal person) would be liable.



If it is a labour dispute, usually the employer would be held liable and its employee could be involved as third party so that damages could be later claimed from direct perpetrator. The Equal Opportunities Ombudsperson, when applying administrative sanctions issues them to the executive body of a legal person (director, etc.) but not its employees.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

National legislation does apply to all sectors of public (including military and statutory office) and private employment. However, it is not precisely clear regarding self-employment. It is not explicitly mentioned in the Law on Equal Treatment, and legislation which regulates particular professions (attorneys, notary, etc.) lacks anti-discrimination provisions. Thus it is up to the interpretation of the Law on Equal Treatment. However, so far there is no practice regarding self-employment neither in courts nor in the Equal Opportunities Ombudsperson institution.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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)) Is the public sector dealt with differently to the private sector?

In relation to employment, the public sector is not dealt with differently from the private sector. The main provisions of national law concerning non-discrimination in the field of employment (recruitment conditions, promotion, professional training, etc.) are established in the Law on Equal Treatment. However, these provisions should also be transposed to specialised laws, governing self-employment, because it is not clear from the Law on Equal Treatment whether self-employment is covered.

The laws relating to specific professions, such as the Attorney Law,³⁸ Law on the Health Protection System,³⁹ Accountancy Law⁴⁰, Audit Law and Dentistry Law⁴¹ and others, do not contain non-discrimination clauses, definitions of discrimination on any regulations on protection against discrimination and lack direct prohibition of discrimination on grounds, covered by the Directives.

³⁸ Lithuania/Lietuvos Respublikos Advokatūros įstatymas, Official publication *Valstybės Žinios*, 2004, Nr. 50-1632.

Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319071

³⁹ Lithuania/Lietuvos Respublikos Sveikatos sistemos įstatymas, Official publication *Valstybės Žinios*, 1994, Nr. 63-1231.

Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319140

⁴⁰ Lithuania/ Lietuvos Respublikos Audito įstatymas, Official publication *Valstybės Žinios*, 1999, Nr. 59-1916. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=325076

⁴¹ Lithuania/ Lietuvos Respublikos Stomatologinės priežiūros (pagalbos) įstatymas, Official publication *Valstybės Žinios*, 2004, Nr. 4-36. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=232525



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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Occupational pensions are a new phenomenon - *Profesinių pensijų kaupimo įstatymas* [Law on Accumulation of Occupational Pensions]⁴² was introduced in the country only in June, 2006. It is not established in practice yet. The law does not contain explicit provisions regarding the application of non-discrimination law to occupational pensions. However, this does not mean the principle is not applied.

According to the Law on Equal Treatment, the actions of an employer shall be deemed discriminatory if he/she applies to one employee less (or more) favourable terms of employment or payment for work than to another. Employment contracts must be based on the conditions required by law. According to Article 95 of the Labour Code, the conditions of remuneration for work (system of remuneration for work, level of wages, payment procedure, etc.) is an essential part of every employment contract, that must be agreed upon. The employment contract cannot contain illegal provisions. Discriminatory terms of contract should be evaluated as a breach of the provisions of the Law on Equal Treatment. Thus the fact that the labour laws do not include special prohibitions of discriminatory conditions of contract does not negate the requirement to avoid provisions that may discriminate against a person under the Law on Equal Treatment.

3.2.4 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))

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning course?

The Law on Equal Treatment does not elaborate on "vocational training" and "education". National provision obliges employers to ensure the accessibility to vocational training, professional retrain, as well as raising of qualification. This means the training, closely related to work. The Labour Code does not elaborate on this in detail too. The case law on the matter is non-existent, thus it is not clear, whether training outside employment relationship (such as life long learning) would fall under the scope of national anti-discrimination legislation.

⁴² Lithuania/ Lietuvos Respublikos Profesinių pensijų kaupimo įstatymas. Official Publication *Valstybės Žinios*, 2006, Nr. 82-3248. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=323193



This also applies to training, provided outside the employment relationship (such as that provided by technical schools or universities).

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))

The provision, prohibiting discrimination with regard to membership and involvement in an organisation was introduced to the Law on Equal Treatment only when latest amendments took place in June, 2008. The provision repeats the wording of the directive. As there is no practice on the matter yet, it is not clear how it will function in practice.

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The existing Law on Equal Treatment does not explicitly state, that social security and healthcare fall under the scope of this law. There is a general duty to implement equal opportunities, which reads as follows (Article 5): “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 would be laid down without regard of gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status”.

It can be interpreted in a way, that this duty must be applied in the fields of social security and healthcare as well, since these fields are not mentioned among those, where, according to the law, the principle of non-discrimination is not applied. Thus it is not trying to rely on the exception embodied in Article 3(3), Directive 2000/78.

Social protection system is mainly regulated by the Law on State Social Security Insurance. However, this law does not have 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 health care are governed by a number of other special laws that cover areas such as social benefits,⁴³ health insurance and health care,⁴⁴ but these laws also lack non-discrimination provisions.

⁴³ Lithuania /Valstybinių šalpos išmokų įstatymas. Official publication *Valstybės Žinios*, 1999, 1994, Nr. 96-1873. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314524.

⁴⁴ Lithuania/Lietuvos Respublikos Sveikatos sistemos įstatymas, Official publication *Valstybės Žinios*, 1994, Nr. 63-1231. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319140



Thus without existing case-law as well as cases at the Equal Opportunities Ombudsperson institution, it is hard to tell whether the provisions of the Law on Equal Treatment could be interpreted to include social security and health care.

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

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of ‘social advantages’ or if discrimination in this area is likely to be unlawful.

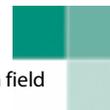
National anti-discrimination law does not explicitly address social advantages. The existing Law on Equal Treatment does not explicitly state, that social benefits fall under the scope of the law. Previously mentioned general “duty to implement equal opportunities” can be interpreted in a way, that it also covers social benefits, since social benefits are not mentioned among those exceptions, where, according to the law, the principle of non-discrimination is not applied. There is neither case law, nor Equal Opportunities Ombudsperson practice regarding social advantages. Numerous regulations, which address various social benefits (reduced rate bus tickets, childbirth grants, funeral grants etc.) do not contain anti-discrimination clauses.

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

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated “special” education is favoured and supported.

Generally all educational institutions, schools, science and academic institutions (public and private) are obliged under the Law on Equal Treatment to ensure, that the principle of non discrimination is applied in admitting to schools, awarding study grants, drafting educational programs, selecting curricula, assessing knowledge. However, there is a type of schools, which according to the law, enjoy exception from applying anti-discrimination law. In addition, the Law on Education states equal opportunities as one of the principles of the educational system.



One of the provisions of Article 3 of the Law on Equal Treatment, states, that the law would not apply to the acceptance for admission of persons to schools or other scholarly institutions, founded by religious communities or associations, as well as schools, institutions, organisations (where education is not the main activity of these bodies) founded by religious communities or their members, which were founded with the purpose of maintaining the values of these religious communities and associations, where the refusal to accept a person is necessary in order to preserve the ethos of these religious communities. The same rules apply to the process of education as well as selection of personnel to these schools.

This exception was included to the Law on Equal Treatment in June, 2008, thus its application is not clear. It is not clear which school and on which cases would be exempted from applying the law, since there is no practice on this issue yet. However, the debate over adoption of these exceptions in the parliament focussed largely on the issue of sexual orientation. Politicians from the conservative wing elaborated, that such provisions can be used to “protect” schools from homosexuals. The present wording is very broad, leaving the room for interpretations, that could breach the requirements of Employment equality directive 2000/78/EC.

The education of persons with disabilities is mainly governed by the Law on Special Education⁴⁵. It states the principles of the education of persons with special needs (persons with disabilities). The general policy of the state is to support the inclusive approach towards education of people with disabilities, by partially or fully integrating it to the mainstream education⁴⁶. Although precise statistical information about the education of people with disabilities is lacking however rough estimates show, that approximately 10% of all persons with disabilities, attending basic education, are placed in special institutions, while 90% are integrated into mainstream education system⁴⁷. According to the national law, parents have a right to choose a form of education for their child, however only to a certain degree. If special pedagogical-psychological institutions identify a degree of high special needs where education in a mainstream education is not possible, then the education of a child is taken by special education institutions or is exercised at home.

One of the main obstacles for successful integration of persons with disabilities in education remains a lack of proper financial support, insufficient quality of education in the mainstream educational system (lack of teachers assistants with special educational background, lack of methodological tools, lack of accessibility facilities, etc.). The under financing remained very high in recent years. In 2004 a governmental program of education of persons with special needs for 2005-2008 was set, identifying financial needs of the program. During the period, however, only 21,77% of initially planned financial resources were actually allocated⁴⁸.

⁴⁵ Lietuvos Respublikos Specialiojo Ugdymo įstatymas, 1998 m. gruodžio 15 d. Nr. VIII-969.

⁴⁶ Lietuvos Respublikos Vyriausybės 2002 m. birželio 7 d. nutarimas Nr. 850 Dėl Nacionalinės žmonių su negalia socialinės integracijos 2003-2012 metų programos patvirtinimo.

⁴⁷ Mokslinio tyrimo “Specialiųjų poreikių turinčių asmenų mokymosi aprėptis“ ataskaita, Kaunas, 2007. Available in Lithuanian at: http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/spec_poreikiai_smm_07.pdf.

⁴⁸ Lietuvos Respublikos Švietimo ir Mokslo ministro 2009 m. rugsėjo 3 d. įsakymas Nr. ISAK-1796 „Dėl Specialiojo ugdymo plėtros programos patvirtinimo“, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=352526&p_query=&p_tr2=



The lack of financial resources, lack of specialists in mainstream education institutions, the lack of accessibility for physically disabled persons, were as well identified as one of the main obstacles for successful integration by Children's Rights Ombudsman in one of its reports⁴⁹. In relation to the issues surrounding the education of the Roma, it should be noted that their general level of social integration is unsatisfactory. 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. This leads to discriminatory actions in all fields of life. Negative stereotypes of the Roma also persist in schools.

According to the latest available report on Roma education, the main reasons influencing Romas' learning difficulties are related to the lack of social skills, linguistic barriers and poor school attendance⁵⁰. Most Roma children (69%) did not attend either pre-school establishments, nor pre-school groups; participation in after school activities is uncommon among Roma. Thus it is more complicated to acquire social skills that would contribute to adaptation at school. There are no precise official statistics on how many Roma pupils attend school, however, data provided by NGOs and schools suggests that there is a positive tendency of increasing Roma attending schools. However, many Roma start attending school late (at around the age of 10) and this is usually the cause of dropping out and low attendance. Additionally, it seems that schools do not find ways how to solve problems related to poor attendance. According to the opinions of some experts, the most effective way of dealing with Roma problems at school and further social integration could be closer cooperation among several institutions and individual relations to Roma parents.⁵¹

What concerns major ethnic minorities (Polish and Russian), the situation is very different. To start with, education of ethnic minorities remains an issue only in culturally diverse areas of Lithuania and most importantly – the Vilnius region. Although the latest in-depth report⁵² on education in Vilnius region did not prove significant disparities or structural discrimination, some problematic areas, disadvantageous to minorities, can be identified. One of such is the dual system of subordination of schools raises concerns. The fact that part of the schools in the territory of Vilnius region municipality is subordinate to Vilnius County (these are mainly monolingual Lithuanian schools)⁵³ causes confrontation among communities. Although this *per se* does not identify discrimination, however the latest survey indicates that all communities consider it as negative, causing non-transparent competition and distance among communities⁵⁴.

⁴⁹ Neįgaliųjų vaikų situacija ir problemos Lietuvoje, Vaiko teisių apsaugos kontrolieriaus informacinis biuletenis Nr. 8, 2006.

⁵⁰ Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje, Socialinių tyrimų instituto etninių tyrimų centras, 2008 gruodis,

http://www.tmid.lt/wp-content/uploads/2009/05/sti_tmld_romu-padeties-tyrimas-2008_ataskaita.doc.

⁵¹ Romų bendruomenės socialinės integracijos galimybių tyrimas, Etninių tyrimų centras, tyrimo vadovas dr. Tadas Leončikas, 2007 m.

<http://www.lygybe.lt/ci.admin/Editor/assets/Romu%20integrac%20galimybes%20ataskaita.pdf>.

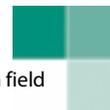
⁵² Mokymosi prieinamumas Vilniaus rajono gyventojams, LR Švietimo ir mokslo ministerija,

http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/Mokymosi_prieinamumas.pdf.

⁵³ Vilniaus rajono švietimo būklė ir problemos, Vilniaus rajono savivaldybė, 2007, <http://www.vilniaus-r.lt/index.php?id=3564>.

⁵⁴ Mokymosi prieinamumas Vilniaus rajono gyventojams, LR Švietimo ir mokslo ministerija,

http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/Mokymosi_prieinamumas.pdf.



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

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

The general rule of the Law on Equal Treatment is that it does not distinguish between goods and services, available to the public and those available privately. However, there is one exception to the rule. Religious communities or associations, as well as associations founded by these religious communities or their members, are not obliged to follow the Law on Equal Treatment, while providing goods and services, when the purpose of this provision is of religious character.⁵⁵

As this exception was introduced only during the latest amendments of the law (June, 2008), there is no existing practice of its application. However, there is enough room for interpretations, which could be used to justify discrimination of homosexuals. With regard to the Racial Equality Directive, the provision on goods and services does not explicitly mention housing, thus can be considered as not in line with directive.⁵⁶

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

There are no exceptions in the Law on Equal Treatment that would allow differences in treatment on the grounds of age and disability on the provision of financial services.

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

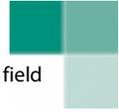
To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

The Law on Equal Treatment does not explicitly state, that housing falls under the scope of the law. On the other hand, housing is not mentioned among those exceptions, where, according to the law, the principle of non-discrimination is not applied. Municipal and state institutions and agencies must ensure that in all the legal acts, drafted and passed by them, equal rights and treatment would be laid down without discrimination. Thus this general duty “to implement equal opportunities” could in theory be interpreted in a way, that it also should be applied in the field of housing. However, there is neither case law, nor Equal Opportunities Ombudsperson practice regarding issue of housing.

⁵⁵ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115.

Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132

⁵⁶ Please see section 3.2.10 of this report.



Thus this uncertainty is clearly not in line with the Racial Equality Directive. The law also does not address the availability or promotion of housing, which is accessible to people with disabilities or older people.

Reliable data on housing remains scarce. No studies or research exist on segregation in the field of housing. However, Roma community is one of those groups, who face housing problems on a regular basis. In general, Lithuanian Roma live a settled life. Over half of Roma indicate that they have been living over 20 years in current city, town or village⁵⁷. Over one third of Roma questioned (38%) live in their own housing or property of their family members. Other big group (31%) is comprised of Roma who live in municipal housing. Roma living in Vilnius Kirtimai suburb face lowest living standards. Housing, as well as sanitary conditions are of unsatisfactory standing. On the other hand, most of the Roma's buildings in Kirtimai are illegally built so the possibilities to sell their property or change are very limited.

⁵⁷ Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje, Socialnių tyrimų instituto etninių tyrimų centras, 2008 gruodis,
http://www.tmid.lt/wp-content/uploads/2009/05/sti_tmld_romu-padeties-tyrimas-2008_ataskaita.doc.



4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The provision on genuine and determining occupational requirement is provided in the Law on Equal Treatment in a list of exception to direct discrimination. The national provision repeats the wording of the directive, and does not elaborate on it. The provision has never been considered neither by courts nor by Equal Opportunities Ombudsperson.

Some guidance on how such exception in general could be applied in practice can be found in the ruling of the Constitutional Court⁵⁸, which was passed much earlier than the Law on Equal Treatment. According to the Constitutional Court, differentiated legal regulation applying to certain groups of people, distinguished by the same criteria, and in which the regulation aims to achieve positive and socially meaningful goals, is not regarded as discrimination. In addition, special requirements or certain conditions relating to a group, which 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 to the education, qualifications, health or work experience of citizens who enter the civil service.

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

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

The Law on Equal Treatment does provide an exception, concerning occupation and involvement in employers with an ethos based on religion or belief. According to Article 3, the law would not apply to teachers, employees and personnel of religious communities, associations, centres, as well as associations and legal persons (the ethos of which is based on the same religion or belief to serve the same purposes) founded by these religious communities or their members, where, by reason of the nature of the activities of these subjects, 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 Law provide these organisations and institutions the right to require individuals working for them to act in good faith and with loyalty to the organization's ethos, as it is allowed by the Directive.

However, it must be taken into account that this exception was explicitly mentioned and included into the Law on Equal Treatment only during the latest amendments on June, 2008. The first edition of the Law did not contain the exception, thus there is no case law or interpretation on the matter.

⁵⁸ 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. Official publication, Valstybės žinios, 1998, No. 100-2791.



There is also no information available whether such practices had existed before the adoption of the directive in the country, in which organizations and to what extent they were used, since none of this discussed during the sitting in the Parliament, when the latest amendment took place.

The list of organisations, which could take advantage of this exception remains not clear. The wording of national provision is very broad and can be interpreted vary widely. Hardly this is compatible with the goals of the Directive.

Moreover, this could eliminate LGBT people from significant areas of public life. Some members of the Parliament, notorious for opposing homosexuality and protecting ‘traditional values’, during discussions on adoption of such exceptions identified the connection between these provisions and the issue of sexual orientation, and stated that it could be used as a “self-defence tool” for the elimination of ‘non-traditional’ sexual orientation from schools and the education system in general.⁵⁹

b) *Are there any specific provisions 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? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

Since previously mentioned provisions were introduced only recently, there is no case-law on the subject. However, conflict with respect to the ground of sexual orientation might arise in the future, since initial debate on introducing such amendment focussed on homosexuality. The Catholic Church played a significant role in the introduction of the previously mentioned provisions.⁶⁰ Bearing in mind openly negative attitude of the Church to sexual minorities in Lithuania, there is a possibility that these broad provisions would be used to discriminate not only on the grounds of religion or belief alone.

Moreover, this could eliminate LGBT people from significant areas of public life. Some members of the Parliament, notorious for opposing homosexuality and protecting ‘traditional values’, during discussions on adoption of such exceptions identified the connection between these provisions and the issue of sexual orientation, and stated that it could be used as a “self-defence tool” for the elimination of ‘non-traditional’ sexual orientation from schools and the education system in general.⁶¹

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

a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

⁵⁹ Stenograph of the Parliament sitting of 18.09.2007. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466

⁶⁰ The Minister of Social Affairs and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Bishop’s Conference, and that the draft law and these particular provisions were approved by Lithuanian Bishop’s Conference. Stenograph of the Parliament sitting of 18.09.2007. The text in Lithuanian can be found at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466

⁶¹ Stenograph of the Parliament sitting of 18.09.2007. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466



National law does not explicitly provide for an exception for the armed forces in relation to age or disability discrimination. In this case a general rule on genuine occupational requirement would apply.

b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

There are no provisions or exception relating to employment in the police, prison or emergency services explicitly mentioned in the Law on Equal Treatment. In this case a general rule on genuine occupational requirement would apply. However, there are other laws that provide special requirements for persons joining these institutions. First of all Lithuanian nationality is a requirement for joining the armed forces and the police. Certain health conditions are also required to serve in these forces.

c) *Are there cases where religious institutions can select people (on the basis of their religion) to hire or to dismiss from a job - when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

According to the Law on Education⁶² in order to become the teacher of religion, a person must be approved by religious community. It is an obligatory requirement. In case of Catholic church this is also elaborated between agreement with the Holy See⁶³ which states, that person, willing to teach religion must have a permit of a local bishop (*missio canonica*). This applies to all schools (state and private) as well as other institutions of formal education system.

4.4 Nationality discrimination (Art. 3(2))

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) *How does national law treat nationality discrimination? Does this include stateless status?*

What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?

Is there overlap in case law between discrimination on grounds of nationality and ethnicity (ie where nationality discrimination may constitute ethnic discrimination as well?)

⁶² Lithuania/Lietuvos Respublikos Švietimo įstatymas. Official publication *Valstybės Žinios*, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=350527

⁶³ Lietuvos Respublikos ir Šventojo Sosto sutartis "Dėl bendradarbiavimo švietimo ir kultūros srityje", Official Publication *Valstybės žinios*, 2000-08-09, Nr. 67-2024. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=106813&p_query=&p_tr2=



Generally, the law provides protection from discrimination to every person within jurisdiction of the country (notwithstanding to nationality or statelessness – the law does not elaborate on this). However, the Law on Equal Treatment, provides an exception with regard to nationality. However, discriminatory treatment must be justified and set by law. There are other laws, where the requirement of nationality is mentioned. For instance, Lithuanian nationality is required to join the civil service, intelligence services, police and armed forces. The Law on Citizenship does not define nationality (citizenship) discrimination. The definition of nationality can be given only by a systematic analysis of the provisions of the Law on Equal Treatment which defines discrimination generally.

The relationship between ‘nationality’ and ‘race or ethnic origin’ is not elaborated in the national law. In practice, certain confusion undoubtedly occurs, while considering nationality with discrimination on the ground of race and ethnic origin. Cases of multiple discrimination might arise in these instances. Nevertheless, there is no case law and no definite conclusions can be drawn on this subject. Lithuanian anti-discrimination law lacks commentaries and judicial practice is almost non-existent.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

The Law on Equal Treatment provides certain exceptions that seek to rely on Article 3(2) of both Directives. Direct discrimination shall not be taken to occur in regard to the requirement for knowledge of the State language, prohibition from taking part in political activities and different rights applied on the basis of citizenship if such exceptions have been provided for by the law. These exceptions are outlined in Article 3, Para.7 of the Law on Equal Treatment

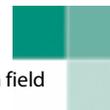
4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

The question of family-related benefits is not very common in the national context. In practice, such benefits are very rare and there is no actual case law in this field. However, such benefits are not directly prohibited either to married employees or to those with opposite-sex partners, neither in the Law on Equal Treatment, nor in any other legislation.

b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?



Private employers may choose to provide extra benefits to workers. A collective agreement or individual employment contract can govern these benefits (e.g. extra paid holidays for workers when they get married). According to the Law on State Social Insurance every biological or adoptive parent, regardless of their gender or marital status, is entitled to receive parental leave.

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

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

Article 279 of the Labour Code contains a general statement on the guarantees of health and safety at work for working disabled people: “Health and safety at work for working disabled people shall be guaranteed by this Code and other laws, as well as other legal acts regulating health and safety at work.”

The Labour Code does not regulate other grounds. The State Labour Inspectorate [Valstybinė darbo inspekcija] assesses whether the employment of a disabled person will result in a risk to health and safety. An employer can exclude a disabled person on the grounds that the work will pose a risk to the disabled person’s own health or safety (but not the health or safety of others). A disabled individual can decide for themselves whether they wish to accept such a risk. In this situation the employer will be excluded from liability should the disabled individual suffer harm.

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

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?

The Law on Equal Treatment repeats the wording of the directive regarding the exception of age. Since there is no case law on the matter, it is not known how the test for justification would be applied in practice.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Most of the age-based exceptions concern minimum and maximum age requirements for entry to certain professions (discussed under 4.7.3 section of this report). There are also prohibitions to access some goods and services for the protection of under aged.



- c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?*

Occupational pensions are a new phenomenon - *Profesinių pensijų kaupimo įstatymas* [Law on Accumulation of Occupational Pensions]⁶⁴ was introduced in the country only in June, 2006. Thus in general the occupational pension system is not established in practice yet.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The Labour Code regulates special conditions for younger and older employees. “Younger employees” are defined as those under the age of 18. These workers are prevented from working at night, they have a right to choose their vacation time and are entitled to 30 days’ holiday (the normal entitlement is 28 days). “Older workers” are workers who have five years or less to work until they reach retirement age. These workers must be notified four months in advance of any organisational restructuring, for example, merging of departments (other employees are notified two months in advance). According to the Labour Code, people with family care responsibilities are ensured protection if the child is under seven years old or, in the case of a disabled child, under 16 years old.

Additionally, the Labour Code provides additional guarantees to certain groups of persons. Priority in job security in the case of restructuring of employer organisation or poor financial situation is given to: employees, who were injured while employed in the same organisation, employees who are raising children under 16 years old, or taking care of a disabled family members, those who have 10 years of working experience in the entity, those, who have 3 years left to reach the pensionable age (Article 135). Additional guarantees are secured to pregnant women – they can be dismissed only on limited instances, set by law. Certain guarantees are secured to employees who are attending educational institutions (schools, universities, etc.).

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

The Labour Code sets the general minimum age for persons entering into labour contracts as workers at 16 years of age.

Children younger than 16 are forbidden to work, except in relation to artistic, cultural, advertisement or sporting activities under the conditions established by the Labour Code.

⁶⁴ Lithuania/ Lietuvos Respublikos Profesinių pensijų kaupimo įstatymas. Official Publication *Valstybės Žinios*, 2006, Nr. 82-3248. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=323193



Such activity must be proportionate to the child's age, not dangerous, must not jeopardise his/her education, school attendance or attendance of educational programmes and must not be harmful to his/her health, psychological or moral development. For specific professions, the age of competency differs, with the minimum age often set at 18 and usually dependent on some material condition relating to carrying out the work in question. The general minimum age for self-employment is 18, but in specific cases it can differ, according to special requirements for various types of self-employment, for example requirements for training or experience necessary for the proper execution of the activity.

For some professions different laws establish maximum age limits. For instance, the Law on the Courts establishes 65 as the maximum age for judges (the minimum age is established by this Law as 25 years) A judge's function is terminated *ex lege* on the day when s/he reaches 65. Similarly, a prosecutor's post is terminated on his/her 65th birthday. Work in public administration is terminated at the age of 62.5. The same applies to doctors under the Law on the Health Protection System.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

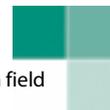
- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

Until 1995, women had the option of retiring five years earlier than men. After the amendments to the Law on State Social Insurance Pensions in 1995, the pension age was gradually raised both for men and women. The current pension age in Lithuania is 60 years for women and 62 years and six months for men.

According to the jurisprudence of the Constitutional Court, gaining of one constitutional right cannot deprive a person from gaining another Constitutional right.⁶⁵ Thus when a person reaches the age when he or she is entitled to a state pension, this cannot be considered as legitimate reason to terminate employment.

Article 129 of the Labour Codes states that age cannot be a legitimate reason to terminate employment contract.

⁶⁵ Lietuvos Respublikos Konstitucinio teismo 2002 m. lapkričio mėn. 25 d. nutarimas Dėl Lietuvos Respublikos diplomatinės tarnybos įstatymo 69 straipsnio 2 dalies, Lietuvos Respublikos valstybinio socialinio draudimo įstatymo 4 straipsnio (2000 m. kovo 16 d. redakcija) 1 dalies 9 punkto ir Lietuvos Respublikos valstybinių socialinio draudimo pensijų įstatymo 2 straipsnio (1999 m. gruodžio 16 d. redakcija) 1 dalies 5 punkto bei 23 straipsnio (1994 m. gruodžio 21 d., 2000 m. gruodžio 21 d., 2001 m. gegužės 8 d. redakcijos) atitikties Lietuvos Respublikos Konstitucijai // Valstybės žinios, 2002. Nr. 113-5057



- b) *Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

Occupational pensions are a new phenomenon - Law on Accumulation of Occupational Pensions was introduced in the country only in June, 2006. Thus in general the occupational pension system is not established in practice yet.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

The general rule is that compulsory retirement is not permitted, with exceptions to certain professions: for instance, there are compulsory age limits for judges, who retire by law at the age of 65.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

No, the law does not permit the setting of retirement age in these ways.

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

The laws protecting employment rights are applicable to all workers irrespective of age. No rights can be lost on attaining pensionable age. Article 92 of the Labour Code provides that people who have no more than five years until they reach pension age may be provided with additional guarantees. Article 135 of the Labour Code provides that, in the event of a reduction in the number of employees on economic or technological grounds or due to the restructuring of the workplace, the right of priority for job retention shall be enjoyed by those employees who will be entitled to the old age pension in no more than three years.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

No, the law does not permit the use of age as ground for selecting workers for redundancy. On the contrary, there are some guarantees, provided for senior workers. According to the Employment Code, the priority to remain working is granted to persons who have only three years remaining before they reach pension age.

- b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*



Age is taken into account, to the extent that the amount of compensation depends on the time the worker was employed in that particular company or institution.

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

There are no such exceptions. No information about a public debate on whether these various age limits are compliant with the requirements of the Directive is available.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The requirement to know the state language as well as prohibition to participate in political activities are listed as exceptions. These exceptions are elaborated in other laws. For example, those serving in the armed forces or police cannot be members of a political party. However, in the field of private employment, there are no specific exceptions.



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

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic*

The Law on Equal Treatment provides exceptions to direct discrimination, that should be interpreted as allowing positive action: (1) special measures applied in healthcare, work safety, employment, labour market sphere while striving to create and apply conditions and opportunities guaranteeing and promoting the integration of the disabled into the labour environment; (2) special temporary measures applied while striving to ensure equality and bar the way to violation of equal treatment on the basis of age, sexual orientation, disability, racial ethnic, religion, beliefs or convictions, language or social status;

The concept of positive action is not well established at national level. There is no consistent jurisprudence on the topic, neither political debate. Although various measures exist in practice, but consistent legal/political approach is lacking.

- b) *Do measures of positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights based measures.*

Article 92 of the Labour Code provides that additional guarantees can be established to facilitate access to the employment market for certain vulnerable groups, including disabled people, people who have no more than five years until their entitlement to an old age pension and graduates of vocational schools and schools of advanced and higher education who are commencing a career in their area of work.

Currently, support related to the employment of the above-mentioned groups is regulated by the procedure approved by the the Minister of Social Security and Labour, special Employment Plans to be produced for such individuals when they register at an employment exchange. In cases where they are not employed within three months of the date of registration, measures are taken to provide/adapt jobs for these people. Jobs may be established/adapted in any organisation or enterprise that demonstrates continuous activity. Persons with disabilities are entitled to additional support and guarantees in the employment market according to the Employment Code.⁶⁶ The system of giving additional support to employers employing disabled people is created on the basis of the Law for the Support of Employment.⁶⁷ Disabled people are included in the list of unemployed people who have the right to additional support.

⁶⁶ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

⁶⁷ Lithuania/ Užimtumo rėmimo įstatymas, Official publication *Valstybės Žinios*, 2006, Nr. 73-2762 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349684



According to the rules for providing additional support to unemployed people in the labour market, the employer can receive special subsidies if s/he creates additional workplaces for disabled people.

Additionally, the specific system of additional support is established in the field of education. The Law on Education⁶⁸ makes provision for the creation of possibilities for students with special needs (special educational assistance, special study aids, social and medical care). Students with disabilities have the right to financial support granted by the state during their studies in higher education establishments and universities.

There are other provisions in other legislation which foresee positive discrimination measures with respect to integration of the disabled.

The government approved a number of policy documents in 2008, that foresee various measures: the National Anti-discrimination Programme for 2006-2008⁶⁹, Strategy on the Development of the National Minority Policy until 2015⁷⁰. One of the main policy developments with regards to social inclusion was the adoption of the Programme of the Integration of Roma in Lithuanian Society for 2008 – 2010 in March 2008⁷¹. The programme, contrary to its previous version is mainly aimed at improving Roma unemployment and the education situation. It can be evaluated as a very positive initiative, directly aimed at the reduction of poverty and fighting social exclusion of Roma. Significant resources were allocated for training courses, state language education activities and support for cultural projects of ethnic minorities.

Besides that, the government was implementing other policy documents: the Action Programme for the Integration of National Minorities into Lithuanian Society for 2005–2010, National Anti-discrimination Programme for 2006–2008, Measures to tackle poverty and social exclusion 2007-2008. The issues of ethnic minorities are rather well taken into account in both programmes, however there is no focus on minorities as well as migrants in the list of measures to tackle poverty and social exclusion. It seems that the issues of minorities and migrants were not at the top of the agenda for the Ministry of Social Affairs and Labour in the field of social exclusion and fighting poverty. The action of the ministry was dominated by measures to integrate people with disabilities, as well as elderly, fighting gender discrimination.

However, some positive developments are reflected in the Strategy on Ethnic Minority Policy Development until 2015⁷², which changed the previous Programme for the Integration of National Minorities into Lithuanian Society for 2005–2010.

⁶⁸ Lithuania/Lietuvos Respublikos Švietimo įstatymas. Official publication *Valstybės Žinios*, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350527

⁶⁹ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo“, 2006 m. rugsėjo 19 d. Nr. 907.

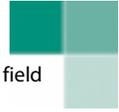
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=,

⁷⁰ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=, accessed May 6, 2009.

⁷¹ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309.

⁷² Lietuvos Respublikos Vyriausybės nutarimas „Dėl tautinių mažumų politikos plėtros iki 2015 metų strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132.



The Strategy takes very well into account the situation of minorities in the labour market and foresees significant number of measures, directly aimed at social inclusion, reduction of poverty and lack of state language.



6. REMEDIES AND ENFORCEMENT

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

In relation to each, of the following questions please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?

No special judicial, administrative or conciliation procedures for cases of discrimination exist at national level. Mediation in discrimination dispute is also not known to the national law. According to national legislation, persons who have experienced discrimination have several procedural ways to protect their rights established by the Constitution and legislation.

Firstly, the Constitution of the Republic of Lithuania guarantees the right of every person to appeal to a court for the protection of rights under the Constitution which have been violated. The general principle of equality of persons is embodied in a number of laws (e.g. Civil Code of the Republic of Lithuania, Labour Code). However, the Code of Civil Procedure and other procedural laws do not comprise special judicial, administrative or conciliation procedures for cases of discrimination. Thus, in civil or administrative cases, victims of discrimination must rely on general procedures, which can be very difficult to apply in discrimination cases. So far there has been only one case on discrimination brought to the court.

In practice, a person, willing to address courts 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 a few legal aid clinics (mostly staffed by law students) are in operation, state legal aid needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in courts.

In the case of a labour dispute, a person could take advantage of procedures established by the Labour Code.⁷³ However, it must be mentioned that the Labour Code does not directly make provision for any sanctions for workplace discrimination; these sanctions are provided for in the *Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas* [Administrative Violations Code].⁷⁴ A person can address the *Darbo ginčų komisija* [Employment Disputes Commission] or courts directly.

⁷³ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264

⁷⁴ Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official publication, *Valstybės Žinios*, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314423.



According to the Labour Code, the establishment of *Darbo ginčų komisija* [Employment Disputes Commission] in a company, agency or organisation rests with the employer. The Commission comprises an equal, unspecified number of representatives of the employees and the employer. An employees' meeting elects the employees' representatives. The employer appoints the representatives of the employer. The commission can award compensation to an individual in a case of discrimination which is generally prohibited under the Labour Code (a sum of up to twice his or her annual salary can be awarded where a person proves that, as a result of a discriminatory act, he or she cannot continue to work in the same position.)

Additionally, it is possible to address the *Valstybinė darbo inspekcija* [State Labour Inspectorate], which controls compliance with laws regulating labour relations and inspects for compliance with the provisions of the Labour Code, including those related to employment contracts, payment for work, organisation of work and rest periods, as well as the enforcement of relevant resolutions of the government of the Republic of Lithuania and orders of the *Socialinės apsaugos ir darbo ministerija* [Ministry of Social Security and Labour]. Theoretically, the State Labour Inspectorate could impose administrative sanctions on employers who discriminate against employees, and thus violate the provisions of the Employment Code. Sanctions are imposed by a general provision in the Administrative Violations Code.⁷⁵ In practice, however, State Labour Inspectorate officials do not address issues of workplace discrimination in practice.

People who believe that their rights have been infringed by individual administrative actions or actions (or omissions) of civil servants or municipality employees in the sphere of public administration, including social protection, social advantages, education and access to and supply of goods and services available to the public, have the right to file a complaint with *Administracinių ginčų komisija* [Administrative Disputes Commission] under the Law on Administrative Disputes Commissions or with the Administrative Courts under the Law on Administrative Proceedings.

Another possibility is to start a criminal process under the previously mentioned provisions of the Criminal Code of the Republic of Lithuania, including the provision which prohibits discrimination (Article 169). However, in this case, only severe discriminatory acts can be brought before the court, and so far these provisions have rarely been used in practice.

Finally, the most widely used possibility in practice is to address the Equal Opportunities Ombudsperson. The Office of the Equal Opportunities Ombudsperson was created by the Law on Equal Treatment, which expanded the mandate of the previous institution (the Ombudsman of Equal Opportunities for Men and Women), and can thus be considered as a national equality body in terms of Article 13 of Race Directive 2000/43/EC. The procedure at the Office of the Equal Opportunities Ombudsperson is quite simple and reasonably inexpensive. Each natural or legal person has a right to file a complaint with the Equal Opportunities Ombudsperson about the violation of rights to equal treatment. Complaints should be made in writing: the complainant or her or his representative may send the complaint to the Equal Opportunities Ombudsperson by post, fax, e-mail or bring it in person to the office.

⁷⁵ Article 41. Violation of Employment Laws and Normative Acts Regulating Health and Safety at Work. 'A violation of employment laws and normative acts regulating health and safety at work is punishable by a fine for employers or their authorised representatives to the amount of 500 to 5,000 Litās.'



If a complaint has been received by word of mouth or by telephone, or if the Equal Opportunities Ombudsperson has found indications of violation of equal rights in the mass media or other sources of information, the investigation may be started on the initiative of Ombudsperson. The Ombudsperson may also decide to investigate anonymous complaints. The time-limit for filing complaints is three months after the commission of the acts against which the complaint is being filed. Complaints filed after the expiry of this time-limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise.

The decisions of the Equal Opportunities Ombudsperson when applying administrative sanctions are of binding character. However, they can be overruled by court. Addressing Equal Opportunities Ombudsperson does not prevent complainant to address the court on the same matter.

The Ombudsperson institution, often acts as a mediator in practice. Since, according to the Ombudsperson, peaceful resolution of discrimination is one of the main objectives of the Ombudsperson activity.⁷⁶ On the other hand, such activities, exercised by the Ombudsperson have never brought compensation to the victim.

b) Are these binding or non-binding?

All of the previously mentioned procedures result in a decision which is binding to the parties of the discrimination dispute.

c) Can a person bring a case after the employment relationship has ended?

According to Article 27 of the Employment Code, the general time limit for a person to bring a case is three years after the discriminatory act has occurred. This term is not applied to the requirements of defence of honour and dignity of the employee. A person can bring a case after the employment relationship has ended. An individual may apply to the Employment Disputes Commission within three months from the day when s/he found out or ought to have found out about the violation of his or her rights.

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

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

Formally the requirements of the Directives in this respect were transposed to the Law on Equal Treatment only in June, 2009.

⁷⁶ The Equal Opportunities Ombudsperson annual reports 2005, 2006, 2007. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.



The wording of the Article 12 Paragraph 2 of the Law on Equal Treatment states, that associations, whose field of activity, as stated in their founding documents, encompasses representation of victims of discrimination on a particular ground of discrimination at courts, have a right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedure, in a manner prescribed by law.⁷⁷ This provision does not concern trade unions.

According to Code of Civil Procedure⁷⁸ (which is also applied in labour disputes), the association could be involved in a discrimination case in support of the victim, if the cases concern the rights and responsibilities of association. In all cases it is up for the court to decide whether organisation has a legitimate interest to participate as a third person in support of the complainant.

b) *on behalf of one or more complaints (please indicate if class actions are possible)*

Despite previously quoted provision of the Law on Equal Treatment, under current procedural legislation, legal representation by associations or NGOs in civil courts on behalf of the victim is barely possible.

According to Paragraph 1 of Article 56 of the *Civilinio proceso Kodeksas* [Code of Civil Procedure] of the Republic of Lithuania, legal representation of persons is exercised almost exclusively by attorneys, with only a few exceptions granted to trade unions representing their members, and to persons with a degree in law in cases involving legal representation of their relative or spouse.⁷⁹ According to Paragraph 2 of Article 56 of the Code, other persons of law could represent a party in a legal dispute, but only as a subsidiary to attorneys or attorneys' assistants acting as primary legal representatives.

According to Article 49 of the Code of Civil Procedure of the Republic of Lithuania, in certain cases prescribed by law the possibility exists for 'other subjects' to pursue a class action on behalf of a group of persons.⁸⁰ However, the detailed procedure in such cases is not clear, because as yet no class-action case has been brought to court by NGOs.

However, it is theoretically possible for NGOs and associations to engage in administrative procedure on behalf of the victim in administrative courts.

According to Article 49 Paragraph 3 of the Law on Lithuanian Administrative Procedure,⁸¹ mandatory legal representation is 'usually, but not necessarily' exercised by an attorney, which leaves an opening for possible representation by associations.

⁷⁷ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132

⁷⁸ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205

⁷⁹ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205

⁸⁰ Ibid.

⁸¹ Lithuania/Lietuvos Respublikos Administracinių bylų teisenos įstatymas. Official publication, *Valstybės Žinios*, 1999, Nr. 13-308. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312242.



However, this opportunity has never been used in practice, and it is hard to predict whether it would be accepted by the courts.

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The shift of the burden of proof in respect to the grounds, covered by Article 13 Directives was formally introduced to the Law on Equal Treatment only in June, 2008.⁸² Current wording repeats the provision of the Racial Equality Directive, not going into details. Despite the implementation gap which existed in the law, the Equal Opportunities Ombudsperson applied the shift of the burden of proof while investigating complaints since 2005 (as the Ombudsperson is not bound by the Code of Civil Procedure).

However, taking advantage of this provision at courts of civil jurisdiction might be difficult in practice, since the Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant.⁸³ There are no any other legal acts, which would explain the procedure in anti-discrimination case in detail, thus the interpretation of the law would depend on the judge. This is approved by the first and so far the only one existing discrimination case. The provision on the shift of the burden of proof was not in the Law on Equal Treatment at the time of the hearing, thus the judge stated that the hearing was based on general principles of the Code of Civil Procedure (competitiveness, the obligation for both parties to prove their statements)⁸⁴.

The government is aware that certain amendments to the Code of Civil Procedure should be introduced in order to bring more legal certainty. It initiated an amendment to Article 178 of the Code of Civil Procedure to include provision for the shift of the burden of proof in discrimination cases.⁸⁵ However it did not manage to convince the members of the Parliament to approve it,⁸⁶ and the draft amendment was dismissed.

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

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

⁸² The latest amendment took place on 17.06.2008.

⁸³ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.

⁸⁴ Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.

⁸⁵ Lithuania/ Civilinio proceso kodekso 178 straipsnio pakeitimo ir papildymo bei priedo papildymo įstatymo projektas, Nr. XP-2349, 2007-06-19. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299949&p_query=&p_tr2=

⁸⁶ Stenograph of the Parliament sitting of 27.06.2007. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811.

The provision on the Law on Equal Treatment repeats the wording of the Directives, saying that an employer is obliged to take necessary measures to ensure that employees are protected against dismissal or other adverse treatment which could occur as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment. The national law does not elaborate on which measures particularly should be taken. Thus presumably all persons, involved in the dispute should be protected.

It also must be added, that before the latest amendments of June, 2008 took place, the national provision, had limited the protection from victimization only to those employees who directly file a complaint against discrimination.

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

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

The Criminal Code provides sanctions for severe discriminatory behaviour, which can comprise (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.⁸⁷ However, only one investigation on the basis of this article was started since 2003 and no sanctions have been brought.⁸⁸

Civil sanctions in the discrimination dispute (in the form of the right to claim compensation) have been formally introduced to the national law only recently. According to Paragraph 2 of Article 6.250 of the Civil Code of the Republic of Lithuania,⁸⁹ non-pecuniary damages in a civil case can be claimed only in cases prescribed by law. The right to claim compensation in case of discrimination on grounds, covered by Directives was introduced to the Law on Equal Treatment in June, 2008.⁹⁰ Thus no cases regarding this were brought to the court yet.

However equality of persons is one of the principles of law, embodied in Labour Code.⁹¹ Thus a person has a right to bring civil action against employer and claim compensation in case of discrimination in a workplace. This particular option was used in the first and so far the only one discrimination case, brought to the court in Lithuania.⁹² At the time of the action, the right to claim compensation regarding breach of the Law on Equal Treatment was non-existent, thus the provisions of the national anti-discrimination legislation were not tested in practice.

⁸⁷ Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141.

⁸⁸ Lithuania/ Generalinės Prokuratūros Specialiųjų Tyrimų skyriaus veiklos 2007 m. ataskaita, 2008-01-29 Nr. 12.14-2 Vilnius. Available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx>.

⁸⁹ Lithuania/Lietuvos Respublikos Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis Kodeksas. Official publication, *Valstybės Žinios*, 2000, Nr. 74-2262. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299402.

⁹⁰ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

⁹¹ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

⁹² Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.



The court ruled in favour of the applicant and awarded her with a compensation of 2864,98 Litas (approximately 830 Euros).⁹³ So far this remains the only case of compensation for a victim of discrimination and a financial penalty for perpetrator.

The decisions of the Equal Opportunities Ombudsperson remain the most widely used sanctions for perpetrators. As it was mentioned, the Ombudsperson is usually issuing a warning or providing recommendation to halt discriminatory practices. It can also issue administrative sanctions – fine for up to 4000 Litas (1158 Eur) – which are embodied in the Administrative Violations Code of the Republic of Lithuania.⁹⁴ However, the Ombudsperson rarely exercises this function in practice. The Ombudsperson stated numerous times in its annual reports, that it does not consider fine an effective option to solve discriminatory situations. On the other hand, if Ombudsperson issued fines, they could be challenged at court, which would result in litigation, causing extra burden to the Ombudsperson staff. However, even if it would, these administrative sanctions can hardly be considered to be of effective, proportionate and dissuasive character. In addition, the decisions of the Ombudsperson do not have any compensatory effect to the victim.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

There is no limit to compensation for non-pecuniary damages, suffered because of discriminatory behaviour.

c) Is there any information available concerning:

- the average amount of compensation available to victims

- the extent to which the available sanctions have been shown to be - or are likely to be effective, proportionate and dissuasive, as is required by the Directives?

So far there has been only one discrimination case in national courts. Most of the sanctions, in discrimination cases are applied by the Equal Opportunities Ombudsperson, when it is implementing its quasi-judicial role. In most cases the Ombudsperson issues warnings and recommendations to halt discriminatory behaviour. Out of all decisions on all grounds of discrimination administrative sanction (fine) was issued 6 times. (2005 – 4 occasions, 2006 – 2 occasions; 2007 – 0, 2008 – 0).⁹⁵ In its yearly reports to the Parliament the Ombudsperson has stated on every occasion, that priorities are given to peaceful conflict resolution, rather than administrative sanctions which are not considered effective measure to prevent discriminatory behaviour.

Among the decisions that the Ombudsperson can take there is none that comprise some kind of compensation to the victim of discrimination.

⁹³ Ibid.

⁹⁴ Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official publication, *Valstybės Žinios*, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335295 .

⁹⁵ The Equal Opportunities Ombudsperson annual reports 2005, 2006, 2007. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7> .



7. SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that corresponds to the requirements of article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so)*

Lygių galimybių kontrolierius [*The Equal Opportunities Ombudsperson*] is the main national anti-discrimination body, founded in order to fulfil the requirements of the Racial Equality Directive. When the Law on Equal Treatment came in force in 2005 it expanded the mandate of the previous Moterų ir vyrų lygių galimybių kontrolierius [*Ombudsman of Equal Opportunities for Men and Women*]. Thus a new institution – the Equal Opportunities Ombudsperson – covering all grounds of discrimination, embodied in directives 2000/43/EC, 2000/78/EC and gender ground, started working since January 1st, 2005. The Ombudsperson supervises the implementation of the Law on Equal Treatment in the manner prescribed by the Moterų ir vyrų lygių galimybių įstatymas [*Law on Equal Opportunities for Women and Men*].⁹⁶ The Ombudsperson is financed from the fiscal budget. It is the main national institution dealing with equality and non-discrimination.

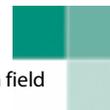
The budget of the Ombudsperson in 2008 was 1250 thousands litas (362 000 Eur), altogether 15 persons were employed.

- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The Ombudsperson is appointed by the Parliament for 5 years term (there is no limit of terms). The current regulation of the appointment of the Ombudsperson does not involve civil society. Since there is no board or other body, the Chairman of the Parliament may suggest a candidate to the Parliament for voting, without consulting civil society.

The requirements for the candidate are set in the Law on Equal Opportunities: an impeccable reputation, a university degree in Law, a minimum of 5 years experience in the field of law or a minimum experience of 5 years in office of municipal or state institution or agency. Before the start of service The Ombudsperson is obliged to take oath to Lithuanian state, impartiality and the rule of law. Thus a candidate to the post of Ombudsperson can be either experienced lawyer, or an experienced state official.

⁹⁶ Lithuania/Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official publication, *Valstybės Žinios*, 1998, Nr. 112-3100. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=330994.



The independence of the Ombudsperson is also ensured by the provision which prohibits the Ombudsperson from working any other job or involvement in any profit making activities with exception to creative or pedagogical work. The term of the Ombudsperson can be terminated by the Parliament only if the Ombudsperson is ill for a certain period of time as foreseen by law, the parliament exercises a no-confidence vote or Ombudsperson is convicted for a criminal offence.

The Office of the Equal Opportunities Ombudsperson is financed from the fiscal budget, thus financial independency is ensured by law.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

The Ombudsperson exercises its functions with respect to all grounds, covered by the Directives as well as gender, language, convictions and social status (the later 3 were added in June, 2008). In accordance with the Article 12 of Law on Equal Opportunities for Men and Women, the competence of the Equal Opportunities Ombudsperson encompasses three fields of activities only:

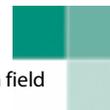
- 1) The investigation of complaints regarding direct, indirect discrimination, harassment and sexual harassment and provision of objective and impartial consultations with regard to this function;
- 2) Reporting on the implementation of this law to the Parliament, and submitting recommendations to governmental and municipal institutions and organisations of the Republic of Lithuania on the revision of legal acts and priorities in the policy of implementation of equal rights;
- 3) The exchange of information with analogous institutions of other Member States. Although awareness raising, research, surveying or other functions do not fall under the competence of the Ombudsperson according to the law, in practice, however, the Ombudsperson is involved in those activities. The Ombudsperson was appointed by the government to be the main national body, implementing the European Year of Equal Opportunities for All 2007.

Additionally, a number of educational, awareness raising and research functions were allocated to the Ombudsperson by the Government, since the Ombudsperson institution was involved in the National Anti-discrimination Programme for 2006-2008,⁹⁷ Governmental program for the Integration of Roma 2008 – 2010⁹⁸, Strategy on the Development of the National Minority Policy until 2015⁹⁹. Thus the government considers the Ombudsperson as the key institution for awareness raising and promotion of equal opportunities.

⁹⁷ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo“, 2006 m. rugsėjo 19 d. Nr. 907. Available in Lithuania at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=

⁹⁸ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=.

⁹⁹ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=.



- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

According to the law, providing independent assistance to victims of discrimination in pursuing their complaints about discrimination or conducting independent surveys concerning discrimination, as foreseen in the Article 13 of the Racial Equality Directive, does not fall under the competence of the Ombudsperson. These activities are also not exercised in practice.

According to the Article 27 of Law on Equal Opportunities,¹⁰⁰ the Ombudsperson is obliged to present annual report to the Parliament before March 15 of the next year. The annual reporting role of the Ombudsperson is exercised fairly well. All yearly reports are available on the website of the Ombudsperson. Although the decisions of the Ombudsperson are not posted on-line on a regular basis, extracts from the reasoning of it's decisions are put to the annual reports. No theme-specific or any other reports are drafted by the Ombudsperson, the national law does not provide obligation for Ombudsperson to report on other occasions.

Since drafting of additional reports or research does not fall under the competence of Ombudsperson, statistical information (which is rather scarce at national level) is neither managed, nor collected by the Ombudsperson. However, basic statistical information on the number of complaints received as well as trends those numbers identify is well reflected in annual reports of the Ombudsperson institution.

According to the law, the Ombudsperson is obliged to provide consultations for state or municipal institutions and organisations.¹⁰¹ In practice, the Ombudsperson is usually invited to advise the Parliament and the Government, as well as other governmental or municipal institutions, when issues of equal opportunities arise.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

Bringing discrimination complaints or intervening in legal cases does not fall under competence of the Ombudsperson. Since there has been only one case of discrimination in courts, there is not much practice for the Ombudsperson to be involved in legal cases. However, during the discrimination case the Ombudsperson was involved in proceedings, providing its expertise on the matter and assisting the victim in this way.

- f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions)*

¹⁰⁰ Lithuania/Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official publication, *Valstybės Žinios*, 1998, Nr. 112-3100. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312549.

¹⁰¹ Ibid



Quasi-judicial function is the main activity of the Ombudsperson, since the Ombudsperson can not only investigate the complaints, but also issue administrative sanctions in accordance with the Administrative Violations Code of the Republic of Lithuania.¹⁰²

The Ombudsperson may take the following decisions:

- to refer relevant material to public prosecution authorities if indications of an offence have been established;
 - to address an appropriate person or institution with a recommendation to discontinue actions violating equal opportunities, or to recommend a person or an institution to repeal its' legal act related to such violations;
 - to hear cases of administrative offences and impose administrative sanctions for violations of the Law on Equal treatment and the Law on Equal Opportunities. In accordance with Article 41(6) of the Administrative Violations Code, in such cases it can issue a fine of from 100 to 2,000 Litass (from 29 to 580 Euros approximately). Where the same violation is committed repeatedly, a fine of from 2,000 to 4,000 Litass can be imposed on the same subject.
 - to admonish those who have committed a violation;
 - to halt advertisement activities temporarily, if there is sufficient data to indicate that an advertisement campaign may incite hatred towards or encourage discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, ethnicity, age, disability, faith, religion or beliefs;
 - to issue binding decisions to stop discriminatory advertisement campaigns.
- The decisions of the Equal Opportunities Ombudsperson when applying administrative sanctions are of binding character, thus they can be challenged at court. Although the Ombudsperson was given competence to investigate complaints on discrimination, the decisions of the Equal Opportunities Ombudsperson do not include compensation for damage to the victim of discrimination. In practice the Ombudspersons usually issues a recommendation to stop discriminatory actions or admonishes those, who commit violation.

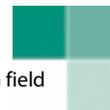
g) *Is the work undertaken independently?*

The independency of the Ombudsperson is ensured by the appointment procedure as well as financial independence – the institutions is financed from the state budget.

h) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

The Roma community certainly remains at the centre of attention of the Ombudsperson. However, due to the lack of complaints from Roma themselves not many discrimination instances were investigated by the Ombudsperson.

¹⁰² Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official publication, *Valstybės Žinios*, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=335295.



8. IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The Ombudsperson was appointed by the government to be the main national body, implementing the European Year of Equal Opportunities for All 2007. Additionally, a number of educational, awareness raising and research measures were foreseen in the National Anti-discrimination Programme for 2006-2008,¹⁰³ Governmental program for the Integration of Roma 2008 – 2010¹⁰⁴, Strategy on the Development of the National Minority Policy until 2015¹⁰⁵. Different information and dissemination measures were implemented.

- b) *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) and*

There has not been much initiatives by the government or the ministries directly, however, most of the initiatives aimed at fostering dialogue with NGOs were allocated to the Ombudsperson. In practice, while implementing national anti-discrimination measures, the Ombudsperson institution is involved in various projects, organised in cooperation with NGOs. Awareness raising, educational activities or research are exercised by the Ombudsperson or in partnership and cooperation with other institutions, non-governmental organisations. These activities were particularly visible in 2007 and 2008, when the Ombudsperson was one of the main institutions implementing the European Year of 2007 as well as the main institution, implementing national anti-discrimination programme for 2006-2008. It is difficult to assess, whether these efforts are sufficient to implement the requirements of directives. One must take into account, that national NGO scene is very weak and fragmented. In general, the government does not take NGOs seriously as partners. There is no governmental policy on the development of this sector. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), there are almost no ethnic minority NGOs, which work on lobbying or policymaking. Thus one could say, that demand for governmental actions is also weak, thus the efforts from the government are limited.

- c) *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)*

¹⁰³ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo“, 2006 m. rugsėjo 19 d. Nr. 907. Available in Lithuania at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=

¹⁰⁴ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=

¹⁰⁵ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=



This particular field is explored the least. There is no particular information available whether there were any initiatives implemented between social partners with focus on giving effect to principle of equality. Thus it can be said, that the government has not implemented the directives properly in this respect. Codes of practices or workforce monitoring are not commonly implemented in the country.

d) to specifically address Roma and Travellers

One of the main policy developments in 2008 with regards to Roma community, was adoption of the Programme of the Integration of Roma in Lithuanian Society for 2008 – 2010 in March 2008¹⁰⁶. Although such programme according to the plan had to be adopted in 2006 the initial adoption of it in 2008 is still a great achievement. The programme, contrary to its previous version is mainly aimed at improving Roma unemployment and the education situation. It can be evaluated as a very positive initiative, directly aimed at the reduction of poverty and fighting social exclusion of Roma. During the year the implementation of the programme contributed to the understanding of Roma unemployment and education programmes. Significant resources were allocated for training courses, state language education activities and support for cultural projects of ethnic minorities¹⁰⁷.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

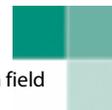
a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

As noted above, the principle of non-discrimination is enshrined in the Constitution. According to the Constitution, the Constitutional Court ensures constitutional legality by deciding whether laws and other legal acts adopted by the Seimas are in compliance with the Constitution and whether the acts adopted by the President or the government correspond to the Constitution and laws. An individual may contest provisions in agreements, contracts or rules relating to professional activity, workers and employers which, in his or her opinion, are contrary to the principle of equal treatment, using non-judicial or judicial procedures. S/he may base his or her position on the Constitution and the relevant international treaties, which Lithuania has an obligation to follow.

Such provisions may be contested before the courts. For instance, Article 36 of the Labour Code states: "3. By way of exception, only the courts shall have the prerogative to protect employment rights under the law in the following ways: 1) by recognising as invalid acts adopted by state institutions, municipalities or individual officers if the said acts are contrary to the law; 2) by not applying an act adopted by a state institution, municipality or individual officer, if that act is contrary to the law."

¹⁰⁶ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309.

¹⁰⁷ LR Tautinių mažumų ir išeivijos departamento 2008 m. veiklos ataskaita, www.tmid.lt.

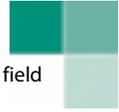


b) Are any laws, regulations or rules contrary to the principle of equality still in force?

In one way or another, the main laws regulating the various fields of everyday life have already been adapted in line with the new levels of equality provided for by Directives 2000/78 and 2000/43. However, there are some provisions of laws, regulations and rules still in force which are contrary to the principle of equality.

For example, religious communities which do not meet the registration criteria are still disadvantaged in that they cannot register as legal persons. The Law on Religious Communities and Associations makes a distinction between traditional and non-traditional religious communities. On the basis of historical and cultural criteria, the State recognises nine traditional religions.

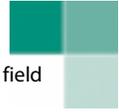
Another example is the Law on Citizenship. Analysing Articles 5 and 18 of this law, discriminatory situations may appear. If an individual accepts citizenship of another country, s/he is then only deprived of his or her citizenship of the Republic of Lithuania if s/he is not of Lithuanian ethnic origin. Institutions responsible for the implementation of Directives 2000/78 and 2000/43 work in the field of discriminatory legislation alongside non-governmental organisations and put forward proposals for amendments to discriminatory laws.



9. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

The main institutions, dealing with anti-discrimination issues are Ministry of Social Affairs and Labour (Department of Equal Opportunities), the Office of the Equal Opportunities Ombudsperson.



ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Lithuania

Date: September 2009

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
The Constitution of the Republic of Lithuania http://www3.lrs.lt/home/Konstitucija/Constitution.htm	November, 1992	Sex, race, nationality, language, ethnic origin, convictions, opinions, social status	Civil/Administrative / Criminal Law	Securing human rights in all spheres of life	Prohibition of unequal treatment and guarantee of fundamental human rights
The Law on Equal Treatment http://www3.lrs.lt/pls/inter3/dokpaleska.showdoc_1?p_id=324132	January, 2005 (latest amendments June, 2008)	Age, sexual orientation, disability, ethnic origin, religion, beliefs or convictions, language, social status	Civil/Administrative	employment, private employment, access to goods or services, education	prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Law on Equal Opportunities for Women and Men http://www3.lrs.lt/pls/inter3/dokpaleska.showdoc_1?p_id=330994	March 1999	gender	Civil/administrative	Public employment, private employment,	Prohibition of direct and indirect discrimination on the ground of gender,



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
				access to goods or services	sets the procedural rules of a specialised body (since 2005 an all grounds of discrimination)
Labour Code http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=311264	June, 2002	gender, sexual orientation, race, nationality, language, ethnic origin, citizenship, social status, religion, marital status, age, convictions or opinions, membership of political parties or other organisations	Civil	Employment	Prohibition of Discrimination in employment
Law on National Minorities http://www3.lrs.lt/DPAieska.html	January, 1991	Nationality, ethnic origin	administrative	Public and private employment, culture, education, etc.	Prohibition of discrimination on the ground of nationality or ethnic origin
Law on Social Integration of the Disabled http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=330987	January, 1991	Disability	administrative	Public and private employment, culture, education,	Prohibition of discrimination on the ground of disability



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
Law on Religious Communities and Associations http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=289917	October, 1995	Religion and beliefs	administrative	Public and private employment, culture, education, etc.	Prohibition of discrimination on the ground of religion
Law on Education http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=350527	June, 1991	All grounds	administrative	Education	Provides exceptions on application of non-discrimination in education



ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Lithuania

Date: September 2009

Instrument	Signed (yes/no)	Ratified (yes/no)	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)		Yes	No derogations	Accepted	Yes
Protocol 12, ECHR	No	No	No derogations		
Revised European Social Charter		Yes	No derogations	Ratified collective complaints protocol	Yes
International Covenant on Civil and Political Rights		Yes	No derogations	Accepted	Yes
Framework Convention for the Protection of National Minorities		Yes	No derogations		Yes
International Convention on Economic, Social and Cultural Rights		Yes	No derogations	Accepted	Yes
Convention on the Elimination of All Forms of Racial		Yes	No derogations	Accepted	Yes

Instrument	Signed (yes/no)	Ratified (yes/no)	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?
Discrimination					
Convention on the Elimination of Discrimination Against Women		Yes	No derogations	Accepted	Yes
ILO Convention No. 111 on Discrimination		Yes	No derogations	Accepted	Yes
Convention on the Rights of the Child		Yes	No derogations	Accepted	Yes
Convention on the Rights of Persons with Disabilities	Yes	No	No derogations		