

Introduction, summary and recommendations in English

Although the Office of the Equal Opportunities Ombudsperson in Lithuania was established almost 20 years ago, it has not lost its relevance to this day. In fact, quite the opposite: experts of legal theory as well as people responsible for the implementation of the EU policy on equal opportunities agree that now it is more crucial than ever to focus on making national equality bodies successful in practice.

EU Directives 2000/43/EC and 2000/78/EC marked a significant step towards ensuring the protection of persons against discrimination and improving the legal standards in the EU Member States. Thanks to the above-mentioned Directives, in 2005 the Lithuanian Office of the Equal Opportunities Ombudsperson was entrusted with implementing the principle of equal opportunities not only based on gender, but all the “new” aspects safeguarded by the EU law – age, nationality, race or ethnic origin, disability, sexual orientation, religion or beliefs.

Now that most legal harmonisation issues in the EU Member States have been formally solved, the focus should fall on the efficient implementation of the EU legal requirements, and here national equality bodies have a significant role to play. This study was aimed at reviewing the activities of the Office of the Equal Opportunities Ombudsperson in the past decade as well as its objectives of and results achieved. It also sought to answer the question as to what the future role of the Lithuanian national equality body could and should be.

This has not been an easy task. EU law has granted Member States considerable freedom in choosing national models for these institutions, whereas the abundance of and differences in these models add to the difficulty in summarising them. Perhaps for this reason this area is still rather new and unresearched. The study is based on several reports on the implementation of EC directives containing valuable insights on the activities of national equality bodies as well as on the publications of the European Network of Equality Bodies (EQUINET) and the published material of the Equality Law Network. However, most importantly, the authors have not only reviewed the activities of the Office in terms of EU legal requirements and international legal standards, but also tried to gain insight into the views of decision makers, social partners and NGO representatives concerning the activities of the Equal Opportunities Ombudsperson in Lithuania, what are their current expectations and requirements for the future¹.

This study was not aimed at giving an exhaustive overview of non-discrimination legislation in Lithuania², but rather focused on one of its aspects, namely, the activities of the national equality body. Equally, the study was not aimed at finding a universal solution. The authors present their insights and propose several possible directions for future development in the hope that this study will provide impetus for an open and inclusive discussion aimed at strengthening the anti-discrimination mechanism for the benefit of all Lithuanian people.

This study reflects solely the views of its authors that do not necessarily match the position of the European Commission, the Office of the Equal Opportunities Ombudsperson or any other institution. Therefore, neither the European Commission nor the Office of the Equal

¹ For the purposes of the study 30 respondents representing different organisations, bodies or academic institutions (10 representatives of governmental or municipal institutions, 10 representatives of NGOs and 10 representatives of the academia) were interviewed.

² The study is based on national legislation that reflects the situation until 1 September 2016.

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THE OFFICE OF THE EQUAL OPPORTUNITIES OMBUDSPERSON AS A NATIONAL EQUALITY BODY

Changes that took place in the field of equal treatment in Lithuania over the past decade are evident. Equality among individuals regardless of their sexual orientation is probably the most conspicuous example of this change: in fewer than ten years the transition was made from the total absence of any protection of individuals to the statutory prohibition of discrimination and a successful and peaceful equality march “Baltic Pride 2013”. Certainly, this does not mean that the principle of equality among individuals has become embedded in daily life of Lithuanian people. Most of the changes in the legal system made to ensure equality among individuals were due to EU accession requirements or international pressure, therefore it is no wonder that much of the Lithuanian population was not ready to embrace the change.

Differently from many Western European countries, society in Lithuania is quite homogenous. According to the latest census, 84 per cent of the population are ethnic Lithuanians and the majority claim to be Catholics (77 %). Unlike the other Baltic States, ethnic minority groups in the country are not very large either³. Maybe that is why embracing diversity remains a challenge to the Lithuanian public. Although in the past decade the legal basis has improved indeed, it seems likely that considerable time and effort will be needed for the public opinion to change. According to the last year’s opinion poll, 50 % of the Lithuanian population do not agree that gays, lesbians and bisexuals should have rights equal to those of heterosexuals (by way of comparison, the EU average is 23 %), as many as 63 % would be unhappy if the top national leader would be someone older than 75 years (the EU average being 29%), one quarter would be unhappy to see a disabled person occupy the top post (the EU average is 8 %) ⁴. The Lithuanian public agree that in the country there is widespread discrimination due to old age (50 % agree), sexual orientation (57 %) and disability (44 %). It has been acknowledged officially that the Lithuanian population is particularly intolerant of the mentally disabled, LGBT and Roma individuals and lacks awareness of discrimination⁵.

The good thing is that people are increasingly informed on whom to contact in cases of discrimination. More than half of the population in Lithuania say that, if discriminated against or harassed, they would exercise their rights and would report the case of discrimination to the police (37 %) or the national Equal Opportunities Office (35 %) ⁶. **On the other hand, if actually discriminated against, people rarely report the fact: as many as 95 % of individuals who said they had been victims of human rights violations did not complain**

³The largest ethnic minority group in Lithuania – Poles – account for 6,6 per cent of the population, while the second largest ethnic minority group are Lithuanian Russians. (5,8 per cent).

⁴The European Commission, EUROBAROMETER survey on “Discrimination in the EU in 2015”, available online at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68110>

⁵ The 28 January 2015 Decision No 46 of the Republic of Lithuania on the Approval of an Inter-Institutional Action Plan for the Promotion of Non-Discrimination, available online at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2

⁶ The European Commission, EUROBAROMETER survey on “Discrimination in the EU in 2015”, available online at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68110>

to any institution⁷. This number reveals the lack of practical skills in defending human rights as well as the lack of trust in the national human rights defence mechanisms: two thirds of respondents (66,4%) said they did not believe they would be able to defend their rights effectively. Lithuanians are quite poorly informed about state institutions directly responsible for or assisting in safeguarding human rights. People are best informed about the work of the Labour Inspectorate, although their knowledge can only be rated 5 out of 10 (4,69). The knowledge about the Office of the Equal Opportunities Ombudsperson was rated 2,97 points out of 10.

The National Inter-Institutional Plan for the Promotion of Non-Discrimination⁸ acknowledges the low level of public awareness, points out at the lack of educational measures for the promotion of non-discrimination, the lack of studies to shed light on the situation of groups in need of legal protection, and highlights low levels of cooperation between institutions and organisations working in the area of equal opportunities and non-discrimination.

SUMMARY AND RECOMMENDATIONS

Back in 2005, along with EU directives, the new basis for non-discrimination was incorporated into the Lithuanian legislation, introducing the ban on specific grounds for discrimination. The directives outlined certain minimal standards that every Member State had to meet, but also allowed for considerable freedom of choice in terms of implementation methods. Most importantly, the directives provided for the establishment of a national legal remedy mechanism meant to enable discrimination victims to defend their rights and access legal assistance, but also to impose proportionate, efficient and dissuasive sanctions on offenders.

Overall public awareness of where to complain about discrimination is increasing⁹. On the other hand, if discriminated against, people rarely report the fact: as many as 95 % of individuals who said they had been victims of human rights violations did not complain to any institution¹⁰.

The majority (65 %) of respondents interviewed in a qualitative survey believe that people who are being discriminated against have some knowledge about the Office of the Equal Opportunities Ombudsperson and know on what grounds they can contact the Office (20 respondents); 5 respondents believe that these people know it well; 4 respondents believe that they do not know it.

⁷ Human Rights Monitoring Institute, a public opinion poll on how society evaluates the situation of human rights in Lithuania, conducted by the Vilmorus company on 3-12 October 2014, available online at <http://www.hrmi.lt/musu-darbai/tyrimai178/visuomenes-nuomones-apklausas/>

⁸ The 28 January 2015 Decision of the Republic of Lithuania No. 46 "On the Approval of the Inter-Institutional Action Plan for the Promotion of Non-Discrimination", available online at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2

⁹ More than half of the population in Lithuania say that, if discriminated against or harassed, they would exercise their rights and would report the case of discrimination to the police (37 %) or the national Equal Opportunities Office. (35 %). The European Commission, Eurobarometer survey "Discrimination in the EU in 2015", available online at:

<http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68110>

¹⁰ Human Rights Monitoring Institute, a public opinion poll on how society evaluates the situation of human rights in Lithuania, conducted by the Vilmorus company on 3-12 October 2014, available online at: <http://www.hrmi.lt/musu-darbai/tyrimai178/visuomenes-nuomones-apklausas/>

Although the civil procedure in Lithuania is in fact the only means available for victims of discrimination not only to remedy their infringed rights but also to seek damages, in the past eight years only a dozen or so individuals who had been victims of discrimination decided to defend their rights in court¹¹, and only in a handful of cases courts acknowledged the fact of discrimination and ruled in favour of the victims. Statistical data reveals that in Lithuania victims of discrimination prefer out-of-court settlements: about a hundred times more people address the Office of the Equal Opportunities Ombudsperson as compared to those who seize the court.

Therefore, one could conclude that in Lithuania in the past decade most victims of discrimination sought legal remedy by complaining to the Office of the Equal Opportunities Ombudsperson, an institution obliged by the law to investigate individual complaints and entitled to launch own-initiative investigations. Therefore, the role of the Equal Opportunities Ombudsperson in safeguarding equal treatment in Lithuania is particularly important.

Within the meaning of EU non-discrimination directives, a national equality body is a body or an institution promoting equal treatment. The mandate of the Office of the Equal Opportunities Ombudsperson was broadened by the duty imposed on Member States by the Directive on Racial Equality to designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of race or ethnic origin¹²”. According to the Directive, the competences of this body (or bodies) should include three areas of activity: (1) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, (2) conducting independent surveys concerning discrimination, (3) publishing independent reports and making recommendations on any issue relating to such discrimination. EU law gives Member States very broad possibilities of choosing ways and means for establishing national equality bodies and lays down only a minimum standard. According to the European Commission, the directives introduce an obligation for Member States to ensure that such bodies could (1) implement their functions independently, (2) have sufficient resources and capacity to work efficiently, especially in providing independent assistance to victims of discrimination¹³.

Even though the work of equality bodies is a relatively new and unresearched area, existing research provides a sufficient basis for drawing a relatively detailed picture of EU equality bodies. Already the first study revealed the diverse nature of national equality bodies and led to the conclusion that most of these bodies could be grouped into two main types: promotional-type bodies and tribunal-type bodies¹⁴.

¹¹ Amendments to the Law on Equal Treatment introducing the right for legal remedy on the new equality grounds entered into force on 5 July 2008. In the Lithuanian judicial system discrimination cases do not have a special category and are not otherwise categorised or grouped, therefore there is no specific data on the number of discrimination cases that reach courts annually. The author of this study has used available statistical data gathered during consultations with other experts and searching the judicial database.

¹² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available online at: http://www3.lrs.lt/pls/inter1/dokpaieska.showdoc_l?p_id=21169

¹³ Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), Brussels 17.01.2014, available online at: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

¹⁴ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

Bodies of the first – promotional – type essentially fulfil the functions stipulated in EU non-discrimination directives: they engage in the promotion of equal treatment, draw up independent reports, conduct surveys, make recommendations and provide independent assistance to victims of discrimination not only by way of consultations but also by representing victims in courts. Their clearly defined proactive mandate is frequently pointed out as the key advantage of this type of bodies. However, this type of institutional setup is not flawless. When a country has this type of bodies only, victims of discrimination wishing to seek legal remedy in a specific case usually cannot rely on such bodies for help, so the only possibility to restore justice is to take the matter to a court of law.

The main function of the second – tribunal-type bodies involves analysing and deciding on specific cases of discrimination. While investigating complaints and/or conducting own-initiative investigations these bodies, just like independent tribunals, detect infringements and, quite frequently, take binding decisions. Bodies of this type exist in 13 EU Member States, 9 of which are entitled to take binding decisions (Denmark, Finland, Estonia, Latvia, Hungary, Ireland, Romania, Bulgaria and Lithuania¹⁵). A body that investigates specific discrimination cases has a considerable advantage in that they often grant victims of discrimination easier access to justice for they can avoid usually lengthy, costly and complicated litigation in court. However, bodies of this type are not without flaws either. Firstly, as the work pattern of these bodies usually is entirely dependent on the amount of complaints received, it is much more difficult for them to work in a strategic and planned way. Proactive approach becomes a challenge when an organisation is forced to use its resources to react to the infringements that had already been made. Moreover, such bodies are much more challenged while implementing other functions outlined by the Directives.

Nevertheless, European non-discrimination directives do not provide for complaint handling as a mandatory function of a national equality body. For this reason, some countries have two (or several) bodies, one engaging in proactive promotion of equal treatment, while the other serves as an impartial tribunal on matters of discrimination. The European Commission¹⁶ and the Council of Europe Commissioner for Human Rights¹⁷ recommend having two or more bodies with clearly separated tribunal-type and promotional-type functions as an example of good practice.

However, in some countries it was impossible to set up two separate bodies due to legal tradition, objective circumstances or simply a lack of political will. Therefore, when in a country there is only one institution whose main function (or one of the main functions) is, among other things, complaint handling, this body inevitably must perform some of promotional activities as well. In other words, it must fulfil at least three mandatory functions required by EU non-discrimination directives. Only a handful of countries have this type of equality bodies responsible, among other things, for individual complaint handling. These countries are Bulgaria, Cyprus, Macedonia, Hungary, Romania, Poland, Latvia and Lithuania¹⁸.

¹⁵ Ibid, p. 125.

¹⁶ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 182, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

¹⁷ Opinion of the Commissioner for Human Rights on National Mechanisms to Promote Equality, CommDH (2011)2, Council of Europe, Strasbourg, 2011, available online at: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1761031&direct=true>

¹⁸ Developing Anti-discrimination law in Europe, The 28 EU Member States, the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway and Turkey compared, European Commission, Directorate-General

Undoubtedly, equality bodies of this type are faced with many challenges, mostly due to limited financial and human resources. On the one hand, a given body is obliged to investigate all complaints and cases of discrimination (reactive function), while on the other hand, as it is required to implement all the functions laid down in EU directives, it must engage in planned, proactive promotional activities. And, most importantly, it must implement both parts of its mandate efficiently.

The Independent Nature of a National Equality Body

Although mandates of national equality bodies may vary in terms of their functions and scope, it is universally agreed that there are two key features these bodies should have, namely independence and efficiency. These two features are indispensable and partially co-dependent: without being independent an institution would not be able to work efficiently, and without being able to work efficiently it could not reach its goals.

Independence involves the grounds for establishing an equality body, its legal structure (*de jure* independence) as well as the procedure for appointing the head of the institution and its staff members, issues related to their accountability and actual activities (*de facto* independence). The study commissioned by the European Commission¹⁹ concludes that without *de jure* independence it can be very difficult to obtain *de facto* independence. Nevertheless, formal independence does not always mean actual independence and vice versa. Strong leadership of an equality body as well as the determination to achieve its goals, a clear vision and courage to raise uncomfortable issues are vital for achieving *de facto* independence²⁰. This becomes even more important when the institution is a one-person organisation.

During in-depth interviews respondents also pointed out the importance of strategic activities, leadership and proactive approach not only for complaint investigation but also for awareness raising and making recommendations on improved legislation and equal treatment policy priorities.

The Council of Europe Commissioner for Human Rights, while reviewing the activities of equality bodies, points out efficiency as one of the key features of these bodies²¹. He says that efficiency is an essential feature that enables equality bodies to make impact. Efficiency means that equality bodies acting within the scope of their competences and mandate can implement all their functions and powers to make real impact and to use their full potential.

Lithuania took the decision to establish the Office of the Equal Opportunities Ombudsperson by a separate law, thus providing it with the status of a separate body independent from the executive branch, which was a progressive step in line with the recommendations of the European Union and international organisations. Institutional independence is greatly valued

for Justice and Consumers, December 2014, p. 121, available online at:

http://ec.europa.eu/justice/discrimination/files/comparative_analysis_2014.pdf

¹⁹ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 11, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

²⁰ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 147, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

²¹ Opinion of the Commissioner for human rights on national structures for promoting equality, CommDH (2011)2, Strasbourg, 21 March 2011, available online at:

<https://wcd.coe.int/ViewDoc.jsp?p=&id=1761031&direct=true>

also among other national equality bodies and in this respect Lithuania is happy to be ahead of many other EU Member States.

Respondents were asked to evaluate the independence of the Office of Equal Opportunities Ombudsperson within the scale of 1 to 10 points. The average score given by the 29 respondents was **5,91** (one respondent refused to provide evaluation due to the lack of information).

However, despite its formal independence, the Office of the Equal Opportunities Ombudsperson has not been able to avoid an institutional crisis that gave rise to unnecessary doubts concerning its independence and impartiality.

Most respondents (16 out of 30) believe that the legal regulation of equal treatment, including the appointment procedure and competencies of the Equal Opportunities Ombudsperson is adequate, but there are issues concerning the implementation of laws²².

After the end of a regular term of office of the Equal Opportunities Ombudsperson, the institution was functioning under an acting leader for almost two years, and during this period two attempts by the Seimas to appoint a new head of the institution failed. Both attempts gave rise to doubts concerning the transparency of the appointment procedure as well as candidate selection criteria. When, without any explanation, experienced and principled candidates were rejected, people got the message that the institution was politicised and principled individuals not accommodating for a specific political ideology were not accepted despite their professional qualifications. This limited the choice of the Seimas Speaker and narrowed the circle of potential candidates²³. Therefore, it is obvious that the appointment procedure cast a shadow of doubt on the status of the Office as an independent equality body and dissuaded several competent experts from possibly applying for the position of the Equal Opportunities Ombudsperson. The current statutory procedure and its practical implementation make it possible to question the impartiality of the appointment of any new Ombudsperson (even when this is unfounded).

For this reason, the current procedure for the appointment of the Equal Opportunities Ombudsperson is not in line with international recommendations. The candidate is nominated by the Seimas Speaker on his/her discretion and the candidature is presented to the Seimas for consideration. The Speaker's choice of a candidate is formally limited only by the eligibility criteria stipulated in the law: higher legal education and at least five-year working experience in the field of law or in governmental or municipal institutions. The appointment procedure does not provide for the possibility to organise consultations with the public, NGOs or the academic community, therefore the choice of potential candidates also depends on the political affiliation of the Speaker of the Seimas. This practice is not in line with the recommendations of the European Commission and the Council of Europe. The Council of Europe Commissioner for Human Rights believes that heads of equality bodies should be appointed according to the principles of openness and transparency and, if possible, with the participation of the public²⁴.

²² LG-NVO-01-1, LG-NVO-02-1, LG-NVO-04-1, LG-NVO-05-1, LG-NVO-06-1, LG-NVO-07-1, LG-NVO-09-1, LG-NVO-10-5, LG-VI-08-4, LG-AKB-03-1, LG-AKB-05-1, LG-AKB-06-1, LG-AKB-08-1, LG-AKB-10-1, LG-VI-09-6, LG-VI-10-1

²³ L. Grauzinienė: *The Attitude of the Parliament Has Complicated the Search for an Equal Opportunities Ombudsperson*, BNS, 28/12/2014, available online at: <http://kauno.diena.lt/naujienos/lietuva/politika/l-grauziniene-seimo-nusiteikimas-apsunkino-lygiu-galimybiu-kontrolieriaus-paieskas-666830#ixzz477vuL8ji>

²⁴ Opinion of the Commissioner for Human Rights on National Mechanisms to Promote Equality, CommDH (2011)2, Council of Europe, Strasbourg, 2011. P. 14 available online at: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1761031&direct=true>

It should be noted that the current legal regulation has been criticised by most respondents surveyed who represented the academic community, NGOs and state and municipal institutions²⁵. While evaluating the procedure for the appointment of the Equal Opportunities Ombudsperson, most respondents (20 out of 30) pointed out that it was rather politicised and could undermine the independence of the Equal Opportunities Ombudsperson. Eleven respondents believed that the possibility of exerting political pressure on the Ombudsperson is due to the lack of transparency during the appointment procedure²⁶.

RECOMMENDATIONS

Lithuania chose to implement the ombudsman-type model of a national equality body that is accountable to the Seimas. To improve this model, it is vital that the procedure for the appointment of the Equal Opportunities Ombudsperson is more transparent and open and involves public participation but does not limit the constitutional right of the Seimas Speaker to choose the most suitable candidate. Only by ensuring that the current legislation provides for a more transparent and open procedure for the selection of candidates and the formal participation of non-governmental organisations and the academic community can a non-politicised, most pluralistic procedure for the appointment of the Ombudsperson be ensured. Moreover, the method of open competition for this position when all formally eligible persons may apply is another option to be considered.

Clear deadlines for nominating candidate(s) prior to the end of a current term of the Equal Opportunities Ombudsperson to be considered in the Seimas could be included in the law to avoid a situation when the Office must function without a leader.

Requirements for an Equal Opportunities Ombudsperson

The issue related to statutory requirements for the Ombudsperson raises doubts as well. Only an experienced practicing lawyer or a civil servant with a legal education is eligible to be appointed as Equal Opportunities Ombudsperson. **These restrictions prevent specialists experienced in other areas from applying to the position where academic knowledge of human rights, sociological knowledge or other skills may be as relevant as a degree in law or practical experience in the field of law.** Bearing in mind that the activities of the Equal Opportunities Ombudsperson cannot be limited to investigating complaints (complaint investigation in general is not obligatory under EU directives), the promotion of equal opportunities, conducting surveys and assistance to victims of discrimination must become a significant part of the mandate of the Ombudsperson. Therefore, if we regard the Equal Opportunities Ombudsperson as a national equality body with a broad mandate (and not only as a complaint handler), it is doubtful whether the institution really can be headed by someone who holds a degree in law or has any other experience in the field of law only.

Quite a few of respondents interviewed support this approach. They believe that it would be useful to harmonise the requirements for an Equal Opportunities Ombudsperson with the

²⁵ For the purposes of the study 30 respondents representing different organisations, bodies or academic institutions (10 representatives of governmental or municipal institutions, 10 representatives of NGOs and 10 representatives of the academia) were interviewed. The results of the study are reviewed in detail in Part 2 of the study.

²⁶ LG-VI-06-1, LG-VI-07-1, LG-AKB-05-1, LG-NVO-02-1, LG-VI-04-1, LG-AKB-07-1, LG-VI-05-1, LG-NVO-03-1, LG-AKB-04-2, LG-NVO-04-1, LG-NVO-05-1.

requirements for other types of Ombudspersons²⁷. A considerable number of respondents (14 out of 27) indicated that these requirements should include experience in the areas of equal treatment, human rights and non-discrimination. 33 % of respondents (10 out of 30) said that someone with a degree other than law could be an Equal Opportunities Ombudsperson²⁸.

RECOMMENDATION

It could be worthwhile to consider the possibility of amending current legislation by including a provision whereby candidates to the position of an Equal Opportunities Ombudsperson would be required to have not only a legal education but also knowledge (experience) in the fields of human rights, equal treatment and non-discrimination. People with another type of a university degree in social sciences could also be eligible for the position of an Equal Opportunities Ombudsperson.

Number of Terms in Office

The suggestion by the newly appointed Equal Opportunities Ombudsperson to limit the number of terms in office of an Equal Opportunities Ombudsperson deserves attention too²⁹. An Equal Opportunities Ombudsperson must have guarantees of the continuity of his/her activities to ensure strategic, planned and independent work of the institution. However, when the number of terms of office is not limited there is a threat that, in order to keep the position, the Ombudsperson, instead of safeguarding the principle of equal treatment in an unbiased way, could succumb to political pressures (especially concerning certain controversial issues), trying to “please everybody” just for the sake of securing the support of a given parliamentary majority and avoid a confrontation with any significant political force or ideology. The time-span of two terms of office (i.e. 10 years of uninterrupted activities) would help fully implement the competences and potential of the head of the institution, but also would help avoid any political pressure and would guarantee the renewal of the institution. Therefore, it would be useful to consider the possibility of amending the legislation currently in force by introducing limits for consecutive terms of office³⁰. It is also worth noting that this initiative by the new Ombudsperson is supported by quite a few respondents who took part in the survey. The majority (16 out of 30) believe that the number of terms in office of an Equal Opportunities Ombudsperson should be limited. The majority said that an unlimited number of terms of office could give rise to a situation when the Ombudsperson implements his/her functions passively and is only concerned with preserving his/her workplace, reluctant to undertake complex tasks, or else it could create conditions for political pressure, making it difficult to ensure that the Equal Opportunities Ombudsperson is truly independent.

RECOMMENDATION

²⁷ New versions of the Law on Equal Opportunities for Women and Men and Law on Equal Treatment came into force from January 1st, 2017. The requirements for the Ombudsperson are foreseen now in the Law on Equal Treatment.

²⁸ LG-NVO-02-1, LG-VI-04-1, LG-VI-06-1 (I), LG-VI-07-1, LG-AKB-02-2, LG-AKB-04-2, LG-AKB-05-1, LG-AKB-07-1, LG-AKB-08-1, LG-AKB-09-1

²⁹ The Equal Opportunities Ombudsperson will propose introducing limits to her terms of office, *Kauno diena*, BNS, 01-04-2016. Available online at: <http://kauno.diena.lt/naujienos/lietuva/salies-pulsas/lygiu-galimybiu-kontroliere-savo-pareigoms-siulyt-apriboti-kadencijas-741722>

³⁰ New versions of the Law on Equal Opportunities for Women and Men and Law on Equal Treatment came into force from January 1st, 2017. The requirements for the Ombudsperson are foreseen now in the Law on Equal Treatment. Limit of not more than two consecutive terms has been included in the Law.

Existing legislation must be amended by including a provision limiting the number of consecutive terms of office of the Equal Opportunities Ombudsperson (i.e. 10 years of uninterrupted service). Such duration of time would make it possible for the head of the institution to reach his/her full potential and help avoid political pressures and ensure the renewal of the institution³¹.

The Equal Opportunities Ombudsperson can be released from office upon a motion of censure in the Parliament. Following a systematic interpretation of the Law on Equal Opportunities for Women and Men, half of the votes of Members of Parliament present during the sitting is enough for a motion of censure to be carried. This provision creates additional possibilities for separate political forces to influence the decisions of the Equal Opportunities Ombudsperson and exert political pressure and creates uncertainty. This type of regulation differs from the guarantees granted to the Ombudsmen of the Seimas – the mandate of a Parliamentary Ombudsman ceases to be valid when more than half of all Members of Parliament vote in favour of a motion for censure³². Bearing in mind the fact that the Office of the Equal Opportunities Ombudsperson was established with the purpose of making it equal to that of the Ombudsman of the Seimas, it is difficult to see why the Equal Opportunities Ombudsperson should enjoy different (lesser) safeguards against possible political pressure.

RECOMMENDATION

It is necessary to amend current legislation by harmonising rules governing the accountability to the Seimas and the dismissal of the Ombudsmen of the Seimas and the Equal Opportunities Ombudspersons³³.

Financing of the Office of the Equal Opportunities Ombudsperson

Even the broadest structural independence would be but an empty declaration if the institution would not be able to implement its mandate fully due to the lack of funds. Adequate funding along with the possibility of distributing the funds within the institution based on its needs are pointed out as key elements of independence in the Recommendations of the European Commission against Racism and Intolerance and the Paris Principles.

The Office of the Equal Opportunities Ombudsperson is not financially independent and must rely on the good will of the Parliament and the Government. The absence of financial freedom goes against international recommendations. In this respect the situation in Lithuania resembles that of other countries where most equality bodies are financially dependent and many of them suffered cuts during the economic crisis and thus are no longer able to carry out their functions fully and in a planned way³⁴.

Insufficient financing of certain functions undermines the authority and prestige of these bodies and damages their reputation of reliable and efficient institutions. The Lithuanian national equality body is challenged by the fact that some of its functions not related to

³¹ The new version of the procedure for the appointment of the Equal Opportunities Ombudsperson stipulates that “the same person may be appointed as Equal Opportunities Ombudsperson for the maximum of two consecutive terms” (Article 18.2).

³² Law on the Seimas Ombudsmen, Article 9, available online at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462906

³³ New versions of the Law on Equal Opportunities for Women and Men and Law on Equal Treatment came into force from January 1st, 2017. The dismissal procedure has been changed.

³⁴ Equality Bodies - Current Challenges, An EQUINET perspective, 2012. P. 17, available online at:

<http://www.equineteurope.org/-Publications->

complaint handling (promotional activities, surveys and educational activities, etc.) are attributed and financed not directly, but via the programmes approved by the Government or individual ministries. Often no or little funds are allocated for their implementation. Some activities are funded only because of the proactive involvement in projects by the Office itself or NGOs.

Therefore, the financial independence of the Office of the Equal Opportunities Ombudsperson is very limited; the institution has limited possibilities of planning its functions several years ahead. This is contrary to international recommendations.

The representatives of the academic community, NGOs and state and municipal institutions surveyed also believe that insufficient financial independence of the Office may compromise its independence. The majority of respondents (15 out of 30) see inadequate funding as an obstacle for ensuring the independence of the Equal Opportunities Ombudsperson.

RECOMMENDATION

To make the institution more effective and to enable strategic and full implementation of its mandate, it is recommended that the activities of the institution are funded not only via short-term non-discrimination measures, but also directly, by earmarking funds for certain functions in a separate line in the budget of the institution every year (e.g. funding for promotional activities, for legal research, etc.), by allowing the Office to distribute its funds independently according to its strategic goals and priorities.

Strategic Planning

Setting its strategic directions and guidelines by the Office itself is a significant indicator of the degree of institutional independence. At the same time, strategic planning is an equally important tool for increasing the efficiency of the institution and assessing the ability of the institution to make real impact on individuals and the public. The existence of a strategic plan is one of the indicators that the institution implements its functions strategically and in full measure³⁵. A strategic plan is particularly useful to those national equality bodies that have a broad mandate and implement a wide range of functions.

The laws and other legal acts governing the activities of the Office of the Equal Opportunities Ombudsperson provide little detail on how the operational activities of the institution should be shaped. Neither the Seimas, nor other institutions or organisations can impose strategic priorities; therefore the Office of the Equal Opportunities Ombudsperson can approve its own strategic directions. This, of course, is a positive feature of the Lithuanian national equality body; however, for quite some time it had not been used. Prior to the appointment of the new Ombudsperson in 2015 the importance of a strategic plan had been overlooked. The new Ombudsperson's focus on strategic planning is welcome.

Foreign experts believe that strategic planning is vital for bodies like the Office of the Equal Opportunities Ombudsperson³⁶. A strategic plan and the monitoring of its implementation can help the institution to prioritise for impact and strive to become an institution with a real impact on the individual, collective and societal level.

³⁵ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 139, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

³⁶ Niall Crowley, Key Challenges for a Single Equality Body, Notes in Support of Lithuanian Dialogue, October 2016. The presentation was delivered in a project workshop.

During in-depth interviews respondents pointed out the necessity for strategic planning as they evaluated specific functions carried out by the Equal Opportunities Ombudsperson. Respondents believe that strategic goals are vital for the implementation of every function, especially considering the limited financial and human resources of the Office.

RECOMMENDATION

It is vital to re-evaluate the role of strategic planning within the Office of the Equal Opportunities Ombudsperson. A meticulous strategic plan should become the basis for practical activities of the Office and serve as a self-evaluation tool that helps to work in a planned and strategic way while focusing on real and measurable impact on the individual, collective and societal level.

Handling of Complaints

As mentioned above, EU law does not require that equality bodies function as individual complaint-handling institutions; this is not a mandatory feature of an equality body. But in 13 EU Member States there are bodies that have this mandate (9 of them can impose binding decisions)³⁷.

Formally, the investigation of complaints has been and still is the main function of the Office of the Equal Opportunities Ombudsperson. In the past decade, since the start of its activities the Equal Opportunities Ombudsperson has received more than 2000 complaints (another 200 or so were initiated by the Ombudsperson herself). Statistics show that most decisions are recommendations on ceasing illicit actions (some 25 % of the decisions), followed by warnings (some 8 %) that have only minimal legal implications (an increase in fine, if the Ombudsperson decides on imposing an administrative fine to the previously warned offender). An administrative fine is the only sanction resulting in any tangible legal implications and only has been imposed on several occasions (0,44 %). Therefore, this gives rise to a justified question as to what legal implications the decisions of the Ombudsperson have both to the offenders and the victims.

It seems that the Office can exert certain influence on individuals even prior to the receipt of a complaint. According to the representatives of the Office, the staff devote a lot of time for providing consultations and information. So, victims of discrimination receive free consultations on possible actions in each situation. In fact, both the law and the staff of the Office perceive these consultation activities as fulfilling the function of “assisting victims”, as required by the EU Directive on Racial Equality.

Respondents believe that the possibility for the victims of discrimination to seize the Office to remedy their rights can give the victims a sense of security and to provide at least a theoretical possibility of assistance and hope (9 respondents)³⁸. Quite a few of respondents said the Office was open and ready to provide information, but some did not know what specific assistance the Office of the Equal Opportunities Ombudsperson provided to victims of discrimination (9 respondents). When asked to evaluate the efficiency of assistance provided to victims of discrimination, harassment and sexual harassment within the scale of 1 to 10 points, one third of respondents said they could not give an evaluation, and the rest rated the efficiency of assistance provided at **5.92 points**.

³⁷ Ibid, p. 125.

³⁸ LG-NVO-06-1, LG-NVO-07-1, LG-NVO-10-5, LG-VI-01-1, LG-VI-02-1, LG-VI-03-1, LG-VI-04-1, LG-VI-08-4, LG-AKB-01-1

The next stage of influence on individuals begins when a complaint is registered and the actual investigation starts. Some respondents believe that the filing of an individual complaint can have a preventive effect and encourage other victims of discrimination, especially when an infringement is detected (6 respondents)³⁹.

It must be admitted that complaint investigation does not have much effect on the situation of a discrimination victim; the Ombudsperson is not in the position either to enforce the payment of a compensation or oblige the offender to restore the situation as it was before the act of discrimination (e.g. to oblige the offender to re-employ the victim). If successful, the victim does not get anything except for the recognition of the illicit nature of the actions of the offender, which perhaps simplifies further litigation in court (although, without doubt, the Ombudsperson's decisions are not binding to courts). The situation of the victims can be mostly influenced by the decision of the Ombudsperson "to address a specific person or institution and *suggest* the cessation of actions infringing equal opportunities and to adjust or stop behaviour related thereto", however, the law does not specify that the offender is bound by such a *suggestion*. 12 out of 30 respondents believe that such decisions by the Ombudsperson have major or big impact, 11 respondents believe that they have average impact and 7 – that they have small or negligible impact.

The Ombudsperson's decisions have a somewhat greater effect on the offender. As indicated by the representatives of the Office of the Equal Opportunities Ombudsperson, frequently the mere fact of finding an offence is sufficient to make offenders reconsider their behaviour and in many cases offenders agree with the suggestion to stop actions infringing equal opportunities, and the recommendations to amend legal acts are accepted. Therefore, according to the representatives of the Office, even a warning is an adequate measure. Perhaps it is true that in certain cases when infringements are accidental and are due to the lack of knowledge, this type of decisions really can be effective. However, it is doubtful whether a suggestion of stopping discriminatory behaviour or a warning could change the attitude of deliberate offenders or dissuade them from committing future offences.

14 respondents believe that a warning has a small or negligible impact, 9 – average impact and 7 – big or major impact.

The only potential dissuasive measure available to the Ombudsperson is a specific financial sanction – a fine. The wish to avoid an unpleasant (expensive) sanction will convince the offender to abide by the law. Only effective, proportionate and dissuasive sanctions can guarantee that deliberate offenders abide by the provisions of equal treatment legislation. However, current legislation does not provide for such sanctions.

The necessity to review the mechanism for enforcing sanctions and decisions by the Equal Opportunities Ombudsperson is confirmed by the surveyed representatives of the academic community, NGOs, state and municipal institutions. As many as half of the respondents believe that the Equal Opportunities Ombudsperson lacks powers to ensure the enforcement of his/her decisions and only a third believe that the statutory powers are sufficient, while another third commented on possible ways of strengthening the impact of the decisions. As many as 23 respondents out of 30 pointed out that the sanctions and penalties set out in the current legislation are not sufficiently effective, proportionate and dissuasive.

Some of respondents say that victims of discrimination would benefit more if the steps taken and positive results achieved following the investigation of discrimination, harassment or sexual harassment complaints would be made public. To ensure better enforcement and

³⁹ LG-NVO-02-1, LG-NVO-05-1, LG-VI-06-1, LG-AKB-03-1, LG-AKB-02-2, LG-VI-09-6.

broader impact of decisions a stronger and permanent enforcement monitoring mechanism is needed. (5 respondents⁴⁰).

In terms of activities related to complaint investigation and subsequent decisions, most respondents (77 %) noted that current legislation **does not prescribe sufficiently effective, proportionate and dissuasive sanctions** (23 respondents⁴¹).

RECOMMENDATION

It is necessary to review current legal acts governing the nature and enforcement of decisions taken by the Office of the Equal Opportunities Ombudsperson. It is necessary to set up a mechanism of effective, proportionate and dissuasive sanctions which, upon the evaluation of specific circumstances in each case, would enable imposing individualised sanctions that are most effective in each case. Moreover, it could be useful to put in place clearer legal regulation on making public complaint investigation results when publicity could serve as a preventive measure and a sanction to the offender.

Independent surveys, overviews of discrimination situation and reports

“The Equal Opportunities Ombudsperson shall conduct independent investigations into cases of discrimination and independent surveys on the situation of discrimination, publish independent reports” – stipulates the law regulating the activities of the Equal Opportunities Ombudsperson without providing further details. This area of the competence of the Equal Opportunities Ombudsperson was included in the law only in 2009 after the European Commission commented on the fact that the mandate of the Equal Opportunities Ombudsperson lacked one of the three functions of an equality body laid down in Article 13 of the Directive 2000/43/EC⁴². While adopting the necessary amendments, it was highlighted that the Office engaged in that kind of activity *de facto*, therefore the amendment to the law was a mere formality needed to take on board the comments by the European Commission.

It is therefore not at all surprising that it remains unclear what place this functional activity should have in the work of the Ombudsperson, how many resources should be allocated for this activity every year and what results are to be expected. There is an impression that the Office itself cannot work independently and plan the implementation of this function due to the lack of financial and human resources. It must rely on the periodic measures included in governmental programmes in the hope that these measures will receive targeted funding or, in many cases, resort to uncertain external financing and the support of external experts.

RECOMMENDATION

The Office of the Equal Opportunities Ombudsperson is obliged to conduct independent surveys on cases of discrimination, draft independent overviews of the situation on discrimination and publish independent reports. However, to strengthen this institutional competence, it must be regulated more clearly in legal acts and subsequently described in detail in the strategic documents of the institution and be

⁴⁰ LG-NVO-01-1, LG-NVO-02-1, LG-AKB-04-1, LG-NVO-03-1, LG-NVO-06-1

⁴¹ LG-NVO-01-1, LG-NVO-02-1, LG-NVO-03-1, LG-NVO-04-1, LG-NVO-05-1, LG-NVO-06-1, LG-NVO-08-3, LG-NVO-09-1, LG-NVO-10-5, LG-VI-01-1, LG-VI-02-1, LG-VI-03-1, LG-VI-04-1, LG-VI-06-1, LG-AKB-01-1, LG-AKB-03-1, LG-AKB-04-2, LG-AKB-05-1, LG-AKB-06-1, LG-AKB-07-1, LG-AKB-08-1, LG-AKB-09-1, LG-AKB-10-1,

⁴² The 21 April 2009 verbatim report No 63 of the extraordinary evening plenary session of the Parliament, available online at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.341966?positionInSearchResults=3&searchModelUUID=fc07c994-7fcc-4a2b-907a-15f65b699891>

reflected in the internal institutional setup.

The recommendation monitoring mechanism

EU directives require Member States to ensure that national equality bodies are competent in making recommendations on all issues related to all cases of such discrimination. Since 2005 almost yearly the Office of the Equal Opportunities Ombudsperson has been submitting a list of recommendations on improving equal treatment legislation and on how individual institutions could amend legal acts or policies. Sometimes these recommendations have been rather abstract, often without a specific addressee and vaguely defined specific entities that were supposed to implement a given recommendation, the deadlines for implementation were not set and no specific suggestions were proposed. Therefore, it is quite likely that the institutions concerned do not always treat the recommendations as mandatory.

Representatives of the academic community, NGOs and state and municipal institutions were asked whether the Office of the Equal Opportunities Ombudsperson was active enough in submitting proposals on any possible legislative improvements. Most respondents (47 %) believe that it was not active enough, 20 % of respondents believe that it is active enough and 20 % indicated the option "other". Most respondents noted that the Office of the Equal Opportunities Ombudsperson should be more active in making suggestions on any possible improvements of legal acts, but also pointed out that more human resources would be necessary to fulfil this function.

Recommendations are meaningful only when a mechanism for the monitoring of their implementation is in place⁴³. A mechanism for the monitoring of recommendation implementation would strengthen the status of the Office of the Equal Opportunities Ombudsperson and send a signal to the institutions and individuals to whom the recommendations are addressed that they should be taken seriously and efforts must be made to implement them.

It must be noted that in 2005-2015, prior to the appointment of the new Equal Opportunities Ombudsperson, the Office did not have an effective mechanism for ensuring the implementation of decisions or recommendations. It was never common practice in the Office to monitor or control the implementation of its recommendations. Until the beginning of 2016 the electronic data management system was not operational, therefore even manual administration of decision implementation was difficult⁴⁴.

RECOMMENDATION

For a mixed-type institution (such as the Office of the Equal Opportunities Ombudsperson) recommendations resulting from complaint investigation could serve as an important tool, provided that an efficient mechanism for the monitoring of their implementation is in place, and the recommendations would: 1) help solve an individual dispute, repair the damage caused by the violation of an equal treatment principle; 2) have an educational and preventive influence on the general public; 3) be fully individualised and creative, taking into account the victim's situation and needs as well

⁴³ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 95, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

⁴⁴ In 2016 a reform was launched to increase the effectiveness of the institution with the aim to install a system for the registration of complaints.

as the situation of the offender and the circumstances of the offence.

Internal reforms implemented by the newly appointed Ombudsperson are welcome as is the electronic data management system that will ensure the monitoring of every process. More importantly, the Office must have enough staff to use the system properly and monitor the implementation of its recommendations. Without doubt, the situation would be further improved by legislative amendments laying down the right of the Ombudsperson to enforce the implementation of recommendations and, should offenders deliberately avoid the implementation, would be able to seize the court or impose additional sanctions.

Education on equal treatment and discrimination prevention⁴⁵

While evaluating the work of a national equality body it is quite important to evaluate not only the functions that formally fall under its remit, but also the actual work. Since its establishment the Office of the Equal Opportunities Ombudsperson is treated by the Seimas and the Government as the main institution to safeguard equal treatment. Indeed, the Office carries out several activities that formally are outside its competence: it engages in awareness raising and promotional work, organises training courses for target groups and monitors the implementation of the UN Convention on the Rights of Persons with Disabilities. In other words, the *de facto* activities of the institution differ from the formal statutory provisions and this difference is pre-determined by the existing national policy on equal treatment.

Thus, even though according to the laws awareness raising and promotional activities do not belong to the competence of the Equal Opportunities Ombudsperson, it is obliged to implement these activities year after year.

It should be noted that awareness raising and promotion of equal treatment are seen by most respondents as very important tasks of the Office. When asked if awareness raising and discrimination prevention activities should be included in the remit of the Office of the Equal Opportunities Ombudsperson, as many as 77 % replied that it should, and only 13 % of respondents believed that it should not. Respondents said that educational activities carried out by the Office had the strongest impact on safeguarding equal treatment, preceded only by complaint investigation activities (13 out of 30 respondents).

Therefore, it is surprising that for many years this function had not been specified in the laws governing the work of the Office.

For a long time organising and conducting targeted training courses has been the responsibility of the Office of the Equal Opportunities Ombudsperson even though this type of activity is outside its statutory competences. The training function itself is not alien to equal treatment promotion, however, in the case of the Lithuanian national equality body this activity does not belong to the formal remit of the Office and its role in the institutional set-up is unclear.

RECOMMENDATION

Although EU directives do not spell out awareness raising as a function of a national equality body, it is universally acknowledged that this type of activity is essential to the proper implementation of equality promotion and equal treatment in general. Therefore,

⁴⁵ New versions of the Law on Equal Opportunities for Women and Men and Law on Equal Treatment came into force from January 1st, 2017. Education on equal treatment has been included as one of the functions of the Ombudsperson.

laws regulating the activities of the Office must highlight the importance of this activity and include it in strategic action plans, allocate necessary financial and human resources every year and ensure that it is adequately reflected in the staffing structure of the Office⁴⁶.

Control of the UN Convention on the Rights of Persons with Disabilities

In 2010 the Government of the Republic of Lithuania decided to assign yet another function to the Office of the Equal Opportunities Ombudsperson that was not provided for in the legislation governing the activities of the Office⁴⁷. The Office was obliged to “control the implementation of the provisions of the Convention related to safeguarding equal opportunities”. It seems as if this function was simply “dropped” upon the institution, for it was not adequately specified in the legal acts governing the activities of the Office of the Equal Opportunities Ombudsperson and no additional funding was provided. Therefore, no actual activities were carried out in practice.

Organisations representing the interests of the people with disabilities believe that this governmental decision was rather unsuccessful – in Lithuania the mechanism for monitoring the implementation of the Convention is inefficient, the institution responsible for the co-ordination of the implementation is not capable of performing functions assigned to it, independent monitoring of the implementation of the Convention that is entrusted to the Council of the Affairs of the Disabled under the Ministry of Social Affairs and Labour is not ensured. In their opinion no additional human and financial resources have been allocated for the control of the Convention. Several respondents pointed out the lack of consistent cross-sectoral cooperation in ensuring the efficient implementation of the UN Convention on the Rights of Persons with Disabilities⁴⁸.

In some of the EU Member States the remit of national equality bodies includes certain functions related to the implementation of the UN Convention on the Rights of Persons with Disabilities⁴⁹. In fact, the Lithuanian Office of the Equal Opportunities Ombudsperson could play a partial role too – some of the respondents agree with this⁵⁰. However, in Lithuania this function was assigned by setting up an inefficient co-ordination and monitoring mechanism that is not compatible with the UN Convention on the Rights of Persons with Disabilities. This is a failure that prevents the proper implementation of the Convention. Therefore, it is obvious that the functions related to the UN Convention on the Rights of Persons with Disabilities were assigned to the Office of the Equal Opportunities Ombudsperson inappropriately and without providing a proper regulatory environment or any additional human and financial resources.

RECOMMENDATION

It is necessary to organise a substantive review of the decision to oblige the Office of the

⁴⁶ New versions of the Law on Equal Opportunities for Women and Men and Law on Equal Treatment came into force from January 1st, 2017. Education on equal treatment has been included as one of the functions of the Ombudsperson.

⁴⁷The 8 December 2010 Decision No 1739 of the Government of the Republic of Lithuania on the Implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. Available online at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D9347683010E>

⁴⁸ LG-NVO-02-1, LG-NVO-05-1, LG-VI-01-1, LG-VI-07-1, LG-AKB-02-2, LG-AKB-05-1,

⁴⁹ Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, European Commission, 2010, p. 57, available online at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en>

⁵⁰ LG-NVO-05-1, LG-VI-01-1, LG-VI-02-1, LG-AKB-02-2

Equal Opportunities Ombudsperson to control the implementation of the provisions of the UN Convention on the Rights of Persons with Disabilities on safeguarding of equal treatment and involve the organisations representing the interests of the people with disabilities.

If the Office of the Equal Opportunities Ombudsperson is obliged by the law to control the implementation of the UN Convention on the Rights of Persons with Disabilities, this function must be clearly defined in the laws and adequate financial and human resources must be provided.

Co-operation of the Office of the Equal Opportunities Ombudsperson

The results of the first study on national equality bodies initiated by the European Commission already showed that equality bodies can reinforce their frequently limited powers and resources by engaging partners and fostering close co-operation ties with stakeholders – NGOs, trade unions, employer organisations, research institutions and other institutions active in the field of human rights, by involving them in formal structures (boards, councils, advisory bodies), institutionalised networks and decision-making procedures or joint campaigns.

Since its establishment, the Office of the Equal Opportunities Ombudsperson has been striving to be open for co-operation. This has been confirmed by the data provided by the organisations and institutions surveyed. During interviews respondents were asked whether their institution, body or organisation co-operated with the Office of the Equal Opportunities Ombudsperson. Most respondents (87 %) co-operate with the Office.

This is an understandable and welcome initiative – without the help from partners it would have been difficult to implement many of the equality promotion functions entrusted to the institution. Co-operation with a wider circle of stakeholders increased after 2007 and has gained significance in recent years when the informal national Equality and Diversity Forum⁵¹, a network of various equality organisations, was established under the auspices of the institution. This network helps to organise the annual event of “National Equality and Diversity Awards”⁵² – an excellent example of good practice when the topic of equality hits the headlines at least for a short while.

Respondents pointed out and gave a positive evaluation of improved co-operation with municipal institutions in 2015 and 2016⁵³ as well as of meetings with NGOs.

RECOMMENDATION

Informal relations of the Office of the Equal Opportunities Ombudsperson with various stakeholders are quite well developed, which is a significant advantage of the institution. However, maintaining these relations and especially establishing networks under the auspices of the institution is not mandatory under current legislation. Therefore, constructive co-operation mostly depends on the will and initiative of the Equal Opportunities Ombudsperson. Existing legislation could be amended by formally establishing the importance of this co-operation and spelling out specific forms of co-operation (advisory boards, periodic fora, etc.)

⁵¹ The National Equality and Diversity Forum, website: <http://nlif.lt/apie-foruma/>

⁵² <http://nlif.lt/category/naujienos/apdovanojimai/>

⁵³ LG-NVO-01-1, LG-NVO-02-1, LG-NVO-04-1, LG-NVO-05-1, LG-VI-08-04, LG-VI-09-6, LG-AKB-04-2,

To summarise, it should be noted that current regulatory provisions and the activities carried out by the Office differ. Even though the Law established the Office of the Equal Opportunities Ombudsperson as a tribunal-type body, since 2005 the Government of the Republic of Lithuania has entrusted it with many additional functions characteristic of a promotional-type body, although these functions are not even properly set out in the legislation governing the activities of the Office.

Respondents believe that the greatest impact on safeguarding equal opportunities is due to the investigation of complaints by the Office⁵⁴ (18 respondents) as well as educational, preventive and awareness raising activities (13 respondents)⁵⁵. Based on the evaluation of the effectiveness of the functions, complaint investigation by the Office of the Equal Opportunities Ombudsperson is ranked as the most effective – 53 % of respondents believed that this activity was carried out effectively (46 %) or very effectively (7 %), averagely effective – 30 %, and only 7 % believed that this function was implemented ineffectively or totally ineffectively. More than half of respondents (57%) evaluated educational and equality promotion activities as average, 26% – as effective (23%) or very effective (3%), and 14% – ineffective.

The work of the Office of the Equal Opportunities Ombudsperson should be viewed in a conceptual way, revisiting the question of what role this institution should play within the Lithuanian legal system: should it be a tribunal-type body that handles complaints and imposed sanctions on the offenders, a body that engages in equality promotion and assists victims, or should it remain a mixed-type institution that strategically combines and separates these functions.

If complaint investigation is essentially meant to punish the offender and restore the victim's rights, it is obvious that it would be useful to review current legislation, the mechanism of sanctions available to the Ombudsperson as well as the practical aspects of complaint investigation. If, however, the meaning of this function is to make discrimination cases public and educate people (engage in preventive activities), perhaps the same or even better results could be achieved by giving up mandatory investigation of all complaints received and focussing on the development of other activities (equal treatment promotion, assistance to victims of discrimination, own-initiative surveys or legal research), which would prevent victims of discrimination from fostering unjustified expectations.

⁵⁴ Complaint investigation: LG-NVO-01-1, LG-NVO-02-1, LG-NVO-03-1, LG-NVO-05-1, LG-VI-01-1, LG-VI-02-1, LG-VI-03-1, LG-VI-06-1, LG-VI-08-4, LG-VI-09-6, LG-AKB-01-1, LG-AKB-02-2, LG-AKB-03-1, LG-AKB-05-1, LG-AKB-06-1, LG-AKB-07-1, LG-AKB-09-1, LG-AKB-10-1

⁵⁵ Education and publicity: LG-NVO-04-1, LG-NVO-06-1, LG-NVO-07-1, LG-NVO-08-1, LG-NVO-09-1, LG-NVO-10-5, LG-VI-06-1, LG-VI-07-1, LG-VI-08-4, LG-AKB-01-1, LG-AKB-03-1, LG-AKB-04-2