



## **Executive Summary**

### **Country Report Lithuania 2008 on measures to combat discrimination**

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#### **1. Introduction**

Lithuania regained its independence from the Soviet union in 1990. The present Constitution of the Republic was approved by referendum in 1992. In May 1, 2004 Lithuania joined the EU, thus in a bit more than a decade significant changes in the legal system had to take place in order to meet the standards, set by the EU as well as the international community.

The lack of comprehensive data on the composition of society and communities vulnerable to discrimination in Lithuania remains quite a barrier to assess the real situation of particular minorities. The UN Committee on the Elimination of Racial Discrimination (CERD) also raised this issue in its latest observations as an obstacle to the assessment of progress towards the elimination of discrimination based on race, colour, descent, national or ethnic origin.

According to the latest most accurate data on the composition of Lithuanian society (2001 Census), Lithuania can be considered as rather homogenous country. Lithuanians account for 83.5% of the population, while only 29 nationalities account for one hundred or more people. The biggest minority groups are Poles and Russians. Poles make up 6.7%, Russians 6.3%, although there are some regional exceptions, where ethnic minorities form the majority of the population.

The same applies to religion and beliefs. 79% of the population consider themselves as Roman Catholics, 9.5% are non-believers, 4% are Orthodox and 7.5 % belong to other religious communities.

The issue of discrimination is relatively new phenomenon in the Country. Thus it is not surprising, that significant part of the population is not aware of it. Stereotypes and prejudice are also persistent particularly with some minority groups. Potential vulnerability of particular communities can be estimated while analyzing the data from yearly surveys on the opinion of society towards various minority groups. Social surveys reveal that the “hierarchy of intolerance” remains the same - Roma, Chechens, refugees are the least tolerated thus the most vulnerable groups to discrimination in Lithuania.

Homosexuals face wide ranging negative attitudes in everyday life. Prejudice towards gay people is deeply rooted in the mind of society. This is mostly the relict of the soviet past, since consensual homosexul relationship was considered a crime (such provision was removed from the countries criminal code only in 1992) and homosexuality was treated as mental illness.

Thus there are many challenges in order to eradicate discrimination.



## 2. Main legislation

The principle of equality of persons enjoys Constitutional status in Lithuania. The general principle of non-discrimination is repeated in various national legal enactments, including Labour Code, Civil Code and Criminal Code. Although every individual could defend his or her rights on the basis of Constitution, non-discrimination cases are almost non-existent in the country.

Lithuania is a party to a number of international agreements, which guarantee protection against discrimination on various grounds. According to the Constitution, international agreements which have been ratified by the Parliament form a constituent part of the legal system. The Law on International Agreements also 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.

However, the most important legal enactment on non-discrimination is the Law on Equal Treatment, which came in force in 2005 was particularly designated to ensure the implementation of EU anti-discrimination directives in to national legislation. It must be mentioned, that the law had been criticized by NGO's for being not in line with the requirements of EU law for a period of two and a half years. In June, 2008 latest amendment of the Law formally eliminated significant parts of implementation drawbacks.

## 3. Main principles and definitions

After latest amendments of June, 2008 some of the drawbacks in transposing main definitions were eliminated. Currently the Law in most cases repeats the wording of the Directives, not going into details of particular provisions, thus clarification of some concepts still requires judicial interpretation. Definitions of direct and indirect discrimination, victimisation and harassment repeat those provided by the directive, not going into details. Both natural and legal persons are protected from discrimination on all grounds of discrimination, listed in the directives. Besides prohibition of direct and indirect discrimination, discrimination by association, instruction to discriminate are also considered illegal.

However, some definitions still lack clarity. For example, the duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. 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 addition, 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 simply repeats the wording of the directive, and does not elaborate on it. As it has never been considered neither by courts nor by Equal Opportunities Ombudsperson it is not clear how it will be used in practice.

The concept of Multiple discrimination is not addressed neither by the law, nor by the practice of Equal Opportunities Ombudsperson. 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.

#### **4. Material scope**

The national anti-discrimination law is applied in both public and private sectors. It should be applied in employment, education, access to goods and services on all grounds, covered by the Directives. In addition, national anti-discrimination law also provides protection against discrimination on the grounds of social status, language and convictions.

However, part of the material scope, as defined by the directives is still missing protection by national law. The existing Law on Equal Treatment does not explicitly state, that social protection, social security fall under the scope of this law. The generally defined duty of state and municipal institutions and agencies 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 weather this interpretation is right.

Healthcare is also not explicitly mentioned in the law, thus one could only argue, that it falls under the general definition of “services”. The same applies to housing. 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. . Previously mentioned 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

#### **5. Enforcing the 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. In addition, the lack of 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.

Speaking about the evidence, the national law does not prohibit neither the use of statistical evidence, nor of situation testing. 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.

Situation testing, on the other hand, has already been successfully used in a discrimination cases, and such practice was approved by the court. Although there is no law that elaborates on the usage of situation testing or sets the procedure of its use.

In the case of a labour dispute, a person could take advantage of procedures established by the Labour Code, addressing the Employment Disputes Commission or courts directly.

People who believe that their rights have been infringed by individual administrative actions or actions (or omissions) of civil servants or municipality employees have the right to file a complaint to 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 proceedings under the 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.

However, most widely used possibility in practice is to address the Equal Opportunities Ombudsperson, who mainly performs quasi-judicial functions. 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. The decisions of the Equal Opportunities Ombudsperson when applying administrative sanctions are of binding character and can be sued by a court. Addressing Equal Opportunities Ombudsperson does not prevent complainant to address the court on the same matter. The Ombudsperson institution, however, can be considered as a mediator in practice. Since, according to the Ombudsperson, peaceful resolution of discrimination is one of the main objectives of the Ombudsperson activity. On the other hand, the mediation, exercised by the Ombudsperson has never brought compensation to the victim.

The support from various associations in discrimination cases is crucial, however, 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.

## 6. Equality bodies

In 2005 the Law on Equal Treatment expanded the mandate of the previous Ombudsperson institution. The Equal Opportunities Ombudsperson Institution is now the national equality body, covering all grounds of discrimination embodied in both directives and other grounds of discrimination. The Ombudsperson is an independent institution financed from the fiscal budget and appointed by the Parliament. The main function of the Ombudsperson is, however, quasi-judicial, since it can not only investigate the complaints, but also issue administrative sanctions. The decisions of the Ombudsperson do not have compensatory effect to the victim. 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, do not fall under the competence of the Ombudsperson. These activities are also not exercised in practice. Bringing discrimination complaints or intervening in legal cases also does not fall under competence of the Ombudsperson.

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 its 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.

However still, the government considers the Ombudsperson as the key institution for promotion of equal opportunities, thus it is involved in many awareness raising activities. In practice, while implementing national anti-discrimination measures, the Ombudsperson institution is involved in various projects. Awareness raising, educational activities or research are exercised by the Ombudsperson or in partnership with other institutions, non-governmental organisations.