

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Lithuania

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1. Demographic background

The current population of Lithuania is 3,366,000, making it numerically the most populous of the three Baltic States (Statistics Lithuania, 2009a). Over the period since independence from the USSR, approximately 10 per cent of the population has migrated abroad, making this one of the highest levels of outward migration among the new EU member states. Combined with an aging population, declining birth rates and some of the most negative health and demographic trends in the EU, the future sustainability of the labour force remains in question. Linked to this there are also problems of a sense of national identity already profoundly challenged by the years of incorporation of a small country first in the larger political entity of the Soviet Union, and now within the European Union.

However, the level of inwards migration from other parts of the Soviet Union during the fifty years of Soviet rule was on a considerably lower scale than in the neighbouring Baltic States. As a result, Lithuania has a lesser burden of inherited potential ethnic tensions, such as those that erupted in Estonia in April 2007, although both Lithuania and Latvia have seen mass protests as the global financial crisis has deepened with especially severe and longer-term consequences in the Baltic States. So far, such protests have not taken an inter-ethnic character. The 'zero option' inclusive citizenship legislation adopted at the time of Lithuanian independence, granted citizenship rights to all who lived in Lithuania irrespective of national or ethnic origin. Thus, stateless persons and non-citizens comprising a significant minority of the population, as in Latvia and Estonia, are absent. The percentage of ethnic Russians in the population of Lithuania has declined following independence from 9.4 per cent in 1989 to 5.1 per cent in 2007. There are also Poles (6.3 per cent) and of Belarusians (1.1 per cent) forming established 'traditional' communities. Other historically long-present minorities such as Jews, Roma and Tartars comprise no more than a fraction of one percent of the total population (Statistics Lithuania 2009a).

To date, the level of inwards migration to Lithuania has been rather low as a result of relatively unattractive wages compared to other EU countries, and has mainly comprised manual employees in construction (often working in the informal economy) and in retailing. Most migrants have come from contiguous 'third countries' of the former Soviet Union, such as Ukraine, Moldova and Belarus. Third country migrants from further afield, for example Middle East, Asia and Africa are still very rare in Lithuania, although prior to the recession, Turkish, Chinese and Thai workers were working in Lithuanian enterprises. The salient racial and ethnic characteristic of Lithuanian society is its perceived 'homogeneity'.

2. Industrial relations background

Estimates of trade union density overall in Lithuania vary, but suggestions of 16 per cent of the working population would appear optimistic. A more realistic estimate would be around 10-12 per cent. Estimates of employer organisation suggest perhaps 20 per cent affiliated to one of the main organisations, but this would also appear optimistic. In general, industrial relations at sector and plant levels have been weakly developed in the post-communist period, with significant legal restrictions on the right to strike and high degrees of employer hostility to union organisation, especially at enterprise level. In terms of strike activity, Lithuania along with the other Baltic States records among the lowest levels in the EU (Statistics Lithuania 2009b). Very few sector trade union agreements exist and Lithuania records among the lowest levels of collective agreements, union density and membership of peak organisations in the new EU member states joining the EU in 2004 (European Commission 2008: 73). Nevertheless, social dialogue discussions continue at a national level, with representation in a Tripartite Council from the major employers and trade union organisations, although practical achievements resulting from these discussions remain a matter of debate.

The LPSK Lithuanian Trade Union Confederation is the largest trade union organisation. Its membership is organised on a branch/sector basis and currently has 26 affiliated branch trade unions (approximate membership is 120,000 persons). "Solidarumas" unites basic trade union organisations at enterprise level grouped in county, city/town and regional territorial bodies and federations (currently having 24 affiliated territorial unions and 12 federations). A small Christian based trade union confederation, LDF, also exists with some limited enterprise agreements. In total, therefore, there are three separate trade union confederations although some progress has recently been made in joint spheres of action.

The LPK Lithuanian Confederation of Industrialists is the largest employers' organisation and is mainly representative of bigger companies in Lithuania. (Employer peak organisation). LVDK, Lietuvos Verslo Darbdavių Konfederacija is a smaller organisation representing mainly small enterprises.

3. Trade union and Employer awareness

As a preliminary to assessing general awareness of the Racial Equality Directive, it is necessary summarise survey data that suggest contradictory and ambivalent attitudes in the population as a whole on issues of racial and ethnic discrimination. In the contemporary post-communist period, there has been only lukewarm endorsement by the emergent political elites of rights-based social justice demands and discourses of anti-discrimination in society. Lithuania records among the lowest levels of civic participation in voluntary activity in the EU as a whole, as well as low levels of social trust in others and in the basic political institutions of society (Eurobarometer 2007: 35,

67). This peculiarly post-communist social fragmentation appears as a pervasive social quiescence on issues of discrimination in general.

Recent social attitude surveys have revealed seemingly anomalous findings that there is in fact *less* perceived overt discrimination on ethnic and racial, or indeed on most other grounds in Lithuania when compared to the rest of the EU. A Eurobarometer survey on discrimination across all EU member states notes that 'the NMS12 countries (new member states acceding in 2004 and 2007) have higher proportions of citizens who cannot estimate the extent of various forms of discrimination; *this is especially true in Lithuania and Latvia*' (Eurobarometer 2008a: 10, emphasis added). Lithuania scored the *lowest* percentage of the population of those who actually *perceived* multiple discrimination in their society, a mere 2 per cent in total (Eurobarometer 2008a: 17). Compared to an EU average of 19 per cent of respondents claiming to have experienced discrimination on racial or ethnic grounds, the figure for Lithuania was only 7 per cent, just above that of Malta at 5 per cent (Eurobarometer 2008a: 52). In detailed country data, 'substantial disparities' between Lithuanian and EU25 average figures were noted. Thus, belonging to 'a different ethnic group' was seen as a 'disadvantage' by 27 per cent of Lithuanian respondents, compared to 62 per cent for the EU. Belonging to 'a different religion' was seen as a 'disadvantage' by 21 per cent of Lithuanian respondents, compared to 39 per cent for the EU25 (Eurobarometer 2008b: 1). 'Widespread' discrimination based on ethnic and racial origin or religious beliefs was 'perceived to be much less prevalent in Lithuania' than in the European Union as a whole (Eurobarometer 2008b: 2). The proportion of those who perceived 'widespread' ethnic and racial discrimination was less than half the EU average (23 per cent compared to 64 per cent), and less than a third in respect of perceptions of 'widespread' religious discrimination (15 per cent compared to 44 per cent). Moreover, only small percentages of Lithuanian respondents believed that discrimination on the basis of ethnic origin was 'more widespread than it was five years ago' (23 per cent compared to 49 per cent for the EU), and similarly for discrimination based on religious beliefs, (16 per cent compared to 42 per cent for the EU) (Eurobarometer 2008b: 2). A significantly lower percentage of Lithuanians considered that more MPs were needed of a 'different ethnic origin' (24 per cent compared to the EU average of 44 per cent) (Eurobarometer 2008b: 4).

These data would appear to indicate that racial, ethnic or religious discrimination is perceived as being significantly less important when compared to European Union averages. However, a recent survey from the Institute for Social Research, Centre of Ethnic Studies provides contrasting findings (Socialinių tyrimų instituto, etninių tyrimų centras 2008). These data suggest the embedded nature of discriminatory attitudes measured in terms of 'social distance', in asking respondents to indicate those ethnic or racial minorities that they would *not* wish to have as neighbours. Over two-thirds of those sampled in 2008 expressed the view that they would not like to have Roma (Čigonais/Romais) (69.2 per cent) as neighbours, followed by more than half for Chechens (Čečėnais) (55.7 per cent), more than a third for Muslims (Musulmonais) and refugees (Pabėgėliais) (44.5 and 42.7 per cent respectively), and nearly one third for black persons (Juodaodžiais) (31.3 per cent). More than half of respondents expressed antipathy towards homosexuals (Homoseksualiais asmenimis) (55.7 per cent) and

nearly a third towards Jews (Žydais) (30.6 per cent). The percentage of those expressing negative views towards Jewish people nearly doubled, from 18.3 per cent in the preceding year. The survey also noted that four out of five Lithuanians (80 per cent) were reluctant to work with or communicate with anyone who is 'different' (on the basis of race, sexual preference, language, or religion).

Unsurprisingly, in view of the above, there is a mix of political correctness as well as ongoing open hostility to certain ethnic and other minority groups, while trade union and employer awareness and pre-occupation with the Directive is extremely low. The prevailing view that Lithuanians have of themselves is as a tolerant people. Even where the perception is otherwise, the Directive is not seen as necessarily offering the appropriate means of redress for victims of discrimination, as a leading researcher in the field from the Institute for Social Research's Centre of Ethnic Studies pointed out: *'For those minorities (Poles and Russians in Lithuania) the issues of discrimination did not seem so relevant. They did not feel that everything was all right, but it was harder to say that they were meeting direct discrimination. Rather there were certain social disparities, or disrespect or lack of recognition in public space, all those things being sensitive for them, but could not be easily addressed as discrimination.'*

The view of a leading trade unionist from the LPSK federation succinctly summarises the conventional wisdom of a 'tolerant Lithuania': *'We don't see a lot of discrimination here in Lithuania at all.'*

On the other hand, the tendency towards scapegoating 'others' is recognised in the view of another trade union leader from the "Solidarumas" federation:

When Lithuanians solve their own social problems...that's what we need...to solve our own social problems. If Lithuanians will have normal life conditions they will never ask about other people. You know that during the Soviet Union time we were together, many Russians and Ukrainians, and everybody, and we never had that subject (racism). But when Lithuania came in transition times our life conditions were very low and everybody was looking 'who is guilty?' 'Who can be guilty?' Of course – 'Russian people are guilty, Ukrainian and Polish people are guilty'.... I think that Lithuanians are tolerant. Lithuanians like to learn from other people because even singers we see on TV...many people came from other countries. Of course, there was an 'accident' with Berneen (a young Asian woman TV personality physically assaulted by neo-Nazis). Simply criminal people. That doesn't mean that you are black or whatever. But you can find that everywhere.

There is a 'politically correct' public discourse of anti-discrimination, although with regard to Roma there is a shared hostility (tending to view Roma as 'criminal' elements or 'drug dealers'), or at best indifference on the part of both employers and employee organisations. The attitude towards Roma by an employers' spokesperson is revealing:

The problem in Lithuania is about the Roma 'species' as we call them here; they simply don't want to work. They don't want to work, they don't want to learn, they don't want to respect the country's laws.

Here also is the view of a leading trade unionist, suggesting that Roma are treated no differently in trade union terms, but appearing in part to tacitly endorse prevailing hostility towards Roma:

As regards gypsies, our employers do not like to have workers who are gypsies. If we have gypsies in the trade union, they are equal and we do not know of discrimination in trade unions for them, so we have no special programmes and no special needs for them. The government had a lot of special programmes for them, but in trade unions every worker is equal. The problem with minority groups is not those who are workers but those who are doing crime.

The view of another trade union leader reflects a greater degree of striving for political correctness on the issue of Roma discrimination, and at the same time awareness of the influence of mass media negative stereotyping, particularly pronounced in the case of Roma people:

Maybe Lithuania has some problems with gypsies, you know, there were some scandals (criminal behaviour). But I cannot talk about gypsies because we don't have members from (hesitates) from Roma people, yes? It is better to say Roma people not gypsies (laughs). You can understand. I don't like to be not polite to other people. I am from a Polish background and we work in the trade union and we don't feel any discrimination, even though relations between Poland and Lithuania sometimes have tensions, but that's our politics and our common history... (Regarding Roma) it's a problem of culture, it's a tradition. Also, of course it's a problem of the mass media as they usually like to make some sensation and they are writing only about the negative aspects.

4. Comments on the Equality Body

While respondents had knowledge of the country's Equality Body, the Ombudsman, and of NGOs working in the field of racial/ethnic/cultural discrimination in employment, their mutual involvement was negligible. The Lithuanian Human Rights Monitoring Institute (HRMI) is one of the most active in pursuing discrimination issues and is involved in education and awareness-raising activities at national level. The House of National Communities is an NGO project seeking to provide facilities and representation for the various small ethnic minority communities established in Lithuania both of a long-standing and more recent variety. Both national NGOs interviewed expressed favourable views of the role of the Ombudsman office, and in particular, of the personal openness and commitment of the current appointee.

However, the issue of raising awareness has still to be confronted in an organised and systematic manner, through the creation of a single human rights agency such as is found in many other European countries. A HRMI spokesperson commented:

There is a very vital thing, awareness raising and education. But in Lithuania nobody is really responsible for that. And this is because we don't have this national human rights institution that would make a policy, identify the problem and see what should be the main means. There has to be very targeted awareness-raising campaigns but the NGO sector in Lithuania is not strong. There exist very few NGOS. They are not really in place to provide these very systematic and long-term planned activities.

The HRMI spokesperson felt that the general problem of lack of an agency dealing with all manifestations of discrimination in Lithuania, especially on the Internet, needs to be addressed:

There is another problem; in Lithuania there is no official institution that would monitor the Internet, especially for hate crimes, discrimination or incitement. The prosecutor's office investigates but for a complaint to be brought someone has to monitor the whole media.

This view was echoed by another spokesperson from the HRMI who also felt that the remit of the Ombudsperson might be broadened in order to gain greater credibility:

The Ombudsperson office is too narrow. It is perceived by the general public and even politicians as an artificial institute created for an artificially-created issue in Lithuania. So 'those bureaucrats in Brussels they created an institution, but the don't know anything about Lithuania and they create an issue which is not practical but rather illusory' let's say 'theoretical'. Even human rights as a concept is not well understood and seen as not topical for Lithuania... It is still very much conceived as an issue that was brought here artificially, from the West, as part of European institutions. It might be better if this institution was part of a larger organisation for the promotion of human rights and legal work in general.

The matter of racial and ethnic discrimination was not regarded as 'an issue' by employers or by trade unions, as currently requiring specific interventions or policies on their part, particularly given the ongoing economic challenges facing them. As a recent report to the European Commission on anti-discrimination training and activities on the part of trade unions in Lithuania suggested, '*trade unions do not focus their activities on anti-discrimination. Their practical work focuses on legal representation of their members in labour disputes in cases of labour law breaches. Practically, they do not work with victims or potential victims of discrimination*' (Lithuanian Centre for Human Rights 2008). This country report endorses that view. Much the same observation can be made with respect to employers' organisations.

Where trade unions are active, it is in protecting the labour market from incoming foreign workers, especially from third countries such as Moldova, Belarus or Ukraine, in

particular, from workers who are 'undocumented'. But, even here, if required, the trade unions will take up cases, although it is arguable whether these are best seen as 'discrimination' cases or relate more to the exploitation of the insecure status of migrant labour and negative impacts on indigenous workers' wages. However, such cases are usually as a result of referrals from the State Labour Inspectorate, rather than a result of conscious recruitment activity. As a trade unionist spokesperson from "Solidarumas" put it:

We don't go and catch these people. Because we have a very good co-operation with the labour inspectors and people at present come to labour inspection, not to the trade union, because maybe labour inspection is more visible because that's a state organisation. And after, labour inspection sends these people to the trade union because the trade union has more capacity to help. Because labour inspectors cannot negotiate with employers. We can negotiate; we can talk to find some solution. Labour inspection can only impose paying some punishment.

The view of this trade union leader is that questions of discrimination are viewed, if at all, mainly in gender rather than ethnic or racial terms:

We were involved in discussions on equal opportunities, but mostly we were talking about equal opportunities for men and women. That was the subject that was important for the trade union. We like to implement this subject by collective agreement at enterprise level. Maybe five or ten years ago there were adverts in our newspapers for jobs for men, and we worked with the government and the situation changed. We never had a problem with other nationalities.

5. Trade union and employer policies and measures

Trade union commitment to anti-discrimination policies is low. These are seen as matters for government, the Ombudsman and NGOs to pursue. Thus, in general, complaints dealing with issues of discrimination are pursued by the Ombudsman rather than trade unions. The number of complaints relating to ethnic and racial discrimination appears to be rising; although absolute numbers are still small and it is not known how many of these are directly related to the labour market. Only one case of ethnic discrimination involving a Roma job applicant has reached the courts with a successful outcome, but under Labour Code provisions rather than Directive transposed legislation. This was pursued by the Lithuanian Human Rights Monitoring Institute, an NGO active in this area. The researcher was not able to ascertain the effectiveness of any specific social partner policies over the period since the Directive's implementation in Lithuanian law in 2005. National experts are equally guarded on issues of governmental policy impacts (Andriukaitis 2009). Nor are there any examples of social dialogue with the employers or government over discrimination/diversity issues. Union respondents therefore have little interest in suggesting how the law and awareness of it could be more effectively pursued, as the matter is seen as rather 'external' to current concerns and largely of 'theoretical' rather than practical importance.

Employer commitment to anti-discrimination policies is also low. Here too, it is seen as a matter for government and NGOs to pursue. The view of an NGO spokesperson when asked about social partner initiatives is salutary:

Oh, very good! They do nothing! They do nothing! Of course, if they need to, they can participate in some conference. But I didn't hear anything yet that a trade union or employers helped somebody. One example I can give you from our project. An employer in the Ukmerges region was asked to take a few Roma into his workplace. He said 'Ok, I would better take my own Roma people than Chinese people.

In short, the researcher was not able to ascertain any specific anti-discrimination policies on the part of trade unions, and whether and how these might have changed over the period since the transposition of the Directive. Nor was it possible to ascertain responses at local, sectoral and national level in employer practices. Respondents, once again, therefore, had little interest in suggesting how the law and awareness of it could be more effective. Involvement by employers' organisations seems to have been marginal as this spokesman's comments suggest:

There was no problems and there was no involvement because in our opinion we do not have racial discrimination or discrimination at all. There were not discussions or arguments between us and our government.

6. Views on how to tackle discrimination better

The typical response set regarding issues of ethnic and racial discrimination in the labour market on the part of the key actors suggested the relevance of many of the interview questions was problematic. While respondents were mostly polite, it was clear that many felt that their time was being wasted by the research inquiry and that answers were being artificially 'forced' by the close 'structuring' of questions to focus on matters of detail. Discrimination legislation and its transposition were often lost in the mists of time, belonging to another 'post-accession' era. On the whole, respondents' engagement in discussions during the process of transposition of the Directive had been almost non-existent. Nor was their lack of engagement in the process of transposition a concern, particularly in a context in which comprehensive new labour market and socio-political institutions were constructed. The Directive is one of the myriad of EU laws introduced and transposed in the EU's *acquis communautaire*, but which social partners dealt with only formally, and administratively, if at all, on the Tripartite Council involving government, unions and employers. As regards active implementation of anti-discrimination measures by employers or trade unions, these were also regarded as largely irrelevant matters and no significant initiatives could be discerned.

The NGOs interviewed have significant experience and knowledge in the area of racial and ethnic discrimination, but like most aspects of civil society, are in a very early stage of development, even two decades after the collapse of communism, and are heavily reliant on external funding for support. Perhaps the key to future improvement is a more

active pursuit of their rights by individuals who are discriminated against. However, in general, passive attitudes on the part of many towards issues of violations of rights inhibit this development. As the HRMI spokesperson put it:

People do not really know their rights. And when they know their rights they can complain to the equal opportunities Ombudsman office. But again, this office is only in Vilnius and the information is on the internet. A person from a small town has little chance of doing this.

The spokesperson of another NGO, the House of National Communities, echoed this view:

With the law, everything is ok in Lithuania. We have this law but the problem is with society not with the law. To me it's a problem of society. The system of laws is ok, and everything is ok with the Constitution and human rights, you can go to the Ombudsperson and if something is wrong, they can go to prosecutors. That system works. But, the other thing is that just a few people know their rights. And, for example, for Roma people who are afraid of government like 'the government' and of the state like 'state', for them everything and everybody is a 'policeman', it is especially hard. Not only national minorities, Lithuanians don't know their rights either!

The present economic crisis has also intensified previous pre-occupations on the part of the social partners, especially the trade unions. Their concerns are wages and conditions, rather than engaging with any wider remit of tackling discrimination in the labour market, far less in society as a whole. Here the views of a trade union confederation spokesperson from "Solidarumas" sum up the situation: *'Our biggest problem now is unemployment and labour law liberalisation, how much we can be flexible. Our government is talking about that [flexicurity] model from Denmark.'*

Another trade union leader directly links the issue of trying to preserve existing labour market conditions in Lithuania with the problems of migration. The main issue is seen as one of securing a sustainable national workforce in the future, both by keeping out external labour and attracting those Lithuanian workers who have left the country to return. In the view of the LPSK trade union confederation:

We have very strict control of third countries nationals working in Lithuania. We are trying to keep our labour market from third country workers. Even in a situation when we had not enough workers in Lithuania, we agreed only to 5000 places for third country workers. We are trying to keep our labour market for our workers. We had this agreement for two years, but for now, we have no agreement. There was a moment when employers wanted to bring in more workers and we said we needed to keep our wages, otherwise if they are paying minimum wages, our wages could go down. We said we need to raise our wages and then after that Lithuanians [working abroad] will come back to Lithuania.

This issue of incoming labour and responses to this question is not perceived by employers' organisations as one of potential racial or ethnic discrimination, and therefore requiring active awareness measures as envisaged by the Directive, but simply of securing the available supply of cheap labour from outside of the country. There is however a worrisome gradation of 'preferred' or 'less preferred' workers, merging seamlessly into discriminatory attitudes: the more distant and the more dissimilar, the greater the stereotyping of the 'other'. Thus, those being 'culturally' similar are preferred as employees in the view of one employers' federation leader:

When our economy was rising and we needed to employ workers, most employers don't look at the nationality or colour of their workers. But, in the changed situation (of recession) when we could chose other people, I think that we prefer our nationals, because it is religion, culture and mentality, it is closer for us than people from China. That is one side of the question, the other side of the question is our history. Twenty years ago, we were in one big country and fifteen different republics from Middle Asia and so on. From them we had to look at different coloured and black faces, from Georgia, Tajikistan, other people. We wouldn't like...we wouldn't like people from this area. But, if we could compare Russian people with Uzbekistan or Tajikistan, we like Russians more - for culture, religion and, of course, face colour...For us they are only cheap workers, only cheap workers. Of course, employees from Ukraine and Belarus are better than employees from Tajikistan... I think the great problem is the relation with mentality and culture. When I was in the Soviet Army, the soldiers from this area, Middle Asia, were every time worse than from other areas and, in my opinion, we see these people like lacking in education.

The current rather complacent approach to racial and ethnic discrimination however does not mean that in the future there will not be problems in the face of new flows of inward migration from third countries that are visibly different. The key government department over-viewing the implementation of the Directive and monitoring such issues is staffed by competent and committed officials, but is currently subject to restructuring, and key policy developments for promoting racial and ethnic harmony appear under threat due to the financial and economic crisis. The relatively fragile nature of Lithuanian democratic institutions, civil society and its problems of national identity therefore, provide potential future problems. Nevertheless, one of the most informed and long-standing government officials observing the issue of racial and ethnic discrimination did have a cautiously optimistic view of the progress achieved so far:

I would say there have been changes especially after our joining the European Union. But, the problem is that our civil society is very weak and the NGOs are very poor and they don't have the possibility to influence the view of society in the different spheres. But change is on the way. Firstly, there is discussion in public life and in the media. A few years ago you could not see discussion about that (racism). This is real change.

The challenge to involve the social partners in combating racial and ethnic discrimination in Lithuania remains. NGO observers like the HRMI, have commented:

I think that they (employers and trade unions) are the most, or one of the most important actors in developing this culture of acceptance of 'otherness', because its in the labour market basically where everything starts...People spend a lot of time in the workplace and this is basically where they form social contacts, so they are one of the major factors here and right now I would say they are insensitive to this kind of issue and they are not aware that this kind of issue is important and that they are to play a significant role. So, I think that some awareness raising work, very serious work is to be done among both employers and employee organisations.

The real issue for research is therefore rather less awareness of Directive today and its implementation up to this moment, but more what will be appropriate and effective anti-discrimination legislation and policy in the future. Here the specificities of the post-communist countries will require to be acknowledged, beyond simply their status as new EU member states.

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