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States of Democracy

Gender and politics in the European
Union

Edited by
Yvonne Galligan

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7 National and European gender equality legislation

A mismatch of agendas and hesitant feminism in Lithuania¹

Irmina Matonytė

Introduction: Lithuania an early adopter of women-friendly politics

On the 11 March 1990, Lithuania became the first Soviet republic to declare its independence from Moscow and begin its sovereign life, guided by democratic aspirations and free-market reforms. In the years leading to Lithuania's EU membership, the Lithuanian political and administrative elites as well as civil society engaged in profound changes across all social life and policy domains. A new constitution was drafted, electoral reform completed and tailor-made institutional mechanisms established in order to secure and promote human rights, civil liberties and meet concomitant gender equality challenges. These profound political changes, a consequence of establishing an independent state free of Russian domination, had widespread internal support (Martinaitis 2012; Palubinskas 2005). Economic transformation accompanied political democratisation, while adjustments from the heavily subsidised state socialist economy to a market-based economy raised the cost of living and unemployment levels (Clark 2005).

Today, Lithuanian democracy is considered well consolidated (Beissinger 2008), with strong political institutions functioning through a semi-presidential system of government. The president is elected directly by the people and is active in foreign affairs, appoints the chief public service executives and performs ceremonial duties. The unicameral Lithuanian parliament (*Seimas*) consists of 141 MPs elected every 4 years, using a mixed electoral system. Elections to *Seimas* are based on 71 single-member electoral districts and 1 multi-member, nationwide 70-seat constituency. Lithuania's multiparty system, while fragmented, is dominated by a conservative-liberal and social democrat-left liberal cleavage, along with populist parties and small nationalist (Lithuanian) and ethnic (Polish) political forces. These positions are reflected in the composition of parliament: the conservatives-liberals are represented by the Homeland Union-Lithuanian Christian Democrats (TS-LKD), the Order and Justice Party (TT), Liberal Movement (LS) and the Lithuanian Poles Electoral Action (LLRA). Social democrat-left liberal parties in the *Seimas* are the Lithuanian Social Democratic Party (LSDP) and the Labour Party (Saarts 2011). In the 2012 general election, the LSDP narrowly defeated the incumbent conservative-liberal coalition, and formed a four-party coalition, returning the TS-LKD to opposition.

Since the early 1990s, when the issue of Lithuania's membership of the EU arose, Lithuanian political elites have been in unanimous support. All relevant Lithuanian political parties broadly agreed that the country needed to Europeanise; in other words to further liberalise markets, promote democratic practices, respect human rights, and adopt the *acquis communautaire* (Matonytė and Gaidys 2005). This swiftly led to the Lithuanian Association Treaty with the EU being signed in 1995. Lithuania became a member of the EU in 2004 – its membership was approved by popular referendum on 10–11 May 2003, with 91 per cent of the vote and a 63 per cent turnout. Since then, the Lithuanian public has remained among the most positive in their view of the EU. A 2013 Eurobarometer poll showed that 62 per cent of Lithuanians thought that EU membership was a good thing, compared to the EU average of 50 per cent (EB/EP 2013: 40–41).

Women in political leadership roles

Public opinion surveys regularly show that the president's office is the most trusted political institution and the president is the most trusted politician in the country (Vilmorus 2014). In the summer of 2009 Dalia Grybauskaitė, a former European Commissioner and a political independent, won the presidential elections in the first round, with 69 per cent of the vote. Grybauskaitė became the first female president in Lithuanian history. She was re-elected comfortably in 2014 for a second term, supported by conservatives and liberals, with 58 per cent of the vote. This placed her well ahead of her nearest rival, a social democrat male who obtained 40 per cent support. Her achievement is but one instance of women taking leadership roles in Lithuanian politics since independence from Russia in 1990. The charismatic economist Kazimira Prunskienė became prime minister of the new state (1990–1991) and facilitated the democratisation of politics. Another achievement for women's political history occurred in 2009, when Irena Degutienė, a Christian democrat MP (TS-LKD), became the first woman speaker of the *Seimas*. In 2013 she was succeeded in this position by Loreta Graužinienė (one of the leading figures of the Labour Party). Four of the eight party groups in the *Seimas* are chaired by women in 2014. Women's share of Cabinet portfolios, and their type, varies from one government to another. In 2014 Algimanta Pabedinskienė was the only female member of Cabinet, as Minister for Social Affairs and Labour, but among the roles held by women in the previous conservative-liberal administration were Minister for Finance and Minister for National Defence (Mejere 2012: 51).

Women's political representation

Women's representation in the *Seimas* has fluctuated since the first post-communist elections in 1990, ranging from a low of ten women MPs (7 per cent) to the 2012 high of 34 (24 per cent). Women candidates tend to run via the national party list rather than in the single-seat districts (Krupavičius and Matonytė 2003: 85). In the mid-1990s a short-lived women's party (1995–1998)

played a considerable role in encouraging all Lithuanian parties to expand women's political representation and to better articulate women's interests (Krupavičius and Matonytė 2003: 90). Yet, while parties are conscious of the need to appeal to women voters, and have women's sections within their structures, only the social democrats have voluntarily instituted a candidate gender quota. The issue has repeatedly engaged the attention of parliament: to date four parliamentary initiatives to introduce gender quotas on party lists have been advanced, all of which have been defeated (Mejere 2012: 50).

The *Seimas* remains a male-dominated institution, with party groups, committees and commissions mostly led by male MPs (Matonytė 2010). Of the 15 parliamentary committees in the 2012–2016 term, 5 (33 per cent) are chaired by women, and four of these are committees traditionally associated with women's interests – Social Affairs, Health, Education Science and Culture, and State Administration and Local Authorities. Of the three committees dealing with economic and financial affairs, one – the Audit Committee – is chaired by a woman, and has a gender-balanced composition. There are no women on the committees of Rural Affairs and Foreign Affairs, while the committees chaired by women are reasonably gender-balanced in their membership.

Any women-friendly political developments occurred amidst favourable domestic circumstances and with international partners' assistance. On an economic and cultural macro level, positive path dependencies from the Soviet times were in operation in Lithuania where women's political representation, women's engagement in civic activities, and female employment outside the home was an accepted social norm. Although a conservative right-wing majority government controlled the 1996–2000 *Seimas*, it introduced a parliamentary women's group, which promoted political ambitions with regards to women. Former Prime Minister Kazimira Prunskienė, who had been left without any important decision-making portfolio, and who was interested in the promotion of a women's political agenda, successfully mobilised her parliamentary female peers to advance equal opportunities legislation. Finally, there was pressure from European (mostly Scandinavian) and American partners of various political parties and non-governmental organisations for Lithuania to become more attentive to women as a special interest group (Krupavičius and Matonytė 2003: 100–102). In this gender awareness-raising process, the EU role was only indirect and occurred before Lithuania was officially included in the list of the EU-candidate countries (in December 1997). The EU monitoring of the Lithuanian compliance to the European *acquis communautaire* was launched in April 1998, and the country was invited to begin EU accession negotiations in February 2000.

Establishing a gender equality framework

From 1997–1998 Lithuania became one of the first countries in central and Eastern Europe to establish an inter-parliamentary women MPs group, approve the Law on Equal Opportunities between Women and Men² and create an

Ombudsman of Equal Opportunities for Women and Men (OEOWM, later OEO).³ The 'historical' EOAWM law was initiated by the Lithuanian government following the personal initiative of Giedrė Purvaneckienė, a well-known sociologist and university professor, and at the time advisor on women's affairs to the social democrat prime minister. The United Nations Development Programme (UNDP) office in Lithuania had been lobbying for such a piece of legislation since 1995. In the summer of 1997 the board of the *Seimas* appointed a working group to prepare the law. The group was chaired by a female conservative MP and comprised parliamentarians from various political parties, representatives of the Ministry of Justice, the *Seimas* Ombudsman Office and several NGOs. The equal opportunities law was passed by the *Seimas* in 1998 with little opposition. Some would suggest that the low vote (48 for, two against, with seven abstentions) expressed the indifference of Lithuanian legislators to the issue (Krupavičius and Matonytė 2003: 100–102).

Since its first appearance, the equal opportunities law has undergone a series of major revisions. Initially it covered gender equity in the labour market alone. However, the law was amended in June 2002 to comply with European legislation and international best practice, and the regulations also began to cover consumer rights. The amended equal opportunities law defines direct and indirect discrimination on grounds of gender, and also recognises the gendered nature of sexual harassment and harassment. For more than ten years, the Act applied to the public sphere only – the labour market, education, public administration, goods and services. Many amendments were introduced while transposing the EC Directive 2004/113/EC. Domestic violence became a subject of the Act in late 2011.

The development of national legislation regulating gender issues coincided with Lithuania's process of adopting the *acquis communautaire*. Remarkably, compared to the passionate social-democratic, liberal and feminist political debates in the *Seimas* from 1997 to 2000, there were no major controversies on harmonisation of the national law and the *acquis communautaire* during the EU accession period in Lithuania, 2000–2004. The European Commission positively evaluated Lithuania's accession progress in its reports. However, reforms of the national equality law stalled after accession. From 2005 onwards, the transposition of the EU directives relating to gender equality became a procedural formality (Pilinkaitė-Sotirovič 2008).

At the official level, apart from the *Seimas*, the main actors engaged in gender equality public policies between 2005 and 2009 were the Ombudsman for Equal Opportunities, the Inter-ministerial Commission on Equal Opportunities for Women and Men and the Department of Equal Opportunities in the Ministry of Social Security and Labour. The Inter-ministerial Commission on Equal Opportunities for Women and Men (hereafter I-MC) was formed in 2000. Its main functions involve the coordination of public policies geared towards implementing gender equality; it advances proposals to the government and other public bodies to this end. The I-MC has representatives from all the government ministries on its board. It also includes representatives of the OEO, NGOs, and

unions. With respect to broader social participation in national decision-making, the principle of social partnership is politically acknowledged. The first post-communist tripartite council was established in May 1995, and the National Agreement on Tripartite Cooperation, which aspired to consolidate inter alia the promotion of equal opportunities in the labour market, was signed on the 13 June 2005 between the Ministry of Economics, the Confederation of Industrialists and the National Confederation of Trade Unions. However, agreements on Tripartite Cooperation do not specify any particular measures to be taken, or any particular targets to be achieved to this end. Generally speaking, social prestige and the bargaining power of the Lithuanian trade unions are weak. As such, trade unions mostly confine their activities to a minimalist defence of workers' rights, often abused by the neo-liberal regime in post-communist Lithuania.

In Lithuanian civil society per se, women's organisations of various types are active. First are those originating from within the academic community. The Gender Studies Centre (GSC) at Vilnius University – the first of its kind in the Baltic States – was established in 1992 by philologist Professor Marija Aušrinė Pavilionienė. The GSC functions as a base of interdisciplinary academic research on women and gender. The GSC also plays an important role in forming gender policy in Lithuania. Its current director Professor Dalia Leinartė was elected as a member of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in June 2012.

The Women's Information Center (WIC – *Moteryų informacijos centras*), was established in 1998 with support from the UNDP. It is an umbrella organisation that counts more than 100 institutional members, and brings together individual women activists, state agencies, NGOs, social partners, scientists and gender equality experts. The WIC has facilitated horizontal cooperation among a diverse set of stakeholders in equal opportunities policies. The NGOs Coalition for the Protection of Women's Human Rights in Lithuania was set up in 2001. It closely cooperated with the women parliamentarians' group, the OEO, and the I-MC.

In 2003, the Centre for Equality Advancement (CEA – *Lygių galimybių plėtros centras*) was jointly established by the Kaunas Women's Employment Information Center, the Ministry of Social Security and Labour and the OEO. The CEA quickly became one of the leading women's non-governmental organisations in the country and the region. Activities of the CEA involve academic research and educational programmes aimed at promoting gender equality. This think tank regularly conducts research on women's issues, financed by the Ministry of Social Security and Labour, EU funding programmes and other donors. In 2008, the European Council decided to establish the European Institute for Gender Equality (EIGE) in Vilnius. This decision could be interpreted as a symbolic reward for Lithuania's early progress, and recognition of Lithuanian feminist expertise, women's NGOs activism in international – mostly EU – networks as well as a stimulus for the Lithuanian state agencies to excel in gender equality policies (Interview with EIGE representative).

Despite the institutionalisation of gender equality, and active NGO engagement with the issue, the outcome of these efforts has been uneven, and generally

of average effectiveness. Even with early innovative legislative initiatives, gender equality-focused institutional arrangements and a lively women's interest group sector, along with periodically mobilised feminist civil society, women are still under-represented in the national political-administrative elite, and gender mainstreaming in public policies is cumbersome. On the national political stage, attention to gender equality issues waxes and wanes, depending on the political fortunes of parties and personalities. Enterprising civil society initiatives geared at promoting gender equality – albeit ambitious and occasionally provocative – are sporadic and oftentimes unsustainable because of inadequately institutionalised patterns of interaction between state agencies, the expert community and civil society activists.

Even though over the last 15–20 years the Lithuanian political scene has witnessed a tremendous transmutation of the Soviet and early post-Soviet tokenism into a more democratic pattern of female inclusion and recognition in the public sphere, the gender equality agenda is not prominently included in Lithuanian political life. Moreover, the Lithuanian accession to the EU does not symbolise any watershed point where gender equality politics became easier. On the contrary, some backlash tendencies can be observed, such as the pro-natalist public policies which reinforce traditional gender roles. These were introduced in 2006 by the social democrat minority government and intensified in 2008–2012 by the conservative-liberal coalition. The remainder of this chapter will reflect on gender equality politics as revealed through the adoption into domestic law of the Goods and Services Directive.

Transposing the EC Directive 2004/113/EC in Lithuania: a bumpy road in an undemanding landscape

The EC Directive on the equal treatment of women and men in access to and the supply of goods and services (2004/113/EC) (here after, the EC Directive) was transposed into Lithuanian law between 2005 and 2009. The transposition, as well as the previous process of *acquis communautaire* adoption in Lithuania, was anchored by the executive branch, and became an exercise conducted by the administrative elite. In practice, all relevant legislative drafts were prepared by the Ministry of Social Security and Labour, while the OEO presented its expert commentaries. Three *Seimas* committees were involved: Human Rights, European Affairs, Social Affairs and Labour. The participation of other governmental agencies and NGOs was very limited. The transposition of the EC Directive began under the direction of a social democrat-led (LSDP) coalition government without any major objections from the liberal partner parties. However, it is important to underline that this was a minority government, dependent on the parliamentary support of the major opposition party, the conservative TS-LKD.

Between 2005 and 2008, several amendments were introduced to the equal opportunities law. The Lithuanian Labour Code also underwent several modifications and incorporated new guarantees and special arrangements for pregnant workers, women who had recently given birth and breastfeeding mothers

Provisions expressly prohibited direct or indirect discrimination on gender-based grounds with regards to access to employment, vocational training and promotion, and working conditions were consolidated in the revisions.

In the *Seimas*, all the draft laws relating to this EC Directive were given a special status – coded as ES, meaning *Europos Sąjunga* (the EU in Lithuanian) – and were passed by means of an urgent procedure. This meant that it took only two to four weeks from the first reading of the draft in the plenary meeting until the vote on it in the *Seimas*. The first legislative deliberations concerning the EC Directive in the *Seimas* took place on 23 June 2005. Vilija Blinkevičiūtė,⁴ a social democrat MP and Minister of Social Security and Labour, presented the draft of the amendments to the equal opportunities law which aimed at defining and distinguishing the marital and family situation, direct and indirect discrimination on gender grounds, harassment, sexual harassment and order to harass, as well as introducing the exception that provides for the eventual non-applicability of the gender equality principle in the sphere of insurance. On 25 April 2006 Česlovas Juršėnas, a social democrat MP, on behalf of the Law and Legislation Committee introduced the amendments to parliament for scrutiny. One of the issues to be decided upon was whether the oath of the equal opportunities Ombudsman would contain a reference to God. This provoked a lively discussion: politicians with strong religious convictions argued that as God created men to be superior to women, God could not assist the Ombudsman. On 4 May 2006 the draft was approved, giving the EO Ombudsman candidate the right to choose the text of the oath, with or without a reference to God. On 13 July 2006, Jonas Lioginas, a chair of the Committee of Budget and Finance, presented draft amendments with new principles regarding the evaluation of insurance risk, which would be based on equal treatment of women and men. The draft was rejected.

On 18 September 2007, Blinkevičiūtė presented a new draft of amendments to the equal opportunities law. The minister emphasised that the European Commission had recently sent official statements to the Lithuanian government urging them to fully transpose the EC Directive. The draft *inter alia* introduced the concept of sexual orientation into the list of backgrounds on which discrimination is prohibited. The subsequent plenary sitting devoted to the issue of non-discrimination on various grounds took place on 18 December 2007. Further parliamentary deliberations regarding the draft took place on 17 April 2008, during which it was noted that there was some misinterpretation of the meaning of the EC Directive in the Lithuanian translation.⁵ The Directive prohibited discrimination in relation to admittance to a trade union and employers' organisation, yet the Lithuanian translation talked of a requirement not to discriminate against any person because of his or her membership in trade unions and employers' organisations. The revised draft was reintroduced in the plenary sitting on 20 May 2008. It focused on the notion of 'social situation' and the prohibition to discriminate on this ground. During voting in the afternoon plenary session of 20 May, the draft was rejected. The newly revised law was presented by the Committee of Human rights on 5 June

2008 and the plenary deliberation took place on 10 June 2008, but due to the absence of a quorum, plenary voting was impossible. However, further plenary deliberations took place on 12 June 2008 with a breakthrough vote taking place on 17 June.

On 13 November 2007 Minister Blinkevičiūtė presented further amendments to the equal opportunities law, concerning the right of NGOs, trade unions and/or the OEO to represent the victims of discrimination in judicial and administrative procedures. On 18 December 2007, the draft was approved. On 13 May 2008, Vice Minister of Social Security and Labour, Vytautas Povilas Žiūkas, introduced draft amendments which proposed changes aimed at better guaranteeing the protection of women and men from discrimination, and equal opportunities in the labour market and professional activities, as well as in the social security system. Plenary voting took place on 19 June 2008.

Contrary to the plans of the social democrat-led coalition, the transposition of the EC Directive was not accomplished before parliamentary elections were held in October 2008, with the result that in early 2009 the European Commission auditors reported that Lithuania had failed to fully transpose this Directive. The initial EC report evaluating the transposition, signaled that the national labour legislation – adopted in 2007 – was so heavily loaded with guarantees for women and persons raising children that some provisions could potentially be challenged by male employees.⁶ The EC report also listed some problems in relation to the implementation of non-discrimination rules in the workplace. It judged that state agencies and social partners had insufficient capacity to efficiently promote gender equality. The EC report also drew attention to the fragmentation of NGO activities concerned with gender equality, and noted that these were mostly limited to surveys and public campaigning (European Commission 2009). Therefore, in 2009, the newly elected *Seimas*, dominated by a former hard-line opposition party – the conservative Christian democrat TS-LKD – led the new coalition government to quickly fix the failures and fully transpose the EC Directive so as to meet all 'European expectations'.

Interestingly, the main instigator of gender equality legislation while in office, social democrat MP Vilija Blinkevičiūtė, became the fiercest critic of the legislative initiatives proposed by the conservative MP Jonas Dagys, the newly appointed Minister of Social Security and Labour. However, the content of these critiques was usually constructive. On 21 April 2009, in the plenary meeting of the *Seimas*, Dagys introduced a Draft of Amendments to the equal opportunities law and to the Labour Code. The minister emphasised the need to better define the workplace and professional advancement guarantees for women and men who return to their job after parental leave. The new draft specified that after parental leave, employees should have the opportunity to participate in training, qualification workshops and benefit from other improvements in working conditions, which had been offered to their co-workers during their parental leave. The draft was approved on 14 July 2009 and it technically meant that the EC Directive on goods and services was fully transposed into Lithuanian national law.

Analysis of transposition

This brief overview of the major phases and actors in the transposition of the EC Directive in Lithuania provides good indicators and strong clues in relation to the analysis of the quality of democracy in Lithuania in general, and of gender democracy and deliberative democracy above all. Basically, tracking this particular legislative process reveals important deficiencies in relation to three broad principles of deliberative democracy on which our study dwells: inclusion, accountability and recognition.

Inclusion

In relation to the principle of inclusion, the analysis found that the dialogue between political and administrative elites and civil society actors at the drafting and deliberation stages was inadequate, and that the level of engagement and mobilisation of relevant social actors throughout the process was insignificant. Women's organisations were not well informed about the legislative process itself, and were never formally consulted. The government gave no space to civil society groups who sought to enlarge the scope of deliberations, such as women activists, who in 2007, for example, were pushing to expand the legislation to cover domestic violence. The Lithuanian state agencies purposely curtailed and limited the gender policy agenda, largely excluding the civil society actors and reduced expert discussion to technicalities such as their opinion on the accuracy of translations of certain terms from English into Lithuanian. Women's organisations and actions remained rather disconnected from deliberative sites, and their engagement was mostly limited to informal discussions, open-table meetings, advisory consultations, and other gatherings peripheral to the decision-making process.

The quality – content and substance – of the legislation indisputably depends on actors input into the process; their finding the 'right' answers and doing so responsibly by publicising the issue, building advocacy coalitions and promoting certain responses. In principle, the governmental bodies and *Seimas* are open to all kinds of written proposals and opinions from civil society. The Statute of *Seimas* grants a wide range of groups from government, politics and civil society the opportunity to participate in the sittings of *Seimas* committees or working groups in the parliament. Yet women's NGOs did not have any special access to the relevant draft projects, and could not effortlessly participate in committee deliberations or observe plenary discussions. Typically, except for the agenda of the plenary sittings clearly displayed on the *Seimas* website, it is difficult to know in advance what is on the forthcoming agendas of particular *Seimas* committees. As one of our interviewers from the NGO sector observed:

It's possible to find the agenda of committees somewhere, but I don't know where exactly ... you have to be a professional in this system, or receive information in other ways, using acquaintances or friends. This is the

attitude of officers that everything is available publicly, but it is available in such a complicated way. For public policy discourse formation and advocacy NGOs do not have many opportunities, they do not have huge human resources. You cannot get involved in everything, especially when you are not welcome by those who have the ultimate responsibility on the issues of your concern and expertise.

(Interview with Jūratė Šeduikienė)

In addition, the representatives of women's organisations revealed the tactical challenges in lobbying for women interests:

If you want to lobby, you have to talk with an MP and receive his or her support. If you only attend the sittings of committees and provide your own opinion, it would not go very far without this additional human support. Your opinion should be expressed by somebody who has power.

(Interview with Vilana Pilinkaitė-Sotirovič)

In reality most of the drafts proposing amendments to the equal opportunities law were prepared by the Division of Gender Equality in the Ministry of Social Security and Labour, and then approved by the government once the draft had been presented for parliamentary deliberations and approval in the *Seimas*.

By analysing the content of the sittings of *Seimas*, we can see that the legislating committees, particularly the Committee of Social Affairs and Labour and the Committee of Human Rights, did not receive any written proposals suggesting the position of women's organisations towards the equal opportunities law amendments. The populist macho MP Petras Gražulis, for example, speaking on behalf of the Human Rights Committee, pointed out that 'the Committee did not receive any proposals towards the amendment from parliament members, political parties, and from any other organisation'.⁷ Further parliamentary debates concerning the transposition of the EC Directive and related amendments indicate the lack of civic initiatives and weak political engagement in representing and promoting equal gender opportunities in the Lithuanian *Seimas*. In her plenary speech, social democrat MP and former academic Marija Aušrinė Pavilionienė reflected on the past vigour of civil society organisations in implementing gender equality principles and rights. She rhetorically appealed to the uninterested MPs, trying to mobilise their support for the law: 'I remember that Lithuanian NGOs and some politicians have undergone a very difficult road, they were spreading the ideas of gender equality and changing the gender stereotypes... I wish they would vote today for the gender equality in society'.⁸

The substantive representation of women, in terms of outcomes, was also significantly absent. The negative impact of a non-participatory legislative process on the substantive representation of women's views and interests was partially remedied by the blueprints and critiques prepared and imposed by the European Commission. For instance, between 2005 and 2009 the most publicised and discussed women's interests in Lithuania were financial support for gender issues

NGOs, fostering cooperation between NGOs and state agencies, the harmonisation of work and family obligations and violence against women. Yet these issues were poorly included in the content of the laws transposing the EC Directive. The fact that women's interests were insufficiently included in the deliberative agenda was underlined in the European Commission report, which evaluated the Lithuanian state agencies' capacities to promote the principles of gender equality as inadequate and requested that they develop them.

Accountability

The transposition process in Lithuania also showed shortcomings in relation to the principle of accountability. The public, and in particular one group of those 'qualified and affected' by the intended law – in other words, women citizens and women's non-governmental organisations – were not adequately informed about the issues under parliamentary deliberation. The one-sided, patriarchal and populist media coverage was particularly salient. In their media interviews some vocal Lithuanian parliamentarians showed their lack of understanding of various aspects of the drafts of the law promoting gender equality, and sometimes even did not have sufficient knowledge of the socio-economic and cultural background of the assumptions guiding the legal initiatives. One incident highlights the glaring lack of basic competencies in the Ministry of Social Security and Labour, whose representatives prepared the bulk of the drafts of the law. It was revealed that Lithuanian officials had misinterpreted some European provisions while translating them into Lithuanian. As surprising as it might sound, a need to justify the proposed draft law aiming to guarantee gender equality in the labour market and in the social sphere arose during the *Seimas* plenary discussions. The conservative lawyer and MP Vidmantas Žiemelis requested some hard facts which would show that

there is some discrimination in the social sphere. I have not heard of any case of discrimination based on an individual's gender in the social sphere. I think that mentioning the social sphere is unnecessary in the law. We do not have this problem. Or maybe I am wrong?⁹

Interestingly, the presenter of the draft, Vice Minister of Social Security and Labour, Žiūkai, first of all apologised that as a man he was speaking in favour of women before providing the 'hard fact' that the pay gap in Lithuania, at around 15–18 per cent, put women at a disadvantage. He also mentioned the 'hard fact' that it is more difficult for a woman to reconcile her career and family life, but again he admitted that 'a woman in my place would be a better advocate than I am, she would explain the problem much better, but I must admit that indeed there might be cases of [indirect] discrimination'.¹⁰

Also related to the principle of accountability is that the EU dimension of the relevant laws was strongly underlined in *Seimas* debates, and the EU was frequently used as a short cut, and as an ultimate argument for the rapid adoption of

the presented drafts. Europe was perhaps the only aspect in the political debates which was a common denominator for both the governing coalition and the opposition parties, who tried to obstruct each other's actions and initiatives on any other possible grounds. However, analysis of the democratic quality of the deliberative process in terms of the principle of accountability shows that a golden opportunity was missed for in-depth, engaged public information and discussion of gender inequalities and gender stereotypes in Lithuanian society, and the role of the EU and national governments to redress them. Based on theories of institutional adaptation, we might argue that the gap between the existing Lithuanian laws and practices of gender equality, and the norms and instruments promoted by the EC Directive, was small, and therefore the adaptation was relatively mechanical and unproblematic. Sometimes, especially in the cases related to deep-seated ideological convictions, politicians turned to a logic of appropriateness, and argued against certain aspects of the EC Directive, and blocked the adoption of the relevant pieces of legislation until the last minute, when negative reports and pending sanctions from the European Commission in 2009 forced them to accept the legislation.

During the process of the transposition of the EC Directive, there was minimal in-depth analysis of the problems under deliberation. The main 'arguments' in favour of the proposed drafts were related to the external leverage: Lithuania has to comply with the EC Directive as failure to do so would lead the European Commission to start a financial penalty procedure, where MPs and the government would be blamed and shamed by the EU, and Lithuania would lose its place in the international rankings. For example, Minister Blinkėvičiūtė, in explaining one of the drafts, referred to the external leverage argument:

I would like to remind you that Lithuania has always given priority attention to the issue of gender equality. Recently, in November, the World Economic Forum rated Lithuania fourteenth in the Gender Gap Report; compared to 2006 Lithuania improved its position by seven places. Let's keep the tradition of receiving high international evaluations.¹¹

Otherwise, there were two major frames of reference used by MPs in the relevant plenary debates. The first was related to Christian/secular ideologies, and the second pertained to the essentialism vs social constructivism driving political ideologies and law-making. The first frame of ideological Christian-secular references is illustrated by discussions concerning the oath of the EO Ombudsman and the appropriateness of any reference to God in it. The second frame of parliamentary debates was related to the concept of gender and the understanding of gender equality in general. For instance, when the draft law was introduced proposing some changes aimed at ensuring a better anti-discrimination guarantee for women and men, and equal opportunities in the labour market and professional activities, and in the system of social protection, the social democrat MP Pavilionienė sought to broaden the concept of gender equality to include domestic violence against women. The MP expressed the following argument:

members would rely on pragmatic reasoning and vote for gender equality as broadly construed.¹² The conservative MP Kęstutis Čilinskas, referring to persistent gender stereotypes in public opinion in Lithuania, and the parliamentarians' duty to harmonise Lithuanian legislation with European norms and standards, returned to the nuances of law-making through 'discursive or terminological innovation':

I propose to vote for this law. It is totally justifiable, corresponds to the practices of the European Court of Justice. It is adapted to the Lithuanian situation. The interpretation of 'equal gender opportunities' is a bit modified [narrowed down] reflective of the Lithuanian intolerance of some issues.¹³

While Lithuanian parliamentarians did not have any difficulty in espousing the traditional notion of gender equality and supporting relevant anti-discrimination measures, the notions of gender and sexual orientation/discrimination provoked considerable debate. Parliamentarians entered into normative discussions about biological vs cultural-social bases of sexual orientation and gender identity. Most MPs argued that the essentialist perception of difference between women and men needed to be preserved. Social democrat MP Vytautas Čepas urged the *Seimas* to initiate more vibrant public discussion and nationwide 'negotiations on what gender' is:

We have a lot of discussion in the mass media about gender equality, but we need to discuss more. Because we are from another epoch, our perception of gender equality is outdated. ... Maybe we understand only that there are biological differences between the two sexes and that we are not identical in a biological sense, but we should be equal in all social and cultural relations without any exception.¹⁴

In a series of prolonged plenary debates concerning the draft of the law proposing a Europeanised interpretation of sexual orientation and gender identity, which was finally approved after its seventh reading, parliamentarians got stuck on incompatible ideological philosophies of essentialism vs social constructivism, where women's and gender equality interests were relegated as secondary to the most important issue at stake: who controls the political agenda.

Recognition

Finally, in relation to the principle of recognition, the overall quality of deliberations during the legislative process was tarnished by offensive ad hominem remarks, which diminished the value of the arguments presented by political opponents, experts and engaged women activists. Interestingly, there were more signs of deference in the parliamentary debates when some outsiders such as high-level public officials like the vice minister or Ombudsperson participated in the plenary sittings (similar to the experience in Spain, see Clavero, Chapter 9).

However, we are unable to fully substantiate this insight about the civilising role of outsiders on the quality of parliamentary debates, since there were very few plenary sittings where persons other than political elites participated. Women NGOs, for instance, did not take part in any plenary sittings.

In their speeches, parliamentarians showed little respect to the intended principal beneficiaries of the law – women – and there is not a single mention of public interest throughout all plenary discussions held from 2005 to 2009 in relation to the Directive. It is apparent that the reference to Europe or the EU was the strongest argument in support of the necessary laws. Parliamentarians and administrative elites concentrated much more on the imperatives to transpose the European directives than to deliberate in any depth about gender equality and devising the best public policy tools to achieve it. For instance, a social democrat MP, Algirdas Sysas, underlined the importance of demonstrating to the European institutions that the Lithuanian state is consistent in its openness to gender equality: 'We have to vote and get the amendment finally approved. I think we would send a very bad signal to the European institution if we fail to do so'.¹⁵ Ironically, then, it can be considered fortunate that most of the drafts were prepared and adopted by the Lithuanian political and administrative elites with some urgency, so that there was no space or need for prolonged discussions. This speed possibly avoided even more destructive comments and suggestions by the more media-friendly politicians, epitomising a limited understanding of the principles and ideas of gender equality as well as displaying poor standards of qualitative, respectful, democratic deliberation and value-based political communication.

Concluding discussion

Significantly, the transposition process of the Goods and Services Directive was characterised by a marked gender democracy deficit. As shown in this chapter, Lithuania scores low on the three key gender democracy criteria. The research material, however, invites a more generalised critique of the political decision-making environment. Problematic issues, identified in this particular case study, shed some light on the democratic deficiencies which, on the one hand, bypass gender equality policies and, on the other hand, characterise politics 'beyond the state', i.e. involving not only national but also transnational actors and institutions. In particular, the case study of the transposition of the EC Directive in Lithuania highlights the central role of the EU with regards to national decision-making. The results of this study prompt reflection on domestic politics and national governance styles vis-à-vis adoption and implementation of the EU policy on gender equality as well as other EU policies. The case study serves as an illustration of the impact of new forms of multilevel governance, including how limited political deliberation in Lithuania was divided between domestic and European aspects of the law. This critique of the political decision-making environment in relation to the Goods and Service Directive will be structured along three lines: process (timing and agenda); actors (national and transnational; political elites and civil society) and substance (arguments and content).

Process

In terms of timing, even though the first parliamentary discussions on the Goods and Services Directive took place as early as June 2005, Lithuania still had not introduced national legislation giving effect to the Directive by the end of 2007, as expected by the EU. Following strong criticism from the European Commission, political elites urgently produced and codified 2004/113/EC into national law in July 2009. In retrospect, we can see that the legislative initiatives that related to one and the same broad normative act were divided into two packages: 'easy' issues including technical, bureaucratic, cosmetic and minimalist issues; and 'contentious' questions including politically controversial issues and those laden with norms and values.

The first package of easy issues was dealt with fairly smoothly and quickly, facilitated by the context in pre-transposition Lithuania, where several gender equality amendments and reforms had already taken place to the extent that the minimum requirements established by the Directive were already in place (Davulis 2009: 106). The contentious, politically and financially costly questions were postponed as long as possible, until the warning from the EC. However, throughout the whole four-year period the political deliberations on these contentious gender equality issues were confined to within the state agencies and the *Seimas* with little broader public discussion. The political tensions and anxiety surrounding them were caused by the normative substance of the law, the minority coalition government's interest in political survival (2005–2008), and willingness of the new coalition government in late 2008 to showcase the seriousness of their engagement to transpose the EU requirements in Lithuania.

The second contentious package of gender equality issues contained within the EC Directive was hijacked and usurped by two major rival political party elites – the social democrat LSDP vs the conservative Christian democrat TS-LKD – and was used in their political wrangling with each other. As well as delaying the process, this political party wrangling also reinforced the ambiguous commitment at elite level to gender equality and to equal treatment beyond the workplace. For different reasons the political elites were more concerned with satisfying Brussels than with making ambitious gender equality and discrimination policies. In sum, in the Lithuanian political context 'Brussels' means 'not Moscow'; the political right-wing in Lithuania usually emphasises its 'Europeanness', while the centre-left political forces hold a more muted anti-Russian stance. Therefore, in Lithuania the political colour of national government matters (Holst 2012: 280). Yet it does not do so in a straightforward manner, where centre and left-wing parties have a more active and positive attitude towards gender equality and anti-discrimination reforms than conservatives and right-wing populists. A social democrat-dominated government, for example, was no guarantee of a smooth and generous transposition of the European laws and practices relevant to positive equal gender treatment. Between 2006 and 2008, the social democrats had other issues higher on the agenda, and they were willing to compromise with the traditionalist, conservative party, who were not

friendly to women's interests, in exchange for its support for a minority government. In contrast in 2009, the Lithuanian conservative government, contrary to their more usual political programme of re-establishing and reinforcing the traditional place of women in society, wanted to send out a strong sign of their unequivocal 'Europeanness,' and so rushed the full transposition of the EC Directive on Goods and Services, using it as a vehicle to prove their European credentials.

Actors

The Lithuanian case study also shows that in circumstances of blatant adversarial power struggles, deliberative democracy suffers. For example, the parliamentary acts on the controversial points of the EC Directive in the *Seimas* were passed in the absence of rational, reason-giving debates, without clarification and justification of the positions of all participants, which stands in stark opposition to the main qualities of deliberative democracy (Young 2000: 21–26). Such an absence of in-depth discussions can hardly be explained by the rushed parliamentary schedule. The rush might have excused the narrowness of the parliamentary deliberations in the *Seimas* during the EU accession period, when the national legislation had to be rapidly harmonised with the *acquis communautaire*, and the harmonisation process could resemble 'wholesale trade practices'. The straightforward packaging of policy issues in the case of the transposition of the EC Directive in Lithuania in 2005–2009 was mostly possible because of its divorce from public opinion and civil society mobilisation.

This observation leads to a more detailed analysis of the actors involved in the legislative initiatives and acts associated with the transposition of the EC Directive. The analysis reveals several institutional deficiencies and the illusory comfort of a unitary political system of a small EU member state such as Lithuania. As mentioned at the beginning of the chapter, Lithuania is a semi-presidential republic. However, the election of a female president – Dalia Grybauskaitė, inaugurated in July 2009 – did not produce any added value to the feminist agenda in the country. Indeed, President Grybauskaitė associates herself more with the 'EU cause' than with women's interests. Civil society was also largely absent from the drafting and deliberative forums. Even though feminist NGOs and women's interest groups are numerous and active in the country, they have not been sufficiently included in the decision-making processes under consideration, while trade unions – who were included – are powerless and have no 'women's agenda' in Lithuania. Prior bureaucratic consensus on the content of the law, particularly with respect to the first package of 'technicalities and cosmetics', limited the need and space for a more inclusive articulation of women's concerns. Our fieldwork shows that Lithuanian civil servants and officers are well versed in the workings and details of the transposition of the EC Directive. This is demonstrated by administrators' hyper-diligence to provide researchers and other interested parties with information related to the EC Directive in such detailed, minute and sometimes confusing ways (Interview with a representative

of the Ministry of Social Security and Labour). In this respect, latent legacies from the state socialist era which might result in an absence of institutional memory or a reluctance of key players to provide information is long gone. In ten years of EU membership, a policy culture has developed that does not feature an institutionalised lack of transparency and accountability. Yet the true and full meaning of the EU policy instruments is oftentimes blurred by intricate conceptual and technical parameters; if no one spells out what they are 'really' about – in this case gender equality – then they are difficult even for researchers of gender policy to interpret and act upon, never mind civil society activists and the general public.

It was not only the lumbering technical wording of the EC Directive, but also paradoxically new patterns of EU financing available to women's NGOs that contributed to their 'demobilisation' vis-à-vis the transposition process. Indeed, such EU funding supports women's organisations that challenge the masculinist culture of government, and push for greater government efforts to deliver on gender equality. Yet EU funding is very competitive, while the Lithuanian state support for women's organisations remains scarce and dependent on the political priorities of the acting government. Therefore, neither the 'EU-fed' nor the national government-supported NGOs had much interest in mobilising themselves for a more extended and thorough reading and implementation of the EC Directive. One of the main reasons for the NGO's failure to engage efficiently in the decision-making process was due to persistent economic insecurity, which means that NGOs funded from the EU or the Lithuanian public purse and private sponsors' budgets view groups similar to themselves as rivals rather than partners, and avoid teaming up with them. In Lithuania this dysfunctional structure and culture of civil society is exacerbated by the specificities of the political elite culture, namely that political decision-making is typically a zero-sum game, based on a crude rule of competition and adversarial strategies that avoid consensus-building.

In addition to these general political culture problems, some simple impediments arose in the implementation of the *Seimas* visitors' management act that further complicated NGOs' participation in legislative processes. Although in keeping with good consultative practice, it is possible for all interested parties to participate in parliamentary committee and working group discussions, in reality this is not facilitated in practice. Citizens require a special invitation from an MP to enable them to participate in committee discussions, while the issues for consideration in these forums are not made available in advance.

Finally, in terms of actors engaged in the transposition of the EC Directive, gender equality experts were not included in this process, or only included in very limited ways. This is rather unexpected given that the Lithuanian gender expert community is well established in universities, and the competence of its individual members is recognised internationally. The sustained weakness of the relationship between gender equality experts, feminist researchers and the political elites in Lithuania points to more general failings in gender mainstreaming in newly democratising countries. The relative absence of expert

discussion during the transposition process demonstrates a crucial failure in political imagination, a missed opportunity to strengthen equality legislation, to incorporate cutting-edge academic insights and to raise gender awareness in a society at large.

Substance

When transposing the EC Directive into domestic legislation, the Lithuanian government opted for the punctuated action of filling the gaps and remedying the failures in the existing laws. In the spirit of democratic elitism, emerging and strengthening itself in the new EU member states after 2004 (Matonytė and Varnagy 2007) the disparate legislative initiatives and acts were prepared without any significant mobilisation and participation of civil society. It appears as if the Lithuanian women's organisations, feminist intellectuals and social-democratically minded politicians considered that they had done their job of gender justice promotion well before the advent of the EC Directive. Around 2005, the progressive Lithuanian political elites and civil society ran out of steam in the pursuit of the broad gender agenda. The transposition process coincided with this period of minimal political concern about gender equality in the government and the *Seimas*. The national political elites and civil society started paying more attention to other, new, high-stake sociopolitical and economic issues, such as the use of the European Structural Funds, the deteriorating demographic situation of the Lithuanian population, and control of the Schengen borders.

Although the transposition of this particular Directive served as a vehicle for further Europeanisation of the Lithuanian political arena, the process did not significantly enhance political understandings of gender equality problems in Lithuania. The pursuit of short-term domestic political goals resulted in an unsophisticated understanding of the issue. The debate of the final legislative draft was of minimal importance in comparison to the major stakes at play: the survival of the minority government and satisfying EU officialdom. The national and international gender expert community cherish the knowledge that the EU has some specific democratic virtues such as a high awareness of women's claims, and institutionalised routes for making the voices of those 'affected' heard, as well as the potential for consensus-seeking (Galligan 2012c: 5–6). However, these fell on deaf ears in the decision-making sites in Lithuania.

Notes

- 1 This article draws on the previous publication by Irmina Matonytė and Jurga Bučaitė-Vilkė: 'Lithuanian's Unnoticed Transposition: Invisible gender democracy', in Yvonne Galligan (ed.), *Deliberative Processes and Gender Democracy. Case Studies from Europe*, ARENA Report No. 1/12, RECON Report No. 17, University of Oslo, 2012, pp. 163–206. Interviews for this study were conducted by Dr Jurga Bučaitė-Vilkė.
- 2 Law of the Republic of Lithuania on Equal Opportunities between Women and Men, 1 December 1998 No. VIII-947. which came into effect on 1 March 1999

- 3 In 2005 the Ombudsman of Equal Opportunities for Women and Men (OEOWM) was renamed as the Ombudsman of Equal Opportunities (OEO).
- 4 Blinkevičiūtė was elected to the European Parliament in May 2014, the only woman among Lithuania's 11 MEPs.
- 5 17 April 2008, *deliberations* for Nr. XP-2384 (4*).
- 6 The Law on Social Insurance of Sickness and Maternity introduces conditions for maternity leave (first legislation approved in 2000). Maternity legislation was revised in 2006 (compensation for 126 days, one year at 100 per cent salary, second year at 80 per cent of salary) and introduced paternity leave of one month after the child's birth. In 2007 amendments of the law established two years paid parental leave.
- 7 5 December 2007, *deliberations* for Nr. XP-2626 (2*)ES).
- 8 19 June 2008, *deliberations* for Nr. XP-3051 (2).
- 9 13 May 2008, *deliberations* for Nr. XP-3051.
- 10 13 May 2008, *deliberations* for Nr. XP-3051.
- 11 13 May 2008, *deliberations* for Nr. XP-3051.
- 12 19 June 2008, *deliberations* for Nr. XP-3051 (2).
- 13 19 June 2008, *deliberations* for Nr. XP-3051 (2).
- 14 17 April 2008, *deliberations* for Nr. XP-2384 (4*).
- 15 12 June 2008, *deliberations* for Nr. XP-3051 (2*).

8 Gender democracy in Poland

An empty shell?

Katarzyna Zielińska

Introduction

Democratisation in Central and Eastern Europe has for a long time occupied the attention of scholars in the context of the two most significant political processes in the region: democratic transformation and Europeanisation. The literature focuses on various outcomes of these processes, such as institutional make-up, along with economic, political and social changes. This chapter contributes to this scholarship by offering yet another perspective – assessing the functioning of democracy in Poland through the application of gender-sensitive criteria. The assessment will be done by scrutinising the process of policymaking transposing the Goods and Services Directive into Polish law.

The first part of this study provides a short background on the country, with special attention given to the existing institutionalised gender regime and the impact of both transformation and European integration on its evolution. This is followed by an overview of the political and institutional context in which the creation and implementation of the new law aiming to transpose the Directive took place in Poland. The third part of the text discusses the transposition, and is then followed by an analytical discussion, which applies a series of gender democracy indicators to the process under investigation. The final section discusses and interprets the results.¹

Transformation, Europeanisation and gender equality

The processes of transformation and democratisation that took place after 1989 radically reshaped the political, social and economic reality in Poland. These changes also held important implications for the gender order in Polish society. During the communist regime, official state ideology stressed gender equality and women's liberation. In practice, however, these assumptions were mostly declaratory. The representation of women in communist party politics remained low, the relatively high participation of women in the labour market was not accompanied by equal pay, nor was there a redefinition of traditional gender roles in the domestic sphere (Fidelis 2004: 314; Fuszara 2005: 89; Sawa-Czajka 1996: 104). Moreover, the state socialist regime's attempts to introduce emancipation policies

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