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The Race Equality Directive: ‘differentiated’ or ‘differential’ Europeanisation in the new EU member states?

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ABSTRACT This article examines the Race Equality Directive (RED) and its transposition in the context of a new European Union (EU) member state, Baltic Lithuania. Taking this post-communist society as a case study, it is suggested that while formal legislative compliance with the RED has been broadly attained, transposed anti-discrimination legislation and national policy implementation initiatives may not adequately take into account societal attitudes and norms. The historical legacy of Soviet times, the contemporary post-communist experience, and the current economic crisis have resulted in a fragile national identity and a propensity towards populist and even xenophobic responses to uncertainty. These factors are explored in terms of their potential for undermining the objectives of EU-derived legislation designed to promote racial and ethnic tolerance. The article concludes that while a ‘differentiated’ Europeanisation has not occurred in formal terms, the possibility exists of ‘differential’ Europeanisation emerging in post-communist new EU member states such as Lithuania.

KEYWORDS Europeanisation, new EU member states, labour migration, Race Equality Directive, Lithuania.
INTRODUCTION

The ‘Europeanisation’ of Eastern Europe has generally been described as a process in which the political project of European Union (EU) integration is realised through the transfer of certain legal and institutional practices and the dissemination of sets of values embodying liberal democratic norms to the domestic contexts of candidate countries (Schimmelfennig and Sedelmeier 2005; Graziano and Vink 2006). Within the burgeoning literature on this topic, there has been recent debate as to whether as new member states of the EU, former applicant countries now freed of the asymmetrical pressure of political ‘conditionality’ from Brussels, might reassert different sets of policy priorities, especially with respect to ‘sensitive’ areas of social policy (de la Porte 2002; Lendvai 2008; Sedelmeier 2008; Thomson 2009). Some have even argued that as ‘incentive structures’ change with full membership, ‘different worlds of compliance’ may emerge in the new EU member states, and that previous externally induced reform momentum may slow (Falkner and Treib 2008; Leiber 2007). Beyond the matter of formal compliance with the requirements of the European *acquis communautaire*, the body of European law which candidate countries are obliged to transpose into domestic law as a condition of future acceptance, there is a more challenging question. Has Europeanisation occurred, such that it has succeeded in bringing about sustainable changes at a deeper level, in terms of value structures, social attitudes and behaviours? It is now over a decade since the ‘alignment’ process accompanying EU accession negotiations began, and more than five years since the first Eastern European states finally ‘joined Europe’. It therefore, provides a good moment to begin an assessment of what might have changed and what might not.
In the realm of EU social policy, the key EU Directive intended to combat racial and ethnic discrimination, the Race Equality Directive (RED) provides something of an acid test (Council of the European Communities 2000). Mark Bell (2008) has questioned whether the ‘transposition of the Race Equality Directive has resulted in the genuine “Europeanisation” of anti-discrimination law and policy and whether this implies convergence in the direction of a common model’ (2008: 36). A sociological understanding of this question requires that new EU member states of Eastern Europe be viewed, not simply as passive receptacles for policy mandates from Brussels, but within the trajectory of their previous Soviet era history, in term of their contemporary sociological character as post-communist societies, and now as neo-liberal economies which may have entered a period of protracted economic decline, bringing in its wake new social turbulence and uncertainties.

The eastwards enlargement of the European Union, incorporating ten countries from the Baltic to the Black Sea, was intended to consolidate political and economic transition in post-communist Eastern Europe from centrally planned to market economies and a ‘return’ to a European sphere of pluralistic democracy. As a political project, enlargement was accompanied by an expansion of formal European citizenship rights, including the proscription of discrimination on the basis of race and ethnicity in the field of employment and other key areas of social life (Hansen 2000; Bell 2002: 388). Taking the new member state of Lithuania as a case study, the success of this project is critically examined in this sensitive policy area of racial and ethnic discrimination. Recent studies of implementation of EU policy based on individual country studies have mainly focussed on the institutional and political actor levels, rather than their sociological and historical dynamics (Hartlapp 2009; Pridham
The current article suggests that in order to understand the role of European-transposed policy measures in promoting tolerance of ‘others’ in the new EU member states, it is necessary to interrogate deeper sometimes hidden-from-view social attitudes. While the empirical evidence reviewed here is not conclusive, nevertheless quantitative and qualitative data are sufficiently ambiguous to be concerning.

First, an overview of the economic and social context of Lithuania is presented. Second, seemingly contradictory empirical survey evidence is examined suggesting significantly lower perceptions of discrimination with respect to ethnic and racial minorities in comparison to averages for the European Union, and at the same time, high levels of expressed hostility towards a variety of minority groups. Third, the main elements of the legislative and policy implementation framework of the transposed Directive are described, along with the measures adopted by the Lithuanian government to promote racial and ethnic understanding. The article concludes by suggesting that the transposition of the RED may have been largely successful in respect of adopted formal governmental policies, but that Europeanisation while not ‘differentiated’ may already be ‘differential’ implying divergence from a common model of European norms of racial and ethnic inclusion (Andersen and Sitter 2006; Bauer et al. 2007). Lithuania’s uncertain future trajectory in this respect, may exemplify a wider lack of resonance for race equality legislation in the post-communist new EU member states.

POLITICAL AND ECONOMIC CONTEXT

With a current population of 3,366,000, Lithuania is the largest of the three small Baltic States incorporated into the Soviet Union as full Soviet republics at the end of 2009.
the Second World War (Statistics Lithuania 2009a). It regained national independence in the early nineteen nineties, quickly seeking membership of the EU and NATO and becoming a full member of the European Union in 2004. During the post-Soviet years, national political elites have pursued a neo-liberal programme of economic and social reforms, designed to promote business enterprise and to attract inward foreign investment on favourable terms. Economic ‘imperatives’ and structural adjustment programmes have prioritised ‘market-building’ over social concerns (Bohle and Greskovits 2007; Aidukaitė 2009). The result, until recently at least, has been deemed an ‘economic miracle’, with the Lithuanian economy recording among the highest levels of GDP growth in the EU (BTI 2008).

Other indicators suggest the costs of transition for the population have been considerable, in terms of social inequality (also among the highest levels in the EU), low and declining adult life expectancy, negative population growth, as well as extraordinarily high suicide rates. Taken together with poor public health indicators, an absence of employment rights in the workplace, the highest proportional out-migration of its population of any new EU member state, and the current picture of life-quality and well-being is altogether rather grim (Woolfson and Calite 2008). Comprehensive radical reforms inspired by pro-market neo-liberal policies during the transition period have had specific economic and social outcomes in terms of spiralling inequities, impaired social cohesion and a debilitated civil society.

Nevertheless, on paper at least, the new democratic Constitution of Lithuania embodies certain fundamental rights for its citizens such as the equality of all persons, the right of every ethnic or national group to foster their culture, and imposes
limitations on freedom of speech on the grounds of incitement on racial or religious
grounds. Article 29 of the Constitution lays down that the rights of a human being
may not be restricted, nor may be granted any privileges on the ground of gender,
race, nationality, language, origin, social status, belief, convictions, or views
(Žiobienė 2008: 2-3). The general provisions of the Constitution are complemented by
the Law on National Minorities that recognizes notably that ‘the cultural heritage
connected with a national ethnic minority is an integral part of the cultural heritage of
the Republic of Lithuania’. This law establishes a general prohibition on
discrimination based on national or ethnic origin while defining positive actions to
advance minority cultures. In particular, the legislation (art. 3.2) confirms the State’s
obligation to promote the national consciousness and self-expression of minorities in
order ‘to foster and develop the culture, language, customs and traditions of their
nation or ethnic group and to preserve their national/ethnic identity’ (United Nations
2008: 10). Thus far, the outlook for racial and ethnic tolerance might be viewed as
promising. The reality is rather different.

DISCRIMINATION IN LITHUANIA
The historical incorporation Eastern European states into the Soviet sphere, has
produced a continuing sensitivity to questions of national identity during the post-
independence period (Brubaker 1996). Thus, in Lithuania a popular and resurgent
nationalism exists based on the imagined and real historical particularities of a unique
language and national culture. Yet, on the surface at least, independent Lithuania has
enjoyed significant advantages over many parts of the former Soviet Union. During
fifty years of Soviet rule, the level of inward migration from other parts of the Soviet
Union was on a considerably lower scale than, for example, in neighbouring
countries. As a result, Lithuania has inherited a lesser burden of ethnic tensions compared to Latvia and Estonia which, following the collapse of communism, found themselves with sizeable Russian-speaking minorities on their territories. The ‘zero option’ citizenship legislation granted citizenship rights to all who lived in Lithuania at the moment of independence, irrespective of national or ethnic origin. It has not been necessary therefore to consolidate ‘regime change’ through the exclusion of a section of the population via restrictive language and citizenship laws, as has occurred in Latvia and Estonia (Woolfson 2009). Indeed, the percentage of the ethnic Russians in the population of Lithuania has declined following independence from 9.4% in 1989 to 5.1% in 2007.

There are also smaller percentages of Poles (currently 6.3%) and of Belarusians (1.1%) forming long-established communities. Other historically long-present minorities, such as Jews, Roma and Tartars comprise no more than a fraction of a percentage of the total population. The lack of significant ethnic minorities and of visible incoming migrant communities has produced relative demographic and cultural ‘homogeneity’ in Lithuanian society. In general, Lithuanian understanding of ‘outsiders’, of whom there are very few in their midst, remains narrowly based on idealised symbolic notions of ‘Lithuanian’ national identity, today largely defined against Lithuania’s previous Soviet identity (Akstinavičiūtė and Petraitytė 2007). This mind-set is rehearsed in the conventional narrative as a ‘natural’ reaction of a small nation for whom external domination by larger foreign powers has left a profound sense of national insecurity. Paradoxically, it is accompanied by the comforting myth of Lithuania as a society of ‘tolerance’ and ‘fairness’.
Paradoxically, in the contemporary post-communist period, despite the avowal of
democratic values in the Constitution, there has been only lukewarm endorsement by
the emergent new political elites of rights-based social justice demands and discourses
of fairness in society (Matonytė 2006). A significant proportion of the population
appears to feel excluded from social and political life. Lithuania records among the
lowest levels of civic participation in voluntary activity in the EU, as well as low
levels of social trust in others, in the basic institutions of society and in the organs of
the state (Rose 2005: 25ff; Eurobarometer 2007: 35, 67). Basic understandings of
inclusive citizenship remain highly problematic. Recent survey evidence points to
Lithuania, as among that group of East European countries, in which ‘people report
particularly low life satisfaction, happiness and life fulfilment’ (Anderson et al 2009:
22).

The result is that support for democratic processes and values such as free speech and
multiparty democracy, belief in the free market and political institutions is at a
particularly low level, having significantly declined over the last two decades since
independence from the USSR (Pew Research Center 2009). In large measure, this
reflects a post-Soviet vacuum – a ‘de-solidarisation’ of norms - following the collapse
of (albeit state-sponsored) ‘collectivist’ ideologies. This vacuum has been filled by a
proliferation of attitudes and social practices based on invidious personal
discrimination, across an entire range of everyday social interaction, ethnicity and
race not excepted. This post-communist pattern of social fragmentation provides an
important backcloth in assessing receptivity to racist or xenophobic ideologies. In
Lithuania, it has produced ambivalent and complex responses in terms of awareness
of discrimination based on race and ethnicity.
THE PARADOX OF PERCEPTIONS

Seemingly anomalous findings with respect to issues of discrimination in society are revealed by European-wide social attitude surveys. It would appear that there is in fact considerably less perceived overt discrimination in general in Lithuania, when compared to the rest of the EU. A Eurobarometer survey on discrimination across all existing EU member states notes that the new member states in comparison to the old ‘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). Of the Lithuanian population, 44% (the highest percentage in the EU) could not evaluate the extent of discrimination in social life, based on a combination of several factors (Eurobarometer 2008a: 17). Lithuania scored the lowest percentage of the population who actually perceived multiple discrimination existing in society, at a mere 2% (Eurobarometer 2008a: 17). Compared to the EU average of 19% of respondents who claimed to have experienced discrimination on racial or ethnic grounds, the figure for Lithuania was only 7%, just above that of Malta which at 5% was the lowest in the EU (Eurobarometer 2008a: 52). In detailed country data ‘substantial disparities’ between Lithuanian and EU average figures were noted. Thus, ‘belonging to a different ethnic group’ was seen as a ‘disadvantage’ by 27% of Lithuanian respondents, compared to 62% of respondents for the EU as a whole. ‘Belonging to a different religion’ was seen as a ‘disadvantage’ by 21% of Lithuania respondents, compared to 39% for the EU (Eurobarometer 2008b: 1). Thus, somewhat surprisingly, ‘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).
In fact, the proportion of those who perceived ‘widespread’ ethnic and racial
discrimination was less than half the EU average (23% compared to 64%), as were
perceptions of ‘widespread’ religious discrimination (15% compared to 44%).
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% compared to 49% for the EU), and similarly, for discrimination
based on religious beliefs, (16% compared to 42% for the EU) (Eurobarometer 2008b:
2). Again, a significantly lower percentage of Lithuanian respondents (just over half
EU averages) considered that ‘more MPs’ were needed of a ‘different ethnic origin’
(24% compared to 44%) (Eurobarometer 2008b: 4).

These data would appear to indicate that discrimination along a number of
dimensions, is not regarded as a salient issue by Lithuanian respondents. By contrast,
figures regarding perceived discrimination arising from disability and gender factors,
were much in line with averages for the EU25. On ‘knowledge of rights’ in the event
of discrimination or harassment, Lithuanian responses were also virtually identical to
the EU average results. A majority of Lithuani ans (58%) did not know their rights,
with only just under a third (31%) claiming otherwise. The comparable figures for the
EU as a whole were a near perfect match at 56% and 32% respectively
(Eurobarometer 2008b: 3). Discrimination on the grounds of sex or disability (both
prominent in EU ‘mainstreaming’ activities) again accords with the EU averages,
leaving the anomaly that perceived discrimination on race, ethnicity and religion
appears to be significantly less than EU averages. Thus, while discrimination is
acknowledged as a factor in particular areas of social life, and with respect to specific
groups, it appears to be only reluctantly recognised with regard to race and ethnicity, producing the paradox of a seemingly diminished perception of discrimination.

However, EU-level comparative survey results may mask a more ambiguous reality. A recent national survey provides contrasting findings (Socialinių tyrimų instituto, etninių tyrimų centras 2008). Results suggest more deeply embedded discriminatory attitudes if measured in terms of ‘social distance’ towards ‘others’.

**FIGURE 1 ABOUT HERE (maximum half page)**

Respondents were asked to indicate those ethnic, racial or other minorities that they would not wish to have as neighbours. Over two-thirds of those sampled expressed the view that they would not like to have Roma (Čigonais/Romais) (69.2%) as neighbours, followed by more than half for homosexuals (59.3%) and Chechens (Čečenais) (55.7%), more than a third for Muslims (Musulmonais) and refugees (Pabėgėliais) (44.5% and 42.7% respectively), and nearly one third for black persons (Juodaodžiais) (31.3%) and Jews (Žydais) (30.6%). The percentage of those expressing negative views towards Jewish people had nearly doubled, from 18.3% in the preceding year. The survey also noted that four out of five Lithuanians (80%) were reluctant to work with or communicate with anyone who is ‘different’ (on the basis of race, sexual preference, language, or religion). Attitudes towards ‘traditional’ ethnic groups (Russians, Poles, Jews) have also become more negative and a ‘growing lack of tolerance, identified among youth’ suggesting that a ‘natural transformation to tolerant and open civic society is not taking place’ (Andriukaitis, 2008: 3).
Another recent survey of 622 representatives of ethnic minorities carried in Lithuania also suggests qualifications to the picture of a ‘tolerant’ society. This study found some 20.3% of respondents who claimed to have suffered from discrimination on the grounds of nationality in the labour market, or in education. Ethnic discrimination was reportedly encountered by 23.1% of Russians, 19.7% of Poles and 29.5% of members of other ethnic groups. The respondents indicated that major barriers encountered in the labour market were caused by insufficient command of Lithuanian language (42%), while negative attitude of employers towards their nationality (10.8%), general ethnic discrimination (8.5%) and non-recognition of qualification documents (6.8%) were also reported (Department of National Minorities and Lithuanians Living Abroad 2009). Such findings have led some commentators to speak of ‘systematic racism’ in Lithuania, and others of ‘veiled intolerance’ (*Baltic Times* 2008a; *Baltic Times* 2009a).

‘OTHERING’

Evidence of actual behaviours rather than simply expressed attitudes, suggests deeper layers of antagonism towards ‘outsiders’ than are revealed by survey data alone. The historically ‘traditional’ ethnic groups most visibly present in Lithuanian society are the Roma, Tartars and Jews, although the latter group is today present only in a vestigial sense. Vilnius, the present day capital of Lithuania, once described as ‘the Jerusalem of the north’, previously flourished as a centre of Yiddish scholarship and culture with roots reaching as far back as the fourteenth century. The capital’s pre-second world war Jewish population numbered some 100,000 persons or around 45% of the city’s total inhabitants. Anti-Semitic attitudes in Lithuania have a long history, especially during Czarist times. The period of Nazi occupation witnessed the
extermination, with the active participation of sections of the local population, of
upwards of 90% of Lithuania’s Jewish population of more than 240,000 persons.
Today, in an official narrative of ‘moral equivalence’, the Nazi and Soviet periods are
equally regarded as marking the totalitarian oppression of the Lithuanian nation.
Public displays of emblems of either era are legally proscribed. However, Lithuania’s
record in prosecuting Nazi-era war criminals from among its population has been far
from vigorous, in contrast to efforts to bring Soviet collaborators to justice (Lawson
2008).

The memory of the Lithuanian ‘genocide’ is institutionally embodied in the Museum
of Genocide, a grim exhibition chronicling the brutalities of Soviet occupation,
including the deportation of several tens of thousand Lithuanians by the Soviet
authorities during the early war years and again, after re-occupation in 1944. While
the heroism of partisan resistance fighters is celebrated, the holocaust against the Jews
receives but a single sentence mention in the exposition. Dovid Katz, the Vilnius
Yiddish Institute’s research director, identifies what he calls not so much ‘denial’ as
‘Holocaust obfuscation’. Meanwhile, still today, Jewish memorial sites and cultural
centres are continuing targets of anti-semitic vandalism (Andriukaitis 2009: 20).

The historical annihilation of the most numerous visible group of ‘outsiders’ in
Lithuanian society is a matter of record. Hostility towards another traditional group,
the Roma, currently numbering some 3,000 persons is intense and openly displayed in
public discourse, fostered by negative media stereotyping. Actions against this
stigmatised group have included at least one incident that has aroused international
concern. In 2004, Vilnius municipal authority illegally demolished houses in the
Roma settlement of Kirtimai, thereafter remaining steadfastly unrepentant. The ENAR (European Network against Racism) ‘Shadow Report’ for 2008 comments that Lithuania’s Roma population:

- clearly remains the most vulnerable group with regard to multiple discrimination in the fields of employment, education, housing, policing, etc.
- Extreme poverty, low educational levels, involvement in illegal activities and negative attitudes of the majority keep this group locked in social exclusion.
- The most common Roma stereotype is that they are inclined to commit offences, dirty, ailing and in general untrustworthy (ENAR 2008: 9).

While rejecting what it calls ‘the myth of self-imposed isolation’, ENAR estimates that close to 40% of Roma do not know the state language (although a majority of them do speak Russian). Thus, the question of their education and of later employment is ‘very complicated’ (ENAR 2008: 9). Roma unemployment rates are significantly higher than in the general population. However, although official data do not record ethnicity with regard to employment, it would appear that active discrimination against Roma in employment and other spheres is prevalent.

In this regard, a landmark discrimination case is reported involving a Roma woman who applied for a job in a café as a cleaner and dishwasher. When the administrator of the café saw her, she immediately asked whether S. M. was living in Kirtimai – a notorious Vilnius district where the Roma community live under severe conditions. When S.M. answered positively, the administrator of the café openly expressed her indignation saying loudly to her colleague, that ‘now they even teach those Roma to speak Lithuanian!’ She
immediately said that the dishwasher position was taken and that they did not need one anymore (ENAR 2008: 12-13).

The non-governmental Human Rights Monitoring Institute dispatched a Lithuanian woman to apply for the advertised job the same day, in a strategy of ‘situation testing’. The new applicant was accepted at once and was informed in a derisive manner about the previous visit of the Roma applicant. This was the first discrimination case on the ground of ethnicity in Lithuanian jurisprudence, albeit pursued under the Labour Code rather than provisions of racial equality law. The complaint of discrimination was upheld both in the lower and higher courts, resulting in the award of pecuniary and non-pecuniary damages of around 800 Euros. Individual incidents of discrimination however, remain mostly unreported and unchallenged.

Increasing manifestations of racist activity by far-right groups and their supporters have also been noted in recent years. In addition to Jewish targets, physical attacks on foreigners and open displays of racist behaviour at football and basketball games have been frequent (Baltic Times 2008a; 2008b; 2008c; 2009b). In March 2008, a French football team was greeted by a huge banner, unfurled after the playing of the respective national anthems. This depicted an outline of the map of Africa in blue, white and red colours of the French flag. Written in French it read: ‘Welcome to Europe’ – a reference to the presence of visiting black players in the French team. The incident resulted in a fine of 15,000 Swiss francs imposed by the European football federation (See FARE website). Again, on Lithuanian independence day in 2008, an unauthorised march by about two hundred neo-Nazis and supporters was escorted by local police through the centre of the capital to chants of ‘Jews Out’, ‘Russians out’,
and ‘Lithuania for the Lithuanians’ (Baltic Times 2008d). After a three-day period of police silence regarding their role in these events and in the face of growing media clamour, three persons were subsequently charged and eventually fined in the Vilnius district court. However, an application to hold a counter-march to protest against racism and xenophobia was refused permission by the local municipal authority.

‘The other’ has many faces, each one of which excites antipathy. The year 2007 saw the Mayor of Vilnius, a member of the ruling Order and Justice Party, supporting local trolley bus drivers who refused to drive vehicles carrying adverts encouraging tolerance towards gay persons. The following year an attempt to organise the visit of an EU-sponsored awareness-raising ‘tolerance truck’ in Lithuania was frustrated as local authorities in both Kaunas and Vilnius refused permission for the vehicle to park in municipal squares, with the mayor of Vilnius denouncing the ‘un-Lithuanian values’ that were being ostensibly promoted. The vehicle eventually found a refuge in a car park owned by the local supermarket chain (Human Rights Monitoring Institute, 2008). Then, in July 2009, the Lithuanian legislature overwhelmingly endorsed a draft Law on the Protection of Minors against the Detrimental Effect of Public Information. This act and other amendments to the Criminal Code received international opprobrium for legislatively criminalising awareness-raising in an educational context on issues of gender orientation such as homosexuality, potentially incurring penalties on a par with those for an act of violence against a young person. The final legislation removed criminal proscription regarding any mention of homosexuality._—butIn May 2010, following an application to the district court from the prosecutor general only to be subsequently overturned by a higher court, the first gay pride parade eventually took place in Vilnius on ‘Europe Day’, after being initially banned on public order
Homophobia in Lithuania of which this is only the most recent egregious example, remains but one expression of deeper fears of ‘otherness’.

TRANSPOSITION OF THE DIRECTIVE AND THE POLICY RESPONSE

How representative such incidents are may be open to question. In line with the objectives of racial and ethnic tolerance promoted by the European Commission, the Lithuanian authorities have attempted to pursue a path of measured policy responses, and in the face of particular high profile incidents which have attracted international concern, somewhat more vigorous, albeit at times, hesitant actions.

It is important to note that most of these events and many others not documented here, the Holocaust aside, have occurred in the last few years within the purview of the new framework of EU anti-discrimination law. With the accession of Lithuania to the EU important new legislative measures were adopted, intended to promote racial and ethnic harmony, including the transposition of the Race Equality Directive into national legislation, together with establishing individual opportunities for legal redress. The Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and the Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, were implemented in the Law on Equal Treatment (Republic of Lithuania 2005). This legislation forbids any direct or indirect discrimination on the basis of ethnic or racial origin, religion or beliefs, or any other grounds. Coming into force from 1 January 2005, the Law on Equal Treatment clearly defines which actions of state and local authorities, educational and academic establishments, employers, salespersons, producers,

An Equal Opportunities Ombudsman has been empowered to investigate complaints and monitor equal opportunities in public and educational institutions. The office of Ombudsman also seeks to ensure that employers observe the principle of equality while hiring and dismissing, paying equal wages for the same type of work, and that service providers allow equal access to their services (including housing). The Ombudsman has a remit inter alia to: investigate complaints on grounds referred to above; initiate investigations, for instance when violations of equal opportunities are uncovered through information in the media or from other sources; monitor legal acts and workplace practices; initiate administrative procedures (impose administrative fines on violators); disseminate information; to provide advice; monitor job recruitment and admissions to educational institutions; monitor discriminatory advertisements in the media; establish dialogue with non-governmental organizations; make recommendations to competent bodies on the implementation of equal opportunities and legal acts. The Law on Equal Treatment confirmed the role of the Equal Opportunities Ombudsman as responsible for receiving complaints from persons that allege discriminatory actions. Prior to the legislation, the Ombudsman was responsible primarily for gender equality. However, since the adoption of the Law on Equal Treatment, the mandate of this office has been expanded to cover various forms of discrimination, whether on the basis of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs (United Nations 2008: 10).
Complaints of discrimination based on racial or ethnic origin however remain relatively small in number, amounting to only 13% of the total (219), although they have shown a slight increase in recent years (Office of the Equal Opportunities Ombudsman 2008). The majority of cases have concerned discrimination by State institutions and in the realm of employment. Nevertheless, the transposition of the RED would seem to have resulted in some sensitivity towards, and awareness of discriminatory behaviours. Yet in the view of the informed observers, the decisions of the Ombudsman ‘do not have compensatory effect to the victim’, while a system of ‘effective, proportionate and dissuasive sanctions for discriminatory acts has not been established’ (Andriukaitis 2008: 3). Nevertheless, while the exercise of formal sanctions may have been weak, the Ombudsman (actually a woman) has devoted considerable efforts to the educational and awareness-raising role of the office, although the wider effects of these are difficult to measure (Andriukaitis 2009: 25-6).

At a governmental policy level, a National Programme of Anti-discrimination for 2006–2008 was introduced with the aim of reducing societal discrimination on grounds of age, social orientation, disability, race or ethnic origin, religion or beliefs in all the areas of public life, and of increasing tolerance in society. The Government has made it mandatory for ministries and State institutions to investigate complaints of discrimination (including racial discrimination) promptly and impartially (Republic of Lithuania 2006: 3). The programme also provided for training for employers, police officers, labour market institutions, trade unions and non-governmental organization (NGO) representatives, pedagogues, judges and lawyers on discrimination, equal rights and their protection. To mark the EU’s Year of Equal Opportunities for All in 2007, various training measures were also carried out with
labour market agencies, trade unions and NGOs under the auspices of the Ministry of Social Security and of the Ombudsman (Ministry of Social Security and Labour 2008: 156). A follow-on National Programme of Anti-Discrimination for 2009-2011 has been governmentally approved for implementation, although now threatened by severe public sector spending cuts (Lietuvos Respublikos 2008). These various programmes signal however a measure of commitment at national policy level to develop both awareness and tolerance in Lithuanian society.

In addition, a Strategy for the Development of the Ethnic Minorities Policy until 2015 has been put in place, together with a Programme for the Integration of the Roma into the Lithuanian Society for 2008-2010 (Department of National Minorities and Lithuanians Living Abroad 2008). The latter programme in particular has been evaluated as ‘very positive’ in providing significant resources, including for initiatives to combat Roma social exclusion in employment (Andriukaitis 2009 33). Other useful outcomes here have included a study of the dimensions of discrimination in the labour market by leading Lithuanian academics (Bagdonas et al. 2007). Further research has also been conducted into the architecture of anti-discrimination law and its interrelation with provisions of the national Labour Code. In the sphere of employment, the Labour Code does not provide directly any administrative sanctions for workplace discrimination, although under article 13 of the amended Law on Equal Treatment, an individual who is discriminated against at work may sue an employer for damages. In theory, State Labour Inspectors may impose administrative sanctions on employers and sanctions can be imposed under provision in the Code of Administrative Law Violations. However, a recent authoritative review notes: ‘In practice, however, workplace discrimination is not addressed by State Labour
Inspection officials. Only severe workplace discrimination would be punishable under the Criminal Code. Thus, this legal regulation of sanctions is not effective’ (Žiobienė 2008: 4).

In other areas of state regulation, the judicial authorities have seemed to adopt a more vigorous approach to open expressions of racial hatred in the public sphere. Judicial sanctions for the production, distribution or demonstration of material that incites national, racial or religious discord are embodied in the Lithuanian Code of Administrative Law Violations. Since 2006, prosecutors have begun to initiate cases investigating incitement of hatred based on ethnicity, religion, or sexual orientation. More than half these cases have involved the incitement of hatred against Jews. The Prosecutor General has ascribed the increase in racist activity to the opportunities of ‘anonymous’ comment provided by the Internet. In 2007, 36 pre-trial investigations were commenced for incitement of hatred based on Article 170 of the Criminal Code, while three were initiated for discrimination under Article 169. Of these, 21 pre-trial cases were for violations of human rights related to nationality, 15 related to sexual orientation, and four to race. Eighteen offences were recorded against Jews, with one each against Polish, Roma, and Chechen persons (OSCE 2008: 36-37). While some of the previous defects in the transposition of the Directive have been addressed, and legislation now allows for a shift in the burden of proof from the complainant, in practice, often the burden of proof remains with the victim (ENAR 2008). At the same time, there is evidence that the courts may be increasingly resistant to consideration of complaints of discrimination in respect of racial or religious hate speech on the Internet, increasingly demanding as a test of proof equivalent to that of malicious intent, suggesting a possible hardening of judicial attitudes.
A recent episode is perhaps illustrative of growing judicial hesitation. Basketball is a sport in which Lithuania has achieved world-class excellence, and it has the equivalent status of national religion. Black basketball players from the United States often play in the leading Lithuanian teams. In 2008, the President of the Lithuanian Basketball Federation was reported in a press interview regarding a black player in the Kaunas Žalgiris team: ‘Now about the negro playing in Žalgiris, I would expel him immediately. Zygimantas Janavicius (a local Lithuanian) is twice as good as he is...Education, there’s no education there, with only the black assholes playing’. After a pre-trial investigation, prosecution proceedings under article 170 were halted. The Prosecutor General’s Office agreed that the comments were rude, but did not incite racial hatred because they were not directed at the player on the basis of his skin colour: ‘After lexical analysis, it was determined that this word [black assholes] had a mocking meaning’ (Baltic Times 2008e). A subsequent attempt by the Human Rights Monitoring Institute to appeal this decision was rejected on the grounds that as a non-governmental organization it had no direct interest and suffered no injury that would permit a challenge to the prosecutorial decision.

**CRISIS AND MIGRATION**

These unresolved issues have highlighted the broader context of globalisation in which contemporary Lithuania is now embedded and to which it has adjusted only uneasily, not least as the chill winds of the global financial and economic crisis have engulfed the Baltic States, bringing economic depression and sharp reductions in mass living standards (Statistics Lithuania 2009b; European Commission 2009b). As the economic crisis deepened, evidence has begun to emerge of a gathering ‘second
surge’ of emigration, perhaps on a scale exceeding that of the out-migration following EU enlargement in 2004 (Greenhalgh 2009). This new migration, or ‘exit’ is not comprised of optimistic young hopefuls seeking a better life, but of the unemployed driven by desperation, and of the disillusioned, seeing no future for themselves and their families. As the population has haemorrhaged, so issues of a threatened national identity have become increasingly salient. What is certain is that in the longer-run the previous relative ‘homogeneity’ of Lithuanian society cannot be sustained, as demographic decline and emigration eventually make it imperative to recruit new labour resources from abroad.

To date however, the level of inward migration to Lithuania has been rather low as a result of relatively unattractive wages compared to other EU countries. State policy is not favourable towards inward migrant labour from third countries, deeming that such labour be admitted ‘only in the sectors which have identified the shortage of local labour force (as well as the shortage of employees from other European Union Member States)’ and that admission be ‘for a limited period of employment agreements by taking into consideration the flows of the returning local labour force from emigration’ (Ministry of Social Security and Labour 2008: 26). Thus, inward migration is already framed within restrictive temporary worker arrangements, similar to that being introduced in a number of EU member states sensitive to problems of ‘employment protection.’

In 2007, the number of immigrants peaked at a mere 5,686 as formal requirements for work permits were eased slightly to respond to labour shortages in specified sectors of the economy (Ministry of Social Security and Labour 2008: 29). Such immigration
has mainly comprised manual employees in construction (often working in the informal economy) and in retailing, with most migrants coming from neighbouring ‘third countries’ of the former Soviet Union, such as Ukraine, Moldova and Belarus. Migrants from further afield, for example, the Middle East, Asia and Africa are still very rare in Lithuania, although prior to the recession, Turkish, Thai and some Chinese nationals were found working in Lithuanian enterprises. Thus in 2008, one of the most successful enterprise conglomerates in Lithuania was found to be employing Turkish construction workers illegally in a joint venture. The same year, some sixty Chinese immigrants for whom permission had been initially granted for employment in the shipyard of the northern port of Klaipeda, were deported by the immigration authorities, after being discovered illegally working on chicken farms near the town of Kaisiadorys. These highly publicised cases apart, most Lithuanians would never encounter a migrant worker, far less, one with a black face.

Indeed, none of the new migrant groups have been especially ‘visible’. For those working in the informal economy, their ‘invisibility’ has been protection against scrutiny by the authorities. As the economic crisis has further deepened, however, rising levels of hostility have been expressed towards one group of recent arrivals although still few in number, Chinese nationals in Lithuania. Press articles have relayed complaints on the part of local businesses, especially in smaller towns concerning ‘unfair competition’ posed by newly established Chinese shopkeepers importing cheaper Chinese-made goods. Press commentary suggests barely disguised racism: “People say that during the first years, the Chinese are very polite and friendly, but when they get rooted in the market, suddenly they look at you with red eyes. Get out of their way - you are an obstacle” (Baltic Times 2009c). The ‘torching’
of the car belonging to the Chinese ambassador in Vilnius in December 2009 was yet another disturbing indicator. In times of growing economic uncertainty, such sentiments are easily ignited by xenophobic elements.

CONCLUSION

A mission to the Baltic States by the UN Special Rapporteur on Racism and Xenophobia, Doudou Doudiene, noted in his report on Lithuania that representatives of civil society organizations and ethnic minorities expressed rather different views to those of State officials, concerning the extent of racism and ethnic discrimination in Lithuanian society (United Nations 2008: 16). Doudiene commented on what he called a ‘worrisome tendency to equate racial attacks with hooliganism’ in his meetings with a State authorities, including the President of the Supreme Court (United Nations 2008: 21). In order to correct ‘this legal gap’ he suggested, it was ‘important for Lithuania to amend its criminal code in order to recognize racism as an aggravating circumstance in racist crimes’ (United Nations 2008: 21). Lithuanian observers, while recognising progress that has been made in prosecutorial capacity make similar policy recommendations (Andriukaitis 2009). However, draft legislation that would allow crimes with a racial or ethnic content to be considered as providing ‘aggravating circumstances’ was rejected in the Lithuanian parliament, and seems unlikely to be re-considered in the near future.

In one respect, the matter of legal penalties, although important in sending out signals of opprobrium to the wider society, is somewhat beside the point. Such signals are often misunderstood, especially by those who are subject to court proceedings, for whom the rarity of prosecution simply adds to their sense of seemingly arbitrary legal victimisation. The crux of the problem in securing ethnic and racial tolerance lies
elsewhere. The authorities themselves comment on ‘passive’ social attitudes as a barrier to the effectiveness of anti-discrimination policy noting: ‘undoubtedly, the practical enforcement of anti-discrimination provisions is not possible without raising public awareness about the manifestation of discrimination and its consequences’ (Ministry of Social Security and Labour 2008: 155). The RED was not designed to rely primarily for its effectiveness on the apparatus of the state and its formal sanctions. Rather, as a ‘new-style’ instrument of European social policy, it was intended to encourage a different ‘mode of governance’ to the ‘traditional’ European Directives deemed to be too ‘prescriptive’ in nature (Soininen 2006). The RED thus offers a mix of consensual, guiding, regulatory and self-regulatory mechanisms to ensure the broad lines of EU policy are pursued by member states, including a special role for the active involvement of ‘social partners’ (Niessen 2003). It is as much aimed at promoting ‘common European values’ of racial and ethnic tolerance through civil society engagement at the member state level, as ensuring that formal compliance mechanisms have been established.

However, ‘mainstreaming’ (in the parlance of the European Union) the objectives of the promotion of racial and ethnic tolerance, presupposes an active civil society which has proved an elusive ingredient in post-communist societies (Howard 2003). In the socially fragmented neo-liberal Baltic States, civil society remains perilously weak. With key ‘social partners’ of trade unions representing little more than one in ten of the workforce (the second lowest level of trade union density in the European Union), and with employers’ organizations similarly lacking representativeness in the business community, their role in promoting the objectives of anti-discrimination legislation is marginal. Indeed, the trade unions have argued for the maintenance of labour market restrictions on incoming migrant labour in favour of the employment of the domestic
workforce, a logical if narrowly defensive short-term position. NGOs that have specifically championed human rights appear to have had some, if rather limited success in promoting greater social tolerance. However, all of these bodies operate within a wider social and political environment that is largely unreceptive, and in the current crisis, openly hostile to any measures that might encourage new ‘outsiders’ to venture to Lithuania, in addition to the imagined threats from ‘outsiders’ already in their midst.

As Mark Bell has pointed out, the extent to which anti-discrimination directives ‘resonate with the national social and political environment seems a key factor in determining the extent to which they are embraced…(thus) the true extent of the Europeanisation of anti-discrimination law will only become clearer in the future when it can be seen whether these new laws genuinely effected wider changes in the domestic socio-political context’ (2008: 43). In Lithuania today, five years after transposition, this socio-political context is problematic. The Soviet era experience, emigration and now economic recession, has created a particular legacy in terms of a fragile national identity and damaged social cohesion. Today, frustration, disappointment and, at times, open social unrest have emerged in what is now a ‘failed’ Baltic tiger economy (Woolfson 2010). As the crisis has deepened, support for the European project as a whole as has diminished, along with the expectations of the benefits that would accompany EU membership. This conjuncture, together with the absence of trusted civil society organisations and of legitimised political institutions, offers fertile ground for a substratum of latent racist, homophobic and xenophobic ideologies. While, as yet, unlike some other new member states such as Hungary, no political party openly espouses racist policies, this should not offer
grounds for complacency. Authoritarian populism and xenophobia, while also ubiquitous features of the broader European political landscape, remain engrained in Lithuanian political life and carry the potential to metamorphose into an illiberal politics of exclusion (Berezin 2009).

Nor are future prospects for the beneficial impacts of the RED particularly encouraging. In the current post-accession period, entrenched domestic resistances may re-assert themselves and ground-level challenges to implementation of ‘contested’ or ‘Brussels-imposed’ social objectives can be more easily mounted. As the temporal distance from accession grows, further measures, particularly at the level of civil society, may be required in order to assist new EU member states in combating discrimination in ways not foreseen by those who drafted the original provisions of the RED. Substantial divergence from the requirements of formal legislative alignment with European law may be difficult to sustain. In this sense, Europeanisation, at least in terms of legal architecture if not practice, cannot remain ‘differentiated’ in the longer run. Less tractable, however, are attitudinal divergences underpinning a different, and more uncertain trajectory of ‘differential’ Europeanisation that rejects many of the guiding assumptions underlying European initiatives designed to foster non-discrimination. The ultimate effectiveness of the EU’s legislation on racial and ethnic tolerance therefore remains to be determined in the new member states. What is becoming increasingly clear is that doubts concerning convergence towards a common model may be well-founded.
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