

Submitted on 26 March 2019 by the **Office of the Equal Opportunities Ombudsperson**

98th Session
Committee on the Elimination of Racial Discrimination
Consideration of the Combined Ninth and Tenth Periodic Reports of Lithuania

**Additional Information on the State Party's Submission
(CERD/C/LTU/9-10)**

Submitting Institution:



OFFICE OF THE EQUAL
OPPORTUNITIES OMBUDSPERSON

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RECOMMENDATIONS

1. The Office recommends that the State party extends the definition of “family members” under the Law on Equal Treatment in order to provide effective protection from discrimination on the grounds of citizenship not only to spouses and direct descendants, but also to (registered) partners of the EEA citizens.
2. The Office invites the State party to provide the Office of the Equal Opportunities Ombudsperson with sufficient resources to enable full and proper implementation of its mandate, especially pertaining to its capacity to perform preventive and educational activities and dissemination of equal opportunities.
3. The Office recommends that the State party develops concrete measures in order to facilitate enjoyment of economic, social and cultural rights by minorities, especially in tackling the negative phenomena of underreporting and discrimination in the field of employment and occupation on the grounds of, *inter alia*, race, ethnicity, language, nationality, citizenship and origin.

BACKGROUND INFORMATION

1. The Office of the Equal Opportunities Ombudsperson (hereinafter the Office) is a national equality body. The Office performs a quasi-judicial function by investigating individual complaints on alleged instances of discrimination on the grounds of, *inter alia*, race, ethnicity, language, nationality, citizenship and origin under the *Law on Equal Treatment*.¹ In the Lithuanian legal system discrimination on the grounds of race, ethnicity, language, nationality, citizenship and origin is prohibited in the fields of employment and occupation, provision of goods and services, education, membership in organizations (associations), social security, and all actions by public authorities. The Office also investigates into the instances of alleged harassment and sexual harassment in the fields of employment, occupation and education.² Based on the new edition of the *Law on Equal Treatment*,³ which came into effect on 1 January 2017, the Office also performs preventive and educational activities and dissemination of equal opportunities (e.g. awareness raising campaigns). Therefore, the Office is a mixed-type institution, combining tribunal-type and promotional-type functions.
2. In paragraphs No. 5 (i.e. **grounds for discrimination in the legislation**), No. 13 (i.e. **resources for human rights institutions**) and No. 25 (i.e. **enjoyment of economic, social and cultural rights by minorities**) of the concluding observations on the combined sixth to

¹ Lietuvos Respublikos lygių galimybių įstatymas (Eng. “Law on Equal Treatment of the Republic of Lithuania”), No. IX-1826, 18 November 2003, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.222522/ZomTdZpPUx>.

² Harassment and sexual harassment in the field of provision of goods and services is not covered by the national legislation.

³ Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 pakeitimo įstatymas (Eng. “Law on Amending the Law on Equal Treatment of the Republic of Lithuania No. IX-1826”), No. XII-2768, 8 November 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/196bcda2a74b11e68987e8320e9a5185?jfwid=i0s9d01kt>.

eighth periodic reports of Lithuania (CERD/C/LTU/CO/6-8)⁴, the Committee tabled the recommendations which are directly interlinked with the mandate of the Office. After familiarizing itself with the combined ninth and tenth periodic reports by the Lithuanian Government on the implementation of the Convention (CERD/C/LTU/9-10),⁵ the Office would like to take an opportunity in providing additional information on the status of implementation of these recommendations. This submission is developed in the spirit of the paragraph 2 (a) of the General Recommendation No. 28 by the Committee on follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁶

GROUNDS FOR DISCRIMINATION IN LEGISLATION

3. The *Law on Equal Treatment* prohibits discrimination on the grounds of, *inter alia*, race, ethnicity, language, nationality and origin. On 11 July 2017 the *Law on Equal Treatment* was amended by introducing the ground of citizenship as a protected characteristic⁷ (see para. [151] of CERD/C/LTU/9-10). This amendment was initiated with the view of transposing the Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement⁸ into the national legislation. Despite its good intentions, the selected wording of the law has two serious shortcomings. First of all, the ground of citizenship is only applicable to the citizens of the European Economic Area (EEA) and their family members. To put it in other words, the citizens of the third countries and their family members do not have the standing to submit complaints before the Office on the alleged instances of discrimination on the grounds of citizenship. Secondly, the law defines family members as only spouses and direct descendants, thus effectively excluding (registered) partners from legal protection in case of discrimination on the grounds of citizenship. This restrictive legal wording is hardly compatible with the EU *acquis* in general (e.g. Directive 2004/38/EC on the right of citizens and their family members to move and reside freely⁹) and

⁴ Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations on the Combined Sixth to Eighth Periodic Reports of Lithuania, No. CERD/C/LTY/CO/6-8, 6 January 2016, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fLTU%2fCO%2f6-8&Lang=en.

⁵ Combined Ninth and Tenth Periodic Reports Submitted by Lithuania under Article 9 of the Convention, No. CERD/C/LTU/9-10, 23 May 2018, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fLTU%2f9-10&Lang=en.

⁶ Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXVIII on the Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 19 March 2002, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7500&Lang=en.

⁷ Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 2, 3, 4, 5, 6, 7, 8, 9, 11, 13 straipsnių ir priedo pakeitimo įstatymas (Engl. “Law on Amending the Articles 2, 3, 4, 5, 6, 7, 8, 9, 11, 13 and the Annex of the Law on Equal Treatment of the Republic of Lithuania No. IX-1826”), No. XIII-618, 11 July 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c87aab836c7711e7aefae747e4b63286?positionInSearchResults=0&searchModelUUID=5d00f363-c646-48a5-8f1d-0380a0986551>.

⁸ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on Measures Facilitating the Exercise of Rights Conferred on Workers in the Context of Freedom of Movement for Workers, OJ L 128, p. 8-14, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0054>.

⁹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States

other national legislation¹⁰ in particular, which tend to define family members in less restrictive manner.

4. One of the prevailing arguments for introducing the ground of citizenship into the national anti-discrimination legislation restrictively was related to the reluctance by the Lithuanian authorities in recognizing same-sex unions legally concluded abroad. It is true that registered partnerships are concluded in other EU Member States, such as Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, the Netherlands, Slovenia and Sweden. The Directive 2014/54/EU prohibits discrimination of the European Union citizens and their family members based on their nationality. The current wording of the *Law on Equal Treatment* states that the registered partners of citizens from countries where these partnerships are legally registered are not recognized as family members in Lithuania and are not able to lodge individual complaints before the Office regarding instances of alleged discrimination on the grounds of citizenship.¹¹
5. On 11 January 2019 the Constitutional Court of the Republic of Lithuania issued a progressive judgment on legal recognition of same-sex unions concluded abroad for the migration purposes.¹² Despite the fact that the Constitutional Court ruled on a narrow issue, whether a same-sex spouse is entitled to a residence permit on the grounds of “family reunification”, the Court made some important remarks in the *orbiter dictum* of the judgment. The Constitutional Court has reiterated that the constitutional concept of “family life” includes not only married couples, but also couples in stable *de facto* relationships (see para. [32.5] of the judgment). As a result, in order to harmonize the national anti-discrimination legislation with the constitutional jurisprudence and the EU *acquis*, it is recommended to extend the definition of “family members” under the *Law on Equal Treatment* in order to provide effective protection from discrimination on the grounds of citizenship not only to spouses and direct descendants, but also to (registered) partners of the EEA citizens.

RESOURCES FOR HUMAN RIGHTS INSTITUTIONS

6. In the concluding observations on the combined sixth to eight periodic reports of Lithuania the Committee recommended to “provide the Equal Opportunities Ombudsman [...] with sufficient resources to enable them to fully and properly implement their mandate” (see para. [13] of CERD/C/LTU/CO/6-8). Since its establishment in 1999, the Office had predominantly

Amending Regulation (EEC) No 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, p. 77-123, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038>.

¹⁰ For example, see: Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties (Eng. “Law on Legal Status of Aliens”, No. IX-2206, 29 April 2004, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.232378/TrPqfDnmKi>; Lietuvos Respublikos paramos mirties atveju įstatymo Nr. I-348 pakeitimo įstatymas (Engl. “Law on Amending the Law on Monetary Compensation in the Event of Death No. I-348”), No. XII-2612, 20 September 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/bfa8a252817711e6a0f68fd135e6f40c>.

¹¹ It has to be noted that while the Directive 2014/54/EU talks about discrimination on the grounds of **nationality**, it was transposed to the national legislation by introducing the ground of **citizenship**. This decision has been made because the ground of nationality was already an integral part of the national anti-discrimination legislation.

¹² Judgment by the Constitutional Court of the Republic of Lithuania No. KT3-N1/2019, Case No. 16/2016, 11 January 2019, <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1898/content>.

performed the quasi-judicial function by investigating into the individual complaints on the alleged instances of discrimination, harassment and sexual harassment under the *Law on Equal Treatment* and the *Law on Equal Opportunities for Women and Men*.¹³ In 2017 the mandate of the Office was significantly extended through the corresponding legal amendment¹⁴ with the aim of introducing preventive and educational activities and dissemination of equal opportunities as one of the functions of the Equal Opportunities Ombudsperson. As a result, the Office has become a mixed-type equality institution, combining tribunal-type and promotional-type functions. Unfortunately, in the period between 2017 and 2019 the Office did not receive any additional funding for its preventive and educational activities.

7. In 2018 the Office received public funding of EUR 507'000. In the course of the budgetary year, the Office used 99.9% of this funding (53,6% were used for staff costs and 20,7% were used for cofounding externally funded projects¹⁵). In addition to the budgetary funding the project funding of EUR 150,600 was received from the programmes run by the European Commission and EUR 266,800 EUR from the European Social Fund. It has to be emphasized that all preventive and educational activities on the grounds of, *inter alia*, race, ethnicity, language, nationality, citizenship and origin were funded by the project funding, while the Government's contribution amounted to 20,7% in the form of the cofounding. The Office identifies, develops and submits applications for the project funding on its own initiative, so that it could fulfill its mandate to perform preventive and educational activities and dissemination of equal opportunities. The project funding allows the Office to cover such important areas as gender-based violence, LGBT+ rights, hate speech and stereotypes in educational curriculum.
8. In 2019 the Office received public funding of EUR 407'000, despite the fact that well-grounded and justified funding needs articulated in the strategic plan of the Office amounted to EUR 598'000. The difference in EUR 194'000 first and foremost will negatively impact the capacity of the Office to perform preventive and educational activities and dissemination of equal opportunities. For example, in its combined ninth and tenth periodic reports the Government mentioned the annual National Equality and Diversity Awards, organized by the Office (see para. [29] of CERD/C/LTU/9-10). While it is true that the "Nations Dialogue Award" presented during the ceremony significantly contributes to elimination of xenophobia, racial and ethnic stereotypes, it has to be emphasized that the initiative of the National Equality and Diversity Awards does not receive any public funding and is exclusively dependent on the capacity by the Office to fundraise for this important event from the private donors. The total budget of the National Equality and Diversity Awards in 2019 amounts to EUR 38'000, which were donated by 7 different sponsors, ranging from private companies to foreign diplomatic representations in Lithuania. In order to ensure the sustainability of the already ongoing initiatives to combat negative racial, ethnic and (or) national stereotypes, it is

¹³ Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas (Eng. "Law on Equal Opportunities for Women and Men of the Republic of Lithuania"), No. VIII-947, 1 December 1998, <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/FLcEVzJmSQ>.

¹⁴ *Supra* 3.

¹⁵ For the comprehensive list of externally funded projects, which are implemented by the Office of the Equal Opportunities Ombudsperson, please see: <https://www.lygybe.lt/lt/projektaiprojektai>.

recommended to provide the Office with sufficient resources to enable full and proper implementation of its mandate, especially pertaining to its capacity to perform preventive and educational activities and dissemination of equal opportunities.

ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY MINORITIES

9. In 2018 the Office received 20 individual complaints (constituting 9% of all individual complaints received by the Office that year) on the grounds of race, ethnicity, language, nationality, citizenship and origin.¹⁶ The majority of the individual complaints received were related to the grounds of nationality (12), citizenship (4) and language (6). It is important to note that applicants, who complained about discrimination on the grounds of nationality, also felt discriminated on the grounds of language (i.e. identifiable pattern of multiple discrimination). In 2018 the majority of individual complaints on the alleged instances of discrimination on the grounds of race, ethnicity, language, nationality, citizenship and origin occurred in the spheres of employment and occupation and in other areas of life, which are not directly covered under the *Law on Equal Treatment* (e. g. mass media, judicial system, areas of life regulated by separate pieces of legislation, etc.). The sphere of provision of goods and services was also prone to individual complaints on these particular grounds. In the sphere of education, the applicants complained that they had been discriminated because of the lack of education services in particular language and (or) objective evaluation of learning results. It is noteworthy that in all instances, when investigation had been initiated after receiving an individual complaint on the grounds of race, ethnicity, language, nationality, citizenship and origin, violations of the principle of equal opportunities were discontinued already in the course of that investigation. To put it other words, there was no need to find a formal violation of the *Law on Equal Treatment*.
10. A few received individual complaints on the alleged instances of discrimination on the grounds of race, ethnicity, language, nationality, citizenship and origin clearly indicate that majority of these instances remain underreported. For example, the representative opinion survey, conducted by the NGO “Diversity Development Group” in August, 2018, revealed that 11,3% of Lithuanian residents believe that discrimination on the grounds of race and ethnicity is wide-spread in the Lithuanian labor market.¹⁷ The same survey revealed that 47,6% of Lithuanian residents would not like to work together with a Roma person, 29,6% – with a refugee, 21% – with a person who does not speak Lithuanian, 13,4% – with a black person and 10,8% – with a person of color. The similar negative attitudes are identified in other areas of life. For example, the representative opinion survey, conducted by the Office in November, 2018, revealed that 32,5% of the Lithuanian residents would not like to be neighbors with a

¹⁶ Lietuvos Respublikos lygių galimybių kontrolieriaus 2018 metų veiklos ataskaita (Engl. “Annual Report of 2018 by the Equal Opportunities Ombudsperson of the Republic of Lithuania), No. BR-40, 15 March 2019, <https://www.lygybe.lt/data/public/uploads/2019/03/lgk-2018-m.-veiklos-ataskaita-.pdf>, p. 23.

¹⁷ “Lietuviai skundžiasi diskriminacija, bet patys nenorėtų dirbti su gėjais ar musulmonais” (Engl. “Lithuanians Complain about Discrimination, but Do not Want to Work with Gays and Muslims Themselves”), *15min.lt*, 3 October 2018, <https://www.15min.lt/verslas/naujiena/karjera/lietuviai-aiskina-patiriantys-diskriminacija-bet-patys-labai-nenoretu-dirbti-su-musulmonais-romais-ar-homoseksualais-666-1038900>.

black person, 48,7% – with a refugee and 65,8% with a Roma person.¹⁸ The same survey revealed that 48.5% of the Lithuanian residents would rather not prefer to rent a flat for a black person, 62,9% – for a refugee and 88.5% for a Roma person. These numbers very clearly indicate that xenophobic attitudes and racist and ethnic stereotypes remain shockingly widespread among the Lithuanian population.

11. In order to address these worrying tendencies, it is recommended to develop concrete measures that would facilitate economic, social and cultural rights by racial, ethnic and national minorities. Raising legal awareness and empowering affected communities would be an effective strategy in tackling the negative phenomenon of underreporting. More individual complaints, received by the Office and other competent public authorities, would assist in revealing the actual prevalence of discriminatory practices and subsequently developing targeted intervention strategies on the grounds of race, ethnicity, language, nationality, citizenship and origin.

¹⁸ “Apklausa: Lietuvos gyventojai vis dar neigiamai vertina translyčius asmenis” (Engl. “Survey: Lithuanian Residents are still not Fond of Transgender Persons”), *15min.lt*, 10 December 2010, <https://www.15min.lt/naujiena/aktualu/lietuva/apklausa-lietuvos-gyventojai-vis-dar-neigiamai-vertina-translycius-asmenis-56-1072534>.