

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
LITHUANIA**

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Chapter 1 The legal framework, definitions and scope

a. The legal framework

Article 1 (Racial Equality Directive and Employment Equality Directive)

Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?

Where there is no anti-discrimination law, the reports should make note of any relevant public or academic discussion, policy debate or legislative proposals at the national level. In particular, the reports should explain what any proposed legislation entails.

There is both a general and a ground-specific legal framework guaranteeing the principle of equal treatment or non-discrimination in Lithuania.

The **general legal framework** consists of Lithuania's obligations under international treaties, the Constitution and jurisprudence of the Constitutional Court of the Republic of Lithuania, and national legislation¹.

The Republic of Lithuania has either signed or ratified various 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 Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms, the Framework Convention of the Council of Europe 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 exit clauses in 2001².

Paragraph 3 of Article 138 of the Constitution of the Republic of Lithuania stipulates that international agreements that have been ratified by the *Seimas* of the Republic of Lithuania form a constituent part of the legal system of the Republic of Lithuania. The Law on International Agreements of the Republic of Lithuania³ 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. Similar provisions are contained in the Labour Code⁴.

The principle of non-discrimination is enshrined in Chapter 2 of the Constitution of the Republic of Lithuania⁵ under the heading "the Individual and the State".

¹ English translations of selected legislation may be obtained through Lithuanian Parliament website's search engine at <http://www3.lrs.lt/DPaieska.html>

² Lietuvos Respublikos įstatymas "Dėl 1996 metų Europos socialinės chartijos (pataisytos) ratifikavimo". Official Publication "Valstybės žinios", 2001, No. 49-1699.

³ Lietuvos Respublikos Tarptautinių sutarčių įstatymas. Official Publication "Valstybės žinios", 1999, No. 60-1948.

⁴ Lietuvos Respublikos Darbo kodeksas. Official Publication "Valstybės žinios", 2002, No. 64-2569.

⁵ Lietuvos Respublikos Konstitucija. Official Publication "Valstybės žinios", 1992, No. 33-1014.

Article 29 of the Constitution states: “A person may not have his or her 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.”

Article 25 of the Constitution stipulates: “Freedom to express convictions or impart information shall be incompatible with criminal actions such as the instigation of national, racial, religious, or social hatred, violence, or discrimination, or the dissemination of slander, or misinformation.”

Constitutional provisions regarding the principle of non-discrimination have been commented upon in a ruling of the Constitutional Court, which, according to Article 72 of the Law on the Constitutional Court of the Republic of Lithuania⁶ binds all governmental institutions, companies, firms, and organisations as well as officials and citizens. In its Ruling of 11th November 1998 “In compliance with Part 4 of Article 38 of the Republic of Lithuania Law on Elections to the *Seimas* and with Part 4 of Article 36 of the Republic of Lithuania Law on Elections to Local Government Councils with the Constitution of the Republic of Lithuania”⁷, the Constitutional Court proclaimed:

“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 court, 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 as changing the situation of a person or a group of persons with respect 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 on 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.”

Equal treatment in the employment market is regulated by the new Employment Code, in force since 1 January 2003. Article 2 of the Employment Code lists among the principles that regulate employment relations the “equality of subjects of employment law irrespective of their sex, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities.” Disabled persons are entitled to “additional support” in the employment market according to Article 92 of the Employment Code. The new Employment Code replaces a number of legal acts, *inter alia* the Law on the Employment Contract⁸ and the Law on Wages⁹ that also included provisions for prohibition of discrimination on the employment market. However, the anti-discriminatory provisions of the Employment Code are not backed by an appropriate mechanism for their enforcement, which significantly reduces their effectiveness.

Equal guarantees for foreigners are enshrined in the Law on the Legal Status of Aliens in the Republic of Lithuania¹⁰, Article 3 of which states that foreigners in the Republic of Lithuania are equal before the law regardless of their race, sex, colour, language, religion, political or other convictions, national or social origin, the fact that they belong to a national minority, their property, place of birth or any other status.

⁶ Lietuvos Respublikos Konstitucinio Teismo įstatymas. Official Publication “*Valstybės žinios*”, 1993, No. 6-120.

⁷ 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.

⁸ Lietuvos Respublikos Darbo sutarties įstatymas. Official Publication “*Valstybės žinios*”, 1991, No. 36-973.

⁹ Lietuvos Respublikos Darbo apmokėjimo įstatymas. Official Publication “*Valstybės žinios*”, 1991, No. 4-104.

¹⁰ Lietuvos Respublikos įstatymas “Dėl užsieniečių teisinės padėties”. Official Publication “*Valstybės žinios*”, 1998, No. 115-3236.

The principle of equal treatment is addressed by a number of Lithuanian laws, *inter alia* the Law on Education¹¹, the Law on Public Organisations¹², the Law on Access to Information from State and Municipal Bodies¹³, the Law on Political Parties and Political Organisations¹⁴, the Law on the Safety of People at Work¹⁵, the Law on the Support for the Unemployed¹⁶, the Law on Trade Unions¹⁷, the Law on the Fundamentals of the State Social Care System¹⁸, the Law on Public Service¹⁹, the Law on Refugee Status in the Republic of Lithuania²⁰, the Law on Presidential Elections²¹, the Law on Referenda²², the Law on Elections to the Seimas²³, the Law on Elections to the Municipal Councils²⁴.

For example, Article 3 of the Law on Presidential Elections states: “Any direct or indirect modification of a citizen of the Republic of Lithuania's right to vote on the grounds of their sex, race, nationality, language, descent, social status, religion, convictions, or views shall be prohibited.” Article 3 of the Law on the Safety of People at Work stipulates: “1. Every employee must be provided with safe and healthy working conditions, regardless of the type of activities of the enterprise, the type of contract (fixed-term or permanent), the number of employees, the profitability, the workplace, the working environment, the nature of work, the duration of the work day or work shift or the employee's citizenship, race, nationality, sex, sexual orientation, age, social origin, or political or religious convictions.”

The general legal framework will be significantly strengthened if a new Law on Equal Opportunities is passed by the Parliament. One of the objectives of the draft is to fulfil the requirements of the Racial Equality and Employment Equality Directives, which is specifically stated in its explanatory note. The draft law builds upon the Law on Equal Opportunities of Women and Men. It expands the mandate of the Equal Opportunities Ombudsman from only gender-based discrimination to a number of additional grounds, including racial or ethnic origin, religion or belief, disability, age and sexual orientation. Protection against discrimination by the Ombudsman would also be ensured in the employment market.

The draft law provides for all of the main definitions outlined in the directives; it establishes a duty to implement equal rights for state institutions, educational institutions, employers, and in the sphere of the protection of consumers' rights; it defines the violations of equal rights by employers, educational institutions, goods or service producers or providers, discriminating advertisements, and establishes the right of the victim to address a complaint to the Ombudsman for Equal Opportunities of Women and Men; and it establishes the function of control over implementation of the law as well as the processing of complaints with the Ombudsman for Equal Opportunities of Women and Men.

¹¹ Lietuvos Respublikos Švietimo įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 1998, No. 67-1940.

¹² Lietuvos Respublikos Visuomeninių organizacijų įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 1998, No. 59-1653.

¹³ Lietuvos Respublikos Teisės gauti informaciją iš valstybės ir savivaldybių įstaigų įstatymas. Official Publication “*Valstybės žinios*”, 2000, No. 10-236.

¹⁴ Lietuvos Respublikos įstatymas “Dėl Lietuvos Respublikos politinių partijų įstatymo pakeitimo”. Official Publication “*Valstybės žinios*”, 1994, No. 48-891.

¹⁵ Lietuvos Respublikos Žmonių saugos darbe įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 2000, No. 95-2968.

¹⁶ Lietuvos Respublikos Gyventojų užimtumo įstatymo pakeitimo ir papildymo įstatymas. Official Publication “*Valstybės žinios*”, 1996, No. 18-457.

¹⁷ Lietuvos Respublikos Profesinių sąjungų įstatymas. Official Publication “*Valstybės žinios*”, 1991, No. 34-933.

¹⁸ Lietuvos Respublikos Valstybinio socialinio aprūpinimo sistemos pagrindų įstatymas. Official Publication “*Valstybės žinios*”, 1990, No. 32-761.

¹⁹ Lietuvos Respublikos Valstybės tarnybos įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 2002, No. 45-1708.

²⁰ Lietuvos Respublikos įstatymo „Dėl pabėgėlių Lietuvos Respublikoje statuso“ pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 2000, No. 56-1651.

²¹ Lietuvos Respublikos Prezidento rinkimų įstatymas. Official Publication “*Valstybės žinios*”, 1993, No. 2-29.

²² Lietuvos Respublikos Referendumo įstatymas. Official Publication “*Valstybės žinios*”, 2002, No. 64-2570.

²³ Lietuvos Respublikos Seimo rinkimų įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 2000, No. 59-1760.

²⁴ Lietuvos Respublikos Savivaldybių tarybų rinkimų įstatymo pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 1999, No. 93-2710.

The draft law was registered at the Parliament in November 2002. An initial presentation of the draft was made to the members of the Parliamentary Committee on Human Rights and the Parliamentary Committee on Law and Law Enforcement. It was also presented by the Chairman of the Parliament at a national conference on equal opportunities in December 2002. The first reading at the plenary session of the Parliament was held in February 2003. The draft was approved by the Government (for further consideration by the Parliament) in May 2003. There is no widespread opposition to the draft law or any of the draft provisions from any of the main political parties.

Several round-table discussions were held with interest groups (academics, women's NGOs, gay and lesbian NGOs, public officials, NGOs of persons with disabilities, ethnic minorities, media representatives and youth representatives) in 2002 in the context of a project supported by the United Nations Development Programme. Workshops were held in each of the 10 counties of Lithuania with several regional public officials and NGO representatives present.

Most NGOs that were consulted expressed support for the initiative to expand the legal regulation of non-discrimination. For example, some NGOs representing disabled persons said that they would welcome the adoption of the draft law, which they considered to be a useful tool in ensuring the principle of equal treatment. Application of the principle of equal treatment irrespective of sexual orientation was generally not accepted by most of the consulted stakeholders.

The **ground-specific legal framework** consists of legislation specific to each of the grounds specified in the directives.

The principle of equal treatment regardless of racial or ethnic origin is proclaimed by the Law on Ethnic Minorities of the Republic of Lithuania²⁵. The Law states in its preamble: “The Republic of Lithuania shall guarantee to all its citizens, regardless of their nationality, equal political, economic and social rights and freedoms, and shall recognise its citizens’ ethnic identity, the continuity of their culture, and shall promote ethnic consciousness and the expression thereof.”

The principle of equal treatment regardless of religion or belief is embedded in the Constitution and the Law on Religious Communities and Associations²⁶. Article 26 of the Constitution proclaims:

“ Freedom of thought, conscience, and religion shall not be restricted.

Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.

...

A person's freedom to profess and propagate his or her religion or faith may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person’s health or morals, or the fundamental rights and freedoms of others.”

Article 3 of the Law on Religious Communities and Associations stipulates: “All persons, regardless of their religion, religious convictions or attitudes towards religion, are equal before the law. Direct or indirect modification of their rights and freedoms, or application of privileges is prohibited.”

²⁵ Lietuvos Respublikos Tautinių mažumų įstatymas. Official Publication “*Valstybės žinios*”, 1989, No. 34-485.

²⁶ Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas. Official Publication “*Valstybės žinios*”, 1995, No. 89-1985.

The Law on the Social Integration of the Disabled²⁷ establishes the principle of equal treatment on the ground of disability. Article 2 of the Law states: “1. In the Republic of Lithuania, the disabled, regardless of the cause, character and degree of the manifestation of their disability, shall be entitled to the same rights as other residents of the Republic of Lithuania. The state shall provide additional assistance and guarantees to disabled persons who cannot exercise their rights independently. ... 3. Disabled persons shall be protected from all types of exploitation, discrimination and abusive or scornful behaviour.” Lithuania has ratified the ILO Convention No. 159 on the Vocational Rehabilitation and Employment (Disabled Persons)²⁸.

There is no specific legal act providing for the principle of equal treatment on the ground of age. However, the Law on Equal Opportunities of Women and Men²⁹ was amended in 2002³⁰ to incorporate a non-discriminatory provision on age: “It shall be prohibited to specify requirements in job advertisements or education opportunities advertisements, giving priority to one of the sexes, with the exception of the case referred to in item 5, paragraph 3 of Article 2, and to request information from job seekers about their family status, age (notwithstanding the exceptions provided for in the law), private life or family plans.”

There is no specific legal act providing for the principle of equal treatment on the grounds of sexual orientation.

The level of protection of the different grounds of discrimination varies. While the grounds of racial or ethnic origin and religion or belief enjoy Constitutional protection, those of disability, age and sexual orientation do not. The legal framework covering disability is more elaborate than the provisions regarding age and is far more detailed than those concerning sexual orientation.

As described above, the national legislation also covers other grounds of discrimination, including language, origin, social status, convictions or opinions. Nationality (in the sense of citizenship) is not considered to be a valid entitlement to equal treatment. The legal status of foreign nationals is determined by the Law of the Republic of Lithuania on the Legal Status of Aliens.

However, the Collegium of Civil Cases of the Supreme Court in its ruling of 24 May 1999 (case No. 3K-3-165/99) has spoken on the application of the European Convention on the Protection of Human Rights and Fundamental Freedoms:

“... whilst considering any question related to human rights, one has to keep in mind that the Republic of Lithuania has ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms and Protocols thereto. The provisions of the Convention are applicable not only to the citizens of the Republic of Lithuania, but also to the foreigners who legally reside in Lithuania, because Article 1 of the Convention sets guarantees for persons who are within the jurisdiction of the state-party to the Convention ...”

b. The definition of discrimination

Article 2 (Racial Equality Directive and Employment Equality Directive)

²⁷ Lietuvos Respublikos Invalidų socialinės integracijos įstatymo pakeitimo ir papildymo įstatymas. Official Publication “*Valstybės žinios*”, 1998, No. 98-2706.

²⁸ Tarptautinės darbo organizacijos konvencija Nr.159 "Dėl (invalidų) profesinės reabilitacijos ir užimtumo". Official Publication “*Valstybės žinios*”, 1996, No. 30-741.

²⁹ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas. Official Publication “*Valstybės žinios*”, 1998, No. 112-3100.

³⁰ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymo 1, 2, 3, 8, 12, 24 straipsnių pakeitimo ir papildymo bei įstatymo papildymo 5⁽¹⁾ ir 7⁽¹⁾ straipsniais įstatymas. m. birželio 18 d. Nr. IX-956. Official Publication “*Valstybės žinios*”, 1998, No. 112-3100.

Direct and indirect discrimination

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?

Please make precise reference to the relevant legal provisions and case law.

The Law on Presidential Elections, the Law on Elections to the *Seimas* and the Law on Elections to the Municipal Councils contain the notion of “direct or indirect modifications of the right to vote”. For example, Paragraph 5 of Article 2 of the Law on Elections to the Municipal Councils reads: “Other direct or indirect modifications of the right to vote of citizens of the Republic of Lithuania on the grounds of their genetic origin, political convictions, social or property status, nationality, sex, education, language, religion, type and character of their occupation shall be prohibited.” However, no definitions of ‘direct or indirect modifications are provided.

There are definitions of direct and indirect discrimination only within the gender legislation. The Law on the Amendment of Articles 1, 2, 3, 8, 12, 24 and Supplementation by Articles 5⁽¹⁾ and 7⁽¹⁾ of the Law on Equal Opportunities of Women and Men introduced the following definitions:

“Article 2. Definitions

3. Direct gender-based discrimination – an act or an omission which expresses humiliation, contempt as well as modification of rights or granting of privileges, based on gender ...

4. Indirect gender-based discrimination – an act or an omission, or a legal norm or evaluation criterion, which is formally the same for women and men, but in implementation or application thereof an actual modification of rights or granting of privileges, priority or superiority to one of the sexes occurs.”

There are no definitions of direct and indirect discrimination for the other grounds covered by the Racial Equality and Employment Equality Directives. The draft Law on Equal Opportunities, submitted for consideration to the Parliament, introduces the definitions for all the grounds, which are similar to the definitions of the Law on Equal Opportunities of Women and Men quoted above.

The definition of direct discrimination differs from the definitions contained in the Directives. The definitions in the Directives concentrate on the actual, 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”), whilst the definition contained in the Law on Equal Opportunities of Women and Men and the draft Law on Equal Opportunities in its current form emphasizes the unwanted conduct of the discriminator (“humiliation, contempt”) and employs more abstract wording (“modification of rights or granting of privileges”), which is more difficult to apply in practice.

Harassment

Does national law define harassment, as defined in the Directives?

Are there any existing or forthcoming Codes of Practice on harassment?

Please make precise reference to the relevant legal provisions and case law.

There is no direct definition of harassment in Lithuanian law that would be fully compatible with the definitions outlined in the Directives. The above-quoted definition of direct discrimination contained in the Law on Equal Opportunities of Women and Men as well as the draft Law on Equal Opportunities (“an act or omission, which expresses humiliation, contempt ...”) is close to the definition of harassment, although narrower in scope.

Specific forms of harassment on a number of grounds are also punishable under the Criminal Code and the Code of Administrative Violations.

The new Criminal Code³¹, which came into effect on 1st May 2003, provides a definition of unlawful conduct comparable to unlawful harassment³². A similar definition was in force under the previous Criminal Code.

The provisions of the Criminal Code are applicable *inter alia* to harassment in the workplace and the provision of services; however, they are not applied in practice.

The Law of the Republic of Lithuania of 18th November 1997 on the Supplementation of the Code of Administrative Violations by Articles 214(12), 214(13), the Abolition of Article 214(1) and Amendment of Articles 224, 259(1), 320³³ introduced definitions of unlawful conduct related to public advocacy of national, racial or religious discord³⁴.

There is no specific protection against harassment linked to sexual orientation, disability or age in the current law.

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

Instruction to discriminate

Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?

Please make precise reference to the relevant legal provisions and case law.

There is no specific prohibition governing the giving of instructions to discriminate in national law. The draft law on Equal Opportunities in its current available form does not contain such a specific prohibition either. The criminal legislation contains provisions that would encompass “giving instruction to discriminate” on a number of grounds; however, these provisions have never been applied in practice in this context.

³¹ Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Official Publication “*Valstybės žinios*”, 2000, No. 89-2741.

³² **“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 3 years.”

³³ Lietuvos Respublikos Administracinių teisės pažeidimų kodekso papildymo 214(12), 214(13) straipsniais, 214(1) straipsnio pripažinimo netekusiu galios ir 224, 259(1), 320 straipsnių pakeitimo įstatymas. Official Publication “*Valstybės žinios*”, 1997, No. 108-2735.

³⁴ **“Article 214(12). The Production, Storage or Distribution of Information Products That Advocate National, Racial or Religious Discord**

The production or storage with a purpose of distribution of printed, visual, audio or other products, which advocate national, racial or religious discord, incurs a fine from 1000 to 10000 Litass either with confiscation of such products being produced, stored or distributed and of the means essentially used for production of such products, or without confiscation of the means of production.

Article 214(13). The establishment of an organisation that advocates national, racial or religious discord or participation in activities of such an organisation

The establishment of an organisation that advocates national, racial or religious discord or participation in activities of such an organisation, incurs a fine of between 3000 and 10000 Litass.

The same conduct performed by a person who has previously been punished by an administrative penalty for the offences foreseen in Part 1 of this Article, incurs a fine from 10000 to 20000 Litass.”

The new Criminal Code provides a definition of incitement that does not specifically include the grounds of sexual orientation, age and disability³⁵. A similar definition was in force under the previous Criminal Code.

In addition, Article 24 of the Criminal Code extends the notion of criminal offenders from executors to include organisers, instigators and assistants. In theory this would enable the application of Article 169 of the Criminal Code, quoted above, if there were criminal cases related to instruction to discriminate.

c. Scope

Fields of application

Article 3.1 (Racial Equality Directive and Employment Equality Directive)

Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Please make precise reference to the relevant legal provisions and case law.

Under the overall general and ground-specific legal framework consisting of constitutional, civil, administrative and employment legislation, as described above, racial and ethnic discrimination is prohibited in all the fields of application, without distinction between the public and the private sectors. The same applies to discrimination on the grounds of religion or belief, disability, age or sexual orientation. However, there is no specific legislation forbidding discrimination related to the provision of vocational training, goods and services or housing.

A similar situation exists as regards criminal law. Article 169 of the Criminal Code forbids any interference with the right to participate on equal terms in political, economic, social, cultural, employment or other activity or to restrict human rights or freedoms. Therefore, it may be argued that discrimination in general terms is prohibited in all the fields of application listed in the Council Directives. As a general principle, criminal law is applied to all persons having committed a crime on the territory of the Republic of Lithuania, the diplomatic corps constituting an exception to the rule. Consequently, there is no distinction between the private and the public sector in this regard.

The legislative provisions of non-discrimination are abstract and therefore difficult to apply in practice. As a general rule, the fields in question could be made more specific through decisions and explanations of the Supreme Court of the Republic of Lithuania. According to Article 1 of the Statute of the Supreme Court of the Republic of Lithuania³⁶, the Supreme Court forms a uniform body of jurisprudence when applying of the law. However, no decisions or explanations related to any of the grounds of discrimination were found in the records of the Court. This could partly be explained by

³⁵ **“Article 170. Incitement Against National, Racial, Ethnic, Religious or Other Groups of Residents**

1. 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 the fact that they belong to a specific national, racial, ethnic, religious or other group, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 2 years.

2. A person who publicly advocates violence or physical harsh treatment of a group of residents or an individual person on account of the fact that they belong to a specific national, racial, ethnic, religious or other group, shall be punished with (a) a fine or (b) detention or (c) imprisonment up to 3 years.”

³⁶ Lietuvos Aukščiausiojo Teismo statutas. Official Publication “*Valstybės žinios*”, 1995, No. 36-887.

the lack of specific legislation, the inaction of victims, limited occurrence of discriminatory acts, and the general public mistrust in courts and legal institutions as effective instruments for the protection of violated rights.

Exceptions and exemptions

- *Occupational requirements*

Article 4 (Racial Equality Directive and Employment Equality Directive)

Do such exemptions exist on the national level? Does national law define 'genuine and determining occupational requirements' and, if so, how?

Please note that the Employment Equality Directive includes particular provisions with regard to organisations the ethos of which is based on religion or belief.

Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?

Please make precise reference to the relevant legal provisions and case law.

There are no specific provisions for exemptions under national legislation. Article 2 of the Employment Code, quoted above, proclaims the equality of subjects of employment law irrespective of “factors unrelated to the employee’s professional qualities”.

The 2002 amendment of the Law on Equal Opportunities of Women and Men, quoted above, prohibits employers “to request information from job seekers about their ... age (notwithstanding the exceptions provided for by law), ...” The reference to the exceptions provided by law is general; it is not clear to which specific legal provisions it applies.

There are no particular provisions with regard to organisations the ethos of which is based on religion or belief.

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

In its ruling of 11th November 1998 quoted above, the Constitutional Court of the Republic of Lithuania expressed a general opinion on the issue of exceptions³⁷. It may be assumed from this that the Constitutional Court would be prepared to allow certain exceptions to the principle of equal treatment. However, this interpretation does not go beyond the provisions of Article 4 of the Directives.

³⁷ “However, differentiated legal regulation applying to certain groups of persons, who are distinguished [by the same criteria, and in which one strives for positive and socially meaningful goals, is not regarded as discrimination. Special requirements or certain conditions related to their establishment in the group linked to peculiarities of the regulated relations are not attributed to discriminatory restrictions either. For example, laws provide for certain requirements of education, qualifications, health or work experience as regards citizens who enter the civil service. Taking account of the special requirements of performance and responsibility in state institutions, such provisions are considered natural and indispensable and they are applied in all states. Therefore in such cases questions never arise as to the violation or restriction of the right of citizens to participate in the government of their country.”

Reasonable accommodation

Article 5 (*Employment Equality Directive*)

Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a 'reasonable accommodation'?

Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?

How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?

How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

Article 265 of the Employment Code regulates mandatory medical examinations³⁸. Persons willing to be employed in certain categories of jobs are required to pass medical examinations. Persons willing to undertake other types of employment are not required to undergo medical examinations.

There is no direct relationship between the provisions regulating the use of pre-employment medical examinations and the principle of equal treatment / prohibition of disability discrimination.

³⁸ “ 1. Employees under 18 years of age must undergo a medical examination upon employment and annually thereafter until they reach 18 years of age.
2. Employees who are likely to be exposed to occupational risk factors must undergo a pre-entry medical examination and periodic medical examinations during the course of employment, in accordance with the medical examination schedule for employees approved by the enterprise. Employees who are exposed to occupational hazards at work and who handle dangerous carcinogenic substances in the course of their work shall undergo a medical examination upon employment; and periodic medical examinations during the course of employment and upon changing their job or workplace.
3. For the purpose of protecting the health of the population, employees of enterprises of the food industry, public catering and trading enterprises, waterworks, medical and preventive care institutions and children institutions, as well as certain other enterprises, establishments and organisations must undergo medical examination (medical check-ups).
4. Employees working at night and shift workers must undergo a pre-entry medical examination and periodic medical examinations during the course of employment according to the medical examination schedule for employees approved by the enterprise, establishment or organisation.
5. An employer shall approve the list of employees who must undergo medical examination and the medical examination schedule as agreed with the health care institution; he shall introduce employees thereto.
6. ...
7. An employee who has refused to undergo a medical examination in due time, shall be suspended from work without receipt of their wage. Such a refusal shall be treated as a gross breach of duties.
8. The list of professions and activities where employees must undergo medical examination upon employment and periodic medical examinations in the course of employment, as well as the procedure of medical examination shall be established by the Government.”

The question as to whether an employer may inquire about disabilities prior to entering into a contractual relationship with a prospective employee is not regulated by law. Prospective employees are not required to disclose disabilities that may impact on job performance prior to employment.

The duty to provide reasonable accommodation is not established in the Lithuanian law, neither with respect to people with disabilities nor to people discriminated against on the other grounds covered by the Directives.

There are specific provisions regulating working conditions, working hours and vacation time for disabled persons in the Law on the Social Integration of the Disabled³⁹.

There are no court cases related to reasonable accommodation. Since the duty to provide reasonable accommodation is not established, a failure to provide it is not related to the prohibition of discrimination.

Minimum requirements and positive action

- *Minimum requirements*

Article 6 (Employment Equality Directive)

When is differentiation on grounds of age ‘objectively and reasonably’ justified under national law? How is this test being applied?

Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Directive).

Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?

Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age?

Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?

Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?

Is selection for redundancy widely decided on age grounds?

³⁹ “**Article 20. Working Conditions, Work Time and Vacation Time for the Disabled**

1. Working conditions shall be created for disabled persons pursuant to the findings of the commissions establishing disability.

2. If the findings of the commissions establishing disability do not provide otherwise, disabled persons may, by their own wishes, be exempt from working overtime, on holidays, rest days and at night.

3. Disabled persons shall be granted 35 calendar days of annual vacation. Disabled persons, parents of disabled persons, and guardians caring for disabled persons who have been determined to be in need of permanent nursing shall be granted 30 calendar days of unpaid vacation at any desirable time.

4. If the parents or guardians caring for disabled persons who have been determined to be in need of permanent nursing so wish, they shall be provided by employers with work at home, work according to a flexible schedule, or short working days (weeks).”

Is there obvious evidence of age discrimination in access to training opportunities?

Please, do not undertake far-reaching socio-economic research here, but just mention points that are well-known already to the national experts or easily accessible (for example, existing research, national reports, reports of international organisations etc...).

There are no specific legal provisions that would allow for differentiation of treatment on the grounds of age to be objectively and reasonably justified.

There are no specific arrangements made in national law regarding age discrimination and occupational social security schemes.

Compulsory retirement is not permitted. However, protection against discrimination on the grounds of age in the employment market is tied to the entitlement to receive a state pension. Rights to protection from unfair dismissal are lost upon reaching retirement age. Article 129 of the Employment Code states that a legitimate reason to terminate employment cannot be age, except for cases whereby an employee is already entitled to the full pension or is in receipt thereof.

The fixing of the retirement age by employment agreements is not permitted. The entitlement to a pension is regulated by the Law on State Social Insurance Pensions⁴⁰, which establishes retirement ages for all employees without imposing any conditions nor restrictions⁴¹.

Since the retirement ages is fixed by law, it cannot be imposed or otherwise influenced by employers.

In order to reduce the deficit of the State Social Insurance Fund and promote youth employment, the Parliament adopted amendments to the Law on State Social Insurance Pensions which reduced the amount of the pension for some of the working elderly. The Constitutional Court in its ruling of 25 November 2002 ‘On the compliance of paragraph 2 of Article 69 of the Republic of Lithuania Law on the Diplomatic Service, item 9 of paragraph 1 of Article 4 (wording of 16 March 2000) of the Republic of Lithuania Law on State Social Insurance and item 5 of paragraph 1 of Article 2 (wording of 16 December 1999) and Article 23 (wordings of 21 December 1994, 21 December 2000 and 8 May 2001) of the Republic of Lithuania Law on State Social Insurance Pensions with the Constitution of the Republic of Lithuania’⁴² concluded that these measures were contrary to the provisions of the Constitution of the Republic of Lithuania on the protection of property rights, the right to freely choose occupation or business as well as the constitutional principle of the respect of the rule of law.

There is no official policy promoting early retirement, and early retirement schemes are not regulated by the law.

There is no apparent tendency for redundancies to be decided on age grounds. According to the Law on the Support for the Unemployed, an employer must inform the Labour exchange offices in the case

⁴⁰ Lietuvos Respublikos Valstybinių socialinio draudimo pensijų įstatymas. Official Publication “*Valstybės žinios*”, 1994, No. 59-1153.

⁴¹ “ **Article 17. The Right to Draw State Social Insurance Old Age Pension**

A person shall be entitled to draw state social insurance old age pension if he meets the following requirements:

- 1) reaches the pensionable age established by this Law;
- 2) has the minimum state social pension insurance period established for the pension.;

The person must meet the requirements set forth in subparagraph 2 of paragraph 1 of this Article on the day he reaches pensionable age or on the day he applies for pension upon having already reached pensionable age.

Article 18. Pension Age

Pensionable age shall be 60 years for women and 62 years and 6 months for men.

The procedure for enforcement of this Article shall be established in paragraph 2 of Article 55 of this Law.”

⁴² 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. Official Publication “*Valstybės žinios*”, 2002, No. 113-5057.

of group redundancies. However, the Labour exchange does not classify the statistics on redundancies according to the age. This information is not available from any other source.

There is no obvious evidence of age discrimination in access to training opportunities. There is no data or research available on the subject. However, training opportunities that require the knowledge of Western European languages tend to benefit younger employees.

- *Positive action*

Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures?

Are there comparable specific measures in relation to gender discrimination?

Please make precise reference to the relevant legal provisions and case law. Please avoid describing social policies and policies aimed at the integration of certain groups.

Article 92 of the Employment Code provides that additional guarantees must be established for admittance to the employment market for certain vulnerable groups, including persons with a disability, persons who have not more than five years until their entitlement to old age pension and graduates of vocational schools, schools of advanced and higher education who are starting their working career in their specialty⁴³.

The “special law” referred to in Article 92(3) of the Employment Code has not yet been adopted. Currently, support related to the employment of the abovementioned groups is regulated by the procedure approved by the Order of the Minister of Social Security and Employment. “Procedure of support for the employment of persons entitled to additional support on the employment market and the Procedure of employment to jobs supported by the Employment Fund”⁴⁴. The Procedure of support for the employment of persons entitled to additional support on the employment market establishes that special Employment Plans are set up for such persons upon their registration at the employment exchange. In cases whereby they are not employed within three months of the date of their registration at the employment exchange, measures are taken to provide/adapt jobs for these persons. Jobs may be established/adapted in any organisation or enterprise that demonstrates continuous activity. Various incentives for the employers are applied, including temporary subsidies for the establishment of jobs. Employment quotas are established only for the employment of disabled persons.

⁴³ “ 1. Unemployed persons who have or may have additional difficulties in finding work due to their lack of qualification or work experience, long-term unemployment or loss of functional capacity may be provided additional guarantees when being admitted to work.

2. The following persons shall be provided additional guarantees in the employment market:

1) Persons with disability;

...

4) Persons who have not more than five years until their entitlement to old age pension;

...

7) Graduates of vocational schools, schools of advanced and higher education who are starting their working career in their specialty.

3. The conditions of provision of additional guarantees in case of admittance to work and the procedure of application thereof shall be established by a special law.”

⁴⁴ Dēl Darbo rinkoje papildomai remiamų bedarbių užimtumo rėmimo tvarkos ir Įdarbinimo į užimtumo fondo remiamus darbus tvarkos patvirtinimo. Official Publication “*Valstybės žinios*”, 2002, No. 15-591.

Additional guarantees for the employment of the disabled are also regulated by the Law on the Social Integration of the Disabled. The Law sets in place a system of mandatory quotas in employment and provides incentives for the employers to comply⁴⁵.

Article 18(2) of the Law complies with Article 7(1) of the Employment Equality Directive, and Article 18(6) of the Law complies with Article 7(2) of the Employment Equality Directive on the ground of disability.

The Law on the Social Integration of the Disabled provides incentives for the establishment/functioning of firms owned by NGOs of the disabled, which complies with Article 7(2) of the Employment Equality Directive⁴⁶.

There are no specific measures aimed at ensuring or promoting full equality or related to compensating disadvantages linked with racial or ethnic origin, religion or belief and sexual orientation.

Within the framework of the National Action Plan for the Protection and Promotion of Human Rights in Lithuania⁴⁷, a national programme aimed at combating intolerance, racism, xenophobia and homophobia is to be developed in 2003.

The Law on Equal Opportunities of Women and Men provides certain measures that ensure that state institutions are under a duty to promote equal opportunities between women and men⁴⁸.

⁴⁵ **“Article 18. Hiring Disabled Persons**

...
2. For the employment of the disabled and on the recommendation of the employment exchange, local governments shall, on an annual basis, establish for employers quotas for the employment of the disabled or for the establishment of [jobs] which shall comprise no less than 2 percent of the total number of employees if the latter is not less than 50.

...
6. Employers that fill the quotas for the employment of the disabled or for the establishment of additional jobs may receive subsidies from the Employment Fund for the establishment, furnishing and adaptation of jobs for disabled persons.”

⁴⁶ **“Article 21. Incentive for Enterprises Belonging to Public Organizations of Disabled Persons**

1. Tax relief as well as privileges prescribed by other laws shall be applicable to enterprises belonging to public organisations of disabled persons.

2. Privileges and preference rendered in State orders shall be applied to enterprises belonging to public organisations of disabled persons.

3. The Government of the Republic of Lithuania may grant to enterprises belonging to public organisations of disabled persons the exclusive right to produce certain types of production.”

⁴⁷ Nacionalinis žmogaus teisių rėmimo ir apsaugos veikslių Lietuvos Respublikoje planas. Approved by Resolution of the Seimas No. IX-1185 of 7 November 2002. Official Publication “*Valstybės žinios*”, 2002, No. 110-4853.

⁴⁸ **“Article 3. The Duty of State Government and Administration Institutions to Implement Equal Rights for Women and Men**

Within the limits of their competence State government and administrative institutions must:

1) Ensure that equal rights for women and men be guaranteed in all the legal acts drafted and enacted by them;

2) Draw up and implement programmes aimed at changing public attitudes about the superiority of one sex over the other;

3) In the manner prescribed by the law, provide assistance to the programmes of public organisations, public institutions, societies and charitable foundations which assist in the implementation of equal opportunities for women and men.”

Chapter 2 Remedies and enforcement

Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)

a. Judicial and/or administrative procedures

What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?

Please make precise reference to the relevant legal provisions and case law.

Please make precise reference to the relevant legal provisions and case law.

The legislation of the Republic of Lithuania guarantees equal rights for anyone to defend his/her rights and lawful interests in court. There are no existing special judicial, administrative or conciliation procedures for cases of discrimination under the Lithuanian law. In cases of discrimination, victims must rely on the general procedures established by the Constitution and laws.

According to Article 30 of the Constitution, “Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court.” This principle is echoed in other relevant laws, including the Law on Courts⁴⁹ and the Law on Administrative Proceedings⁵⁰.

The settling of work-related disputes, including those related to discrimination, as regulated by Article 286 of the Employment Code, falls under the jurisdiction of the Employment Disputes Commissions and the court.

Employment Disputes Commissions are instituted as the primary mandatory body for employment dispute resolution. The responsibility for the establishment of a Employment Disputes Commission in an enterprise, agency or organisation rests with the employer. The Commission is comprised of an equal unspecified number of representatives of the employees and the employer. The employees' representatives are elected by an employees' meeting. The representatives of the employer are appointed by the employer's order. The Commission is formed for a term of up to two years. The role of the Committee Chair person is performed by the representatives of the employees and the employer in rotation at every meeting.

Persons who believe that their rights have been infringed by individual administrative acts and acts (or omissions) of civil servants and municipality employees in the sphere of public administration, including social protection, social advantages, education as well as access to and supply of goods and services which are available to the public, have the right to file a complaint with an Administrative Disputes Commission under the Law on Administrative Disputes Commissions⁵¹ or Administrative Courts under the Law on Administrative Proceedings.

In practice, the issue of unequal access to justice by different social groups exists. Although a few legal aid clinics, mostly comprised of law students, are in operation, an effective system of state legal aid needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights.

⁴⁹ Lietuvos Respublikos Teismų įstatymo pakeitimo įstatymas. Official Publication “Valstybės žinios”, 2002, No. 17-649.

⁵⁰ Lietuvos Respublikos Administracinių bylų teisenos įstatymo pakeitimo įstatymas. Official Publication “Valstybės žinios”, 2000, No. 85-2566.

⁵¹ Lietuvos Respublikos Administracinių ginčų komisijų įstatymas. Official Publication “Valstybės žinios”, 1999, No. 13-310.

b. Associations

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?

Please make precise references to the relevant legal provisions and case law.

There is no entitlement under national law for associations or other entities to engage in judicial or administrative procedures as a party of the case to act in support of the complainant.

The possibility for associations, organisations or other legal entities to engage in any judicial and/or administrative procedure on behalf of the complainant is provided for in the laws regulating the civil and the administrative procedure, as well as the procedure of settling employment disputes. General norms on representation are included in the Employment Code⁵² and the new Civil Procedure Code⁵³, in force since 1st January 2003⁵⁴.

From the wording of Article 56(3) of the Civil Procedure Code it may be assumed that non-governmental organisations are allowed to participate in the civil procedure under Article 56(2). However, there is no judicial interpretation of this provision, and there are no known cases of participation of non-governmental organisations in a civil case in this context.

The Law on the Administrative Proceedings provides for a broad range of entities that may act as representatives and parties to a case⁵⁵.

The new Criminal Procedure Code⁵⁶, in force since 1st May 2003, limits the definition of representatives of natural persons to qualified lawyers⁵⁷.

⁵² **“Article 18. Basic Principles of Representation**

1. Employers and employees may acquire, change, waive or defend employment rights through the entities representing them. Employees and employers may be represented both in collective and individual employment relations. Representation in collective employment relations shall be regulated by this Code, whereas representation in individual employment relations shall be regulated by the Civil Code, unless such regulation is contrary to this Code.”

⁵³ Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Official Publication “*Valstybės žinios*”, 2002, No. 36-1340.

⁵⁴ **Article 56. Persons who may act as representatives by authorisation in court**

1. The following persons may act as representatives by authorisation in court:

1) Attorneys;

2) Assistant attorneys, with written permission of the attorney leading their practice to act as representatives in a specific case;

...

5) Trade unions, if they represent their members in cases of employment relations.

2. Other persons may act as representatives by authorisation together with the persons indicated in points 1 and 2 of paragraph 1 of this Article.

3. The court may only refuse permission to represent where the representative is not permitted to act as a representative of the authoriser according to the law.”

⁵⁵ **“Article 56. The Procedural Rights of the Prosecutor, Administrative Subjects, State Institutions, Establishments, Organisations, Services and Natural Persons Who Defend the Rights of the State, the Municipality and Persons**

1. In cases provided for by the law, the prosecutor, administrative subjects, state institutions, establishments, organisations, services or natural persons may address the court with a request to defend the public interest or the rights and lawful interests of the state, the municipality and persons.

2. The subjects listed in Part 1 of this Article are entitled to the procedural rights and responsibilities of a party to the case.”

⁵⁶ Lietuvos Respublikos Baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Official Publication “*Valstybės žinios*”, 2002, No. 37-1341, No. 46.

⁵⁷ **Article 55. Authorised representatives**

...

c. Time limits

What is the situation concerning time limits?

Please make precise references to the relevant legal provisions and case law.

There are no specific national rules relating to time limits for bringing actions specifically related to the principle of equality of treatment. General norms concerning limitation periods are applied.

Article 27 of the Employment Code provides for the general time limit of three years⁵⁸. Article 296 of the Employment Code sets a time limit of three months for applying to an Employment Disputes Commission⁵⁹.

The Law on Administrative Proceedings establishes time limits of between one and two months for filing a complaint with an Administrative Disputes Commission in Article 30⁶⁰ and for filing a complaint with an Administrative Court in Article 33⁶¹.

Concerning the criminal offences described in Article 169 (Discrimination on the basis of nationality, race, sex, origin or religion) and Article 170 (Incitement against national, racial, ethnic, religious or other groups of residents) of the Criminal Code, the time limits are 2 or 4 years, depending on the danger caused by the actions of the culprit.

d. The burden of proof

Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)

Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)? AH: as mentioned before, if included in penal law, this would be contrary to international human rights law

Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex).

Please make precise references to the relevant legal provisions and case law.

There are no specific provisions for shifting or easing the burden of proof in cases of discrimination.

The procedure for settling individual employment disputes through an Employment Disputes Commission is regulated by the Employment Code⁶². It is the claimant's duty to provide proof in

2. A representative of the victim, the civil plaintiff or the civil defendant may be an attorney or, upon assignment by an attorney, an attorney's assistant, and upon consent of a pre-trial investigation official, a prosecutor or a judge, another person with high education in law authorised by a party of the case to represent his/her interests."

⁵⁸ "2. The general period of limitation for relations regulated by this Code is three years, unless shorter periods of limitation of actions are established for individual claims by this Code or other employment laws."

⁵⁹ " An employee may apply to the Employment Disputes Commission within three months from the day when he found out or ought to have found out about the violation of his rights."

⁶⁰ " 1. A complaint (application) must be lodged with the administrative disputes commission within 1 month from the date of publication of the challenged administrative act or the day of delivery to the party concerned of the individual act or its notification of the actions of the administration (employees), or within 2 months from the day following the expiry of the time period set for the implementation of the request."

⁶¹ " 1. If a special law does not provide otherwise, a complaint (application) may be lodged with the Administrative Court within 1 month from the day of publication of the challenged act or the day of delivery of the individual act or notification of the party concerned of the act (or omission), or within 2 months from the day following the expiry of the time limit set for implementation of request.

2. If the entity of public or internal administration delays the consideration of a certain issue and fails to resolve it by the due date, such failure to act (delay) may be the subject of a complaint lodged within 2 months from the day following the expiry of the time limit set under legal acts for the settlement of the issue."

support of the claim. However, a significant role is also foreseen for the clerk of the Employment Disputes Commission.

The Law on Administrative Disputes Commissions does not set any requirements for a complaint. The burden of proof lies with the relevant administrative entity (the respondent)⁶³.

Civil and administrative judicial proceedings are adversarial procedures, which presuppose the equal distribution of the burden of proof. The provisions of the Civil Procedure Code⁶⁴ and the Law on Administrative Proceedings⁶⁵ are similar.

In criminal cases, the principle of equality of arms applies. The prosecution and the defence have equal rights to submit proof and to participate in their examination.

There are no provisions for shifting or easing the burden of proof in gender legislation.

e. Victimisation

Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)

Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?

Please make precise references to the relevant legal provisions and case law.

The definition of victimisation as contained in Article 9 of the Council Directive does not exist in national law, except for the equal opportunities legislation, as described below.

The Law on Equal Opportunities of Women and Men contains provisions aimed at protecting the persons who submit complaints involving a violation of the principle of equal treatment. It defines persecution of an employee who has filed a complaint because of discrimination by an employer as a discriminatory act and regulates that an employer must take appropriate means to prevent persecution of an employee who has lodged a complaint on grounds of discrimination.

⁶² **“Article 290. Preparation of the Employment Case for Hearing in the Employment Disputes Commission**

1. The applications addressed to the Employment Disputes Commission shall specify the names, surnames of the claimant, respondent, other persons participating in the case, the name and address of the employer, indicate the circumstances, grounds and evidence upon which the claimant's claims are based and shall contain a clearly formulated demand and the list of documents attached.

2. An application shall be submitted to the clerk of the Employment Disputes Commission or, in the absence of such - to the employer (Article 288(2) of the Code). The clerk shall register the application, notify the Employment Disputes Commission, prepare the case for hearing, obtain the required documents, calculations, findings, notify the participants in the case of the time and place of the hearing of the case, deliver a copy of the application to the respondent.”

⁶³ **“Article 12. Rights of Administrative Disputes Commissions during the Preparation of Material for the Session**

1. The Administrative Disputes Commission shall have the right to demand that the entity of public administration that adopted the contested individual administrative act or performed the action which is the object of the complaint should submit documents, material and information relating to the issue which is prepared for the session, also receive oral or written explanations from civil servants and municipality employees concerning the matter in dispute.”

⁶⁴ **“Article 178. The Onus of Proof**

Each party to the case must prove the circumstances upon which they base their demands and rebuttals, except for circumstances which do not require to be proved according to this Code.”

⁶⁵ **“Article 57. Evidence**

4. Evidence is submitted by parties to the process and other participants to the process. If need be, the court may suggest to the abovementioned persons to submit additional evidence or, by request of those persons or upon its own initiative, to demand the required documents, or to demand explanations from officials.”

f. Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)

What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?

As indicated above under the section on harassment, the Criminal Code contains provisions prohibiting discrimination on the basis of race, nationality and other personal characteristics. In order to prevent violations of the law, a range of penalties are available, including imprisonment, fines, and deprivation of the right to perform certain duties or jobs or to engage in certain activities.

The Employment Code does not provide for any sanctions for workplace discrimination. In theory, the State Employment Inspectors may impose administrative sanctions on employers who discriminate employees, thus violating the provisions of the Employment Code, using the abstract provision of the Code of Administrative Violations⁶⁶. In practice, however, the issue of workplace discrimination is not addressed by State Employment Inspection officials. Only severe workplace discrimination would be punishable under the Criminal Code. Thus, such legal regulation of sanctions is not effective.

Point 2 of Article 3(2) of the Law on Public Service cites fairness amongst the guiding ethical principles of the civil service: “A civil servant must serve all people equally, regardless of their nationality, race, sex, language, origin, social status, religious convictions or political opinions, be fair in considering requests, not misuse the powers and authority bestowed to him.” Article 29 of the law lists the possible sanctions for misconduct, which are a warning, a reprimand, a severe reprimand and dismissal from the service.

It is considered that, following the example of gender discrimination (Article 41⁽⁶⁾ of the Code of Administrative Violations), the infringement of the principle of equal treatment on the basis of racial or ethnic origin, religion or belief, disability, age or sexual orientation could be specifically prohibited by the Code of Administrative Violations. A draft law amending the Code was registered at the Seimas in November 2002.

There is no provision for payments of compensation to victims of infringements in national legislation.

g. Dissemination of information

Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)

What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions? The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.

⁶⁶ **Article 41. Violation of Employment Laws and Normative Acts Regulating Safety and Hygiene at Work**

A violation of employment laws and normative acts regulating safety and hygiene at work is punishable by a fine for employers or their authorised representatives in the amount of 500 to 5000 Lit.

Following the successful example of the work of the Ombudsman for Equal Opportunities of Women and Men, including its wide public outreach, the Parliament is considering a draft law on Equal Opportunities which would add a number of additional grounds to the mandate of the Ombudsman, namely racial or ethnic origin, religion or belief, disability, age and sexual orientation. The law was drafted with the support of a United Nations Development Programme project, implemented from April to December 2002. The project included an extensive public awareness campaign and a series of public consultations in order to arrive at an optimal strategy for expanding the institutional coverage of protection against discrimination. As part of the preparation for the legislative changes, a number of training events for public servants were carried out. No other information campaigns on anti-discrimination legislation have been conducted.

All major recently adopted legislation is being widely discussed in the mass media, including TV, radio and the press, which is the most popular and generally trusted means of getting information. All existing legislation, as well as the drafts, is available free of charge to anyone with access to the internet.

Although there have been no widely-known cases of mistreatment by public officials on the grounds of racial or ethnic origin, religion or belief, disability or age, these issues could be included in the regular curriculum of the institutions responsible for the training of public officials as a preventive measure. There have been several publicised instances of mistreatment by police officials on the ground of sexual orientation, which highlights the need of effective preventive actions.

h. Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

In 1995, the Government of the Republic of Lithuania, together with trade union representatives and employers signed an agreement on tripartite partnership with a view to a more effective coordination of the interests of the parties in solving social, economic and labour-related problems and promoting coherence in society. Based on this agreement, a Tripartite Council was established, with the secretariat at the Ministry of Social Security and Employment. The operational regulations of the Tripartite Council are regulated by Articles 44 and 45 of the new Employment Code.

Despite the progress made, in its 2002 Regular Report on Lithuania's Progress towards Accession⁶⁷ the European Commission noted that "steps should be taken to actively promote further sound developments in social dialogue." There are no notable collective agreements that contain provisions on anti-discrimination. The Tripartite Council has never referred to issues of discrimination.

There are approximately 200 non-governmental organisations of national minorities in Lithuania. They bring together representatives of 19 different ethnic communities. The Government maintains a dialogue with non-governmental organisations representing national minorities through the Council of National Communities by the Department of National Minorities and Lithuanians Living Abroad under the Government, where 17 national communities are represented. The Council of National Communities holds regular meetings to discuss the issues faced by national minorities in Lithuania. In recent years, it has become a tradition that the Council regularly meets with the President of the Republic of Lithuania to exchange views on the situation of national minorities in the country.

⁶⁷ http://europa.eu.int/comm/enlargement/report2002/lt_en.pdf

A number of NGOs represent the interests of the vulnerable groups. They actively engage in a dialogue with the authorities in protecting their rights. For example, the Lithuanian Gay League significantly contributed to the development of a baseline study on human rights in Lithuania, led by the Parliamentary Committee on Human Rights.

A Council for Affairs of the Disabled has been set up by the Government of Lithuania. According to the Regulations of the Council⁶⁸, it is a collegial institution accountable to the Government which coordinates the medical, professional, social rehabilitation and integration of the disabled. The Council is composed of national non-governmental organisations of the disabled and representatives of state institutions on a parity basis, and functions in accordance with the Law on the Social Integration of the Disabled. The composition of the Council is approved by the Government upon proposal of the Minister of Social Security and Employment.

⁶⁸ Dėl Lietuvos invalidų reikalų tarybos prie Lietuvos Respublikos Vyriausybės nuostatų patvirtinimo. Government Resolution No. 420 of 29 April 1997. Official Publication “*Valstybės žinios*”, 1997, No. 40-973.

Chapter 3 Specialised bodies

Article 13 (Racial Equality Directive)

Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?

Are existing bodies addressing the issue of multiple discrimination?

Where a body does not exist on the national level, are there plans to establish such a body?

Responsibility for national policy on developing and implementing harmonious relations between various national groups lies with the Department of National Minorities and Lithuanians Living Abroad under the Government of the Republic of Lithuania.

The Department's policies are aimed at guaranteeing the possibility for the national minorities of Lithuania to preserve their identity, stimulate their participation in the public political and cultural life of the country, foster their civic awareness, tolerance, contribute to the mutual understanding and trust among people of different nationalities, strengthen respect for the culture, customs, traditions and religion of different national groups of Lithuania, and eliminate causes of discord on the basis of national origin.

In pursuit of its tasks, the Department maintains relations, co-operates with and supports various organisations of national communities, artistic groups and schools by developing and implementing cultural, education and integration programmes for national minorities. On the basis of its experience, the Department makes proposals to the Government on the development and improvement of the relevant legislation. In Vilnius, the Department maintains a House of National Communities of which various organisations of national communities can use the premises for their cultural and educational activities.

The Department may accept and consider complaints within the field of its competence. However, it is not authorised to impose administrative sanctions. In order to better protect the rights of victims of discrimination through non-judicial procedures, issues concerning discrimination on the basis of ethnic and racial origin should be added to the mandate of the Ombudsman for Equal Opportunities of Women and Men.

The Ombudsman for Equal Opportunities of Women and Men functions under the framework established by the Law on Equal Opportunities of Women and Men and oversees the implementation of the law. The Ombudsman is appointed for a term of 4 years by the Parliament upon proposal of the Chairman of the Parliament. The Ombudsman for Equal Opportunities of Women and Men investigates complaints relating to direct or indirect discrimination and sexual harassment. The Ombudsman may also initiate investigations at his/her discretion.

Upon completion of investigation, the Ombudsman may take a decision: to refer the material to investigative bodies if indications of an offence have been established; to address an appropriate person or institution with a recommendation to discontinue the actions violating equal opportunities or to repeal a legal act relating to that; to hear cases of administrative offences and impose administrative sanctions; to dismiss the complaint if the violations mentioned in it have not been corroborated; to discontinue the investigation if the complainant withdraws the complaint or if objective evidence about an alleged offence is lacking; to warn about the committed offence; to temporarily suspend the investigation if the person who submitted the complaint or the person whose actions are investigated is ill or dead.

At the request of the Ombudsman, State institutions, enterprises and other organisations must make available to him/her the information, documents and material necessary for carrying out the Ombudsman's functions. During the investigation of the complaint, the Ombudsman has the right to request that the person whose activities are under investigation provides an explanation.

Each year, by the 15th of March, the Ombudsman submits to the Parliament an annual report on the activities of the Office of the Equal Opportunities Ombudsman in the preceding calendar year. The report is considered by the Parliament and is consequently published. In addition, the Ombudsman reports about the implementation of the Law on Equal Opportunities of Women and Men and submits recommendations to State institutions on the revision of legal acts and the priorities in the policy of the implementation of equal rights.

As indicated above, the Parliament is considering a draft Law on Equal Opportunities that would add a number of additional grounds to the mandate of the Equal Opportunities Ombudsman, including racial or ethnic origin. The expansion of institutional coverage for non-discrimination would build on the successful work of the Ombudsman on ensuring equal opportunities for women and men since 1999. If the draft law is passed, it will be important to ensure that the institutional capacity of the Office of the Ombudsman, including its staffing and budget, is strengthened accordingly.

The currently available draft Law on Equal Opportunities is based on the existing Law on Equal Opportunities of Women and Men. If the draft is adopted, all the tasks listed in Article 13 of the Racial Equality Directive will be fulfilled, namely: providing independent assistance to victims of discrimination in pursuing their complaints about discrimination; conducting independent surveys concerning discrimination; and publishing independent reports and making recommendations on any issue relating to such discrimination, both in the public and the private sectors.

Chapter 4 Compliance and implementation

Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)

a. Screening

Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

As noted above, the principle of non-discrimination is enshrined in the Constitution. According to the Constitution, the Constitutional Court of the Republic of Lithuania ensures the constitutional legality by deciding whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution, and whether the acts adopted by the President or the Government of the Republic correspond with the Constitution and laws.

A person may contest the provisions in agreements, contracts or rules relating to professional activity, workers and employers that in his or her opinion are contrary to the principle of equal treatment through non-judicial or judicial procedure. He or she 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 by courts. Article 36 of the Employment Code states:

“ 3. By way of exception, only the courts shall have the prerogative to protect the employment rights under laws 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 laws;

2) By not applying the act adopted by a state institution, municipality or individual officer, which is contrary to laws.”

There is no specific administrative procedure through which such provisions could be declared null and void.