

LITHUANIA

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1. National court system

Civil and administrative cases are examined by different systems of courts, although the proceedings are very much alike. Civil courts system consists of courts of the highest in hierarchy the Supreme Court of Lithuania, the Court of Appeals, five regional courts and fifty four district courts. In 1999 a system of specialised administrative courts was established to hear administrative cases. It consists of the highest in hierarchy the Supreme Administrative Court and five regional administrative courts.

A district court is first instance for civil cases, as well as cases relating to the enforcement of decisions. A regional court is first instance court for civil cases when the amount of claim exceeds sum of 100 000 Lt and appeal instance for decisions, rulings and orders of district courts. The Court of Appeal is appeal instance for cases heard by regional courts as courts of first instance. It also hears requests for the recognition of decisions of foreign or international courts

and foreign or international arbitration awards and their enforcement in the Republic of Lithuania. The Supreme Court of Lithuania is the only court of cassation instance for reviewing effective decisions, rulings and orders of the courts of general jurisdiction. It develops a uniform court practice in the interpretation and application of laws and other legal acts.

A regional administrative court is the court of special jurisdiction established for hearing complaints in respect of administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. Regional administrative courts hear disputes in the field of public administration, deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes, etc. The Supreme Administrative Court is first and final appeal instance for administrative cases assigned to its jurisdiction by law. It is appeal instance for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from decisions of district courts. The Supreme Administrative Court is the only appeal instance for hearing the administrative cases, examined by regional administrative courts. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts.

The Constitutional Court of the Republic of Lithuania is not part of the regular court system, but is a separate independent judicial body with the authority to determine whether the laws and other legal acts adopted by the parliament are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government conform to the Constitution or laws. The individual complaint procedure before the Constitutional Court of Lithuania is not introduced into the national law of Lithuania.

A person, suffered from the discrimination behaviour, has a right to address the Equal Opportunity Ombudsperson or to address directly the civil court of first instance (district or regional courts) for the defence of his/her rights (Figure 1). A person, addressing directly the civil court of first instance has a right of appeal to the appellate instance court (regional court or the Court of Appeals) and after – to make a cassation appeal before the Supreme Court of Lithuania.

Article 301 of the Civil Procedure Code provides that decisions of the first instance civil courts, which did not come into force, are able to be appealed to the appellate instance court. This rule has one exception, which relates to small disagreements, in cases the disputable amount is not

higher than 250 Lt.¹ It also shall be noted, that this mentioned exception does not apply in labour law cases, cases of reimbursement of material and moral damages, because of the health injuries, professional diseases. The appeal to the appellate instance court shall be brought within the thirty days of the announcement of the first instance court's decision. The appellate court has the power to reject the appeal, satisfy the appeal and abolish the decision, to render new decision and establish new facts, to return the case proceedings to the first instance court.

In civil cases the decision of the appellate instance courts shall come into force after the announcement of the decision in the court hearing. The decision of the appellate instance court is able to be challenged in the Supreme Court of Lithuania by cassation appeal. The cassation appeal shall be brought before the Supreme Court of Lithuania within the three months after the announcement of the decision of the appellate instance court.² The Supreme Court of Lithuania, when examining the cassation appeal, only decides on the questions of law, and does not establish facts of the case or challenge the facts of the case. The facts of the case are regarded to be finally established by the appellate instance court. The cassation of appeal is only limited and is not acceptable in two occasions:

- a) if the decision of the first instance court was not appealed to the appellate instance court, the cassation appeal of the former would not be found acceptable;
- b) if the disputable sum of money is less than 5000 Lt in cases of financial disputes, the cassation of appeal would not be found acceptable. This rule does not apply in labour law cases, cases of reimbursement of material and moral damages, because of the health injuries, professional diseases.³

The appeal procedures in administrative cases have small differences from the civil cases.

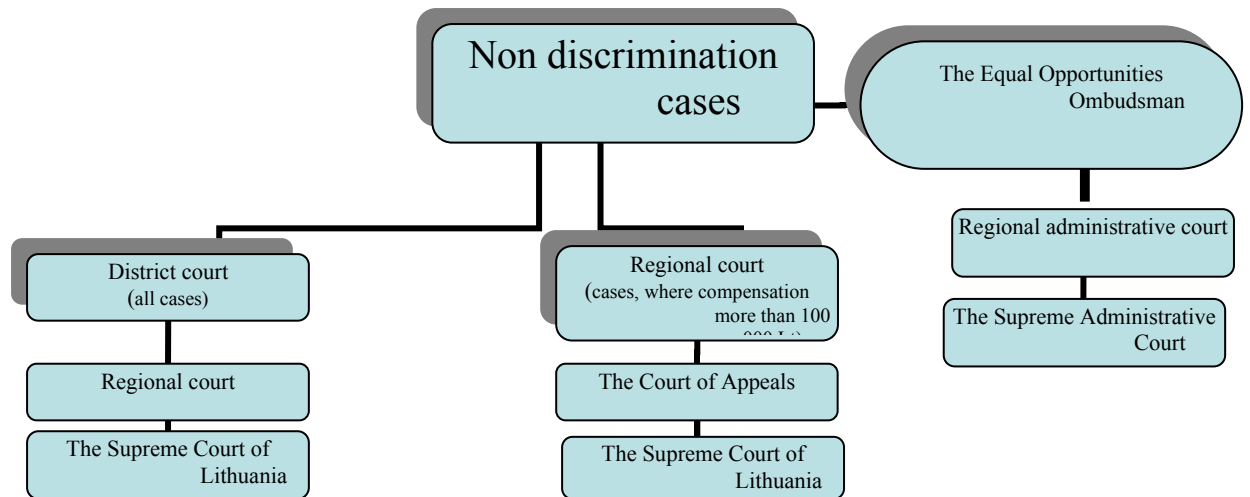
Article 127 of the Law on Procedure of Administrative Cases provides that the decision of the first instance court is able to be appealed to the Supreme Administrative Court within the fourteen days from the announcement of the judgement by the first instance court. The decision of the Supreme Administrative Court is the final. Therefore, the conclusion shall be done that there is no right of cassation appeal in administrative cases.

¹ Article 303 of the Civil Procedure Code. According to the official currency rates, 250 LT shall constitute around 72 Euro (where 1 Euro = 3,4528 Lt).

² Article 345 of the Civil Procedure Code.

³ Article 341 of the Civil Procedure Code.

Figure 1: the national judicial system of Lithuania



2. Restrictions regarding access to justice

Article 1.125 of the Civil Code of Lithuania⁴ regulates that claims for the compensation of any damage shall be brought within three years from the moment the damaged suffered and/or illegal acts committed. The general term of ten years for all other claims is applicable. This includes non-discrimination cases. Article 33 of the Law on Proceedings of Administrative Cases provides that complaint to the administrative court shall be brought within one month from the moment the individual act was announced or within two months in cases of inaction from the moment particular actions should have been carried out.

3. Length of judicial proceedings

The National Administration of the Courts provided the statistics on the terms of examination of all civil cases of first instance in 2008 year, where 180 071 civil cases were finished in courts during one year (the received number of cases during the year – 185 878). Therefore, only 27 172 cases were not finished by the courts during one year period in the first instance court; 168 189 of

⁴ The Civil Code of Lithuania (Civilinis kodeksas), adopted on 18 July, 2000, came into force on 1 of July, 2001. www.seimas.lt

the received civil cases in 2008 year were finished within the 6 months period by the first instance court.⁵

As for the statistics provided by the National Administration of Courts relating to the appellate instance courts, it shall be mentioned, that during 2008 year there were 8548 new cases received by appellate instance courts, of which there were 3117 civil cases examined during one year.⁶ Therefore only around one third of the received cases were examined during one year period by the appellate instance courts of Lithuania.

To conclude, cases examined ranged from three months to twenty four months. Proceedings varied in length depending upon the number of appeals made.

The Law on Proceedings of Administrative cases provides certain terms for the administrative case to be examined before the non-judicial institutions – the Commission of Administrative disputes. Article 65 of the Law on Proceedings of the Administrative Cases indicates that the preparation for the examination of the administrative case shall be done within one month from the acceptance of the complaint in court. The administrative case before the court shall be examined within the two months period from the court's decision to examine the administrative case in the court hearing. This term might be prolonged up to one or three months in separate cases. However in practice these terms have not been followed.

The examination of the administrative case of *A. Raskevicius v. The Equal Opportunities Ombudsman* lasted from the 20 July 2006 until 29 May 2008, which constitutes around two years. The complaint of the aggrieved party V. Frisova was presented to the Equal Opportunities Ombudsperson on the 20 July 2006. The decision of the Equal Opportunities Ombudsperson was delivered on the 20 September 2006. This decision was complained to the Supreme Commission of Administrative Disputes, where as this institution its decision gave on the 10 November 2006. The Equal Opportunities Ombudsperson made a complaint of the decision of the Supreme Commission of Administrative Disputes to the first instance administrative court, which gave its decision in the administrative case on the 11 September 2007. The decision of the first instance

⁵ <http://www.teismai.lt/teismai/ataskaitos/statistika.asp>

⁶ <http://www.teismai.lt/teismai/ataskaitos/statistika.asp>

court was appealed to the Supreme Administrative Court, which it's final and *res judicata* decision brought on the 29 May 2008.

In summing the mentioned above, the non-judicial examination of this administrative case lasted for two months. The examination of this administrative case in the first instance court lasted for approximately ten months; and in the appeal instance court – for approximately eight months.

The examination of the administrative case *R. J. v. The Republic of Lithuania and the Equal Opportunities Ombudsman* lasted from 27 May 2008 until 12 February 2009. The complaint by R. J. was presented for the Equal Opportunities Ombudsperson on the 27 May 2008. The decision of the Equal Opportunities Ombudsperson was delivered on the 15 July 2008. Therefore the non-judicial examination of this case lasted for less than two months. The complaint to the administrative court by R. J. was given on the 17 November 2008. The decision of the first instance administrative court was delivered on the 12 February 2009. Therefore the examination of this case in the first instance court lasted for three months.

The examination of the civil case *G. K. v. G. S.* lasted from 5 May 2005 until the 7 February 2007, which constitutes around one year and nine months. The plaintiff presented the lawsuit to the first instance court on the 5 May 2005. The decision of the first instance court was delivered on the 22 November 2005. Therefore the examination in the first instance court lasted for seven months. The appeal of the first instance court was presented for the appellate instance court within one month from the 22 November 2005, whereas the decision of the appellate instance court was delivered on the 10 March 2006. Therefore, the examination of this case in the appellate instance court lasted for around three months. The cassation appeal of the appellate instance court decision was presented to the Supreme Court of Lithuania within the three months from the 10 March 2006, whereas the decision of the Supreme Court of Lithuania was delivered on the 7 February 2007. Therefore the examination of this case in the Supreme Court of Lithuania lasted for more than eight months.

The examination of the civil case *Saicha Marcinkevici v. UAB "Disona"* lasted from 5 December 2007 until the 10 December 2008, which constitutes around one year. The plaintiff presented the lawsuit to the first instance court on the 5 December 2007. The decision of the first instance court was delivered on the 30 June 2008. Therefore the examination in the first instance court lasted for seven months. The appeal of the first instance court was presented for the appellate instance court

within one month from the 30 June 2008, whereas the decision of the appellate instance court was delivered on the 10 December 2008. Therefore, the examination of this case in the appellate instance court lasted for around five months and a half.

4. Are procedures concluded within a reasonable time?

On the whole it can be concluded that the procedures are examined within reasonable time in courts. This conclusion is done in comparison to the terms of examination of other civil and administrative cases in Lithuania's courts.

The Equal Opportunities Ombudsperson shall examine the complaint of discrimination within one month from the moment the complaint was received. This term may be prolonged for two months more.⁷

5. Does provision exist for speedy resolution of particular cases?

The Civil Procedure Code does not provide for the terms of the examination of the civil cases. However, there is a category of civil cases, where the court shall speedy resolutions of those particular cases. The Civil Procedure Code provides for speedy resolution of labour law cases. Article 413 of the Civil Procedure Code indicates that the preparation of the labour cases shall be done within one month period from the acceptance of the lawsuit. The labour case shall be examined within one month period from the moment of finishing the preparation of the case. However, in practice, usually these terms are not been followed. Lithuanian law does not provide for any other speedy resolution of other particular cases.

There are no any expedited procedures before the non-judicial body in non-discrimination cases.

⁷ Article 22 of the Law on Equal Opportunities of Women and Men.

6. Is it possible to waive the right of access to a judicial body?

No waiver of the right to apply to court is valid under the national legal regulation of Lithuania. Article 5 of both Civil Procedure Code and Law on Proceedings of Administrative Cases indicates clearly that waiver of the right to address the court is invalid. On the other hand, a person in civil and administrative procedures has a right to refuse or withdraw the complaint brought before the court. Article 139 of the Civil Procedure Code provides that plaintiff has a right to refuse the complaint till the moment; the court sends the copy of the complaint to the respondent party. If a plaintiff wishes to refuse the complaint later – the agreement of the respondent party is required. The refusal of the claim does not prevent from bringing the same complaint before court later. Article 140 of the Civil Procedure Code provides that a plaintiff has a right at any time during the court proceedings to withdraw the complaint. The court in such cases shall assure, that the plaintiff is informed in written form of the legal consequences of such action. The legal consequences of the withdrawal of complaint relates to incapacity and inability to bring before the court the same complaint later.

7. Access to non-judicial procedures

In the non-judicial procedures the Equal Opportunities Ombudsperson, the national equality body, exists to deal with claims of discrimination in relation to all grounds of discrimination, regulated by the national law. It is not obligatory to proceed to an equality body before going to court and it shall be regarded as complementary to other legal remedies. The term to address the Equal Opportunities Ombudsperson Office is three months from the moment discrimination acts were committed.

The Office of the Ombudsperson examines all discrimination cases, submitted to this office, according to the Law of Equal Opportunities⁸ and the Law on Equal Opportunities of Women and Men⁹. The Ombudsperson is financed from the fiscal budget. It is the main national institution dealing with equality and non-discrimination.

⁸ The Law on Equal Opportunities (Lygių galimybių įstatymas), adopted on 18 October 2003, new edition adopted on 17 June 2008, came in force on 5 July 2008. www.seimas.lt

⁹ Law on Equal Opportunities of Women and Men (Moterų ir vyrų lygių galimybių įstatymas), adopted on 1 December 1998, came in force on 1 March 1999. www.seimas.lt

In accordance with the Article 12 of Law on Equal Opportunities for Men and Women, the competence of the Equal Opportunities Ombudsperson encompasses three fields of activities only:

- The investigation of complaints regarding direct, indirect discrimination, harassment and sexual harassment and provision of objective and impartial consultations with regard to this function;
- Reporting on the implementation of this law to the Parliament, and submitting recommendations to governmental and municipal institutions and organisations of the Republic of Lithuania on the revision of legal acts and priorities in the policy of implementation of equal rights;
- The exchange of information with analogous institutions of other Member States.

In practice the main function of the Ombudsperson is quasi-judicial, since the Ombudsperson can not only investigate the complaints, but also issue administrative sanctions in accordance with *Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas* [the Administrative Violations Code of the Republic of Lithuania].¹⁰

The procedure before this non-judicial body starts upon the complaint of the aggrieved party. The procedure is regulated by the Law of Equal Opportunities of Women and Men. All the demands made by the Equal Opportunities Ombudsperson are compulsory for all legal entities and persons in Lithuania. The aggrieved party has a right to make written statements to the Equal Opportunities Ombudsperson under its request. The Equal Opportunities Ombudsperson Office conducts examination of the complaint without any oral hearing, unless decides of such necessity individually. After having investigated the complaint the Ombudsperson may take the following decisions:

- to refer relevant material to public prosecution authorities if indications of an offence have been established;
- to address an appropriate person or institution with a recommendation to discontinue actions violating equal opportunities, or to recommend a person or an institution to repeal its' legal act related to such violations;

¹⁰ Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official publication, *Valstybės Žinios*, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335295 (10.01.2009).

- to hear cases of administrative offences and impose administrative sanctions for violations of the Law on Equal treatment and the Law on Equal Opportunities. In accordance with Article 41(6) of the Administrative Violations Code, in such cases it can issue a fine of from 100 to 2,000 Litas (from 29 to 580 Euros approximately). Where the same violation is committed repeatedly, a fine of from 2,000 to 4,000 Litas can be imposed on the same subject.
- to admonish those who have committed a violation;
- to halt advertisement activities temporarily, if there is sufficient data to indicate that an advertisement campaign may incite hatred towards or encourage discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, ethnicity, age, disability, faith, religion or beliefs;
- to issue binding decisions to stop discriminatory advertisement campaigns.

The aggrieved party is notified of the decision of the Equal Opportunities Ombudsperson in written form.

Although the Ombudsperson was given competence to investigate complaints on discrimination, this non-judicial body does not award damage to the victim of discrimination. The Law on Equal Opportunities of Women and Men provides for one interim measure, which shall be applicable by the Equal Opportunities Ombudsperson Office: the Ombudsperson has a power temporarily to suspend the dissemination of commercials, which could be found as instigating racial, ethnic, religion, sex, sexual orientation, disability, faith, age hatred, or degrading person's honour and dignity. In practice the Ombudspersons usually issues a recommendation to stop discriminatory actions or admonishes those, who commit violation. The Ombudsperson has the right to impose administrative sanctions, however, very rarely exercise this function in practice.

The Law on Equal Opportunities of Women and Men does not establish a rule of the term the decision of the Equal Opportunities Ombudsperson shall be appealed. The decision of the Equal Opportunities Ombudsperson is final, however, a party disagreeing with it, has a right to challenge the decision of the Equal Opportunities Ombudsperson in regional administrative court. Among the practitioners there is a debate, whether the decision of the Equal Opportunities Ombudsperson shall at all to be able appealed in court or before any the non-judicial institutions firstly. However in legal practice of Lithuania, there is a landmark case *A. Raskevicius v. The Equal Opportunities Ombudsman*, where the decision of the Equal Opportunities Ombudsperson

was appealed to Supreme Commission of Administrative Disputes. However in later landmark case *R. J. v. The Republic of Lithuania and the Equal Opportunities Ombudsman Office* such practice was not supported by the regional administrative court. Therefore, it shall be concluded, that the decision of the Equal Opportunities Ombudsperson shall be appealed to the first instance administrative court and after that – to the Supreme Administrative Court.

No particular legal provisions on mediation exist in national level thus it is not a common practice. The Ombudsperson institution, however, can be considered as a mediator in practice. Since, according to the Ombudsperson, peaceful resolution of discrimination is one of the main objectives of the Ombudsperson activity.¹¹ On the other hand, the mediation, exercised by the Ombudsperson has never brought compensation to the victim.

8. Legal aid

State-guaranteed legal aid shall mean the primary legal aid and secondary legal aid.

Primary legal aid shall mean the provision of legal information in accordance with the procedure laid down by this Law, legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. This legal aid shall also cover advice on the out-of-court settlement of a dispute, actions for the amicable settlement of a dispute and drafting of a settlement agreement. Primary legal aid shall not cover completing of the returns submitted to a tax administrator.

Secondary legal aid shall mean drafting of documents, defence and representation in court, including the process of execution, representation in the event of preliminary extrajudicial consideration of a dispute, where such a procedure has been laid down by laws or by a court decision. This legal aid shall also cover the litigation costs incurred in civil proceedings, the costs incurred in administrative proceedings and the costs related to the hearing of a civil action brought in a criminal case.

¹¹ The Equal Opportunities Ombudsperson annual reports 2005, 2006, 2007. Available in Lithuanian at: <http://www.lvgvbe.lt/?pageid=7> (10.01.2009).

The legal aid is provided in both civil and administrative cases. Article 11 of the Law on State-Guaranteed Legal Aid provides, that all citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union and other persons specified in international treaties of the Republic of Lithuania shall be eligible for primary legal aid.

The following persons shall be eligible for secondary legal aid:

a) citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union whose property and annual income do not exceed the property and income levels established by the Government of the Republic of Lithuania for the provision of legal aid under this Law;

b) citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union as specified in Article 12 of this Law;

c) other persons specified in international treaties of the Republic of Lithuania.¹²

The above mentioned list is general; therefore in order to define whether a particular person shall be granted the secondary legal aid, the further property and income level criteria shall be met. Article 12 of this Law defines persons who shall be eligible for secondary legal aid regardless of the property and income levels established by the Government of the Republic of Lithuania.¹³ If a person does not meet any of the above mentioned conditions of Article 12 of this Law, the property and income level is been examined by the State Guaranteed Legal Aid Service, which makes the decision to provide for the secondary legal aid.

The State shall guarantee and cover 100 per cent of the costs of primary legal aid. The costs of secondary legal aid provided to the persons by taking account of a person's property and income shall be guaranteed and covered by the State as follows:

¹² Article 11 of the Law on State-Guaranteed Legal Aid (Valstybės garantuojamos teisinės pagalbos įstatymas), adopted on 28 January 2000, new edition came into force on 1 May 2005.

¹³ Article 12 of the Law on State-Guaranteed Legal Aid.

- a) 100 per cent – where the first level is established to the person’s property and income;
- b) 50 per cent – where the second level is established to the person’s property and income.¹⁴

According to the Lithuanian Government Decision No. 468, adopted on the 25 April 2005, and its last amendments¹⁵ the level of families income per year in order to receive first level (100 per cent) of secondary legal aid shall not exceed 6400 Lt per year, for every dependant person in the family counting in addition of 2400 Lt per year¹⁶. The level of the families income in order to receive the second level (50 per cent) secondary legal aid shall not exceed 9600 Lt per year, for every dependant person in the family counting in addition of 3600 Lt per year¹⁷. If not any of these financial limits are satisfied a person is not granted state guaranteed legal aid. It shall be mentioned, that the eligibility financial criteria in comparison to an average standard of living in Lithuania are low.

The rules applicable in civil and administrative cases, including non-discrimination cases, are the same.

As far as assistance to victims of discrimination is concerned, the requirement of the Racial Equality Directive regarding the engagement of associations in judicial proceedings on behalf or in support of the victim has not been sufficiently transposed in Lithuania.

The wording of the Article 12 Paragraph 2 of the Law on Equal Treatment states, that associations, whose field of activity, as stated in their founding documents, encompasses representation of victims of discrimination on a particular ground of discrimination at courts, have a rights to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedure, in a manner prescribed by law.¹⁸

¹⁴ Article 14 of the Law on State-Guaranteed Legal Aid.

¹⁵ The last relevant to the report amended of the 25 April 2005 Decision No. 468 of the Lithuanian Government was adopted on 11 June 2008, came into force on 1 July 2008. www.seimas.lt

¹⁶ When calculating in Euro in accordance to the Lithuanian official currency values, 6400 Lt shall constitute 1853,57 Euro (1 Euro = 3,4528 Lt).

¹⁷ When calculating in Euro in accordance to the Lithuanian official currency values, 9600 Lt shall constitute 2780,35 Euro (1 Euro = 3,4528 Lt).

¹⁸ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132 (10.01.2009)

However, under current procedural legislation, legal representation by associations or NGOs in civil courts is barely possible. According to Paragraph 1 of Article 56 of the *Civilinio proceso Kodeksas* [Code of Civil Procedure] of the Republic of Lithuania, legal representation of persons is exercised almost exclusively by attorneys, with only a few exceptions granted to trade unions representing their members, and to persons with a degree in law in cases involving legal representation of their relative or spouse.¹⁹ According to Paragraph 2 of Article 56 of the Code, other persons of law could represent a party in a legal dispute, but only as a subsidiary to attorneys or attorneys' assistants acting as primary legal representatives.

According to Article 49 of the Code of Civil Procedure of the Republic of Lithuania, in certain cases prescribed by law the possibility exists for 'other subjects' to pursue a class action on behalf of a group of persons.²⁰ However, the detailed procedure in such cases is not clear, because as yet no class-action case has been brought to court by NGOs.

However, it is theoretically possible for NGOs and associations to engage in administrative procedure on behalf of the victim in administrative courts. According to Article 49 Paragraph 3 of the Law on Lithuanian Administrative Procedure,²¹ mandatory legal representation is common, but not necessary. An example of assistance in judicial proceedings was set in the first existing case of racial discrimination.²²

The case of discrimination of Roma woman was brought to the court at the end of 2007. A Vilnius based human rights advocacy NGO – Human Rights Monitoring Institute – assisted Roma women, by exercising situation testing method, to prove that discrimination did actually happen at the recruitment of the women at a café. The results from the situation testing were later used in court to successfully challenge discriminatory behaviour.

The NGO took part in the proceedings as a third party in support of the victim, however, an attorney was nonetheless required, and who directly represented the victim in legal proceedings. Equal Opportunities Ombudsperson Institution took part in the proceedings as an expert,

¹⁹ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205 (10.01.2009)

²⁰ Ibid.

²¹ Lithuania/Lietuvos Respublikos Administracinių bylų teisenos įstatymas. Official publication, *Valstybės Žinios*, 1999, Nr. 13-308. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312242 (10.01.2009).

²² Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.

providing it's finding on the case.y' exercised by an attorney, which leaves an opening for possible representation by associations.

There are a couple of NGOs that provide consultations to the victims of discrimination. However, this is done on a voluntary bases, thus cannot be considered as sufficient legal aid. On the other hand, the number of cases, when victims approach NGO's with regard to discrimination on the grounds of race or ethnicity is rather small. Thus if the number of such cases increased in the future, local human rights NGO's would not be able to provide voluntary consultations due to very limited resources that these NGOs have.

There is no information, that trade unions did any activities with regard to discrimination on the grounds of race or ethnicity.²³ Additionally, there is no available information that collective bargaining agreements, containing prohibition of discrimination on the grounds of race or ethnicity exist in Lithuania. Social dialogue is not focussing on issues of discrimination in general (not to mention particular grounds of race or ethnicity).

From the legal point of view, trade union could engage in legal proceedings on behalf of their members.²⁴ However, no such cases on grounds of ethnicity or race occurred yet

9. Forms of satisfaction available to a vindicated party

The Constitution of the Republic of Lithuania states that the person whose constitutional rights or freedoms are violated shall have the right to apply to court and that compensation for material and moral damage inflicted upon a person shall be established by law. This rule is also supported in the main procedural codes of civil and administrative cases.

However, the non-judicial procedure before the Equal Opportunities Ombudsperson does not guarantee for the victim the compensation for damage or other more effective, proportionate and deterrent remedies.

²³ A written inquiry was sent to the main trade union associations, however no reply was received. Unofficial information also indicates that racial discrimination is currently not at the agenda of trade unions.

²⁴ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205 (10.01.2009)

Article 12 of the Law on Equal Opportunities provides that every person, experienced discrimination on the basis of sex, race, nationality, language, origin, social status, belief, religion, faith, age, sexual orientation, disability, ethnic, shall have a right to claim from the guilty party to reimburse material and moral damage under the rules, established by law.

The Equal Opportunities Ombudsperson is able to suggest to terminate the discrimination behaviour or to abolish acts of such behaviour, by determination the violation of equality, to caution or to apply administrative sanctions. According to the 247(6) Article of the Code on Administrative Violations²⁵, the Equal Opportunities Ombudsperson examines administrative violation cases and is able designate the administrative sanction from 100 Lt up to 2000 Lt.²⁶ The repeated violation shall be fined from 2000 Lt up to 4000 Lt.²⁷

Article 1.138 of the Civil Code provides for the following general for all cases forms of redress, which are able to be asked in court:

- a) Acknowledgment of rights;
- b) Restoration of the previous status before the violation of the right;
- c) Prevention of actions, violating rights of others, prohibition of actions, posing threat the occurrence of damage;
- d) Adjudication to execute the obligation in nature;
- e) Termination or modification of the legal relationship;
- f) Adjudication of material and moral damage;
- g) Recognition of legal acts of the state or municipal institutions or actions of the state officers' void;
- h) Other mean of redress.

There are various criteria, elaborated by courts, which are relevant when establishing the amount of compensation. The amount of the compensation usually is not regarded by courts as it should be deterrent or punitive, but rather as an adequate compensation for aggrieved parties'

²⁵ The Code of Administrative Violations (Administracinių teisės pažeidimų kodeksas), adopted on 13 of December, 1984, came in force on 1 of April, 1984.

²⁶ Whereas 1 Euro = 3,4528 Lt, which means, the limits of the administrative fine shall constitute from 58 Euro up to 579,2 Euro.

²⁷ Whereas 1 Euro = 3,4528 Lt, which means, the limits of the administrative fine shall constitute from 579,2 Euro up to 1158,5 Euro.

experienced disadvantages. A further analysis cannot be provided relating to the lack of jurisprudence in the area listed in *acquis*.

To conclude, the court shall be regarded as most effective remedy of redress of violation of equality or any other rights of a person. The Equal Opportunities Ombudsperson has a power to impose administrative sanctions; however in court an aggrieved party has an opportunity to claim for material and moral damage for the violation of his/her rights.

10. Adequacy of compensation

In order to make the assessment on whether the compensation, awarded by courts, imply deterrent or punitive effect or shall be regarded adequate, only one case example can be presented. In the case of *Saicha Marcinkevic v. UAB "Disona"* the compensation for the aggrieved party was awarded by court. The plaintiff was seeking for 20 000 Lt²⁸ for moral damage for the discrimination on the ground of origin. The first instance court awarded to the aggrieved party 2000 Lt.²⁹ The appeal was not presented for the appellate instance court by the aggrieved party, therefore, the appellate instance court left the same amount of compensation, which was awarded by the first instance court. It is difficult to make any conclusions on if the compensation for the aggrieved party was or usually is adequate, having only one court case example. However, the amount of compensation, claimed by the plaintiff in the civil case and the amount of compensation, awarded by court, varies a lot, therefore it should be admitted that the compensation hardly to be seen as adequate or deterrent.

Concerning the non-judicial procedures before the Equal Opportunities Ombudsperson, the EU Directives 2000/43/EB and 2000/78/EB indicated clearly, that means under national law for the persons, experienced discrimination, shall be effective, proportionate and punitive nature. However, the above mentioned remedies are hardly found to be met the requirements set up in the mentioned Directives. Most common remedy, suggested by the Equal Opportunities Ombudsperson, is the suggestion to abolish legal provisions in the legal acts, which are discriminative, as also suggestions to complement the present legal regulation with the additional legal provisions, abolishing discrimination. The Equal Opportunities Ombudsperson Office stated in its Report of 2006, that administrative sanction is not regarded as an effective remedy, in order

²⁸ Whereas according to the official currency rates 1 Euro=3,4528 Lt, therefore 20 000 Lt shall constitute 5792,4 Euro.

²⁹ Whereas according to the official currency rates 1 Euro=3,4528 Lt, therefore 2 000 Lt shall constitute 579,24 Euro.

to prevent discrimination. Therefore, the Office prefers friendly settlement of the dispute, where as administrative sanctions are as a rule applied in deliberate and malicious violations of equality.³⁰

11. Rules relating to the payment of legal costs

No specific rules regarding court expenses or attorney fees are set in discrimination cases in the Code of Civil Procedure or other laws. Thus a general rule, that the party, which loses the case, must cover all the expenses is applied. Additionally, as there is no specific system of legal aid applied in discrimination cases set by laws, in order to start legal proceedings the victim of discrimination must have sufficient financial resources.

Legal costs in the civil and administrative cases constitute stamp tax and other costs, relating to the case proceedings.³¹ The national law makes a list of other costs, relating to the case proceedings, which would include the following expenses in the case proceedings: a) Expenses, paid for witnesses, experts, expertise institutions and translators and expenses related to the examination of the place inspections; b) Expenses related to the search of the respondent party of the case; c) Expenses related to the delivery of procedural documents in the case; d) Expenses related to the execution of the court's decision; e) Expenses for the earnings of tutor's work in the case; f) Expenses for the legal services of the lawyer; g) Expenses related to the provided legal aid in the case; h) Other necessary and grounded expenses.

12. Rules on burden of proof

The shift of the burden of proof in cases of racial and ethnical discrimination was formally introduced to the Law on Equal Treatment only recently.³² Current wording repeats the provision of the Racial Equality Directive. Despite the lacuna in the implementation which existed in the law, the Equal Opportunities Ombudsperson applied the shift of the burden of proof when

³⁰ Report of the Equal Opportunities Ombudsmen 2006, www.lygybe.lt

³¹ Articles 79 and 88 of the Civil Procedure Code and 38 and 43 and 44 Articles of the Law on Proceedings of Administrative cases.

³² The latest amendment took place on 17.06.2008.

investigating complaints on the ground of race and ethnicity since 2005 (as the Ombudsperson is not bound by the Code of Civil Procedure).

However, taking advantage of this provision at courts of civil jurisdiction might be problematic in practice, since the Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant.³³ There are no any other legal acts, which would explain the procedure in anti-discrimination case in detail, thus the interpretation of the law would depend on the judge. This proves by the first and so far the only one existing discrimination case. The provision on the shift of the burden of proof was not in the Law on Equal Treatment at the time of the hearing, thus the judge stated that the hearing was based on general principles of the Code of Civil Procedure (competitiveness, the obligation for both parties to proof their statements)³⁴.

³³ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205 (01.10.2009).

³⁴ Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.