



Human Rights  
Monitoring Institute

# Human Rights in Lithuania

2016–2017

CONTENTS

# Human Rights in Lithuania

## 2016–2017

### Overview

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**Editors:**

Karolis Liutkevičius, Erika Leonaitė, Kristina Normantaitė,  
Mėta Adutavičiūtė, Ugnė Grigaitė

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## ABOUT US



The Human Rights Monitoring Institute is an independent, non-governmental, non-profit organisation, comprised of human rights professionals – lawyers, social and political sciences experts. Our mission is to contribute to the development of an open and democratic society by ensuring human rights and freedoms.

In seeking to fulfil our mission we monitor the human rights situation in Lithuania, conduct research, draft and submit legislative proposals, submit reports to international human rights supervisory bodies, take up litigation in strategic human rights cases, and organise trainings.

The Human Rights Monitoring Institute's main areas of focus are prohibition of discrimination, crime victims' rights, rights of suspects, accused, and convicted persons, privacy and data protection, and freedom of expression.

[hrmi.lt](http://hrmi.lt)

## FOREWORD



**Dainius Pūras,**  
Human Rights Monitoring  
Institute shareholder

While reading this, far from the first, human rights overview by the HRMI I had thoughts which I would like to share with other readers.

The Overview reflects Lithuania's difficult and winding path to implementing the core principles of fundamental human rights and freedoms.

When Lithuania restored its democratic and independent statehood in 1990, we received a historical opportunity to adopt the best experiences of the free world. And the best that the modern world, and especially Europe, had to offer was the respect for every human's rights and freedoms embedded in everyday life.

All rights and freedoms are equally important. It is especially important for us here in Lithuania, after the soviet occupation, which forced totalitarian challenges and terrors upon us, to uphold the civil liberties and thwart discrimination, whichever form it might take.

The beginning of this path was very successful, the independence movement, the spirit of Reform and Rebirth inspired Lithuanian citizens and authorities to adopt the best practices of liberal democracy. However, later it became clear that Lithuania lacked a firm resolution to align itself with the universal principles of human rights. Today it is evident, and we can see from this Overview, that there is a strong resistance among both the authorities and the public in Lithuania to the principles and practices recommended by the United Nations, the European Union, and the Council of Europe.

This year, 2018, is the 70th anniversary of the world community unitedly proclaiming the Universal Declaration of Human Rights. This Declaration formed the basis for the United Nations conventions to follow, guaranteeing the rights of different groups, and also for the documents enshrining the modern European values. It is not difficult to see that the more diligent and consistent a state is implementing human rights, the better that state fares where its economic and social development is concerned, and the better quality of life for its people.

It is obvious that Lithuania needs more European, more, for examples' sake, Nordic Countries' spirit. Our northern neighbours, situated not too far from us, show the whole world how much you can achieve by investing in every human's rights and freedoms, and especially by protecting women's and children's rights from outdated and flawed stereotypes. No less important is protecting the rights of vulnerable groups, for example, people with disabilities, LGBTI people, from discriminatory attitudes and phobias. The painful history of humankind gives ample examples that if ordinary citizens are indifferent to violations of the rights of others and those different from them, they cannot be sure that it will not be themselves next.

The Overview shows that positive steps in combating frequent discrimination in Lithuania are often followed by authorities' decisions establishing discriminatory practices. Lithuania still fares poorly in areas such as women's rights (plans to prohibit women from deciding what to do with their bodies being a prime example), children's rights, people with disabilities, especially people affected by mental disability, rights, and ongoing discrimination based on sexual orientation and gender identity. Signs of regress are also noticeable in manipulation of topics of family values and promoting protection of "traditional family values", while in reality this noble rhetoric is used to entrench the discrimination of many groups, women and children among them.

We can find many countries in the world and Europe, where the human rights situations is far worse than in Lithuania, especially now, when xenophobia and radical nationalism are on the rise, and attacks against the human rights principles established in 1948 are intensifying. Yet it would be strange and unwise to align with these countries, suffering from signs of regress and shrinking space for civil society. Lithuania will succeed only if society and representatives elected by its citizens are wise enough to align with countries that are human rights leaders, and to resist the many conspiracy theories about supposed threats from modern human rights and freedoms. It is time to stop pitting national values against universal human rights principles. By choosing to strengthen our values that correspond to these modern principles of respect for every person, we can and must achieve the breakthrough in human rights and individual person's welfare so needed in Lithuania.

The Overview sends a clear message about what path Lithuania should and should not take.

**Dainius Pūras**

*Vilnius University professor*

*JT Special Rapporteur on the right to health*

## ACKNOWLEDGEMENTS

We thank the authors who took part in preparing this overview, the human rights experts who shared their knowledge and insights, and the team of awesome interns and volunteers at the Human Rights Monitoring Institute who gathered information for the overview and contributed otherwise: Viktorija Janilionytė, Martyna Kalvaitytė, Julija Kulevičiūtė, Kristina Ramoškaitė, Raminta Šulskutė, Evelina Vaišvilaitė, Kornelija Zaicaitė, Ugnė Zmitrytė, and Vytautas Žarskas.

We also sincerely thank Telia Lietuva for their support which allowed us to produce this overview.

Without your knowledge, help, and support this publication would not have been possible.

# SUMMARY

Human Rights in Lithuania 2016-2017 overviews how essential civil rights and freedoms implemented, as well as human rights problems and progress made in 2016-2017.

## Freedom of expression, assembly, and religion

A significant step was made in the field of the freedom of expression when insult of private persons and public officials was decriminalised. This ensures that exercising this freedom will not lead to disproportionately applied criminal liability, and persons will be able to defend their honour and dignity in civil courts. However, separate instances of freedom of expression restrictions demonstrate that the more extreme forms of expression still receive a disproportionate, prohibitions and punishment-based response from the authorities.

There were no significant obstacles in exercising freedom of assembly. The third Baltic Pride successfully took place in Vilnius, even though the last two Baltic Prides faced active public resistance and institutional obstacles. Freedom of assembly related to employment relationships raised public discussions: right to strike, as a legal way to demand better working conditions, was questioned, and controversy was also raised by provisions in the new Labour Code, which introduced lockout, enabling employers to suspend employment contracts of workers on strike.

Implementation of freedom of religion in Lithuania is limited to individual freedom, and rarely includes the collective freedom of religion and belief. Non-recognition of existing religious diversity continues to remain a social problem resulting in formation of stereotypes about some religious communities, as well as restrictions on their freedom of religion based on those stereotypes. Relations between the Roman Catholic Church and the State continued to raise questions about the possibility to ensure the freedom of all religions and beliefs. Members of the national Parliament and civil society organizations, advocating the values of the Roman Catholic Church and representing it, engaged in active lobbying by submitting and considering legal amendments, particularly on reproductive health and education.

## Personal data protection

The biggest development of the overviewed period in data protection is the EU data protection reform and the General Data Protection Regulation which is its basis. The Regulation aims to strengthen protection of personal data and increase accountability of companies and institutions managing it. Research by the Human Rights Monitoring Institute has shown that, even though most Lithuanians consider the right to data protection important, few are determined to take specific actions to ensure this protection. Meanwhile, public institutions and businesses often have a loose approach to data protection and its importance. In 2016-2017, this resulted in several cases of large-scale data leaks in Lithuania, which lead to specific violations of the human right to protection of personal data.

## Right to private and family life

In Lithuania, it is still not possible to establish a civil partnership between people of both same and different genders. By refusing to acknowledge the legal status of family members of non-marital families, we fail to comply with human rights standards, according to which family life can also be established without marriage. However, initiatives aiming to introduce partnership regulation have not been successful during the review period. On the contrary, initiatives directed towards the elimination of partnership as a family life model from the legal system were making their way to the national Parliament. In the field of EU's free movement of workers, a decision was made to only consider spouses, and not partners, as family members of workers. The Law on Family Strengthening aims to form family policy based exclusively on marital family. Cohabitation agreements, that do not establish legal family relations, were proposed as an alternative to partnership, which the law aims to eliminate.

Human reproductive rights are not receiving the necessary attention from politicians and other decision-makers, while faith based organizations and groups hinder the progress of the implementation of reproductive rights. They pressure the national Parliament to adopt a law which would significantly limit the possibility to terminate pregnancies, and work to prevent science-based sex education in schools, including the dissemination of science-based information about contraception. Contraception and abortion are usually financially inaccessible to vulnerable groups of the population – youth and women with low income. Also, new family planning and abortion methods, which would be less harmful to the health of women, are not legalized, and there is very little scientifically based information about them.

Nevertheless, there are also some positive changes. 2016-2017 can be described as a certain “turning point” in the field of the rights of transgender persons: courts began handling the sexual identity recognition issue by obliging authorities to change the gender entry in civil status acts, regardless of whether a person underwent a full sex change operation. A draft law on the recognition of sexual identity was also prepared, even though it has not yet reached parliamentary consideration stage. The public discourse itself became more mature and focused on solving issues concerning the rights of transgender persons. In this context, it is becoming apparent that there are increasing differences between advanced voices and the rhetoric of the representatives of the national Parliament, which is based on religious beliefs instead of good practice analysis of other EU countries or listening to the needs of the transgender people themselves.

## Prohibition of discrimination

Age-based attitudes and behaviours are deeply rooted in our society, therefore we can see a relatively high tolerance for age discrimination. It is still hard for people to recognize cases of age discrimination, however we can also observe a positive turn, because there is an increasing number of people in Lithuania that know who to contact regarding violations of human rights. Progress in the fight against age discrimination is different in various areas of life. Such discrimination is mostly recognized and not tolerated in the field of employment relationships, however it is particularly hard to fight against age discrimination in the field of provision of various services, for example, health care, finance, etc.

Protection of human rights of lesbian, gay, bisexual and transsexual (LGBT) persons remains limited in Lithuania. In 2016-2017, no significant legislative initiatives were taken in order to improve the position of this community. Legislators have deliberately aimed to ensure that same sex couples who are in a de facto partnership would not be considered a family. And gender reassignment procedures were also not regulated. Finally, a systematic inaction of law enforcement authorities can be observed when examining cases of hate speech and hate crimes directed towards LGBT persons. Despite these negative tendencies, the public view of matters related to the LGBT community is becoming more open. Representatives of the LGBT community were provided with the possibility to use their right to hold peaceful gatherings without institutional resistance, while openly homophobic speeches or initiatives are viewed increasingly critically by the society.

Gender equality provisions in Lithuania are violated actively through discrimination, as well as passively, by failing to take the necessary

actions to eliminate discrimination. The law obliges the state and its municipal institutions to prepare and implement measures to ensure equal opportunities for women and men. The Labour Code applies these obligations to state enterprises and businesses that have 50 or more employees, however these requirements are rarely followed, therefore the aim to achieve gender equality as provided in the legal documents is not turning into a real fact in the economic and social spheres of life. Objectification remains the root cause of violations of women's rights, beginning with exclusion from public spaces due to pregnancy, nursing, or sexual harassment, and ending with gender based violence and restriction of reproductive rights.

Both direct and indirect discrimination of persons with disabilities is still a frequent phenomenon in Lithuania: in practice, environmental accessibility, service availability, and access to information remains particularly limited for people with disabilities. These people suffer discrimination in institutional activities, consumer rights protection, education, labour relations and other fields. In 2016, for the very first time, Lithuania made a report to the UN Committee on the Rights of Persons with Disabilities regarding the implementation of the Convention on the Rights of Persons with Disabilities. The Committee expressed its concern about the protection of women and girls with disabilities against discrimination, and recommended to strengthen the protection of people with disabilities against violence and exploitation, as well as prepare health care and other specialists in accordance with a disability model based on human rights principles. Lithuania should also take measures to create suitable conditions for people with disabilities in public and private sectors.

The state-established differentiation of religious communities into traditional, other, and state-recognized religious communities creates preconditions for religious discrimination. In 2016-2017, complaints received by the Office of the Equal Opportunities Ombudsperson regarding religious discrimination remain among the fewest received by the Office. This situation most likely reflects the distrust of citizens in public authorities rather than the true religious discrimination situation in Lithuania. During the reviewed period, discrimination tendencies have increased regarding those who are not part of the predominant religious community – the Roman Catholic Church. And public authorities were the most frequent source of such discrimination.

Attitudes towards national and ethnic minorities in Lithuania remain negative. The society is most hostile toward groups that are perceived as culturally farther, e.g. Chechens and Syrians, while Roma continue to remain the most discriminated minority. Their health, education and living standards are far below the average

national indicators. Even though in 2017 Vilnius Municipality took a step to approve the Roma Community Integration to the Society Programme of 2016–2019, the recommendatory nature of the document and lack of funds raise doubts whether it will be effective when addressing Roma integration issues. The programme illustrates that the minority integration policy remains fragmented both at the state and municipal level.

When assessing the assurance of equal opportunities from an institutional aspect, there were positive changes in the activities of the Office of the Equal Opportunities Ombudsperson during the reviewed period: it was publicly more visible – in the media and social networks, and the Office itself became more open to other institutions and the civil society. Adopted amendments of the legal acts strengthened the guarantees of impartiality and independence, as well as expanded the functions of the Equal Opportunities Ombudsperson. However, the Office is still relatively little known in the society. Also, despite the international recommendations, the Office is not authorized to initiate legal proceedings regarding established violations of equal opportunities.

Hate crimes are still rather latent in Lithuania. Official data on the recorded cases of hate crimes is limited and does not reflect the actual situation, which is highlighted by non-governmental organizations, the media and various studies. A large number of pre-trial investigations are discontinued, while cases of hate crimes are often classified only as violations of public order without seeing any hate motives in them. Currently Lithuania does not have any clear hate crime prevention programme, while other programme documents lack specificity. The observed increase of activity among institutions is mostly related to reporting to international human rights organizations or the activities of non-governmental organizations.

## Right to a fair trial

Three EU directives on the rights of suspected or accused persons in criminal proceedings came into force by 2016: directive on the right to interpretation and translation, directive on the right to information, and directive on the right to access a lawyer in criminal proceedings. Formally the provisions of all three directives were transferred to the Lithuanian law. However, in practice, questions arise whether certain standards provided in these EU laws are properly ensured in Lithuania. In 2016, studies carried out by the Human Rights Monitoring Institute show that suspects are often not informed about their rights clearly and understandably, therefore it is difficult for them to exercise these rights. The quality of legal services provided by state-funded lawyers also receive a lot of complaints.

When implementing EU standards on victims' rights, legislative provisions were adopted aimed at protecting victims from negative experiences related to their participation in the criminal proceedings. For example, each victim is given the right to participate in the proceedings together with an accompanying person. On the other hand, despite these positive changes, systemic issues were not solved: victims' access to state-guaranteed legal aid remains very limited, and there is no system of general victim support services. In order to increase trust in law enforcement authorities, there is a clear need to strengthen the abilities of officers to communicate with victims respectfully and professionally.

## Right to liberty

In 2015, amendments of the Code of Criminal Procedure were adopted, which aim to decrease the application of pre-trial detention to crime suspects and encourage to impose alternative, less restrictive measures. In 2016-2017, there were also positive changes in practice: even though there were no significant changes in the application of alternative restrictive measures, the application of pre-trial detention decreased by a half compared to the results of the previous year. Even though courts continue to satisfy the absolute majority of requests for detention, the aforesaid decrease indicates that this measure is requested much less frequently, therefore its application is becoming more responsible.

The number of cases of sentence suspensions and releases on parole has been consistently decreasing over the past years. Even though probation is considered to be one of the more effective measures of punishment for criminal behaviour, and allows persons to live in society while committing no further crimes, the practices of probation application and enforcement are very contradictory and inconsistent.

In the past years there were multiple attempts to develop the conditions for involuntary hospitalization and treatment in contravention to human rights standards, international obligations and recommendations of the United Nations committees to Lithuania. This is how politicians suggested to deal with the spread of addiction to psychoactive substances. Instead of taking difficult, real and likely unpopular action – necessary systemic changes, development of health and social services, and making them more accessible. In Lithuania, human rights are also not ensured in the process itself of involuntary hospitalization for many years now: the right of a person to be heard in court, the possibility to appeal against a court decision, and to receive legal aid.

## Deprivation of liberty

The Ministry of Education and Science took steps to address the issues of children with socialization problems and their families in municipalities, in order to decrease the number of children sent to socialization centres. It is estimated that, by 2019, only three reorganized socialization centres will remain in Lithuania. However, it is still too early to assess the success of this plan, as Lithuania lacks specialized psychotherapy services and behavioural correction programs both in socialization centres and in municipalities.

The human rights situation in Lithuanian prisons remained bad over the past years. This is determined by problems that have been ongoing for many years: large number of prisoners, poor prison conditions, lack of staff and its poor preparation, poor relations between the prisoners and the staff, spreading diseases, prevailing indifference to concerns regarding prisoners and prison workers, slow modernization of prisons and manifestations of corruption in the management of the penitentiary system.

In May 2017, the European Court of Human Rights ruled that the prohibition of ever commuting life sentences in Lithuania violates human rights. The Court found that Lithuania creates conditions degrading human dignity by condemning convicts to spend the rest of their life in isolation and not providing them with any hope to prove that they have changed.

## Prohibition of violence

Even though the number of emergency calls regarding domestic violence is increasing each year, the percentage of police investigations in this sphere is decreasing, and half of the investigations are terminated. It shows that people increasingly believe that the State will protect them from domestic abuse, however, implementation problems still remain. Physical punishment of children has been clearly prohibited by law. However, society still tends to tolerate abuse, justify it, and blame the victims. The number of people who believe that domestic violence, including sexual abuse, should not be punished in all cases, has even increased. This shows the necessity to strengthen the prevention of domestic violence.

The number of female murders continues to remain high in Lithuania. As shown by various data, the culture of violence against women is still rather popular in the country, as it is believed that women themselves provoke violence against them. There is no national strategy or programme intended to decrease violence against

women. Women who fall victim to sexual abuse must play a very active part in order to achieve justice in their own cases. Only a few sexual harassment cases per year end up in court, even though the #MeToo movement revealed that harassment is not uncommon. Conclusion of the Constitutional Court, adopted in impeachment proceedings, that sexual harassment amounted to a gross violation of the Constitution and breached an oath of a member of the Parliament, is an important step in combating gender based discrimination and protecting personal dignity.

Over the past few years, several essential steps have been taken in the field of protection of children's rights. Social campaigns following resonant cases of child abuse show that, in a sense, Lithuanian society is already fighting against violence. However, social tolerance for violence is still a widespread phenomenon in Lithuania. Thus, comprehensive measures, including not only laws, but also education, media, and joint efforts of all interested institutions are necessary in order to achieve changes in public attitudes.

## Human trafficking and other forms of exploitation

The number of uncovered human trafficking cases has been following an upward trend. The 2016 expansion of the definition of human trafficking in the Criminal Code was received positively and creates more favourable conditions for identifying various forms of this crime. On the other hand, it is observed that the rights of victims are often violated during criminal investigations, therefore it is important to improve the victim protection system. Even though a human trafficking coordination commission was established, and there are plans to strengthen the mechanisms for combating the exploitation of humans, so far the implementation and coordination of preventive measures are not effective in practice.

There is lack of cross-sectoral cooperation, long-term national strategy for combating human exploitation and also funds necessary to solve this problem. The increasing number of migrant workers in Lithuania is resulting in growing number of human trafficking cases within the country, therefore it is important to take measures to increase the protection of immigrant labour rights and relations.

## Migrant and refugee rights

Lithuania has tendencies of muslimophobia and xenophobia which are further fuelled by the negative portrayal of the refugee crisis in the media. Due to lack of personal experience regarding the arrival

of people from third world countries, the media remains a particularly significant and deformative tool for forming public opinion. Measures for the integration of foreigners remain fragmented on an institutional level and are based on EU funds and project activities of non-governmental organizations. Access to information on migrant rights and available services is limited, particularly concerning employment and improvement of professional skills, while state schools are poorly prepared to accept immigrant children. This increases the vulnerability of migrants, particularly labour immigrants and women.

Refugees are faced with an increased risk of poverty and social exclusion. In addition to hostile public attitudes, small benefit payments and short payment period remain the essential challenges in the processes for the integration of foreigners. Even though persons who were granted asylum in 2017 were included in the social support schemes and the list of additionally supported persons, higher benefit payments are necessary to ensure a person's financial security, as well as a long-term national integration and anti-discrimination policy in order to ensure the rights of asylum seekers and applicants. There is lack of effective dissemination of information on the conditions and the integration programme for refugees and their rights.



# I. FREEDOM OF EXPRESSION, ASSEMBLY, AND RELIGION

## Freedom of expression

*Karolis Liutkevičius*

In the review period, an important step was taken to ensure that exercising one's freedom of expression is not met with disproportionate measures and restrictions – insult was decriminalised. However, separate cases demonstrate that authorities still tend to overreact and apply sanctions when freedom of expression is used in more provocative forms.

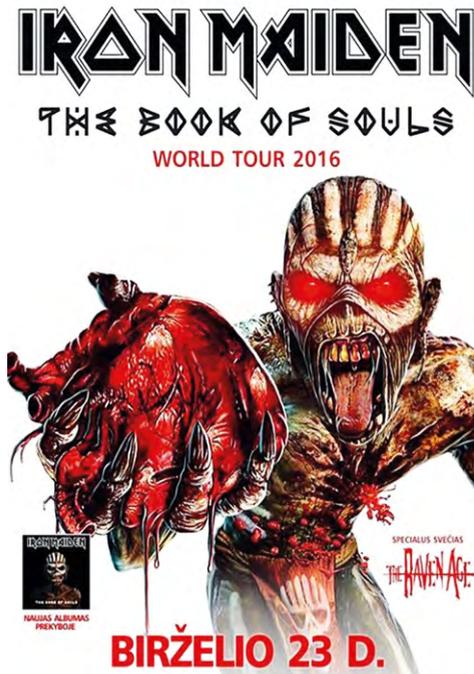
After many years of discussions and encouragement from international organizations, criminal liability for insult was abolished in July 2015, and criminal liability for insulting a public official was abolished in April of 2016.<sup>1</sup> This was an important change ensuring that freedom of expression is not disproportionately restricted by applying or threatening to apply an extreme measure – criminal liability, which, in a democratic state, should be reserved only for the most dangerous actions.

These changes do not mean that a person cannot defend his dignity if insulted – a private individual can make a civil claim for damages caused by the insult. The abolishment of criminal liability for insult was followed by a proposal to expand civil liability for spreading humiliating information about public figures, which was considered by the national Parliament at the end of 2016.<sup>2</sup> This would have been particularly damaging to journalists, since they could be held liable for releasing false information even when acting in good faith, i.e. when they believed that they are releasing truthful information.<sup>3</sup> This proposal was quashed only after the President vetoed – refused to sign – the corresponding amendments of the Civil Code.

Meanwhile, administrative liability by imposing a fine for insulting the honour and dignity of a public official or officer was introduced.<sup>4</sup> This liability provided in the Code of Administrative Offenses came into force in January of 2017 and is also applied for insulting the honour and dignity of the State's politicians.<sup>5</sup> The latter provision is questionable, as it may be seen as a measure to respond to suppress criticism directed towards members of the national Parliament or other politicians.

Despite the positive legal changes, individual decisions and actions of public authorities indicate that the limits of the freedom of expression are often perceived narrowly. A criminal case brought against the comedian Vaidotas Grincevičius or Whydotas was one of such examples. In October 2014 Whydotas posted a song on his *Youtube* channel called “Devil, please” (“Šėtone, prašau”) which contained a verse “Devil, please take my soul, and let me bash children’s heads into the wall”.<sup>6</sup> A pre-trial investigation was soon launched in response to this song, as it was suspected of inciting violence against a social group – children.<sup>7</sup> Despite the song being obviously intended to be humorous and no actual aim to incite violence being present, Whydotas and other creators of the song were only acquitted on appeal, after almost 2 years of investigation and litigation.<sup>8</sup>

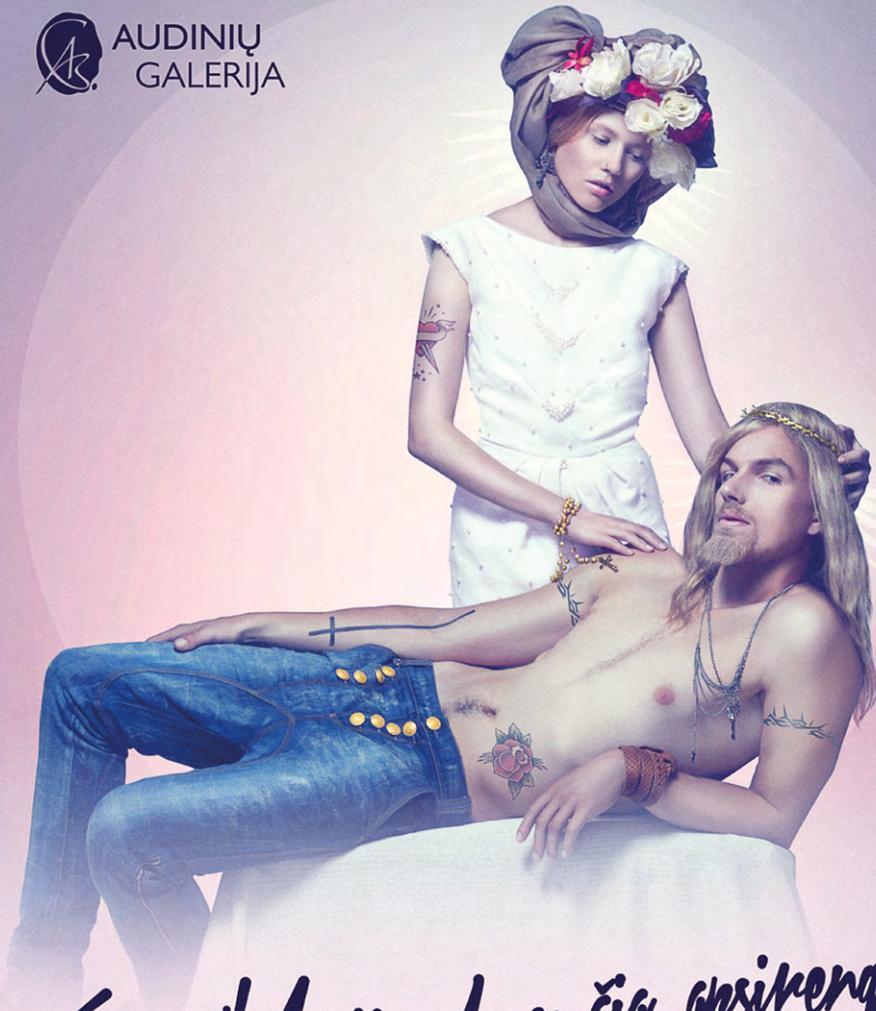
A similar story of public authorities overreacting happened in Kaunas on 16 February 2015, when Viktorija Kolbešnikova, a student at the time, put up posters in the city centre saying “Burn Rukla,<sup>9</sup> Deport the Government, Immigrants welcome!”. This was done to protest the annual 16<sup>th</sup> of February march by the Lithuanian National Youth Union, a nationalist organisation. A pre-trial investigation was launched against V. Kolbešnikova, since the law enforcement authorities assumed that the posters incited action against persons of other nationalities.<sup>10</sup> As in the previous case, the criminal proceedings were evidently groundless, and were only concluded in court. V. Kolbešnikova was acquitted of all charges in November 2016, when the court found that her actions were neither instigating nor criminal.<sup>11</sup>



*Iron Maiden show poster,  
photo by Live Nation Lietuva.*

Another type of poster, this time promoting a show, also received adverse reaction and censorship from the authorities. In June 2016, the Office of the Inspector of Journalist Ethics surprised music fans by ordering to stop advertisements for the heavy metal band Iron Maiden show: the Office decided that the promotional posters, showing a monster holding a bloody heart, is scaring children.<sup>12</sup> The decision astonished both the concert organizers and members of the band, since Iron Maiden’s posters had not previously encountered such problems in any other country. However, in accordance the decision, the posters were replaced.<sup>13</sup>

Mecenatas:

AUDINIŲ  
GALERIJA

*Tezau Makija, kuo čia apsiranga!*

ROBERT KALINKIN

KOLEKCIJA PAVASARIS/VASARA 2013  
2012 10 10, 19.00, Siemens Arena

Rėmėjas

AVON

Kolekcijos  
televizijaKolekcijos  
kavaLateLatte  
BY COFFEE INNBilietus  
piltinoŽiniasklaidos  
partneriai

L'OFFICIEL

370



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Renginio  
partneriaiSiemens  
ArenaPARTNERIAI  
McCANN ERICKSON

JRV

VINEL MODELS



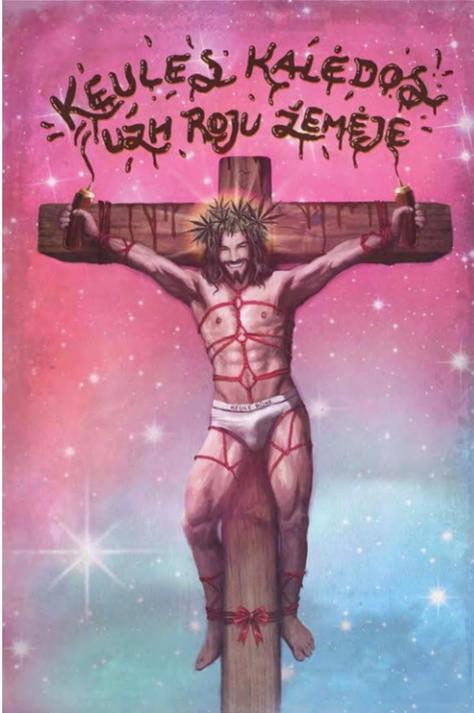
Advertisement of clothing by R. Kalinkinas,  
photo by Sekmadienis UAB



Keulė Rūkė

15 November 2015 · Vilnius · ©

Vakar buvo daug postū facebooke su hashgtagu #prayforparis Ironishka, nes aklas žmonių tikėjimas aukštesnėmis galiomis, o ne jų pačių veiksmais ir veikslių pasekmėmis ir sukėlia visą dramą. Šiandien-sekmadienis, "shventa diena", bet šiandien mes nesitūlom niekam eiti į bazhnychią, degti zhvakeliū ir melstis. Tai būtų didelis pazheminimas tiem, kurie zhuvo dėl religiniū fanatikū kaltės. Zhmogaus gyvybė neturi vertės, kai gyveni tik iluzija apie pomirtinį gyvenimą. Mes gyvename vieną kartą ir turime mėgautis kiekvienu momentu. Šiandien sekmadienis, ir mes shvenčiam gyvenimą ir shluostomės barzdas kvailomis maldomis. #peaceforparis #fuckreligion



Keulė Rūkė  
Facebook posts

Advertisements using religious symbolism or satire criticizing religion itself also faced a strict reaction from the authorities. One of such reactions resulted in a case against Lithuania in the European Court of Human Rights: in 2014, the Supreme Administrative Court of Lithuania upheld a fine imposed on the company of designer Robertas Kalinkinas for promoting clothes depicting persons for similar to religious figures, and thus supposedly violating the principles of public morals.<sup>14</sup> In reaction to this restriction on freedom of expression, the Human Rights Monitoring Institute, representing the designer's company, lodged an application to the European Court of Human Rights. The Court took up the case in 2016.<sup>15</sup> At the beginning of 2018, after the review period of this publication, the Court ruled that there has been a violation of the freedom of expression in this case.<sup>16</sup>

In yet another similar case, a penalty was imposed on the fast food chain Keulė Rūkė for its *Facebook* posts made in 2015-2017, containing religious figures and symbols. Owners of the fast food chain stated that their posts containing a ripped psalm-book, smiling Jesus on a cross, and other images were aimed at provoking and encouraging discussions about religion, as well as criticizing it.<sup>17</sup> However, the State Consumer Rights Protection Authority decided that such advertisements violate the principles of public morality and defile religious symbols, thus a fine was imposed on the company in October 2017.<sup>18</sup> Keulė Rūkė appealed the fine in court.

In general, these events show that even though freedom of expression and the importance of its protection

are acknowledged at the highest level in Lithuania, more extreme cases of exercising this still provoke a disproportionate response from the public authorities, based on prohibition and punishment.

#### Sources:

1. Law on the Recognition of Articles 155 and 290 of the Criminal Code as Invalid, No. XII-1888, 25 June 2015, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c5579760200711e585eaba374ef4b409>
2. Law on the Amendment of Article 2.24 of the Civil Code of the Republic of Lithuania, No. XIII-66, 8 December 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5110d040c1111e682539852a4b72dd4>
3. “Human rights activists: amendments to the Civil Code restrict freedom of the media”, manoteises.lt, 13 December 2016, <http://manoteises.lt/straipsnis/zmogaus-teisiu-aktyvistai-civilinio-kodekso-pataisos-varzo-ziniasklaidos-laisve/>
4. Code of Administrative Offences, NO. XII-1869, 25 June 2015, Art. 507 and 508, <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c026231e5bf92d6af3f6a2e8b/dCWwQCS0SD5>
5. Ibid, Article 508.
6. “Šėtone prašau”, <https://www.youtube.com/watch?v=JV1W1Ur4yW07>
7. “Prosecutors aim to prohibit the song of Whydotas “Šėtone prašau” once and for all, as there are “many bad people” in Lithuania”, Delfi, 3 November 2016, <https://www.delfi.lt/veidai/zmones/prokurorai-siekia-visiems-laikams-uzdrausti-whydoto-daina-setone-prasau-nes-lietuvoje-yra-daug-negeru-zmoniu.d?id=72749636>
8. “Author of the song “Šėtone, prašau” triumphs – the court did not satisfy the appeal of the prosecutor’s office”, 15min, 19 December 2016, <https://www.15min.lt/vardai/naujiena/lietuva/dainos-setone-prasau-autoriai-triumfuoja-teismas-netenkino-prokuraturos-skundo-1050-729180>
9. Rukla is a small town housing the refugee centre in Lithuania.
10. “Inscription “Sudegink Ruklą deportuok vyriausybę imigrantai welcome!” has led to court”, Kauno diena, 7 January 2016, <http://kauno.diena.lt/naujienos/kaunas/nusikaltimai-ir-nelaimes/uzrasas-sudegink-rukla-deportuok-vyriausybe-imigrantai-welcome-nuvede-i-teisma-728125>
11. “Residents of Kaunas accused of putting up the poster “Sudegink Rukla...” were acquitted”, Delfi, 5 November 2016, <https://www.delfi.lt/news/daily/law/isteisinti-kauneciai-kaltinti-plakato-sudegink-rukla-isklijavimu.d?id=72775034>
12. “Lithuania prohibited the promotion of Iron Maiden: it scares the children”, Delfi, 8 June 2016, <https://www.delfi.lt/news/daily/lithuania/lietuvoje-uzdraude-iron-maiden-reklama-tai-gasdina-vaikus.d?id=71496924>
13. “Bad news from Lithuania to the famous Iron Maiden”, Lrytas.lt, 8 June 2016, <https://zmones.lrytas.lt/muzika/2016/06/08/news/garsiajai-grupei-iron-maiden-nemaloni-zinia-is-lietuvos-1308092/>
14. “Sekmadienis UAB against Lithuania: when freedom of expression is restricted without just cause”, Human Rights Monitoring Institute, 31 January 2018, <https://hrmi.lt/uab-sekmadienis-pries-lietuva-kai-savi-raiskos-laisve-ribojama-be-svaraus-pagrindo/>
15. ECtHR, Sekmadienis Ltd. v. Lithuania, Application No. 69317/14, statement of facts, 8 September 2016, <http://hudoc.echr.coe.int/eng?i=001-167139>
16. ECtHR, Sekmadienis Ltd. v. Lithuania, Application No. 69317/14, judgment, 30 January 2018, <http://hudoc.echr.coe.int/eng?i=001-180506>
17. “Keulė Rūkė threatened with a fine for using a crucified figure in advertisement: the company is accused of violating public morality”, 15min, 3 October 2017, <https://www.15min.lt/verslas/naujiena/medijos/uz-nukryziuotaji-reklamoje-populiariajai-keule-ruke-gresia-bauda-imone-kaltinama-visuomenes-morales-pazeidimu-921-861824>
18. “Keulė Rūkė fined for violating public morality”, 15min, 5 October 2017, <https://www.15min.lt/verslas/naujiena/medijos/keule-ruke-gavo-bauda-uz-visuomenes-morales-pazeidima-921-862846>

## Freedom of assembly

*Kristina Normantaitė*

Freedom of assembly enables people to participate in the political and public life of their country, influence the decisions of the government, assess them publicly, and protest them publicly in an organized way.<sup>1</sup>

The third Baltic Pride was organized in Vilnius in the summer of 2016. Despite a record number of members and supporters of the Lithuanian and foreign LGBT\* community participating in the event (up to 3000 people participated),<sup>2</sup> this Pride is considered to be the most peaceful one.

In contrast to the situation in 2010 and 2013, when organizers were faced with institutional obstacles which they had to handle in court,<sup>3</sup> and participants of the parade themselves receiving violent resistance from protesters,<sup>4</sup> there were no disturbances during the 2016 Baltic Pride. The small group of people with posters protesting the march gave the officers maintaining the public order no trouble.



Despite the fact that the right to strike is an integral part of freedom of speech and assembly, it still, to this day, becomes an object of inappropriate interpretations. For example, teacher strikes regarding their payment conditions, that took place in 2016, received comments from the then Prime Minister about possible influence from Russia on teachers' unions and, accordingly, on the protesting teachers. Even though the Prime Minister later apologised for his words,<sup>5</sup> such statements in terms of groups on strike give the impression that attempts are made to question the strike itself as a legal way to demand better working conditions,<sup>6</sup> as well as to limit the possibilities of unions to use their constitutional right to go on strike in order to defend their economic and social interests.

The new Labour Code was adopted during the reviewed period and has several significant provisions related to employee strikes. Most controversy was caused by introduction of provisions enabling employers to temporarily suspend employment contracts of employees who are on strike (lockout).<sup>7</sup> There were public fears that the right of employees to go on strike would be restricted after lockout was introduced.<sup>8</sup>

2017 protests in Kaunas against the cutting of trees in the city received a heated response and caused controversy in the public. The proportionality of law enforcement officers actions were publicly questioned: three protesters were arrested and brought to a police station after refusing to leave a fenced area where the trees were being cut and obstructing the planned works.<sup>9</sup>

After this incident the Lithuanian Bar Association issued a statement expressing its concern about the events in Kaunas and requested the Police Commissioner General to "initiate an official inspection on the legality of actions of police officers who gave orders and participated in the Monday's event."<sup>10</sup> Nevertheless, later during trial it was found that the officers' orders to leave the area surrounded with a "STOP POLICE" tape were lawful, and the accused who disobeyed the officers' orders committed an administrative offense.<sup>11</sup>

**Sources:**

1. Ruling of Kaunas District Court of 7 November 2012 in the case No. ATP-902-493/2012, <http://eteismai.lt/byla/34010808288714/ATP-902-493/2012>
2. "A record number of participants in the 2016 Baltic Pride parade in Vilnius", *LGL*, 22 June 2016, <http://www.lgl.lt/naujienos/baltic-pride-2016-eitynese-vilniaus-gedimino-prospektu-rekordinis-dalyviu-skaicius/>
3. "Dispute between Vilnius municipality and organizers of the Baltic Pride homosexual parade reached court once again", *15min.lt*, 18 June 2013, <https://www.15min.lt/naujiena/aktualu/lietuva/vilniaus-savivaldybes-ir-homoseksualu-eityniu-baltic-pride-organizatoriu-gincas-vel-teisme-56-345893>
4. "Baltic Pride parade: there was a wave of verbal abuse and plenty of work for the police, but participants were happy that the event was more successful than in 2010", *15min.lt*, 27 July 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/baltic-pride-eitynes-netilo-uzgauliojimai-ir-policijai-uzteko-darbo-bet-dalyviai-dziaugesi-sekmingesniu-renginiu-nei-2010-aisiais-56-356883>
5. "Prime Minister apologises to teachers and quotes a confidential note", *Delfi.lt*, 24 February 2016, <https://www.delfi.lt/news/daily/lithuania/premieras-atsiprase-mokytoju-pacitavo-slapta-pazyma.d?id=70504390>
6. Human Rights Monitoring Institute, "Why is the right to go on strike questioned?", 29 February 2016, <https://hrmi.lt/kodel-kvestionuojama-teise-streikuoti/?hilitte=%27protes%27>
7. Republic of Lithuania Law on the Approval, Enforcement and Implementation of the Labour Code, 14 September 2016, <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/PujjRmfzLF>
8. "Another Labour Code novelty: going on strike? Then you are fired", *15min.lt*, 29 June 2017, <https://www.15min.lt/verslas/naujiena/bendroves/dar-viena-darbo-kodekso-naujove-skelbiate-streika-tai-jus-atleistas-663-647989>
9. "Police arrests people protesting against the cutting of trees", *Kauno diena*, 21 August 2017, <http://kauno.diena.lt/naujienos/kaunas/miesto-pulsas/pries-medziu-kirtima-protestuojancius-kauniecius-sulaike-policija-825490>
10. "The Lithuanian Bar Association requests to investigate officers' actions against protesters in Kaunas", *Infoplex.lt*, 24 August 2017, <http://www.infoplex.lt/portal/start.asp?act=news&Tema=1&Str=62184>
11. Ruling of Kaunas District Court of 21 December 2017 in the case No. AN2-682-593/2017, <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=e9b7785f-f5d6-41b6-96a7-c4a12361e57a>

## Freedom of religion

*Milda Ališauskienė*

The provisions establishing freedom of religion in Art. 26 of the Constitution of the Republic of Lithuania comply with the universal provisions of human rights. However, implementation of these provisions in Lithuania, as in most post-Soviet countries, is often limited to the assurance of individual freedom of religion and belief. When implementing provisions of freedom of religion and belief, Lithuania often ignores the generally accepted practice that religion is a social phenomenon with a religious community and common religious practices, and that constitutional protection should also be ensured for these aspects of religious life.

Relationship between religion and the State is defined in Art. 43 of the Constitution. It divides religious communities into traditional and *other*. The Law on religious communities and societies lists 9 traditional religious communities and introduces an additional religious community type between traditional and other – *state-recognized religious communities*.<sup>1</sup> This model of religious communities' recognition is considered in scientific literature as the most complicated among European countries.<sup>2</sup> In 2016-2017, the Evangelical Pentecostal Union and the New Apostolic Church received the *state-recognized religious community* status. By end of 2017, the status of a state-recognized religious community was given to 4 religious communities.

In most cases provisions of agreements between the Republic of Lithuania and the Holy See on cooperation concerning relations between the Catholic Church and the State, education and culture, as well as the pastoral care of the Catholics serving in the Army are applied only to the Roman Catholic Church. This way, exceptional conditions are created for this religious community in the life of the State and the society.<sup>3</sup>

According to the population census data of 2011, three quarters of Lithuanians consider themselves as belonging to the Roman Catholic Church (77.2%), while a quarter of people living in Lithuania belong to various other religious communities, do not belong to any communities or are non-religious. Based on the census data, Lithuanians have 59 different religious communities. The largest religious minority communities are the Orthodox (4.1%), the Old Believers (0.8%), the Evangelical Lutherans (0.6%), the Evangelical Reformed (0.2%), the ancient Baltic faith community (0.1%), and Jehovah's Witnesses (0.1%).<sup>4</sup>



*Campaign supporting of the law on assisted reproduction, July 2016, Bernardinai.lt, photo by Einaras Eringis.*

Recognition of the religious variety in Lithuania remains a social issue. Formation of stereotypes about various religious communities and restrictions of religious freedom based on such stereotypes is a consequence of failure to recognize religious variety. It includes religious communities, believers combining different beliefs, while considering part of a single religious community, and the non-religious – agnostics and atheists.<sup>5</sup> According to 2007 and 2014 surveys, part of Lithuanian population still have negative views on non-traditional religious minorities. The number of respondents viewing religious minorities neutrally has increased during this period, while the number of respondents viewing these groups positively remained the same.<sup>6</sup> This indicates that the Lithuanian society still provides an environment favourable for restrictions on the freedom of religion.

Media's focus on the topic of freedom of religion remains unchanged during the review period. Religion subjects typically interest the Lithuanian media only when they concern everyday life of the existing religious communities. Meanwhile, representation of activities of religious minorities still remains problematic in the Lithuanian. These groups usually attract media's attention only due to exotic or criminal reasons. In 2016-2017, the Lithuanian media made almost no effort to discuss the prohibition of Jehovah's Witnesses activities in Russia, even though the position of the Jehovah's

Witnesses community in Russia at that time attracted significant attention from the international media.

In 2016–2017, relations between the Roman Catholic Church, the dominating religious community, and the State continued to raise doubts about the possibility to ensure freedom of all religions and beliefs. Members of the national Parliament who promote the values of the Roman Catholic Church and civil society organizations representing the church engaged in active lobbying when discussing the laws on assisted reproduction<sup>7</sup> and family strengthening.<sup>8</sup> Representatives of the Catholic Church and Catholic organizations also took an active part in development of the Programme for Health and Sexual Education and Preparation for Family.<sup>9</sup>

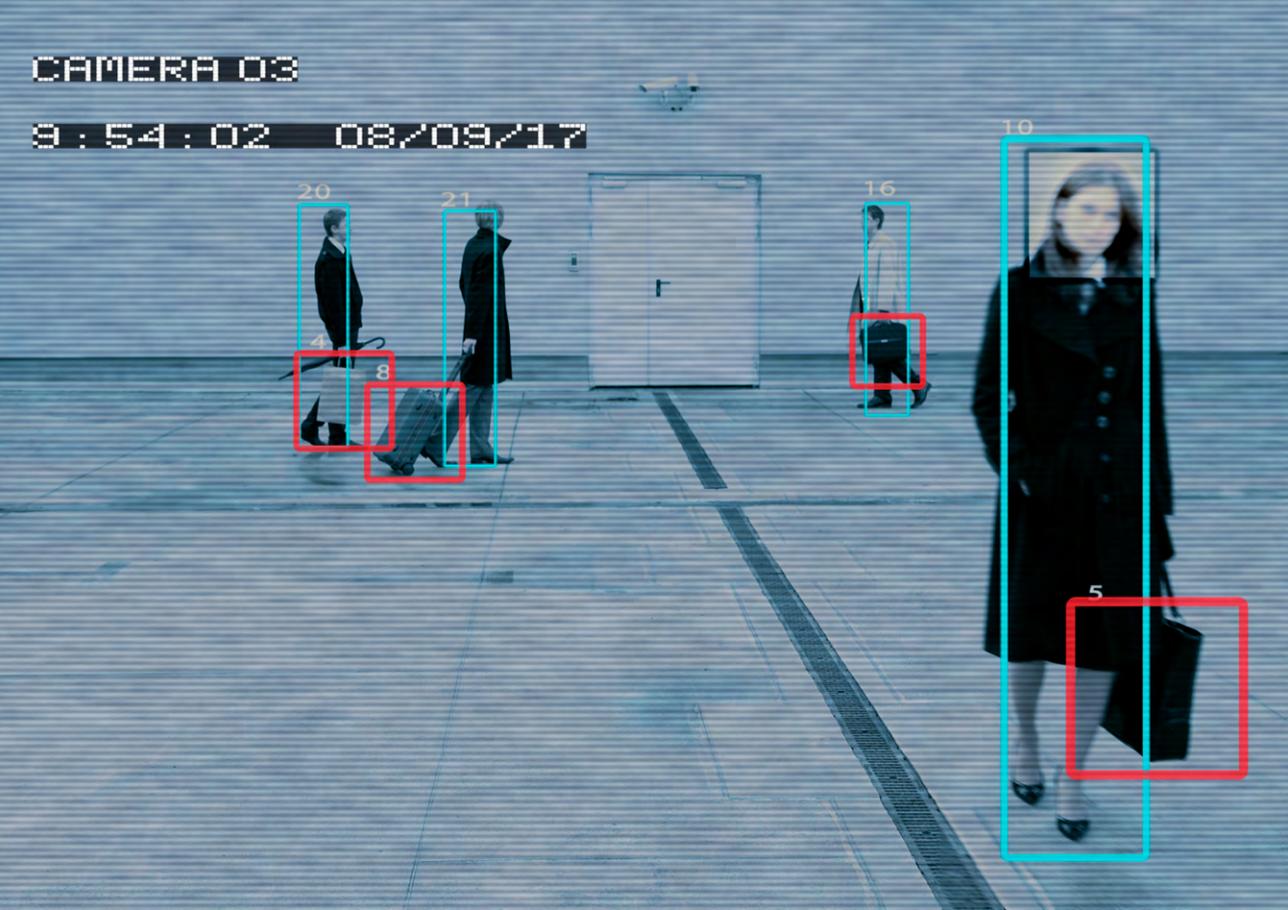
#### Sources:

1. Law on Religious Communities and Societies. 1995. Internet access: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=21783](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=21783)
2. Fox, Jonathan. 2013. *An Introduction to Religion and Politics: Theory and Practice*. Oxon: Routledge.
3. Agreement between the Republic of Lithuania and the Holy See concerning the Pastoral Care of Catholics Serving in the Army. 2000. Internet access: [http://www.lcn.lt/b\\_dokumentai/kiti\\_dokumentai/AS-LR-sutartis-teise.html](http://www.lcn.lt/b_dokumentai/kiti_dokumentai/AS-LR-sutartis-teise.html);
4. Agreement between the Republic of Lithuania and the Holy See on Co-operation in Education and Culture. 2000. Internet access: [http://www.lcn.lt/b\\_dokumentai/kiti\\_dokumentai/AS-LR-sutartis-svietimas.html](http://www.lcn.lt/b_dokumentai/kiti_dokumentai/AS-LR-sutartis-svietimas.html);
5. Agreement between the Republic of Lithuania and the Holy See concerning the Pastoral Care of Catholics Serving in the Army. 2000. Internet access: [http://www.lcn.lt/b\\_dokumentai/kiti\\_dokumentai/AS-LR-sutartis-kariai.html](http://www.lcn.lt/b_dokumentai/kiti_dokumentai/AS-LR-sutartis-kariai.html)
4. Statistics Lithuania. 2013. *2011 Population and Housing Census Results of the Republic of Lithuania*. Vilnius: Statistics Lithuania.
5. Kraulėdaitė, Rasa. 2013. “Expression of Atheism in Lithuania: Peculiarities of Atheistic Views and Relation of Atheists with the Society”, Milda Ališauskienė and Jolanta Kuznecovienė, *Religion and Society: Theoretical Insights and Everyday Practices*, 192–251. Kaunas: Vytautas Magnus University Press.
6. Ališauskienė, Milda and Jurga Bučaitė-Vilkė, 2014. *Ensuring Equal Opportunities for Religious Minorities in Lithuania: Problems and Recommendations*. Vilnius: New Religions Research and Information Centre.
7. Law on Assisted Reproduction. 2016–09–14 No. XII-2608. Internet access: <https://www.e-tar.lt/portal/lt/legu-Act/074c2b707e7311e6b969d7ae07280e89>
8. Law on Strengthening of the Family. 2017–10–19 No. XIII-700. Internet access: <https://e-seimas.lrs.lt/portal/legu-Act/lt/TAD/71039aa2b98511e7967a9645b537eb05?fwid=j9ohh4x3v>
9. Approved Programme for Health and Sexual Education and Preparation for Family. 2016–10–16 Internet access: [https://www.smm.lt/web/lt/pranesimai\\_spaudai/naujienos\\_1/patvirtinta-sveikatos-ir-lytiskumo-ugdymo-bei-rengimo-seimai-programa](https://www.smm.lt/web/lt/pranesimai_spaudai/naujienos_1/patvirtinta-sveikatos-ir-lytiskumo-ugdymo-bei-rengimo-seimai-programa)

# II. PERSONAL DATA PROTECTION

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## II. PERSONAL DATA PROTECTION

*Karolis Liutkevičius*

At the end of 2015, an agreement was reached between the European Council and the European Parliament, and the EU personal data protection reform was approved, which is based on the General Data Protection Regulation, coming into force on 25 May 2018.<sup>1</sup> The Regulation introduces new rules related to the protection of personal data both for consumers and for companies or public authorities using such data.

The Regulation is aimed at changing the balance of power between consumers and companies/institutions managing their personal data, by providing consumers with more possibilities to control their data. The following novelties are directed towards consumers:

- Clearer information about data processing – companies will be obliged to prove that they received consent from consumers to process their data. To receive such consent, companies will have to provide a request that is separated from other questions, e.g. conditions of use, in simple and understandable language.
- Right to be forgotten – consumers will be able to request companies to delete and discontinue processing of their personal data, if such request does not conflict with the freedom of information or other legitimate interests.
- Right to data transfer – companies will have to be prepared to provide personal data (transferred to them by the consumer) in a structured format, so that it could be easily transferred between different service providers.
- Right to be informed if the consumer's personal data has been accessed by hackers, if such violations pose a serious risk to the rights of individuals.

Meanwhile, companies and institutions responsible for the processing of personal data are obliged by the Regulation to assess the risk of data processing violations more carefully and are required to

have a higher degree of accountability, however this also partially reduces their administrative burden:

- A single law will be followed across the EU, establishing the same rules in the entire EU and terminating all previous different provisions in 28 countries.
- There will no longer be an obligation to report on the data processing activities (current or planned) to the National Data Protection Authority.
- Companies whose main activities are data processing operations, as well as public authorities will have to appoint a data protection officer who would make sure that personal data protection requirements are followed.
- When data processing methods, scope or objectives may pose a serious risk to the rights of persons, companies will have to carry out an assessment of the impact of data processing operations on the protection of personal data.
- Strict administrative liability for violations is applied – monetary fines of up to 20 million euros or up to 4 percent of the total annual global turnover of the previous financial year.

In response to the upcoming large-scale changes in the data protection field, the Human Rights Monitoring Institute carried out two studies in 2016, aimed at assessing consumer and business attitudes in terms of personal data protection, as well as awareness about the EU General Data Protection Regulation.<sup>2</sup>

The first research directed towards consumers was based on a representative survey of people living in Lithuania. Research results revealed a “privacy paradox”: three quarters of respondents stated that the right to data protection is as important to them as other main human rights, however only a small part of respondents were firmly determined to take specific actions, for example, to pay a fee for additional data protection in order to improve it. Only 5 percent of respondents stated that they knew about the EU data protection reform and Regulation, while 1 out of 5 respondents promised to learn more about the innovations.

Towards the approaching entry into force of the Regulation, discussions regarding the latter became much more active in the public space since 2017. Therefore it is likely that much more people living in Lithuania know about the Regulation today. However, considering the number of respondents who intended to pay more attention

to this issue, it is doubtful whether the number of people who understand the contents of the Regulation has significantly increased.

The second research included an exploratory survey of 50 Lithuanian companies, including start-ups, operating in the financial and telecommunication fields. Most companies that participated in the research have had heard about the Regulation, however less than 1 out of 10 companies knew about the changes provided in the Regulation. Since, as mentioned before, the approaching entry into force of the Regulation received much more attention in the public space, it is likely that the understanding of the Regulation improved since 2016 when this research was carried out.

The prime conclusion of the research was that business has a rather formal and bureaucratic understanding of personal data protection. The concept of personal data and its processing is often understood narrowly, while most companies did not even know that they were processing personal data unrelated to the company. Formal attitudes were also reflected in the plans for preparing for the Regulation: half of the surveyed companies planned to invest in the preparation for the new personal data protection regime, however most planned to direct their investments only towards the “hard”, technical data protection measures. Whereas the Regulation emphasizes namely the “soft” measures – employee training, assessment of the impact of personal data protection and prioritizing it, etc.

The discussed research results show a systematic problem across the entire country – an overly negligent approach of both public authorities and businesses towards data protection. Personal data, its value and appropriate efforts to protect such data are often considered of low, secondary importance in the list of priorities. In 2016-2017, this approach has led to specific violations of the right to data protection.

In October of 2016, during the elections to the Seimas (national parliament), it became evident that “Elector’s page” website commissioned by the Central Electoral Commission<sup>3</sup> has serious security gaps: users who signed in on the day of the first round of the elections could see the data of random voters who have signed in previously. And, after 3 days, it turned out that there was a security gap on the website which could be easily exploited and enabled to access the accounts of other voters and the personal data in these accounts by using randomly generated URL addresses.<sup>4</sup> Another security gap of the website was found on the same day: due to a flawed login to website administration, basically anyone could obtain the rights of a website administrator and, accordingly, gain access to website management and all the data on the website.<sup>5</sup>

Another incident happened in August of 2017, when Kėdainiai District Municipality Administration sent utility bills to people in a way that enabled to see the name, surname, address and even the personal number of the recipient without opening the envelope.<sup>6</sup> Since these utility bills had to pass through the hands of a number of people before reaching the final recipient, thus revealing personal data to at least several outsiders, this incident has caused outrage of many people. We should keep in mind that the Law on the Legal Protection of Personal Data provides direct prohibition to make personal numbers publicly available, therefore, in this case, the fundamental requirements of personal data protection were disregarded.

However, probably the most scandalous case of insufficient personal data protection and its leak, that also attracted international attention, occurred in the private sector. In April 2017, hackers broke into the databases of “Grožio chirurgija” (“Beauty surgery”) surgery clinic and stole data about the clinic’s Lithuanian and foreign patients – names, addresses, contact details and, as it was later revealed, even photos of before and after operations, which are particularly sensitive and intimate personal data.<sup>7</sup>

This situation revealed not only insufficient data protection, but also issues in the response to data leak. After the hackers demanded a ransom for the data not to be published, managers of the clinic did not take the necessary actions to properly inform its clients about data loss which poses a threat to their private life. And when these hackers contacted the media, managers of the clinic denied that there were photos of their patients among the leaked data. Some clients of the clinic found out about the loss of their data only after they received messages directly from the hackers, which contained threats to publish their photos and demands to pay a ransom for their data.<sup>8</sup>

These situations show that negligence regarding protection of personal data, by viewing it as only a formal requirement with little practical value, can have and already has had negative consequences resulting in violations of human rights.

**Sources:**

1. “Changes that will be brought by the European Union personal data protection reform”, manoteises.lt, 9 March 2016, <http://manoteises.lt/straipsnis/pokyciai-kuriuos-atnes-europos-sajungos-asmens-duomenu-apsaugos-reforma>
2. “Does Lithuanian business and consumers care about personal data protection?”, Human Rights Monitoring Institute, 27 October 2016, <https://hrmi.lt/duomenu-apsaugos-reforma/>
3. Voter’s page, <http://rinkejopuslapis.lt>
4. “Catastrophe: freely accessible personal numbers and addresses on “Rinkėjo puslapis”, the Central Electoral Commission shut down the system”, 15min, 12 October 2016, <https://www.15min.lt/naujiena/aktualu/lietuva/katastrofa-rinkejo-puslapyje-laisvai-prieinami-asmens-kodai-ir-adresai-vrk-isjunge-sistema-56-696277>
5. “New scandal in the Central Electoral Commission: even schoolchildren were able to break into the “Rinkėjo puslapis” website, 15min, 12 October 2016, <https://www.15min.lt/naujiena/aktualu/lietuva/naujas-skandalas-vrk-i-rinkejo-puslapi-isilauzti-galejo-ir-mokyklinukas-56-695949>
6. “Chaos and a crowd of enraged people in the municipality”, Rinkos Aikštė, 14 August 2017, <http://www.rinkosaikste.lt/naujienos/dienos-tema/savivaldybje-chaosas-ir-siutusi-moni-apgultis-paviesinti-asmens-duomenys>
7. “Data of famous Lithuanian clients stolen from a plastic surgery clinic: attempts are made to sell the data in the black market”, 15min, 20 April 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/pavogti-plastikos-chirurgijos-klinikos-garsiu-lietuvoje-klientu-duomenys-juodojoje-rinkoje-juos-bandoma-parduoti-59-785994>
8. “A blow to a beauty clinic: data and intimate photos of famous Lithuanian clients were stolen”, 15min, 21 April 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/smugis-plastikos-chirurgijos-klinikai-pavogti-ne-tik-klientu-duomenys-bet-ir-slaptos-nuotraukos-59-7867728> “Cruelty of hackers after attacking a beauty clinic: both customers and their loved ones were blackmailed”, 15min, 3 May 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/grozio-klinika-atakavusiu-programisiu-ziaurumas-santazavo-ne-tik-garsius-klientus-bet-ir-ju-artimuosius-59-791524>

# III. RIGHT TO PRIVATE AND FAMILY LIFE



## III. RIGHT TO PRIVATE AND FAMILY LIFE

### Partnership

*Vytautas Mizaras*

Section 1 of Article 22 of the Constitution of the Republic of Lithuania provides that the private life of a person is inviolable, and the right to the respect for and protection of family life is established in section 1 of Article 38 of the Constitution, as well as in Article 8 of the European Convention on Human Rights (ECHR). Based on the practice of the European Court of Human Rights (ECtHR), the right to private and family life is the right to live as one wishes, the right to establish and maintain relationships with other people, particularly in the area of emotional life, as well as the right to be protected from one's personal life being made public, and the possibility to improve, realize and promote oneself as a person.<sup>1</sup> The Constitutional Court of the Republic of Lithuania expressed its position that, among other things, the right of a person to his private life includes the inviolability of personal, family and home life.<sup>2</sup>

According to article 8 of the ECHR, the right to family life is ensured not only for people within a marriage, but also to those who have not entered into marriage, but still live as a family. An unmarried couple shall be considered a family if their relationship has stability and is no different from the life of spouses, excluding the fact that they have not entered into marriage.<sup>3</sup> The term “family” cannot be exclusively associated only with marriage-based relationships, since it also includes other actual relationships arising between persons who live together without getting married.<sup>4</sup>

Article 8 of the ECHR includes that same sex couples also have the right to respect of their private and family life.<sup>5</sup> Attention should also be paid to the fact that, in 2013, the ECtHR found that the state is violating the provisions of Article 8 and Article 14 of the ECHR prohibiting discrimination, if it does not provide legal protection for the family life of same sex couples the same way that it provides such protection to the families of opposite sex couples.<sup>6</sup>

In the case of 2015 of *Oliari and others v. Italy*, the ECtHR found that the state does not have the full freedom of self-determination on

whether to recognize the legal family relations among same sex persons, i.e. the state's obligation to regulate the aforesaid legal relations was recognized for the first time.<sup>7</sup> The court repeated this in 2016, in another case against Italy,<sup>8</sup> and, in 2017, the ECtHR found that countries have an obligation to protect the family life of same sex couples.<sup>9</sup>

Ever since 2000, when the new Civil Code came into force in Lithuania, its standards intended for legal family partnership relations between different sex couples never came into force. A few legislators' initiatives regarding the legal regulation of family partnerships of opposite sex couples and same sex couples were unsuccessful. Non-marital families are not legally recognized as having the status of family members. This way Lithuania is violating a ratified international treaty – the European Convention on Human Rights, as well as the Constitution, because, in 2011, the Constitutional Court stated that Art. 38 of the Constitution protects not only marital families, but also family life based on other grounds.<sup>10</sup>

During the period of 2015-2017, there were two initiatives in the national Parliament regarding partnership regulation, however both attempts ended unsuccessfully and without even reaching the discussion stage. On the contrary, there were several initiatives in the Parliament, a few of which were realized and others only initiated, were directed towards the elimination of partnership as a model of family life from the national legal system altogether.

After adopting the amendments of the Law on Equal Opportunities which were used to implement the 2014 EU directive on exercising the right to freedom of movement for workers,<sup>11</sup> only the spouse is indicated in the concept “Family members of the citizen of EU and EEA Member State” provided in the law, whereas the term partner was eliminated from the concept during the draft consideration stage. Therefore in the field of the freedom of movement for workers, only spouses are recognized as family members in Lithuania.

Within the meaning of this directive, a spouse is considered to be a family member without reservation, regardless of whether they are of the same or the opposite sex.<sup>12</sup> Meanwhile, the status of a partner as a family member depends on whether the host state's laws treat registered partnership as equal to marriage.

The second initiative was implemented after the adoption of the Law on Family Strengthening.<sup>13</sup> This law is essentially intended to emphasize marital families between members of the opposite sex, while not even considering other forms of family life as a family.

It is aimed at forming the family policy exclusively on the basis of a marital family model consisting of a husband and a wife, which is clearly reflected in the explanatory notes of the law.<sup>14</sup>

Meanwhile, the realization of the third initiative against the regulation of the legal protection of non-marital families was initiated by several members of the Parliament, essentially members of the Lithuanian Farmers and Greens Union and members of the Homeland Union-Christian Democratic Party, by presenting a draft for the amendment of the Civil Code, the aim of which is to provide the possibility of a cohabitation agreement without forming legal family relations.<sup>15</sup> This precise feature – the non-creation of family relations – is marked in the explanatory notes of the draft as qualifying the cohabitation agreement: “<...> it is aimed at establishing a cohabitation form in the Lithuanian legal system, the main goal of which would be to enable living as cohabitants without creating legal family relations, and protect the rights and legal interests of the parties under this agreement”.

An unlimited number of partners could enter into a cohabitation agreement, and they would not create family relations on the basis of this agreement, therefore they would also not acquire the status of family members or, in other words, they would not be considered as a couple living a family life. Therefore, according to this proposal, cohabitants would not be considered family members. Whereas partners living as a non-marital family require precisely the legal regulation of their relations, so that they would acquire the status typical to family members, because this is the only way for them to also acquire the rights, guarantees and obligations applied to family members.

If drafters and politicians who are supporting them publicly state that, among other things, the aim of the project is to “prevent” the regulation of legal relations arising from a family partnership, then this aim *per se* conflicts with the Constitution and the European Convention on Human Rights. In the case of *Oliari and others v. Italy*, the ECtHR found that Italy has a civil agreement, similar to the proposed Lithuanian cohabitation agreement, which is not intended for the legal protection of couples living as a family, it does not meet the needs of people living as a family, and therefore does not ensure the protection of the right to family life.<sup>16</sup>

With this draft, politicians aim to prevent the regulation of family partnership by presenting the draft as an alternative to family partnership. However, while Lithuania is member of the Council of European, the adoption of such a draft will in no way solve the

need and the obligation of the state to regulate the legal relations of a family partnership. The aim of this draft is clearly discriminatory as it aims to eliminate those living as non-marital families from the legal system. At the same time it is obvious that such aim is anti-constitutional.

## Sources:

1. See Decision of the European Court of Human Rights in the 1979 case of *Van Oosterwijck v. Belgium*, <http://hudoc.echr.coe.int/eng?i=001-57549>
2. See Resolution of the Constitutional Court of 23 October 2002 on the compliance of part 3 of Article 14 and Article 8 of the Public Information Law of the Republic of Lithuania with the Constitution of the Republic of Lithuania (Valstybės žinios (Official Gazette), 2002, No 104-4675), <http://lrkt.lt/lt/teismo-aktai/paieska/135/ta311/content>
3. See ECtHR resolution of 18 December 1986 in the case *Johnston and others v. Ireland*, <http://hudoc.echr.coe.int/eng?i=001-57508>
4. See ECtHR resolution of 26 May 1994 in the case *Keegan v. Ireland*, <http://hudoc.echr.coe.int/eng?i=001-57881>
5. See Resolution of the European Court of Human Rights of 24 July 2003 in case no. 40016/98, *Karner v. Austria*, <http://hudoc.echr.coe.int/eng?i=001-61263>; Resolution of the European Court of Human Rights of 24 June 2010 in the case of *Schalk and Kopf v. Austria*, No. 30141/04, <http://hudoc.echr.coe.int/eng?i=001-99605>. For more details about the positions discussed in these resolutions, see MIZARAS, V. The Right to Family Life: Constitutional and Civil Legal Aspects. In *Law of independent Lithuania: past, present and future. Liber Amicorum J. Prapiestis* (collection of scientific articles), Vilnius, 2012, p. 371.
6. See ECtHR Resolution of 7 November 2013 in the case of *Vallianatos and others v. Greece*, No. 29381/09 and 32684/09, <http://hudoc.echr.coe.int/eng?i=001-128294>
7. See ECtHR Resolution of 21 July 2015 in the case of *Oliari and others v. Italy*, No. 18766/11 and 36030/11, <http://hudoc.echr.coe.int/eng?i=001-156265>
8. See ECtHR Resolution of 30 June 2016 in the case of *Taddeucci and McCall v. Italy*, No. 51362/09, <http://hudoc.echr.coe.int/eng?i=001-164715>
9. See ECtHR Resolution of 14 December 2017 in the case of *Orlandi and others v. Italy*, No. 26431/12; 26742/12; 44057/12 and 60088/12, <http://hudoc.echr.coe.int/eng?i=001-179547>
10. See Resolution of the Constitutional Court of 28 September 2011, <http://lrkt.lt/lt/teismo-aktai/paieska/135/ta159/content>
11. Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32014L0054>
12. Ibid, recital 1. As well as paragraph 2 of Art. 2 of the European Parliament and Council Directive 2004/38/EC <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32004L0038>
13. Law on Strengthening of the Family, No. XIII-700, 19 October 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/71039aa2b98511e7967a9645b537eb05>
14. Draft Law Reg. No. XIIP-4255 and Seimas draft statute Reg. No. XIIP-4256 explanatory notes, 7 April 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/38f9fb30fcc211e5bf4ee4a6d3cdb874>
15. Draft law amending articles 6.589, 6.969, 6.971, 6.973, 6.978 of the Civil Code, No. XIIP-750, 23 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/2eed4fd03fbc11e7b8e5a254f4e1c3a7>
16. See ECtHR Resolution of 21 July 2015 in the case of *Oliari and others v. Italy*, No. 18766/11 and 36030/11, paragraphs 129 and 169, <http://hudoc.echr.coe.int/eng?i=001-156265>

## Reproductive rights and sex education

*Esmeralda Kuliešytė*

Implementation of reproductive rights in Lithuania is still lagging behind since the very beginning of the country's independence. Lithuania has no law, strategy or programme which would regulate reproductive human rights and reproductive health. Both medics and society lack knowledge about sexual and reproductive health and rights, while politicians and health strategists lack political to implement reproductive rights. Decisions on reproductive health and rights are actively influenced by the Catholic Church and organizations and groups associated with it. Whereas the participation of advocates of reproductive human rights in decision-making and drafting of laws is often hindered and attempts are made to prevent them from disseminating science-based information.

### *Right to choose abortion*

Legal, affordable, and safe abortion in Lithuania is ensured not by an act of the Parliament but by the order of the Minister of Health of 1994. In 2013, a draft Law on the Protection of Life in the Prenatal Phase was presented to the national Parliament for assessment, aimed at limiting access to legal and safe abortions in Lithuania.<sup>1</sup> Active discussions regarding this draft law ended in 2015, however, after elections in 2016, the Electoral Action of Poles in Lithuania – Christian Families Alliance once again included this draft law into the Parliament's agenda and initiated new discussions. Even though the Legal Department of the Parliament Office, the European Law Department under the Ministry of Justice and organizations protecting human rights have stressed that such law would violate human rights, its authors and their supporters continued to defend the draft law and campaigned to pass it.

The draft law allows termination of pregnancy only if it poses a risk to the woman's health or life, or there are justified suspicions that the pregnancy resulted from a criminal offence – rape. If this law comes into force, women will be forced to search for abortion services abroad, and it will also result in the creation of illegal and expensive abortion services within the country.

Considering the experience of countries where abortion is severely restricted (Poland, Ireland), it is obvious that access to abortion services would be very difficult even when conditions to terminate a pregnancy are met, as abortion services would be provided too late or not at all because priority is given to foetal life. Poland's

experience shows that women rarely received permission to terminate their pregnancy after rape on time due to judicial process delays. In addition, women avoided contacting appropriate institutions in order to avoid humiliation and additional emotional suffering, and sought to terminate their pregnancy illegally instead.

If the Law on the Protection of Life in the Prenatal Phase is adopted, Lithuanian women, couples and families would suffer from reproductive coercion, and only a certain percentage of women and couples who have sufficient funds would be able to terminate pregnancies in Lithuania or abroad. The number of cases of deaths in women would increase due to illegal abortion complications. Institutional reproductive coercion would reduce public trust in the state, its aspirations and objectives, and would encourage doubts in democracy.

Currently, women in Lithuania are not able to choose the method of abortion, because only surgical termination of pregnancy is legal in the country. Medical abortion, i.e. pregnancy termination using drugs, is widely applied around the world. Even though the World Health Organization describes medical abortion as an advanced method of abortion which causes less complications than surgical abortion,<sup>2</sup> the Lithuanian Ministry of Health did not legalize and regulate medical abortion, drugs for pregnancy termination were not registered, and this method of abortion is not available in Lithuania.

It is common knowledge that women purchase medical abortion drugs illegally and use them as they see fit, without consulting a medical professional.<sup>3</sup> This causes concern for doctors and the public due to possible complications. The Catholic Church, as well as organizations and public groups that are against medical abortion are particularly opposed against the application of such abortion.<sup>4</sup> Whereas surgical abortion operations are expensive and often inaccessible to vulnerable groups of the society.

### *Right to family planning*

Despite the fact that scientific progress provided us with a wide range and selection of contraceptives, the reproductive right to receive information on how to properly plan a family, and how to avoid accidental or unintentional pregnancy is not fully implemented in Lithuania. Contraceptives are not financially accessible to most vulnerable groups – youth, women with low income, are unemployed, and suffer from dependencies.

Catholic Church supported organizations spread myths about contraception and try to turn the public against contraceptives.<sup>5</sup>

Lithuania lacks specialized family planning centres and clinics, as well as medical professionals who are properly trained to consult people. The medical community is divided in terms of human rights,<sup>6</sup> thus even doctors themselves often spread myths about contraception, misleading their patients and the society, encouraging women and couples not to use any protection against unexpected pregnancy. Doctors opposing contraception are not convinced by the recommendations, scientific research, and conclusions of the World Health Organization and other authoritative organizations. They usually encourage women to evaluate their fertility using various methods, avoid sexual relations on fertile days, and in cases of pregnancy – to give birth.

The entire society, regardless of age, lacks information about family planning. Authorities do not provide sufficient education, such as science and evidence based information on family planning and contraception during educational campaigns, through advertising, various events, and sex education programmes in schools. The level of training of medical students regarding family planning and contraception varies in higher education schools, and is often superficial and lacks quality.

Schools rarely provide teenagers with science-based information on contraception and the importance of using a condom during sexual intercourse, therefore their sexual behaviour is often risky and is worrying for parents and the public. The number of teenage pregnancies and births is particularly high in Lithuania,<sup>7</sup> the number of youth infected with HIV is increasing each year,<sup>8</sup> and many suffer from sexually transmitted diseases.<sup>9</sup>

Lithuania has not legalized voluntary surgical sterilization, as a family planning method, and has not created a mechanism for compensating contraception for vulnerable groups. This makes it hard to solve the problem. In 2013 and 2015, Lithuania, along with other European countries, participated in the Barometer study on contraceptive policies and availability in the country.<sup>10</sup> Both studies have shown that Lithuania has the lowest indicators, revealing that changes are necessary in the availability of contraception and education.

In the United Nations review of the implementation of human rights in 2012, Lithuania has undertaken to improve the availability of contraception for its citizens. However it did not fulfil its promise. The situation in the country did not change, and contraception did not become more accessible for vulnerable groups. When making a report in the human rights implementation review in 2016-2017, Lithuania once again undertook to improve the availability of

contraception, and must do so until 2020.<sup>11</sup> In addition, Lithuania undertook to create a reproductive health strategy and include reproductive health in the National Health Programme.

*Right to receive information about sexuality, sexual reproductive health and rights*

Sex education in schools still lacks the necessary attention from Lithuanian politicians and decision-makers. In 2013-2014, the Ministry of Education and Science formed a working group to develop a framework programme for Health and Sexual Education and Preparation for Family. However, due to the conservative attitudes of the working group members, the programme was limited to promotion of sexual abstinence, praising marriage, and promotion of traditional families.

In 2016, the Ministry of Education and Science initiated amendments to the programme, and formed another working group.<sup>12</sup> However, Lithuania once more failed to heed the recommendations of the World Health Organization for the European region on sex education. This resulted in failure to include information on reproductive health and rights necessary for pupils into the programme. The Minister of Education approved the programme in 2016,<sup>13</sup> and it became mandatory in schools. However, there was no proper training for teachers, production of teaching measures, nor dissemination of science-based information for teachers on the Ministry's website.

Under these circumstances, the sex education programme in schools cannot be considered satisfactory.

## Sources:

1. Draft Law on the Protection of Life in the Prenatal Phase, No. XIIP-337, 10 March 2013, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/TAIS.444122>
2. World Health Organization, "Safe abortion: technical and policy guidance for health systems", 2012, [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf)
3. Medicine for people, forum information, [http://www.sos03.lt/Forumas/Seksualinis\\_gyvenimas/Viskas\\_apie\\_kontracepcija/Kur\\_kreiptis\\_del\\_medikamentinio\\_aborto](http://www.sos03.lt/Forumas/Seksualinis_gyvenimas/Viskas_apie_kontracepcija/Kur_kreiptis_del_medikamentinio_aborto)
4. "Medical abortion as a new freedom of choice for women", Kristina Zamarytė-Sakavičienė, Bernardinai.lt, 2014, <http://www.bernardinai.lt/straipsnis/2014-10-09-kristina-zamaryte-sakaviciene-medikamentinis-abortas-kaip-nauja-moters-pasirinkimo-laisve/122814>
5. "Contraception. Is the Church really against the regulation of pregnancy?", William Sauders, Bernardinai.lt, 2013, <http://www.bernardinai.lt/straipsnis/2013-10-07-kun-william-sauders-kontracepcija-ar-baznycia-tikrai-priestarauja-nestumo-reguliuvimui/108235>
6. "Birth control pills: why do doctors have different opinions?", Eglė Rubinaitė, Delfi, 2015, [https://www.delfi.lt/gyvenimas/grozis\\_ir\\_sveikata/kontraceptines-tabletes-kodel-skiriasi-mediku-nuomones.d?id=68313330](https://www.delfi.lt/gyvenimas/grozis_ir_sveikata/kontraceptines-tabletes-kodel-skiriasi-mediku-nuomones.d?id=68313330)
7. "14 years old and already a mother: how many underage girls are giving birth in Lithuania each year?", Ugnius Antanavičius, 2018, <https://www.15min.lt/naujiena/aktualu/lietuva/14-mete-ir-jau-motina-kiek-nepilnameciu-merginu-kasmet-pagimdo-lietuvoje-56-930502>
8. Review of Lithuanians infected with sexually transmitted diseases and the epidemiological situation of the human immunodeficiency virus in Lithuania, Infectious Diseases and AIDS Centre, 2017, [http://www.ulac.lt/uploads/downloads/Ataskaitos/2016/LPI\\_analize\\_2016.pdf](http://www.ulac.lt/uploads/downloads/Ataskaitos/2016/LPI_analize_2016.pdf)
9. Review of Lithuanians infected with sexually transmitted diseases and the epidemiological situation of the human immunodeficiency virus in Lithuania, Infectious Diseases and AIDS Centre, 2016, [http://www.ulac.lt/uploads/downloads/Ataskaitos/2015/LPI\\_analize\\_2015.pdf](http://www.ulac.lt/uploads/downloads/Ataskaitos/2015/LPI_analize_2015.pdf)
10. Barometer of Women's Access to Modern Contraceptive Choice in 16 EU Countries, 2015, <https://www.ippfen.org/sites/ippfen/files/2016-12/EU%20Call%20To%20Action%20-%20Barometer%20of%20Women%27s%20Access%20to%20Modern%20contraceptive%20Choice%20in%2016%20EU%20Countries.pdf>
11. Universal Periodic Review, Lithuania's feedback on the recommendation, 2017, recommendation 100.141, [https://www.upr-info.org/sites/default/files/document/lithuania/session\\_26\\_-\\_november\\_2016/recommendations\\_and\\_pledges\\_lithuania\\_2016.pdf](https://www.upr-info.org/sites/default/files/document/lithuania/session_26_-_november_2016/recommendations_and_pledges_lithuania_2016.pdf)
12. Order of the Minister of Education and Science on the Formation of a Working group, No.V-97, 3 March 2016
13. Order of the Minister of Education and Science on the approval of the Framework Programme for Health and Sexual Education and Preparation for Family, No. V-941, 25 October 2016, <https://www.e-tar.lt/portal/lt/legalAct/b10c19209a9a11e69ad4c8713b612d0f>

## Right to recognition of sexual identity

*Natalija Bitiukova*

Events of the review period brought significant changes to the field of rights of transgender persons. This period can be described as a “breaking point” after an unreasonably long stagnation which went on since 2007, when the European Court of Human Rights (ECtHR) adopted a ruling in one of the best known cases against Lithuania – *L. v. Lithuania*.<sup>1</sup>

In 2016-2017, at least three key areas can be distinguished where changes took place, which directly influenced the position of transgender persons in Lithuania: (i) legal recognition of sexual identity; (ii) health care services for transgender persons; (iii) visibility of transgender people in the Lithuanian society.

### *Legal recognition of sexual identity*

With the *L. v. Lithuania* ruling, the ECtHR obliged Lithuania to adopt a special law “detailing the conditions and procedures for gender reassignment”, as provided in Article 2.27 of the Civil Code. Even though the legislator failed to adopt the necessary laws 17 years after the Civil Code came into force and 10 years after the ECtHR ruling came into force, national courts have acted to resolve this human rights problem in the review period.

In April 2017, Vilnius City District Court took an unprecedented step obliging the Civil registry office to change the gender entry in civil status acts, regardless of whether the applicant underwent a full surgical gender reassignment operation. The court based its ruling on Art. 8 of the European Convention on Human Rights (right to inviolability of private life) and the ECtHR case-law, as well as considered the fact that the applicant was diagnosed as a transsexual, has been undergoing hormone replacement therapy and breast reduction surgery, the applicant considered himself to be a male, and was recognized as such in the social environment.<sup>2</sup> This way, the Court changed earlier practice which required applicants to prove their irreversible gender reassignment process, i.e. the performance of a sex reassignment surgery.

Later on, the courts also satisfied complaints of six other transgender applicants on similar grounds.<sup>3</sup> The following arguments from the ruling of Vilnius City District Court of May 2017 should be mentioned, which directly stated that by this ruling, the court aims to eliminate the gap resulting from failure to implement Art. 2.27 of the Civil Code:<sup>4</sup>

*“[t]he court eliminates this gap in the law by establishing ad hoc that the term “gender reassignment” should not be associated only with surgical irreversible biologic change, but must be understood in a broader sense and perceived as a person’s psychological self-identification with a specific gender confirmed by both the medical records of the person [...], as well as the person’s social behaviour [...]”*

According to the representative of the Government, parallel to the judicial practice development process, the executive power took “more decisive actions” to implement the ruling of *L. v. Lithuania*. The Prime Minister instructed the Ministries of Health and Justice to prepare draft laws until 1 September 2017, regulating the gender reassignment procedure.<sup>5</sup> This step was encouraged by the Committee of Ministers of the Council of Europe which, in 2014, established strengthened oversight procedures for the *L. v. Lithuania* case,<sup>6</sup> as well as urged to ensure the rights of transgender persons in Lithuania.<sup>7</sup>

Implementing the order of the Prime Minister, a working group active in the Ministry of Justice in May-September 2017 prepared a draft law on the recognition of sexual identity. The draft law provides that personal identification documents can be changed for adult transgender persons by submitting an appropriate request to the civil registry office. A person who wants to change his or her gender in his or her personal identification documents must be an unmarried citizen of the Republic of Lithuania, diagnosed as a transsexual. In accordance with the practice established by the courts, such person cannot be required to prove having undergone a gender reassignment surgery. The draft law also prohibits discrimination of transgender persons in order to promote social and economic integration of transgender people.<sup>8</sup>

However, this relatively progressive draft, registered in November 2017,<sup>9</sup> was not put up for vote in the Parliament. Also, no information was published which would allow to predict its fate. On the contrary, when the draft was issued, draft amendments to the Civil Code were registered on the initiative of a group of Parliament members, aimed at prohibiting both legal and medical sex reassignment. These amendments aim to establish that “[p]harmacological, surgical procedures or psychiatric, psychological therapy aimed at changing the genetically determined characteristics of a person’s gender (gender reassignment) are prohibited in the Republic of Lithuania.”

Since the rulings of the national courts to change personal identification documents for transgender persons are based exclusively on a psychiatric diagnosis of transsexuality, there is a psychiatric therapy prohibition in the draft law seemingly eliminating the possibility of medical treatment of transgender persons, and precluding

the possibility of changing one's personal identification documents judicially.<sup>10</sup>

### *Health care services for transgender persons*

When implementing the aforesaid order of the Prime Minister, the working active in the Ministry of Health prepared a Description of Procedure for the Diagnostics and Treatment of a Gender Identity Disorder (Transsexuality).<sup>11</sup> The aim of this description of procedure was to create preconditions for transgender persons to receive specific health care services in the context of the Lithuanian health care system, specifically – psychologist and psychiatrist consultations, as well as hormone replacement therapy. The draft description of procedure for diagnostics and treatment does not mention surgical gender reassignment.

Such a relatively limited scope of the description of procedure was determined by two factors. First, the Ministry of Health refused to regulate surgical gender reassignment operations until a separate law is adopted regulating appropriate gender reassignment conditions and procedures. Second, based on the progressive rulings of national courts, a decision was made to regulate the provision of health care services which would create preconditions for transgender persons to change their personal identification documents judicially, without the mandatory surgical operation requirement.<sup>12</sup>

Despite these positive tendencies, this description of procedure was never adopted. The Ministry of Health did not express its position on the planned date for the adoption of the description of procedure, thus once again failing to meet the legitimate expectations of transgender persons.

Drafts prepared by the Ministry of Justice and the Ministry of Health will probably be reconsidered when Lithuania will have to submit its regular report to the Committee of Ministers of the Council of Europe in 2018, on the implementation of the decision in the *L.* case. It is likely that the Committee will once again assess the actions of the Lithuanian legislator and the executive in this area negatively, and justifiably so.

### *Visibility of transgender persons in the Lithuanian society*

Despite the ECtHR ruling in the case of *L. v. Lithuania* not being implemented, thanks to the efforts of civil society, visibility of transgender people in the Lithuanian society increased during the review period.

The most significant contributor of the latter was the #TRANS\_LT visibility campaign initiated in 2015 by the Lithuanian Gay League (LGL) of the National Association for the Protection of Lesbian, Gay, Bisexual and Transgender (LGBT) Rights, during which transgender persons living in Lithuania shared their experiences publicly.<sup>13</sup> This was the first initiative during which social videos were published which were exclusively dedicated at highlighting the everyday challenges of transgender people. Later, both journalists<sup>14</sup> and the Office of the Equal Opportunities Ombudsman joined the efforts of LGL.<sup>15</sup>

To summarize, the public discourse on issues of transgender people rights became more mature during the review period, and focused on solving clearly identified problems. With the increasing support from public groups, including government representatives, directed towards assuring the human rights of transgender persons, the contrast between the rhetoric and attitudes of progressive voices and the representatives of the national Parliament are becoming increasingly obvious. The rhetoric spread by some representatives of the nation is based on dogmatic beliefs rather than progressive analysis of good practices of other EU countries, or listening to the needs of the transgender people themselves. This results in the general rating of the position of LGBT\* rights in Lithuania declining year after year.<sup>16</sup>

## Sources:

1. L. v. Lithuania, 11 September 2007, No. 27527/03, <http://hudoc.echr.coe.int/eng?i=001-82243>
2. Ruling of the District Court of Vilnius City of 7 April 2017 in civil case No. e2YT-5329-934/2017.
3. Ruling of the District Court of Vilnius City of 2 May 2017 in civil case No. e2YT-5326-987/2017; Ruling of the District Court of Vilnius City of 9 August 2017 in civil case No. e2YT-26625-466/2017; Ruling of the District Court of Vilnius City of 30 November 2017 in civil case No. e2YT-43448-294/2017; Ruling of the District Court of Vilnius City of 30 November 2017 in civil case No. e2YT-46226-861/2017; Ruling of the District Court of Vilnius City of 21 December 2017 in civil case No. e2YT-45425-931/2017; Ruling of the District Court of Vilnius City of 19 January 2017 in civil case No. e2YT-3075-779/2018
4. Ruling of the District Court of Vilnius City of 2 May 2017 in civil case No. e2YT-5326-987/2017
5. Donata Motuzaitė, “Ministries were assigned to prepare drafts on gender reassignment”, 22 March 2017, *BNS/Delfi.lt*, <https://www.delfi.lt/news/daily/lithuania/ministerijoms-pavesta-parengti-projektus-del-lyties-keitimo.d?id=74131562>
6. Human Rights Monitoring Institute, “Implementation of human rights in Lithuania 2013-2014. Review”, <http://pasidomek.lt/iv-teise-i-lytines-tapatybes-pripazinima>
7. Donata Motuzaitė, “Ministries were assigned to prepare drafts on gender reassignment”, 22 March 2017, *BNS/Delfi.lt*, <https://www.delfi.lt/news/daily/lithuania/ministerijoms-pavesta-parengti-projektus-del-lyties-keitimo.d?id=74131562>
8. Republic of Lithuania Draft Law on the Recognition of Sexual Identity, 3 November 2017, No. 17-12650, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c0911e7af36e75c0ac79247>
9. T.V. Raskevičius, “An idea for Lithuania: let us legalize gender reassignment”, 28 December 2017, *Manoteises.lt*, <http://manoteises.lt/straipsnis/ideja-lietuvai-iteisinkime-lyties-keitima/>; Proposal on the “Republic of Lithuania Draft Law on the Recognition of Sexual Identity” - comments and suggestions of the international organization “Transgender Europe” regarding the draft law (in English), 21 December 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAN/f6963fb0e63011e7b4d1bdd5f1a9ff0e?jfwid=-fa58jhb14>
10. T.V. Raskevičius, “An idea for Lithuania: let us legalize gender reassignment”, 28 December 2017, *Manoteises.lt*, <http://manoteises.lt/straipsnis/ideja-lietuvai-iteisinkime-lyties-keitima/>
11. Ibid.
12. Ibid.
13. T.V. Raskevičius, “#TRANS\_LT: “we grew up overnight”, 1 February 2016, [http://manoteises.lt/straipsnis/trans\\_lt-mes-per-viena-nakti-dideli-uzaugom](http://manoteises.lt/straipsnis/trans_lt-mes-per-viena-nakti-dideli-uzaugom)
14. See example. Dokumentikos Namai, “Tovaldas who was born a girl: my grandmother always knew I was a man”, 3 July 2017 [https://www.youtube.com/watch?v=vP\\_MfyWebW0](https://www.youtube.com/watch?v=vP_MfyWebW0)
15. BNS, “Seimas will discuss the rights of transgender people in Lithuania”, 5 May 2017, *Delfi.lt*, <https://www.delfi.lt/news/daily/lithuania/seime-bus-diskutuojama-del-translyciu-asmenu-teisiu-lietuvoje.d?id=74550240>
16. Eglė Kuktoraitė, “Lithuania falls to 40th place in the European LGBT\* rights map”, 16 May 2017, *Lgl.lt*, <http://www.lgl.lt/naujienos/europos-lgbt-teisiu-zemelapyje-lietuva-krenta-i-40-aja-vieta/>

# IV. PROHIBITION OF DISCRIMINATION



## IV. PROHIBITION OF DISCRIMINATION

### Age discrimination

*Sarmitė Mikulionienė*

The Law on Equal Opportunities of the Republic of Lithuania which has been in force for more than a decade<sup>1</sup> strengthened the protection of the rights of citizens of Lithuania and increased social awareness regarding the protection of one's rights. For example, lately, the percentage of people in Lithuania that know who to contact regarding violations of human rights has been continuously increasing (57 percent in 2016, compared to 49 percent in 2010).<sup>2</sup> Thus, we can safely say that there is progress in this area. However, the desire to discover new unused reserves in the fight against various forms and types of discrimination prompts a critical evaluation of these achievements. As well as the search for additional available resources which would likely encourage reaching the goal faster. In this case, the goal would be a socially just society that follows international requirements and best practices, where nobody is discriminated and everyone would feel dignified and safe.

The situation of age discrimination in Lithuania (and abroad) is ambiguous due to historical reasons. We still have a living generation of people who were taught that children or the elder can be treated as second-rate citizens (with fewer rights), that there is nothing wrong in dividing resources that are limited in the society and, thus, very valuable (e.g., the right to employment, social security, health care, social and educational services, the right to acquire goods and services) based only (or primarily) on the calendar age of a person, and that bullying or harassing a person because of their age ("too young" or "too old") is only an innocent joke.

Since such ageist attitudes and behaviour are deeply rooted within our society, it is no surprise that we often fail to even notice cases of age discrimination, or if we do notice, we choose to pretend to not see it (due to various reasons). Thus, only a small part of cases of age discrimination reach the status of complaint submission, investigation and disclosure.

The reviewed period (2016-2017) can be seen as a continuation of the growth of collective awareness in the area of non-discrimination based on age. The number of investigations regarding possible age discrimination, which were carried out by the Office of the Equal Opportunities Ombudsperson, fluctuated between 15 and 35 investigations per year (an average of 24 investigations) over the entire first decade, 2005-2014. However, this number started increasing significantly since 2015: there were 48 investigations in 2015 and 61 in 2016.<sup>3</sup> However, compared to 2016, the number of investigations based on possible age discrimination decreased by three times – to 20 investigations in 2017. Considering the percentage of complaints based on age discrimination in the total number of complaints, it should be noted that the percentage of age discrimination complaints decreased during reviewed period: from 1/6 (17.8 percent) in 2016, to 1/8 (12.7 percent) in 2017.<sup>4</sup>

There were a few innovations in Lithuania during reviewed period when implementing the right to be free from discrimination based on age. By approving the “Action Plan for the Promotion of Non-Discrimination”<sup>5</sup> for 2017, the Minister of Social Security and Labour demonstrated that it is necessary to strengthen preventive and educational measures: to cultivate respect for human beings, implement the principle of non-discrimination and equal opportunities, raise the legal awareness and tolerance of the public, etc. In 2016, the Office of the Equal Opportunities Ombudsperson developed a social dialogue with non-governmental organizations representing different grounds of discrimination, as well as strengthened inter-institutional cooperation, including cooperation with the academic community.<sup>6</sup> In 2015, the public institution European Foundation of Human Rights actively joined the fight against discrimination and informed the Office of the Equal Opportunities Ombudsperson on potentially discriminatory job advertisements based on age, which resulted in a significant increase of registration of such cases and the scope of their investigation.

It is likely that the new Labour Code, which came into force on 1 July 2017 and established an obligation for all employers to implement an equal opportunities policy in their institutions and companies, will be another effective preventive measure in decreasing age discrimination in labour relations. Equal opportunities must be ensured for all people, service users and employees, regardless of a person’s age and other possible grounds for discrimination. Heads of small companies and organizations must implement the principles of gender equality and non-discrimination on other grounds, while employers of organizations with more than 50 employees must adopt and publish an equal opportunities policy (for all characteristics, including age) and the supervision of its enforcement.

Moving to a more detailed analysis of the cases of age-related discrimination, it can be stated that the spectrum of registered age discrimination cases has been expanding lately. Firstly, if, thus far, it was normal to think that only older people suffer age discrimination in everyday life, lately there have also been registered cases when a person was treated differently because they were “too young”, i.e., we begin to see children and youth as potential victims of age discrimination. Secondly, even though these cases are not classified under a separate group in anti-discrimination reports, it can be observed that a significant part of discrimination cases in labour relations can actually be described as multiple discrimination (due to several characteristics): close to a third (30 percent in 2016) of all complaints regarding possible age discrimination were comprised of job advertisements indicating the preferred age and gender of the candidate in the job offer. There were also cases of multiple discrimination with a combination of the characteristics of age and disability.

It can be stated that the field of labour relations is the most advanced in recognizing and declaring cases of (direct and indirect) age discrimination. Discriminatory job advertisements still comprise a large part of cases of age discrimination in the field of labour relations. Job advertisements with discriminatory content indicate a preferred age range of candidates (upper and lower age limit) or age is limited by indicating only one of the limits (usually the upper limit) next to the professional requirements.

There is concern that people in Lithuania (more commonly, older people, but young people as well) encounter unjustified age limits in the fields of social welfare, health care and financial services. It is harder to fight against these cases as they are more obscure – documents which include age limits are not always available publicly, officials tend to eloquently defend them, while older people lack knowledge on how to fight against this.<sup>7</sup> Different credit terms and insurance premiums, conditions for dental prosthetics, preventive programmes, seasonal influenza vaccines, conditions for compensation of technical orthopaedic measures, etc. are applied based on a person’s age. When human rights specialists investigate the purpose of establishing upper and lower age limits when for services, they often find that there are also other packages of criteria (usually health status indicators), beside calendar age, that describe the customer / patient as a category of the service recipient more objectively, and without discriminating them based on their age.

There are still cases in press when the representation of younger and older people is disproportionate and serving the cult of youth, i.e., images of older people are displayed less often or according to

a certain trend. For example, the news portal 15min<sup>8</sup> published an article on the results of the study about violence against older women, stating that the specific needs of 60 year old women suffering decades of domestic abuse are not met – these women are treated as if they were invisible. By adding images of obviously young people in the aforesaid article, journalists once again confirmed the invisibility of older women in the society.

There is still lack of attention towards proper data collection – older people are either not included<sup>9</sup> in studies or data is provided aggregated for a wide range of age groups (e.g., 60 or 75 years old and older people). Such approach limits the visibility of the older generation, distorts research results and certainly does not contribute to the improvement of welfare of older people, because: a) there is simply lack of data about them; b) data is provided summarized for a wider age group.

#### Sources:

1. The Law on Equal Opportunities of the Republic of Lithuania. *Valstybės žinios (Official Gazette)*, 2003-12-05, No. 114-5115. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.222522>
2. Human Rights Monitoring Institute. 2016. *The view of the society on the human rights situation in Lithuania. A Representative survey of the Lithuanian population*. Vilnius. [https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016\\_santrauka.pdf](https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016_santrauka.pdf)
3. Office of the Equal Opportunities Ombudsperson, 2017. Activity report of the Office of the Equal Opportunities Ombudsperson for 2016. Vilnius. <http://www.lygybe.lt/data/public/uploads/2017/03/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
4. Data of the Office of the Equal Opportunities Ombudsperson, provided on request.
5. Order on the Approval of the Action Plan for the Promotion of Non-Discrimination for 2017–2019, 15 May 2017. No. A1-250, <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f1e7b66ae890e1368363>
6. Office of the Equal Opportunities Ombudsperson, 2017. Activity report of the Office of the Equal Opportunities Ombudsperson for 2016. Vilnius, p. 3. <http://www.lygybe.lt/data/public/uploads/2017/03/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
7. Selli K, Czabanowska K, Danusevičienė L, Butkevičienė R, Jurkuvienė R, Overall J. Discrimination of elderly patients in the health care system of Lithuania. *SEEJPH* 2016, Vol. 6. DOI, <http://www.seejph.com/index.php/seejph/article/view/124>
8. Ilona Tamutienė, “Violence against women: why do they keep living with their abusive husbands for decades?”, 15min, 12 December 2017, <https://www.15min.lt/gyvenimas/naujiena/santykiai/prievarta-pries-moteris-kodel-jos-ilgus-desimtmečius-gyvena-su-smurtaujančiais-vyrais-1024-895534>
9. For example, publication of the Human Rights Monitoring Institute “The view of the society on the human rights situation in Lithuania. A representative survey of the Lithuanian population” (Vilnius, 2016; [https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016\\_santrauka.pdf](https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016_santrauka.pdf)) indicates the lower and upper age limits of respondents: “Lithuanians between 18 and 75 years old”. Does this mean that if a person is 76 or 96, then his opinion is no longer relevant?

## Sexual orientation discrimination

*Tomas Vytautas Raskevičius*

Lithuania placed 38th in 2016 and 39th in 2017 among 49 other European countries in the annual overview of LGBT human rights carried out by the international organization ILGA-Europe.<sup>1</sup> Its low position was due to the delay of politicians to adopt laws necessary to ensure the minimum legal protection required by the LGBT community. During the 26th session of the Universal Periodic Review by the United Nations Human Rights Council, Lithuania received as many as 22 thematic recommendations related to the rights of LGBT persons.<sup>2</sup> On the other hand, issues related to the assurance of LGBT human rights are being discussed in the Lithuanian society more actively, and a supportive atmosphere is gradually forming in the public. The third Baltic Pride march “For equality!” carried out in June of 2016 became the most successful public event of the LGBT community in the history of independent Lithuania – according to the organizers, more than 3000 participants marched in the parade.<sup>3</sup>

### *Legal (non-)recognition of same-sex families*

During the 2016-2017 period, legislators not only failed to discuss the possibility to legally protect same-sex families, but also purposefully sought to eliminate them from the definition of the term “family” established in the Constitution of the Republic of Lithuania and other laws. On 28 June 2016, after the first discussion, the national Parliament approved an amendment to the Constitution which is aimed at establishing that “family is created with marriage”.<sup>4</sup> Even though this voting allowed to initiate the procedure to amend the Constitution, voting on the amendment was not carried out in 2017. On 15 June 2017, the Parliament rejected the draft amendments to the Civil Code which proposed legitimizing forming gender neutral partnerships, in which registered partners could have been considered “family members”.<sup>5</sup> Even though 59 members of the Parliament voted “against” the draft law, as many as 29 members of parliament supported it. Thus the LGBT\* rights organization LGL described the voting as an “achievement”.<sup>6</sup>

On 30 May 2017, legislators approved the amendments of the Civil Code submitted by a group of “Lithuanian Farmers and Greens Union” members and two “conservatives”, which enable people who are living together or have joint property to sign “agreements on joint activity”.<sup>7</sup> Although this alternative is presented to the public as a possibility for same-sex couples to regulate mutual property relations, people who conclude “agreements on joint activity”

would not be considered “family members”. Such regulation when same-sex partners are not considered “family members” would discriminate same-sex families in the fields of legal proceedings (right not to testify against family members), patients’ rights (right to receive information about the health condition of family members), tax law (tax reliefs applied to family members) and others. Similarly, the term “family member” was also narrowed down by adopting amendments to the Law on Equal Opportunities<sup>8</sup> and the Law on Strengthening of the Family.<sup>9</sup> The latter law establishes the principle of “complementarity of man and woman” which is defined as the “foundation of a family” in the preamble to the law.

### *Right to the recognition of sexual identity and medical gender reassignment*

Even though the obligation to regulate the gender reassignment procedure was provided in the Civil Code when it came into force as early as in 2001, Lithuania remains one of the few European countries where the possibility for transgender persons to change their personal identification documents and receive necessary health care services are not regulated at all. In 2007, the European Court of Human Rights, in the case of *L. v. Lithuania*,<sup>10</sup> found that the non-existent gender reassignment procedure in Lithuania violates the right to the protection of private life established in the Convention. More than a decade later, this decision of the Court still remains unimplemented.

In March 2017, the Government obliged the Ministry of Health and Ministry of Justice to prepare appropriate draft legal acts. A working group operating in the Ministry of Justice prepared a draft law on the recognition of sexual identity.<sup>11</sup> The draft law provides that personal identification documents are changed under administrative procedures (i.e., by submitting a request to the civil registry office). By analogy, a working group operating in the Ministry of Health prepared a “Description of Procedure for the Diagnostics and Treatment of a Gender Identity Disorder (Transsexuality)”, which would create preconditions for transgender persons to receive specific health care services. Despite the progressive content of these projects, neither the law nor the description of procedure were adopted.

In spring 2017, national courts made two historic decisions obliging the civil registry offices to issue new personal identification documents to transgender persons without the mandatory surgical operation requirement. One of these decisions included the following court statement: “[s]ince the legislator has not yet adopted the application of the procedure of the Law on Gender Reassignment

[...], the court shall eliminate this gap in the law [...] by establishing that the term “gender reassignment” should not be associated only with surgical irreversible biologic sex change [...].”<sup>12</sup> In 2017, six transgender persons were able to change their personal identification documents in court without the mandatory surgical operation requirement.<sup>13</sup>

In November 2017, a draft law on the amendment of the Civil Code was registered in the Parliament, which aims to completely prohibit both legal and medical gender reassignment.<sup>14</sup> Representatives of non-governmental organizations representing the interests of transgender persons described this legislative initiative as an attempt to ignore “scientific, legal and social [...] reality of transgender persons.”<sup>15</sup>

### *Hate speech and crimes against the LGBT community*

Based on the data of an anonymous survey carried out by the LGL association in September of 2016, more than half (54 percent) of people in the LGBT community encountered cases of hate crime and (or) hate speech in Lithuania over the past 12 months.<sup>16</sup> And only 13 percent of victims reported these incidents to law enforcement authorities. Thus, it can be concluded that cases of hate crime and hate speech directed towards members of the LGBT community tend to be latent.

In September-November of 2016, non-governmental organizations, in cooperation with the Lithuanian Police School, trained more than 160 police officers in order to increase their ability to respond to hate incidents directed towards the LGBT community.<sup>17</sup> In September of 2017, the LGL association presented an online platform and mobile application “UNI-FORM” in order to encourage members of the local LGBT community to report possible criminal acts to the law enforcement authorities.<sup>18</sup>

In June 2017, the European Court of Human Rights informed the Government of the Republic of Lithuania that it will hear the case of *Beizaras and Levickas against Lithuania*<sup>19</sup> regarding the failure of law enforcement authorities to investigate cases of hate speech online. The applicants claim that the prosecutor’s office and the national courts failed to launch a pre-trial investigation regarding homophobic hate speech published on Facebook, thus discriminating the applicants because of their sexual orientation. According to the non-governmental organizations, this case reveals a systemic problem regarding the ineffective response of public authorities to hate crimes against the LGBT community.<sup>20</sup>

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However, next to the challenges related to ensuring the human rights of LGBT, there were also positive changes in Lithuania during the period of 2016-2017. In April of 2017, following information in the press that, during their lessons on religion, senior schoolchildren of Telšiai Žemaitė gymnasium were provided with biased information degrading the LGBT community,<sup>21</sup> there was a wave of discussions in the society which encouraged to critically evaluate the methodical measures associated with the sex education programme.<sup>22</sup> After public critique from non-governmental organizations,<sup>23</sup> in June 2017, the Ministry of Foreign Affairs reported that two members of the LGBT community who were victims of persecution in Chechnya were granted asylum in Lithuania.<sup>24</sup> In December of 2016, an application was submitted to the Constitutional Court to examine whether a residence permit enabling to live in Lithuania should be issued to one of the spouses on the grounds of same-sex marriage formalized abroad.<sup>25</sup>

Finally, during this period, the visibility of the LGBT community has also increased in the Lithuanian society. In November of 2017, the European Commission presented a video for the #EU4LGBTI social campaign about a young transgender man Tovaldas and challenges faced by the representatives of this social group in Lithuania.<sup>26</sup>

## Sources:

1. ILGA-Europe, Rainbow Europe. Country Ranking, 2017, <https://rainbow-europe.org/country-ranking#>.
2. Report of the Working Group of the United Nations Human Rights Council on the Second Universal Periodic Review of the Republic of Lithuania, 27 December 2016, [http://www.tm.lt/dok/UUPR%20ataskaita%20d%C4%97%20Lietuvos%20\(vertimas%20%C4%AF%20liet%20k \).pdf](http://www.tm.lt/dok/UUPR%20ataskaita%20d%C4%97%20Lietuvos%20(vertimas%20%C4%AF%20liet%20k ).pdf).
3. National LGBT Rights Organization LGL, “A record number of participants in the 2016 Baltic Pride parade in Vilnius”, *lgl.lt*, 22 June 2016, <http://www.lgl.lt/naujienos/baltic-pride-2016-eitynese-vilniaus-gedimino-prospektu-rekordinis-dalyviu-skaicius>.
4. Draft law amending Article 38 of the Constitution, No. XII9-2017(2), 17 June 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/0be20cb034841e6a222b0cd86c2adfc>.
5. Draft law amending Articles 2.18, 2.19, 3.3, 3.16, 3.140, 3.141, 3.143, 3.146, 3.147, 3.150, 3.155 of the Civil Code, and Articles 5.13, 6.588, 6.590, 6.744 and Chapter XV of Part VI of the Third Book of the Code, No. XIIIIP-781, 30 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/30c639a0451011e7b465dc41e35792b9>.
6. National LGBT Rights Organization LGL, “29 Lithuanian MPs Vote in Favor of Same-Sex Partnership as the Proposal Gets Rejected”, *lgl.lt*, 15 June 2017, <http://www.lgl.lt/en/?p=17529>.
7. Draft law amending Articles 6.589, 6.969, 6.971, 6.973, 6.978 of the Civil Code, No. XIIIIP-750, 23 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/2eed4fd03fbee11e7b85a254f4e1c3a7>.
8. Draft Law on Equal Opportunities No. IX-1826 amending the annex and articles 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, No. XI-IP-837(3), 5 July 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/07a2e18061811e7a53b83ca0142260e>.
9. Republic of Lithuania Law on Strengthening of the Family, No. XIII-700, 19 October 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/71039aa2b98511e7967a9645b537eb05?ifwid=j9ohgz7ip>.
10. Judgment of the ECtHR of 11 September 2007 in the case of *L. v. Lithuania*, application No. 27527/03, <http://hudoc.echr.coe.int/eng?i=001-82243>.
11. Republic of Lithuania Draft Law on the Recognition of Sexual Identity, Reg. No. 17-12650, 3 November 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c09111e7af36e75c0ac79247>.
12. Ruling of the District Court of Vilnius City of 2 May 2017 in civil case No. e2YT-5326-987/2017.
13. Dominykas Griezė, “A silent revolution: while Seimas procrastinates, judges legitimized gender reassignment in Lithuania”, *alfa.lt*, 12 December 2017, <https://www.alfa.lt/straipsnis/50242769/tyli-revolucija-kol-seimas-del-sia-teisejai-iteisino-lyties-keitima-lietuvoje>.
14. Draft law amending Article 2.27 of the Civil Code, No. XIIIIP-1327, 10 November 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/66fe0380c61711e782d4fd2c44cc67af?ifwid=-19syzwy9ez>.
15. National LGBT Rights Organization LGL, “Seimas will also prohibit sex change”, *lgl.lt*, 13 November 2017, <http://www.lgl.lt/naujienos/seimas-draus-ir-lyties-keitima>.
16. National LGBT Rights Organization LGL, “Epidemic of hate in Lithuania: to report or not to report?”, *lgl.lt*, 14 October 2017, <http://www.lgl.lt/naujienos/neapykantos-epidemija-lietuvoje-pranesti-ar-nepranesti>.
17. National LGBT Rights Organization LGL, “LGL presents a toolkit for law enforcement officials in contact with LGBT hate crimes victims”, *lgl.lt*, 31 October 2017, <http://www.lgl.lt/naujienos/lgl-pristato-praktini-vadova-dirbantiems-su-nuo-neapykantos-nukentejusiais-lgbt-asmenimis>.
18. National LGBT Rights Organization LGL, “UNI-FORM platform will encourage to report hate crimes”, *lgl.lt*, 19 September 2017, <http://www.lgl.lt/naujienos/uni-form-platforma-skatins-pranesti-apie-neapykantos-nusikaltimus>.
19. *Beizaras against Lithuania* petition submitted to the ECtHR on 13 October 2015, application No. 41288/15, <http://hudoc.echr.coe.int/eng?i=001-175326>.
20. National LGBT Rights Organization LGL, “Strasbourg Court accepts petition by Lithuanian same-sex couple accused of “eccentric behaviour”, *lgl.lt*, 13 July 2017, <http://www.lgl.lt/naujienos/strasburo-teismas-nagrines-ekscen-trisku-elgesiu-apkaltintu-homoseksualiu-vaikinu-is-lietuvs-skunda>.
21. Mindaugas Jackevičius, “Teacher in Telšiai talks about gay cannibalism and sex during lessons”, *delfi.lt*, 27 April 2017, <https://www.delfi.lt/news/daily/lithuania/telsiuose-mokytoja-per-pamokas-pasakoja-apie-geju-kanibalizma-ir-seksa.d?id=74479638>.
22. Office of the Equal Opportunities Ombudsman, “Sex education: outdated material encourages discrimination against the LGBT\* community”, *lygybe.lt*, 20 October 2017, <http://www.lygybe.lt/naujienos/lytiskumo-ugdy-mas-neatnaujinta-medziaga-kursto-diskriminuoti-lgbt-bendruomene/812>.
23. Tomas Vytautas Raskevičius, “Lithuania is not moved by the tears of homosexual Chechens?”, *delfi.lt*, 18 April 2017, <https://www.delfi.lt/news/ringas/lit/t-v-raskevicius-lietuvai-nerupi-homoseksualiu-cecenu-asaros.d?id=74386102>.
24. Joseph Patrick McCormick, “Lithuania grants asylum to two gay and bi Chechens fleeing ‘gay genocide’”, *pinknews.co.uk*, 18 May 2017, <http://www.pinknews.co.uk/2017/05/18/lithuania-grants-asylum-to-two-gay-and-bi-chechens-fleeing-gay-genocide>.
25. Ruling of the Supreme Administrative Court of Lithuania of 5 December 2016, administrative case No. eA-4175-624/2016, [http://www.lrkt.lt/~prasymai/22\\_2016.htm](http://www.lrkt.lt/~prasymai/22_2016.htm).
26. European Commission, “#EU4LGBTI stories - Tovaldas & Genovaitė”, 17 November 2017, <http://ec.europa.eu/avservices/video/player.cfm?ref=1142955&lg=Lt&sublg=none>.

## Gender discrimination

*Margarita Jankauskaitė*

In 2017, the European Institute for Gender Equality published a Gender Equality Index measuring how the government policy meets the needs of men and women. According to the latter, Lithuania remains one of EU's outsiders.<sup>1</sup> The peculiarities of the needs of women and men are not rated when the policy is formed at a national, municipal level. The law obliges the state and its municipal institutions to prepare and implement measures to ensure equal opportunities for women and men.<sup>2</sup> However, "employees do not have a clear perception of gender equality and do not know which measures should be implemented"<sup>3</sup>

The Measurement of Gender Equality research<sup>4</sup> has shown that ministries find it difficult to apply the following principles:<sup>5</sup> career opportunities are worse for women who are working there, they feel that they are valued less, on average, they are paid less, and are more exposed to harassment. There is also lack of gender equality in the area of values of the organization. Institutions' documents often lack principles of gender equality and no measures are implemented to promote them, even though this obligation is provided by the Law on Equal Opportunities.<sup>6</sup> Research has shown that only 12 percent of surveyed employees have, at some point, participated in trainings related to gender equality and (or) equal opportunities, which was organized and funded by the institution. According to the Office of the Equal Opportunities Ombudsperson, 31 percent of surveyed women and 17 percent of surveyed men gave a negative answer to the question whether the principle of gender equality and equal opportunities is one of the values of their institution.

Similar problems are also becoming evident at the local level. Municipal authorities are obliged to strive to achieve gender equality and ensure equal opportunities when preparing legislation, providing services or carrying out other activities. They must take measures to establish equal opportunities which should be provided in the strategic documents. However, this is done at a very slow pace due to lack of understanding which issues of gender inequality are relevant to the authority and how to solve them.<sup>7</sup> Lack of knowledge is also linked to doubts on whether the company will implement the obligation provided in the Labour Code, which obliges state and business enterprises with 50 or more employees to implement measures for promoting gender equality.<sup>8</sup> In all cases, failure to meet the requirements is explained by lack of knowledge, even though it is also related to lack of political will.

The same can also be said about the average pay gap between men and women,<sup>9</sup> or lower participation of women in the labour market, which are both related to the problem of a higher risk of poverty. Lower activity in the labour market or lower wages are often determined by lack of possibilities to balance work and family responsibilities. Therefore, it is important to expand the network of public kindergartens according to the procedures established by law, and encourage the involvement of men in child care, for example, by obliging real estate developers to build schools and kindergartens or by consolidating non-transferable parental leave for both parents. However, there is only an obligation to publish the average size of wages of men and women working in the company. This is important in order to monitor the pay gap, though not enough to eliminate it altogether.

There is also lack of a systemic approach towards gender equality in discussions on compulsory military service. It is stated that the latter might “have to be considered as a civil duty not only by men, but by women as well.” However, women are considered only due to “lack of military officers and enlisted personnel officers, and there might also be a lack of conscripts in the future”.<sup>10</sup> It seems that in absence of such shortage, gender equality issues would not even be mentioned in the military, because only quantitative indicators are considered, revealing an instrumental treatment of women.

Objectification remains the fundamental cause of violations of women’s rights, beginning with exclusion from public space and ending with gender based violence. Women are discouraged from engaging in professional activities due to pregnancy,<sup>11</sup> they are condemned for breastfeeding in public, comparing it to public defecation,<sup>12</sup> and women at work<sup>13</sup> (or job interviews<sup>14</sup>) often face harassment. Publication of these situations in the media, as well as harassment scandals that touched the area of politics and culture<sup>15</sup> revealed legislative loopholes and the duality of attitudes typical to society. The fact that more people are speaking out about inappropriate behaviour shows the growing intolerance for violations. However, situations when police refuses to launch an investigation, and the district prosecutor’s office and court reject victim’s complaint regarding the police actions, show lack of proper evaluation of sexual offenses.<sup>16</sup> Surveys reveal that the Lithuanian society tends to blame women who are victims of abuse,<sup>17</sup> and this makes it difficult for them to seek help.

Certain law amendments were aimed at strengthening the support for women: private prosecution procedures in sexual harassment cases were replaced with regular procedure in the Code of Criminal Procedure,<sup>18</sup> while the Law on Equal Opportunities was

supplemented with standards<sup>19</sup> that defend persons who are looking for a job from sexual harassment. The national Parliament did not ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence, which provides complex measures for eliminating this problem, due to the lack of political will. The will which, however, is always present when aiming to limit freedom of choice of women concerning abortions: the Parliament postponed the reading of the Law on the Protection of Life in the Prenatal Phase, which prohibits abortions, excluding certain exceptions, until the spring session of 2018.<sup>20</sup>

## Sources:

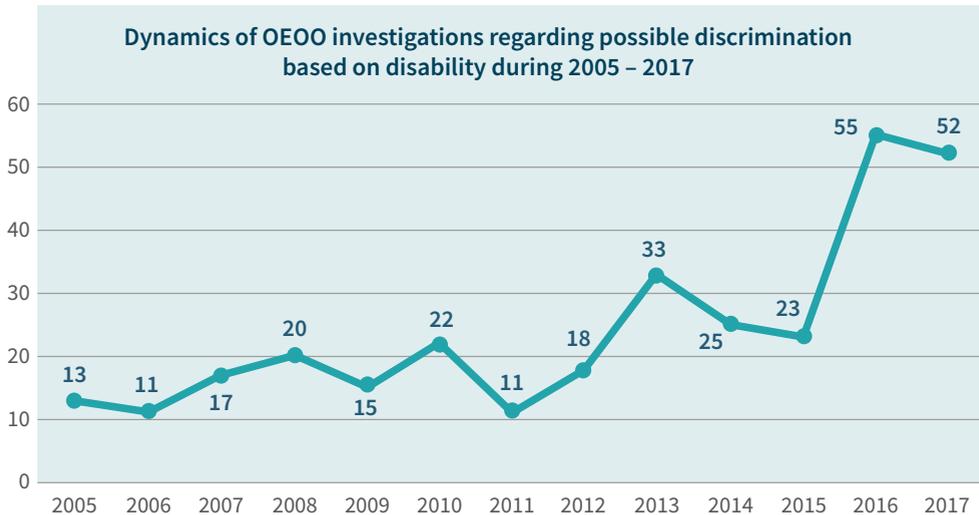
1. "The latest gender equality index: the situation in Lithuania is slowly improving", *Mano teisės*, 16 October 2017, <http://manoteises.lt/straipsnis/skelbiamas-lyciu-lygybes-indeksas-lietuvoje-situacija-gereja-letai/>
2. The Law on Equal Opportunities of the Republic of Lithuania. 18 November 2003. IX-1826" [https://www.e-tar.lt/portal/lt/legalAct/TAR\\_0CC6CB2A9E42/TYmbevkrZH](https://www.e-tar.lt/portal/lt/legalAct/TAR_0CC6CB2A9E42/TYmbevkrZH)
3. "Painful reality: employers still do not understand gender equality", *lrytas.lt*, 13 September 2017, <http://verslas.lrytas.lt/rinkos-pulsas/2017/09/13/news/skaudi-realybe-darbdaviai-iki-siol-nesupranta-kas-yra-lyciu-lygybe-2479405/>
4. Measurement of Gender Equality research, Donatas Paulauskas, 2017. 820 employees from ten ministries were surveyed during the research, <http://www.lygybe.lt/lt/lyciu-lygybes-liniuote/781>
5. Report of member of the Seimas M. Navickienė: presentation of the Measurement of Gender Equality research in Seimas, 13 September 2017, [http://www.lrs.lt/sip/portal.show?p\\_r=119&p\\_k=1&p\\_t=176234&data\\_nuo=2017-09-08&data\\_iki=2017-09-08&printVersion=1](http://www.lrs.lt/sip/portal.show?p_r=119&p_k=1&p_t=176234&data_nuo=2017-09-08&data_iki=2017-09-08&printVersion=1)
6. "Office of the Equal Opportunities Ombudsman: ministries have more women employees, but conditions are better for men", 15min.lt, 6 September 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/lygiu-galimybiu-kontrolieriaus-tarnyba-ministerijose-motery-daugiau-taciau-vyrams-salygos-geresnes-56-849526>
7. "Municipalities pay attention to gender equality", *lrytas.lt*, 27 April 2017, <http://lietuvosdiena.lrytas.lt/aktualijos/2017/04/27/news/savivaldybese-demesys-lyciu-lygybei-973294/>
8. "Lithuanian companies: traditional education is blamed for gender inequality at work", *15min.lt*, 13 June 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/lietuvos-imones-del-lyciu-nelygybes-darbovietėje-kaltas-tradicinis-svietimas-56-811650>
9. "The average wage of women in Lithuania continues to be lower than the wage of men", BNS, 24 November 2017, <http://www.bns.lt/topic/1912/news/54343879/>
10. Vaidas Saldžiūnas, "R. Karoblis: general conscription of men only is considered to be a form of discrimination", *delfi.lt*, 11 September 2017, <http://www.lrt.lt/naujienos/lietuvoje/2/185905/r-karoblis-visuotinis-saukimas-tik-vai-kinams-tam-tikra-diskriminacija>
11. "Baiba Skurstene, who is expecting a baby, is faced with discrimination: "They cancelled my concert because I am pregnant", 15min., 7 July 2017, <https://www.15min.lt/vardai/naujiena/lietuva/klientai-atsisake-baibos-skurstenes-koncerto-nes-ji-nescia-1050-823040> "Povilas Urbšys will have to apologize", *Lietuvos Žinios*, 22 November 2017, <http://lzinios.lt/lzinios/Lietuva/povilas-urbšys-tures-atsiprasyti/254859>
12. "Etiquette expert A. Lydeka compares breastfeeding in public to defecation: how did women respond", *15min.*, 13 September 2017, <https://www.15min.lt/gyvenimas/naujiena/seima/etiketo-zinovas-a-lydeka-zindyma-viesoje-vietoje-prilygino-tustinimuisi-ka-jam-atsove-moterys-1026-852966>
13. "Actress harassed by the head of Panevėžys theater speaks out about her ordeal", *Sekundė*, 27 June 2017, <https://www.delfi.lt/news/daily/lithuania/panevezio-teatro-vadovo-priekabes-patyrusi-aktore-prabilo-apie-sukretima.d?id=75058852>
14. Mindaugas Jackevičius, "Member of the Seimas K. Pūkas faces accusations of sexual harassment", *Info TV*, 8 March 2017, <https://www.delfi.lt/news/daily/lithuania/seimo-nariui-k-pukui-merginu-kaltinimai-seksualiniu-priekabiavimu.d?id=73983328>
15. "Director Š. Bartas accused of sexual harassment", *Diena.lt*. 11 November 2017, <http://www.diena.lt/naujienos/lietuva/salies-pulsas/reziserius-s-bartas-kaltinamas-seksualiniu-priekabiavimu-837102>
16. "Former head of J.Miltinis Theatre to be tried for forced sexual intercourse", *BNS*, 18 September 2017, <http://lsveikata.lt/aktualijos/buves-jmiltinio-teatro-vadovas-bus-teisiamas-uz-vertima-lytiskai-santykiauti-7201>
17. "Half of the Lithuanian population believes that women are to blame for violence against them", *Mano Teisės*, 28 November 2017, <http://manoteises.lt/straipsnis/puse-lietuvos-gyventoju-tiki-kad-moterys-pacios-kaltos-del-smurto-pries-jas/>
18. Law on the amendment of Articles 3, 22, 57, 58, 167, 256, 293, 312, 317, 320, 322, 324 of the Criminal Code of the Republic of Lithuania, and the recognition of Article 34 and Chapter XXX of the Criminal Code as invalid. 11 July 2017, No. XIII-626, <https://www.e-tar.lt/portal/lt/legalAct/4286340070771e7827cd63159af616c>
19. Law on the Amendment of Article 7 of the Law on Equal Opportunities of the Republic of Lithuania No. IX-1826. 11 May 2017, No. XIII-365, <https://www.e-tar.lt/portal/lt/legalAct/a8951d4040771e7b66ae890e1368363>
20. "Draft law on the prohibition of abortion is postponed until the spring session", *15min.*, 30 December 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/abortus-draudziantis-projektas-keliamas-pavasario-sesijai-56-904096>

## Disability discrimination

*Ugnė Grigaitė*

### *Data of the Office of the Equal Opportunities Ombudsperson*

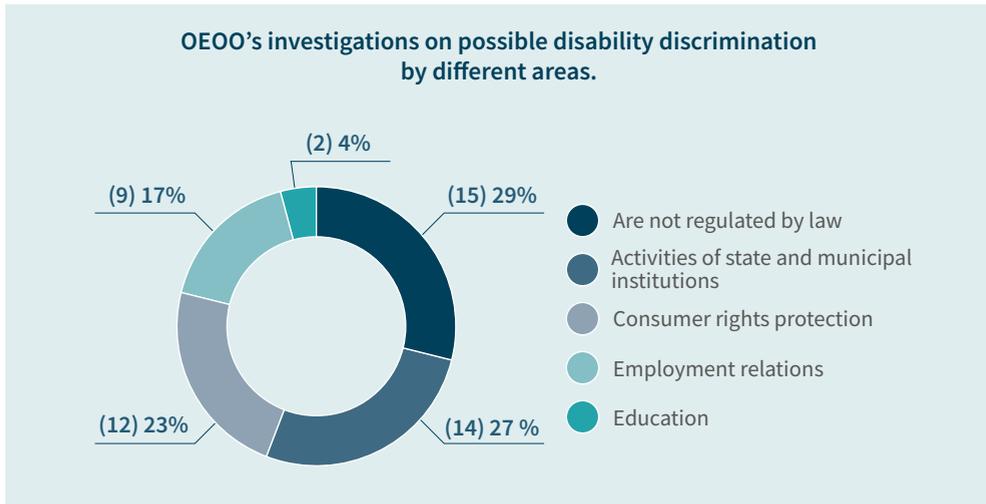
According to the 2016 activity report of the Office of the Equal Opportunities Ombudsperson (OEOO)<sup>1</sup>, as many as 55 investigations were carried out in 2016 regarding possible discrimination based on disability. This comprised nearly 17% of all the investigations carried out by the OEOO during that year. 51 out of these 55 investigations were carried out based on received complaints regarding disability discrimination. It is the highest number of such complaints received by the OEOO over the past 12 years. The number of complaints on possible disability discrimination increased significantly in 2016 and remained high in 2017.<sup>2</sup>



People who contacted the OEOO in 2016 were comprised of: 51% men, 22% women, 20% non-governmental organizations and other legal entities, while 7% of investigations were initiated by the Ombudsperson. In 2016, most investigations were carried out on possible violations in the following fields: consumer rights protection (23), activities of state and municipal institutions (14), and restriction of possibilities of disabled persons to acquire goods or services.

In 2017, the OEOO carried out 49 investigations on received complaints regarding possible discrimination based on disability, and 3 additional investigations were launched on the initiative of the Ombudsperson. In 2017, most investigations were carried out on possible violations in activities of state and municipal institutions (14)

and in consumer rights protection (12). 9 – in employment relations, and 2 investigations – in education. The basis 15 received complaints was not identified. 21 complaints were submitted by women, 22 – by men, and 6 – by legal entities. In 2017, OEOO provided 30 conclusions to the received inquiries, and consulted 105 persons regarding possible restriction of rights: 89 out of the latter were consulted by phone, and 16 were consulted in person after arriving to the OEOO.



It should be noted that the implementation of the provisions of the United Nations Convention on the Rights of Persons with Disabilities (the Convention) with regard to ensuring equal opportunities is supervised in Lithuania by the OEOO.

Investigations carried out by the OEOO have found that people with disabilities were not able to fully and effectively participate in the elections of national Parliament, because they were not provided with necessary conditions. For example, only slightly more than a third (699 out of 1996) of the voting facilities of polling districts were adapted to the needs of people with disabilities. This conflicts with the provisions of the Convention which had to be implemented in Lithuania by 2010. Following the recommendation of the OEOO, the Ministry of Social Security and Labour formed an interinstitutional working group for the preparation of draft law related to the proper implementation of the Convention.

### *First report Lithuania to the United Nations Committee on the Rights of Persons with Disabilities*

In spring of 2016, in Geneva, the Republic of Lithuania had to provide its first report to the United Nations Committee on the Rights

of Persons with Disabilities (the Committee) on the implementation of the Convention.<sup>3</sup> Both representatives of the responsible ministries of Lithuania, and non-governmental organizations reported to the Committee. A delegation from the NGO Lithuanian Disability Forum presented its alternative report in Geneva, and provided its questions to representatives of the Lithuanian State Delegation.

The Alternative Report prepared by the Lithuanian Disability Forum and its member organizations<sup>4</sup> raised key issues related to the discrimination of people with disabilities, such as low quality adaptation of housing and transport inaccessibility – there are no long distance or international buses adapted for the needs of people with disabilities in the country. Also, the infrastructure of transport stations is not adapted for persons with disabilities, and there are no prepared and approved internal rules of procedure on providing services to people with disabilities.

Another problematic area is the legal institute of legal capacity and determination of incapacity. Typically, incapacity is determined by the court exceptionally for persons with mental or intellectual disabilities, and this creates preconditions for the discrimination of these people.

The Lithuanian Disability Forum highlighted the fact that it is still not possible for people with intellectual disabilities to participate in employment programmes for persons with disabilities implemented in Lithuania, since there is no available mechanism for the practical implementation of these programmes. Based on the best practices of other countries, the Lithuanian Disability Forum points out that this situation could be resolved with the implementation of new services, such as, for example, personal work assistants.

The United Nations Committee's on the Rights of Persons with Disabilities recommendations to Lithuania express concern regarding the fact that specific measures to protect women and girls with disabilities from discrimination are not mentioned in the action plan for the implementation of the National Programme on Equal Opportunities for Women and Men 2015-2021. The Committee recommended that Lithuania adjust its action plan by paying more attention to this particularly vulnerable group.

The Committee also recommended to strengthen the protection of people with disabilities against violence, exploitation and abuse. The recommendations also highlighted the need to prepare health care workers and other specialists to perform their functions according to the disability model and perspective based on the human rights principles.

The Committee also recommended for Lithuania to take all the necessary legal and administrative measures which would promote the implementation of proper conditions for people with disabilities in all public and private sectors, and which would acknowledge the fact that lack of appropriate conditions and adaptation of the environment is a form of disability discrimination.<sup>5</sup>

### *Amendments to the Criminal Code*

In May of 2017, 101 out of 102 voting members of the Parliament agreed and adopted amendments to the Criminal Code, which prohibit the discrimination of persons based on their age and disability. This means that disability became separate and independent ground for discrimination, contempt, inciting to hatred or violence.<sup>6</sup> The court can impose community service, fines, restriction of liberty, arrest or imprisonment for up to three years for actions aimed at preventing a group of people or a person belonging to such a group to participate equally with others in political, economic, social, cultural, work or other activities, or restrict the rights and freedoms of such a group of people or a person belonging to such a group, due to disability.<sup>7</sup>

### *Discrimination of persons with mental health disorders*

In June 2017, the OEOO investigated a complaint regarding the advertisement of training for businesses in Vilnius City Mental Health Centre. The training was carried out by using patients of the mental health centre. When promoting their training programme, organizers of the “Personal Growth Groups” published the following information on their website: “If you learn to establish a connection and come to an agreement with a person who has severe mental and physical disability, and who responds sensitively to insincerity, fear, distrust and attempts to please, you can use the same skills when communicating with difficult customers or when managing a large team”.<sup>8</sup>

The OEOO found that “the indication that disabled people are unequal communication partners, thus communication with them is complicated and exceptional, just like communication with difficult customers, can be seen as a humiliation of persons with disabilities, and formation of public opinion that a disabled person is inferior to other members of the society”. The OEOO stated that such advertising was humiliating and degrading for persons with disabilities and issued a warning for the violation to the project manager and lecturer of the “Personal Growth Groups” training programme.

### *Discrimination in job advertisements*

In December 2016, an invitation for applications to the position of Director of the Directorate of Pavilniai and Verkiiai Regional Parks was announced. One of the requirements for potential candidates was the ability to ride a bicycle. The OEOO found that the mayor of Vilnius discriminated people with disabilities with this job advertisement.

The OEOO appealed the mayor's decree inviting the said applications to court, as discriminatory against people with disabilities in the field of employment relations, and proposed to remove the discriminatory requirement from the description of the position approved under the decree. On 4 October 2017, Vilnius Regional Administrative Court announced that the requirement to be able to ride a bicycle was not discriminatory, and, according to the procedures established by law, the Office of the Equal Opportunities Ombudsperson was not supposed to be able to apply to court at all:

“The case included circumstances related to the execution of appropriate procedural steps and applicable legal regulation which leads to the conclusion that, by examining the complaint and failing to make a decision provided in the Law on Equal Opportunities regarding appealing to the court with an abstract petition to examine the normative administrative act, the Office of the Equal Opportunities Ombudsperson did not follow the procedures established by law”<sup>9</sup>

#### Sources:

1. Office of the Equal Opportunities Ombudsperson, 2016 Activity Report, 2017, pages 36-40, figure 29, <http://www.lygybe.lt/data/public/uploads/2017/03/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
2. Office of the Equal Opportunities Ombudsperson, 2017 Activity Report, 2018, pages 28-32, figure 29, <http://lygybe.lt/data/public/uploads/2018/03/lygiu-galimybiu-kontrolieriaus-2017-m.-veiklos-ataskaita.pdf>
3. First review of the Republic of Lithuania by the United Nations Committee on the Rights of Persons with Disabilities regarding the implementation of the United Nations Convention on the Rights of Persons with Disabilities, 6-7 April 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18546&LangID=E>
4. Lithuanian Disability Forum, “Alternative report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities in Lithuania”, 2016, [http://www.lnf.lt/images/Dokumentai/Ataskaitos/IT\\_Neigaliuju\\_teisiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.lnf.lt/images/Dokumentai/Ataskaitos/IT_Neigaliuju_teisiu_konvencijos_Alternatyvioji_ataskaita.pdf)
5. Recommendations of the United Nations Committee on the Rights of Persons with Disabilities for Lithuania, 2016, CRPD/C/LTU/CO/1: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/LTU/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/LTU/CO/1&Lang=En)
6. “Seimas prohibits discrimination based on age and disability”, 4 May 2017, <https://www.delfi.lt/news/daily/lithuania/seimas-uzdraude-diskriminuoti-del-amziaus-ir-neigalumo.d?id=74540908>
7. Law amending Articles 169, 170 and 170-1 of the Criminal Code, No. XIII-343, 4 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/773d272234b91e79f4996496b137f39>
8. Liepa Želienė, “Inappropriate advertising of the Personal Growth Groups receives a warning from the Office of the Equal Opportunities Ombudsperson”, 15min.lt, 3 July 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/lygiu-galimybiu-kontrolieriaus-tarnyba-del-netinkamos-reklamos-ispejo-asmenybes-augimo-grupes-56-820960>
9. “The requirement for the Director of the Regional Park to be able to ride a bicycle was not discriminatory”, Irytas.lt, 5 October 2017, <https://lietuvosdiena.lrytas.lt/aktualijos/2017/10/05/news/reikalavimas-regioninio-parko-va-dovui-vaziuoti-dviraciui-2859259/>

## Religious discrimination

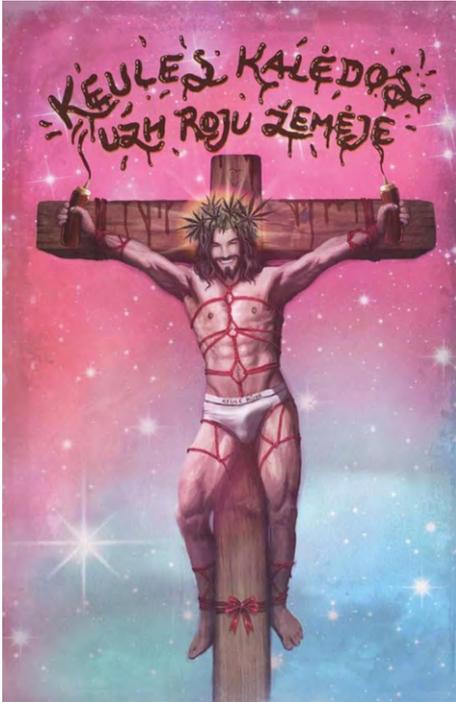
*Milda Ališauskienė*

Scientific literature states that religious discrimination is expressed with the application of restrictions on religious practices or institutions of religious minorities, which are not applied to the religion of the majority.<sup>1</sup> The phenomenon of religion includes both institutionalized and uninstitutionalized religions, as well as non-believers and their movements. The laws of the Republic of Lithuania establish that all persons are equal, regardless of their religion, beliefs or views. It is prohibited to restrict their rights or freedoms.<sup>2</sup> Religious communities in Lithuania are divided into traditional and other (non-traditional) religious communities and societies, and there is also a third category – state-recognized religious communities.<sup>3</sup>

According to the data from the survey of members of religious minorities in Lithuania, most respondents felt discriminated because of their religion. Discrimination was often expressed as stigmatization and restriction of individual or community activities. Respondents stated that the Roman Catholic Church, the media, and the laws, i.e., differentiation of religious communities into traditional and other, were the main causes of religious discrimination. Research data also revealed that the respondents tended to avoid reporting their experiences of discrimination and consulting with public authorities about it.<sup>4</sup>

In 2016, the Office of the Equal Opportunities Ombudsperson received 12 complaints about discrimination in the field of religion, faith and beliefs, 2 out of which were based on religion. Most of the received complaints were based on discrimination in the field of the protection of consumer rights.<sup>5</sup> It should be noted that the Office of the Equal Opportunities Ombudsperson receives very few complaints regarding religion and faith.

In 2016, the Equal Opportunities Ombudsperson made a decision regarding the complaint of the Chairman of Kėdainiai Krishna Consciousness Religious Community, stating that, after the renewal of compulsory military service, members of this community, which must follow *Ahimsa* because of their faith, i.e. the principle of non-violence and follow a vegetarian diet, will also be called to serve. Therefore, according to the complainant, it is practically impossible for members of this community to serve in the Lithuanian military under current conditions.<sup>6</sup> The Equal Opportunities Ombudsperson decided that the complaint was valid and obliged the Ministry of National Defence to take measures to ensure an option of a vegetarian diet for soldiers.



*Image from Keulė Rūkė post on Facebook*

In 2017, the Equal Opportunities Ombudsperson investigated several other complaints regarding diet related to religion and beliefs in Lithuanian prisons. One complaint was submitted by a vegan addressing the lack of dietary options in Kybartai Correctional House,<sup>7</sup> while another complaint was from a Muslim person who pointed out the restrictions of possibilities to follow a religion-based diet in Lukiškės Remand Prison.<sup>8</sup> In the first case, the Equal Opportunities Ombudsperson proposed the Prison Department to include vegans into the list of subjects kept in pre-trial detention and imprisonment facilities for whom food is provided and a menu is formed. In the second case, the Ombudsperson decided to terminate the investigation, because the complainant also appealed to court.

Discrimination of the clergy of the so-called non-traditional religious communities regarding exemption from military service, compared to the clergy of tradi-

tional religious communities,<sup>9</sup> is another matter that was addressed in Lithuanian religious life in 2016-2017. In 2016, a clergyman from the Jehovah's Witnesses Community appealed to the administrative court regarding religious discrimination. According to the applicant, the Military Conscription Law states<sup>10</sup> that the clergy of the state-recognized traditional Lithuanian religious communities and societies are automatically exempt from compulsory military service. The Constitutional Court decided that the aforesaid provision of the law conflicts with the Constitution and should be changed, while compulsory military service should be mandatory for the clergy of all religious communities.

In 2016-2017, reports about the persecution of Christians in Lithuania and elsewhere continued to appear in the media.<sup>11</sup> Such reports, if they do not refer to events that happen in current war zones, should be regarded as attempts of the dominant Christian churches to present the changing position of their individuals and communities in the society (for example, loss of political influence) as discriminatory by exploiting human rights language.

In September 2017, the media reported that a theologian was hired by the State Border Guard Service to consult its employees on spiritual matters.<sup>12</sup> This situation can be regarded as the waning of institutional

boundaries between religion and the state, and discrimination may be possible against the SBGS employees who follow a different religion or faith, because no other employees were hired to provide consultations on spiritual matters of other religions or beliefs.

In October – November of 2017, another case was discussed publicly in Lithuania: the State Consumer Rights Protection Authority imposed a fine on *Keulė Rūkė* restaurant for publishing an advertisement which supposedly hurt the feelings of believers.<sup>13</sup> It should be noted that, after receiving an individual complaint against the restaurant, the State Consumer Rights Protection Authority contacted the Lithuanian Bishops' Conference for an expert opinion, based on which a fine was imposed. Such choice of expert opinion by the State Consumer Rights Protection Authority should be considered an amalgamation of the prevailing religion and the state, as well as disregard of secularism, i.e., the principle of separation of state and religion.

#### Sources:

1. Fox, Jonathan. 2013. *An Introduction to Religion and Politics: Theory and Practice*. Oxon: Routledge.
2. Law on Religious Communities and Societies. 1995-10-04 No. I-1057. Internet access: [https://www.e-tar.lt/portal/lt/legalAct/TAR.B4DBBD7C388A/TAIS\\_363706](https://www.e-tar.lt/portal/lt/legalAct/TAR.B4DBBD7C388A/TAIS_363706)
3. Ibid.
4. Ališauskienė, Milda, Glodenis, Donatas (2013). *Challenges for religious diversity in Lithuania: the perspective of religious minorities*. Vilnius: New Religions Research and Information Centre.
5. Activity Report of the Equal Opportunities Ombudsperson for 2016. Internet access: <http://www.lygybe.lt/data/public/uploads/2017/07/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
6. Certificate of the Equal Opportunities Ombudsperson of the Republic of Lithuania regarding possible discrimination based on religion and beliefs in permanent initial compulsory military service. 2016-01-16. Internet access: <http://www.lygybe.lt/data/public/uploads/2016/01/pazyma-del-galimos-diskriminacijos-religijos-ir-isisikini-mu-pagrindu-atliekant-nuolatine-pradine-privalomaja-karo-taryba.pdf>
7. Decision of the Equal Opportunities Ombudsperson of the Republic of Lithuania “On the investigation of possible discrimination based on beliefs when determining diet options for persons held in pre-trial detention and imprisonment facilities”, 2017-03-31 No. (17)sn-45)sp-46. Internet access: <http://www.lygybe.lt/data/public/uploads/2017/04/sprendimas-kybartai-46.pdf>
8. Decision of the Equal Opportunities Ombudsperson of the Republic of Lithuania “On the investigation of possible discrimination based on religion when providing catering services in prisons”, 2017-08-28 No. (17)sn-120)sp-68. Internet access: <http://www.lygybe.lt/data/public/uploads/2017/08/nr.-17sn-120sp-68.pdf>
9. Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of the provisions of the Republic of Lithuania Military Conscription Law with the Constitution of the Republic of Lithuania. 4 July 2017 No. KT9-N7/2017. Internet access: <http://lrkt.lt/lt/teismo-aktai/paieska/135/ta1728/content>
10. Version in force at the time of the application: Military Conscription Law, 23 June 2011, No. XI-1508, Art. 3 (7). Internet access: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.402806>
11. “OSCE conference on discrimination against Christians: freedom of religion – the basis of all freedoms”. 2016-12-19 Internet access: <http://www.bernardinai.lt/straipsnis/2016-12-19-esbo-konferencija-apie-krikscioniu-diskriminacija-religijos-laisve-visu-laisviu-pagrindas/152950>
12. Jackevičius, M. The increasing army of civil servants. 2017-09-05 Delfi.lt. Internet access: <https://www.delfi.lt/news/daily/lithuania/kaip-dideja-tarnautoju-armija-vs-at-idarbino-teologa.d?id=75689597>
13. Ruling of the State Consumer Rights Protection Authority of 2017-10-05, No. 12R-40 On UAB “Kiaulių valdovai” violation of the Law on Advertising. Internet access: [http://www.vvat.lt/lt/tarnybos\\_komisijos\\_nutarimai/lietu-vos-respublikos-reklamos-hlya/2017\\_5467.html?backlink=%252F%252Fpaieska%252Fresults%252Fp0.html](http://www.vvat.lt/lt/tarnybos_komisijos_nutarimai/lietu-vos-respublikos-reklamos-hlya/2017_5467.html?backlink=%252F%252Fpaieska%252Fresults%252Fp0.html)

## Nationality and ethnicity discrimination

*Akvilė Kriščiūnaitė, Karolis Žibas*

In 2016, the Office of the Equal Opportunities Ombudsman initiated 32 investigations, received 28 inquiries and provided 17 consultations by phone on possible discrimination based on nationality, language, race, origin, and ethnicity. The number of complaints based on the latter was gradually increasing since 2013 and reached a record high in 2016. Complainants usually pointed out possible discrimination in employment relations (34%), consumer rights and protection (22%), and education and science (19%).<sup>1</sup>

Despite the increased number of reports on possible violations of human rights, nationality and ethnicity discrimination remains one of the most common forms of discrimination in Lithuania. According to official statistics, national minorities were the most common victims of hate crimes in 2016. A total of 15 of such cases were registered, but it is likely that the scale of hate crimes based on nationality and ethnicity is significantly higher.<sup>2</sup> In 2016, the United Nations Committee on the Elimination of Racial Discrimination<sup>3</sup> and the European Commission against Racism and Intolerance (ECRI)<sup>4</sup> acknowledged that registration of hate crimes in Lithuania is flawed and does not reflect the true statistics.<sup>5</sup>

Negative public attitudes towards national minorities are also reflected in public surveys' results. Even though studies carried out in 2016 and 2017 revealed that more than half of the respondents stated that their opinion on Poles, Ukrainians and Belarusians has improved significantly, most of the respondents confessed that they would not like to work with or live near people of nationalities that are perceived as culturally more distant: Roma, Chechens and Syrians.<sup>6</sup> Despite their clear hostility towards people of these nationalities, Lithuanians believe that national minorities face discrimination relatively rarely. Respondents of another survey of public attitudes in 2016 believed that national minorities and children are the least discriminated social groups.<sup>7</sup> Survey results revealed that, in addition to the negative views of the society towards Roma, Chechens and Syrians, there is also a lack of information on discrimination faced by these ethnic groups.

Roma continue to remain the most negatively viewed and the most discriminated ethnic group. Surveys of public attitudes carried out in 2016 and 2017 revealed that more than 60% of surveyed Lithuanians would not like to have Roma as their neighbours or rent out their homes to them, and almost half of the respondents would not like to work together with a Roma person.<sup>8</sup>

Negative attitudes against Roma continue to be passed on through Lithuanian folklore elements. In February of 2017, there was a discussion in the media and social networks on the controversy of dressing up as Roma and Jews during the festival Užgavėnės, which highlighted popular public stereotypes and unwillingness of Lithuanians to abandon traditions that encourage discrimination. The latter topic was touched by Vilna Gaon State Jewish Museum that organized a public discussion on «the image of foreigners in the Lithuanian traditions of Užgavėnės», during which the problems of such Užgavėnės characters were discussed.<sup>9</sup>

The Ministry of Culture prepared a programme for the integration of Roma into Lithuanian society for 2015-2020 which is aimed at increasing public tolerance towards the Roma minority, encouraging inclusion of Roma in public life, as well as encouraging the awareness of Roma as a community, and decreasing the discrimination and social exclusion of Roma.<sup>10</sup> The set objectives and measures are commendable, and the role of municipalities in Roma integration was defined for the first time. An important measure was included in the plan – a project called “Local Roma platforms – the road toward communication with municipalities”.<sup>11</sup> The Department of National Minorities has already initiated the implementation of this project: working groups of municipal employees and representatives of the Roma community are being prepared and will aim to identify the best ways to integrate Roma on a municipal level.<sup>12</sup>

On the other hand, the recommendatory nature of the document and failure to provide funds from the state budget which are necessary to execute integration in municipalities makes it difficult to implement the programme for the integration of Roma into Lithuanian society.<sup>13</sup>

The social and economic indicators of Roma continue to remain below the country's average. Living space per Roma person is twice smaller than the national average and smaller than the minimum space determined by the state. Only less than one third of Roma families own the home that they live in, therefore they are constantly threatened by the demolition of their housing and eviction initiated by the state.<sup>14</sup>

In April 2016, Vilnius municipality approved the programme for the integration of Roma community into Lithuanian society for 2016-2019, aimed at encouraging the integration of Roma into the educational system, decreasing social exclusion, decreasing drug use in Roma settlements and surrounding areas, as well as improving living conditions for Roma and ensuring the effectiveness of integration measures.<sup>15</sup> It is commendable that the opinions representative

of Roma community and non-governmental organizations, working with the Roma, were considered when preparing the programme. The programme pointed out the planned results, institutions responsible for the measures and the targeted funding of measures.<sup>16</sup>

The plan also provides measures intended to solve the Roma housing problem. The municipality shall undertake to compensate part of the housing lease for families who want to move out of Roma settlements. However, this plan also has flaws, because it does not provide the mediation of municipalities when leasing housing. Due to the society's negative view towards Roma, it is difficult for them to find a landlord, thus partial compensation is not necessarily an effective measure for solving housing problems.<sup>17</sup>

The average life expectancy of Roma remains lower than the average life expectancy of Lithuanians. Even though most Roma have compulsory health insurance, they often avoid going to the doctor because they are afraid of hospitals and treatment, or simply have no time when looking after their household, while poverty and poor living conditions determine the spread of chronic diseases in Roma communities. In the future, it is important to ensure the implementation of health literacy education for the Roma community and the improvement of medical knowledge of the needs of Roma patients.<sup>18</sup>

The average education and standard of living among Roma also fall below the country's average. The income of Roma people is inconsistent, therefore the risk of poverty is several times higher for them. Even though, based on the pupil register data of 2016, the number of Roma pupils at education levels higher than primary education is increasing noticeably, general level of education among Roma is below the country's average.<sup>19</sup> It is important to ensure that Roma children are able to arrive to school, and to ensure cooperation with the parents of these children in order to improve the participation of Roma children in pre-school and primary education. The possibility for Roma parents to bring their children to school is limited, therefore it is necessary to provide them with transportation to school and back.<sup>20</sup>

After the recommendations of international and Lithuanian non-governmental organizations to establish an institution responsible for the implementation of the national minorities' policy, the Department of National Minorities was established in 2015, under a resolution of the Government. Its activities include cooperation with national minorities and non-governmental organizations, municipalities, the academic community, and international organizations, as well as dissemination of the culture of national minorities, organization of Roma empowerment and skill development, and

conducting research.<sup>21</sup> To encourage persons who are interested in national minorities and promote tolerance and international dialogue, the Department of National Minorities established a prize for the best academic work on the topic of national minorities in Lithuania<sup>22</sup>, as well as an award “For Achievements”<sup>23</sup>, and undertook to organize a photo contest.<sup>24</sup>

However, despite the establishment and initiatives of the Department of National Minorities, the problems of national minorities remain relatively peripheral. There is lack of a systemic state policy which would not only recommend, but also oblige and fund the municipal integration measures.

#### Sources:

1. Office of the Equal Opportunities Ombudsman, 2016 Activity Report, 2017, p. 24, <http://www.lygybe.lt/data-public/uploads/2017/03/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
2. Information Technology and Communications Department under the Ministry of the Interior, <http://old.ird.lt/statistines-ataskaitos/?lang=lt&rt=1>
3. The United Nations Committee on the Elimination of Racial Discrimination, in the closing remarks on the sixth, seventh and eighth periodic reports of Lithuania according to the United Nations International Convention on the Elimination of all forms of Racial Discrimination.
4. The European Commission against Racism and Intolerance, “ECRI report on Lithuania. Fifth Monitoring Cycle”, 18 March 2016, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Lithuania/LTU-CbC-V-2016-020-LIT.pdf>
5. Human Rights Monitoring Institute, “Response to hate crimes: review of the situation in Lithuania”, 2017, p. 15, <https://hrmi.lt/wp-content/uploads/2017/12/Atsakas-%C4%AF-neapykantos-nusikaltimus-2017-1.pdf>
6. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 63.
7. Human Rights Monitoring Institute, “The view of the society on the human rights situation in Lithuania”, 2016, p. 12, [https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016\\_santrauka.pdf](https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016_santrauka.pdf)
8. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 63.
9. Izabelė Švaraitė, “Making fun of Roma and Jews during Užgavėnės is an outdated tradition”, Human Rights Portal, 28 February 2017, <http://manoteises.lt/straipsnis/saipytis-romu-bei-zydu-atgyvenusi-uzgaveniu-tradicija/>
10. Order of the Minister of Culture “On the approval of the action plan for the integration of Roma into Lithuanian society for 2015-2020”, 29 January 2015, No. IV-48, <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d-9548fb36f682>
11. Vita Kontvainė, “Feasibility study on the cooperation between Roma communities and municipalities when implementing the action plan for the integration of Roma into Lithuanian society for 2015-2020. 2016, p. 3, <https://tmde.lrv.lt/uploads/tmde/documents/files/Savivaldos%20ir%20rom%C5%B3%20bendradarbiavimo%20galimyb%C5%B3%20studija%202016%2008%2010.docx>
12. The Department of National Minorities, “New Roma mediators will begin working on the project “Local Roma platforms – the road toward communication with municipalities”, 11 September 2017, <https://tmde.lrv.lt/lt/naujienos/projekte-vietines-romu-platformos-kelias-link-bendradarbiavimo-su-savivaldybemis-darba-prades-nauji-romu-tarpininkai>

13. Vita Kontvainė, “Feasibility study on the cooperation between Roma communities and municipalities when implementing the action plan for the integration of Roma into Lithuanian society for 2015-2020. 2016, p. 3, <https://tmde.lrv.lt/uploads/tmde/documents/files/Savivaldos%20ir%20rom%C5%B3%20bendradarbiavimo%20galimybi%C5%B3%20studija%202016%2008%2010.docx>
14. Ibid., p. 6-7.
15. “Programme for the integration of Vilnius (Kirtimai) Roma community into Lithuanian society for 2016-2019” approved by Vilnius City Municipality Council, 19 April 2016, No. 1-410, <https://www.vilnius.lt/vaktai2011/Default-lite.aspx?Id=3&DocId=30278696>
16. Vita Kontvainė, “Feasibility study on the cooperation between Roma communities and municipalities when implementing the action plan for the integration of Roma into Lithuanian society for 2015-2020. 2016, p. 3, <https://tmde.lrv.lt/uploads/tmde/documents/files/Savivaldos%20ir%20rom%C5%B3%20bendradarbiavimo%20galimybi%C5%B3%20studija%202016%2008%2010.docx>
17. “Programme for the integration of Vilnius (Kirtimai) Roma community into Lithuanian society for 2016-2019” approved by Vilnius City Municipality Council, 19 April 2016, No. 1-410, <https://www.vilnius.lt/vaktai2011/Default-lite.aspx?Id=3&DocId=30278696>
18. Vita Kontvainė, “Feasibility study on the cooperation between Roma communities and municipalities when implementing the action plan for the integration of Roma into Lithuanian society for 2015-2020. 2016, p. 7-8, <https://tmde.lrv.lt/uploads/tmde/documents/files/Savivaldos%20ir%20rom%C5%B3%20bendradarbiavimo%20galimybi%C5%B3%20studija%202016%2008%2010.docx>
19. Pupil register data, 2016.
20. Vita Kontvainė, “Feasibility study on the cooperation between Roma communities and municipalities when implementing the action plan for the integration of Roma into Lithuanian society for 2015-2020. 2016, p. 10-11, <https://tmde.lrv.lt/uploads/tmde/documents/files/Savivaldos%20ir%20rom%C5%B3%20bendradarbiavimo%20galimybi%C5%B3%20studija%202016%2008%2010.docx>
21. The Department of National Minorities, 2016 “Department Activity Report”, 2017, <https://tmde.lrv.lt/uploads/tmde/documents/files/TMDE%20ataskaita%20FINAL.pdf>
22. The Department of National Minorities, “On the approval of the provisions of an award for best final scientific work on the topic of national minorities”, 23 May 2016, No. IV-43 <https://tmde.lrv.lt/uploads/tmde/documents/files/%C4%AEV-43.pdf>
23. DNM, “On the approval of the provisions of the award of a medal of honour “For Achievements” provided by the Department of National Minorities under the Government of the Republic of Lithuania”, 15 April 2016, IV-30, <https://tmde.lrv.lt/uploads/tmde/documents/files/%C4%AEV-30.pdf>
24. DNM, “On the approval of the provisions of the photo contest “Various nationalities - one Lithuania”, 19 April 2016, No. IV-31, [https://tmde.lrv.lt/uploads/tmde/documents/files/%C4%AEV-31-isakymas%20del%20nuostatu%20patvirtinimo\(\).pdf](https://tmde.lrv.lt/uploads/tmde/documents/files/%C4%AEV-31-isakymas%20del%20nuostatu%20patvirtinimo().pdf)

## Institutional Guarantee of equal opportunities

*Natalija Bitiukova*

Operational changes of the Office of the Equal Opportunities Ombudsperson (OEOO, Office)<sup>1</sup> over the past two years are a positive development. When a new head of the Office was appointed in 2015 after an unreasonably prolonged appointment process, the activities of the Office became more visible in public space, as well as more open to the representatives of other institutions and the civil society.<sup>2</sup> During the reviewed period, the legal framework of the Office activities was revised and partially improved, and internal reforms of the Office were initiated aiming to ensure more transparent and efficient operation of this institution.

New versions of legal acts regulating the activities of the OEOO came into force in January of 2017. The aim of the latter was to unify the requirements of the Equal Opportunities Ombudsperson with the requirements of other ombudspersons appointed by the national Parliament, to strengthen the Ombudsperson's guarantees of impartiality and independence, expand the Ombudsperson's competences when carrying out preventive and educational activities, and to ensure legal clarity regarding the complaint investigation procedure.<sup>3</sup>

The Office took a commendable step when it started publishing the results of the supervision of the execution of decisions.<sup>4</sup> Such practice, which is recommended for all ombudsperson's institutions in Lithuania, contributes to increasing transparency of the activities of the Ombudsperson and enables to better assess the impact of the Office's decisions on different subject groups.

Society's awareness of the OEOO activities remained low, yet slightly increased compared to 2014. According to the data of the 2016 representative public opinion poll, respondents evaluated the visibility of this institution with a score of 3.22 points out of 10<sup>5</sup> (2.97 points out of 10 in 2014).<sup>6</sup> This increase is related to a more active communication of the OEOO in the public space, particularly in social networks, as well as due to the wider dissemination of initiatives and events of the Office in the media.

However, during the reviewed period, legal capacity was not granted to the OEOO to initiate lawsuits regarding violations of the Law on Equal Opportunities for Women and Men or the Law on Equal Opportunities. The European Commission against Racism and Intolerance recommended to grant such powers to the OEOO both in the fourth and fifth report on the situation in Lithuania.<sup>7</sup>

A detailed study carried out by the Lithuanian Centre for Human Rights and published in 2017 provides more insights about the OEOO legal regulation and fields of activities that need to be improved. For example, respondents surveyed during the study rated the effectiveness of support provided to victims by the Office with a score of 5.92 (in a scale from 1 to 10).<sup>8</sup> While as many as 23 respondents out of 30 pointed out that the sanctions for the violations of the principle of equal treatment currently established by the laws are not effective, proportionate or deterring enough.<sup>9</sup>

#### Sources:

1. The Office of the Equal Opportunities Ombudsman is an institution responsible for the supervision of the implementation of the Law on Equal Opportunities for Women and Men and the Law on Equal Opportunities.
2. The Office of the Equal Opportunities Ombudsman, "Activity report of the Equal Opportunities Ombudsman of the Republic of Lithuania for 2016", 2017, pages 52-55, <http://www.lygybe.lt/data/public/uploads/2017/07/lygiu-galimybiu-kontrolieriaus-2016m.-veiklos-ataskaita.pdf>
3. Lithuanian Centre for Human Rights, "The Office of the Equal Opportunities Ombudsman as a National Equality Body: Legal Regulation and Activities", 2017, p. 9-10, <http://manoteises.lt/wp-content/uploads/2017/04/Lygiu-galimybu-kontrolieriaus-tarnyba-kaip-nacionaline-lygybes-institucija-teisinis-reglamentavimas-ir-veikla.pdf>; Law on the Amendment of Articles 2, 3, 4, 5, 6, 7, 8, 9, 11, 13 and the Annex of the Republic of Lithuania Law on Equal Opportunities No. IX-1826, 11 July 2017, No. XIII-618, <https://www.e-tar.lt/portal/lt/legalAct/64c-55260707411e7827cd63159af616c>
4. The Office of the Equal Opportunities Ombudsman, "Supervision of the Execution of Decisions of the Equal Opportunities Ombudsman", 31 May 2017, [https://docs.google.com/spreadsheets/d/1NP381Hq2nzKzs-bbM2bnZB-VfTL5\\_FVxhDqiR5oRXHo0/edit#gid=0](https://docs.google.com/spreadsheets/d/1NP381Hq2nzKzs-bbM2bnZB-VfTL5_FVxhDqiR5oRXHo0/edit#gid=0)
5. Question "How well are you familiar with the activities of these institutions?", Human Rights Monitoring Institute, "The view of the society on the human rights situation in Lithuania: representative survey of the Lithuanian population of 2016", 18-26 October 2016, p. 12, [https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016\\_santrauka.pdf](https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016_santrauka.pdf)
6. Question "How well are you familiar with the activities of these institutions?". Human Rights Monitoring Institute, "The view of the society on the human rights situation in Lithuania: representative survey of the Lithuanian population of 2014", 3-12 October 2014, p. 8, <http://www.hrmi.lt/uploaded/Vilmorus%20apklausa%202014%20-%20SANTRAUKA.pdf>
7. The European Commission Against Racism and Intolerance, "Fifth Report on Lithuania", 7 June 2016, paragraph 85, <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/lithuania/LTU-CbC-V-2016-020-ENG.pdf>
8. Lithuanian Centre for Human Rights, "The Office of the Equal Opportunities Ombudsman as a National Equality Body: Legal Regulation and Activities", 2017, p. 26, <http://manoteises.lt/wp-content/uploads/2017/04/Lygiu-galimybu-kontrolieriaus-tarnyba-kaip-nacionaline-lygybes-institucija-teisinis-reglamentavimas-ir-veikla.pdf>
9. Ibid, p. 27.

## Hate crimes

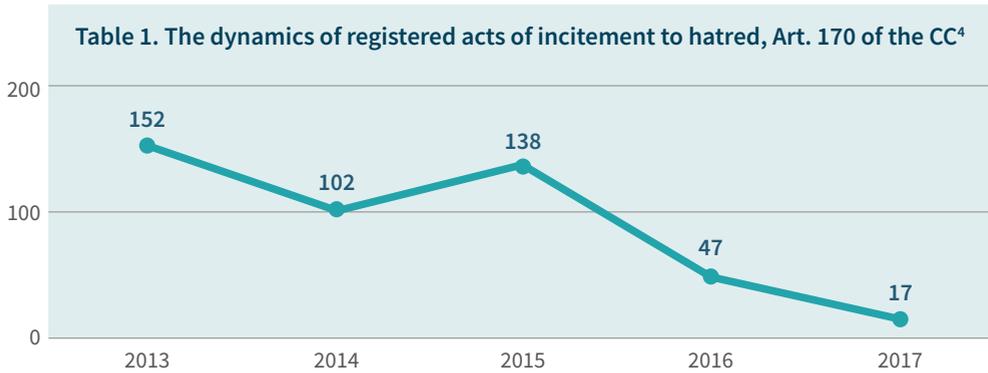
*Kristina Normantaitė*

In Lithuania, the concept of hate crimes is used to describe crimes motivated by hatred (bias) towards a group of persons or individuals who belong to such group because of their age, gender, sexual orientation, disability, race, nationality, language, descent, social status, faith, beliefs, or opinions. Therefore, nearly every crime against a person, the society or property may be considered to be a hate crime insofar as it is motivated by prejudices and advance negative views regarding the groups of persons concerned or the persons that belong to them.<sup>1</sup>

The Constitution of the Republic of Lithuania enshrines the fundamental human rights, including the right to express beliefs and impart information, also notes the fact that these rights are incompatible with criminal acts – incitement to national, religious, racial or social hatred, violence, and discrimination.<sup>2</sup> Since incitement to hatred threatens the fundamental values of the rule of law – equality of people and freedom of conscience, prohibition of acts related to incitement to hatred in Lithuania derives directly from the Constitution, the Criminal Law and international obligations.

Despite that the current legal regulation of hate crimes in Lithuania essentially complies with the requirements of the European Union and international human rights organizations, hate crimes in Lithuania are still highly latent. According to the data of non-governmental organizations, official statistics provided by public authorities do not reflect the real extent of the spread of these crimes.<sup>3</sup> This is partially determined by technical weaknesses in data collection systems. For example, more detailed statistics of hate-motivated criminal offenses are only available under Article 170 of the Criminal Code (CC) which prohibits incitement to hatred. Meanwhile, data on criminal offenses motivated by hate, when this is recognized as an aggravating circumstance, but Art. 170 of the CC is not applied, is currently not reflected in the official statistics.

It is also concerning that the number of registered criminal offenses related to the incitement to hatred according to Art. 170 of the CC is gradually decreasing since 2015.



According to the Government of Lithuania, such (statistical) decrease in the number of acts of incitement to hatred was influenced by the improved knowledge of law enforcement officers, organized trainings, and more active contribution of the media through the dissemination of information about hate crime investigations and court judgements.<sup>5</sup> Moreover, decreasing statistics of registered hate crimes are regarded as a positive change, and not as an issue of latency of this group of crimes which is clearly indicated by different studies on social distance<sup>6</sup> and public opinion polls or other surveys of different vulnerable groups.<sup>7</sup>

Based on official statistics provided by various institutions, incitement to hatred based on nationality and sexual orientation is the most frequently encountered form of incitement to hatred.<sup>8</sup> The media and non-governmental organizations also report frequent manifestations of racism,<sup>9</sup> incitement to hatred or other hate crimes based on the grounds of race or faith.<sup>10</sup>

A decreasing number of registered cases shows the existence of essential issues associated with the effective registration of cases of hate crimes, as well as the organization and execution of investigations. A large number of pre-trial investigations are terminated or suspended by indicating that no criminal offences can be detected in certain cases.<sup>11</sup> Investigations are also terminated if the person who committed the criminal offense is not determined – such cases are particularly characteristic of incitement to hatred on the Internet.

However, problems exist at both criminal investigations and trials. Case-law is still developing in cases of incitement to hatred and other forms of hate crimes, it lacks consistency, and there are relatively few cases of incitement to hatred.<sup>12</sup> It is also significant that, thus far, there were very few technical possibilities to identify cases where a motive of hatred was considered to be an aggravating circumstance of a criminal offence.

Despite the fact that the CC does not provide a “hierarchy” of prohibited actions, cases of ridiculing, expressing contempt or discrimination directed towards a specific group of people are regarded as incitement to hatred less frequently. Meanwhile, in other cases, the courts require for “hatred to be actually incited” by hate speech, despite the fact that this is not provided in the provisions of the CC.<sup>13</sup>

For example, the Supreme Court of Lithuania adopted a ruling in 2016 in which the court examined the following comment made on the internet: “Duot į kailį tokies įdraskytašikniams” [sic] (a statement that homosexuals should be beaten). The court found that “such statement of V. G. could not have caused a real threat to the values protected by the discussed criminal law”, “could not have resulted in the actual [...] incitement of violence”, the court considered the comment itself “laconic” and pointed out that “there was only an abstract indication of violence, using phraseologisms”.<sup>14</sup> Such interpretation of the court does not follow the European Court of Human Rights (ECtHR)<sup>15</sup> case-law and the description of a criminal offense provided in the CC, which points out that both ridicule and contempt can be recognized as criminal offenses.

In 2018-2019, the ECtHR should adopt an important decision to form further practice in the context of homophobic hate speech. In 2017, the court admitted and will be considering the case of “Beizaras and Levickas v. Lithuania”<sup>16</sup>, concerning inaction of law enforcement authorities in investigating cases of homophobic hate speech on the internet.<sup>17</sup> The applicants claim that the prosecutor’s office and national courts refused to launch a pre-trial investigation regarding homophobic hate speech on the social network Facebook, thus violating their right to respect for private life, the right to effective legal remedy, and the right not to be discriminated against on the grounds of sexual orientation.

When talking about hate crimes carried outside cyberspace, both the law enforcement authorities and the courts still tend to fail to see bias motives and classify such incidents simply as violations of the public order. For example, there was an incident in Kaunas in 2017, when a woman and her husband, who was of Indian origin, were attacked, insulted, threatened, and told to leave Lithuania. However, according to the District Court of Kaunas, “such comments could have been directed at any other person who came to Lithuania”.<sup>18</sup> The court decided that the offenders were guilty only for the violation of public order.

After this decision was appealed against to a higher court, the latter decided that the aim of the accused was to humiliate and mock their victim because of his race, and, therefore, their actions should

be considered both the violation of public order and incitement to discrimination.<sup>19</sup>

During the discussed period, a certain improvement of activity at an institutional level can be observed, which is related to Lithuania's reporting to international human rights monitoring bodies,<sup>20</sup> as well as implementation of previously received recommendations.<sup>21</sup> Local non-governmental organizations actively advocating for greater contribution from public authorities in order to reduce the phenomenon of hate crime also had a significant impact. The Ministry of Internal Affairs demonstrated positive changes in this context, by forming a working group in 2016,<sup>22</sup> which was assigned to examine matters for the improvement of the monitoring, analysis and evaluation of the hate crime situation in Lithuania. The group is comprised of representatives of responsible law enforcement authorities and non-governmental organizations.

Nevertheless, Lithuania currently has no specific programme document on a national level, specifically designed to combat hate crimes. Meanwhile, programme documents<sup>23</sup> and informal plans for the implementation of recommendations<sup>24</sup> which address prevention of hate crimes lack several key aspects: they are not clearly directed towards achieving the result, the plans lack clarity, it is not clear what indicators will be used to evaluate the effectiveness of the results achieved through activities, and it is not specified how the monitoring of the effectiveness of those activities will be implemented. There is also a lack of specific budget allocations to implement the planned activities. Law enforcement officers lack measures (updated methodological tools, training) which would help to recognize, register and investigate hate crimes more easily.

Finally, institutions also lack a holistic approach to the issue of the phenomenon of hate crimes. On an institutional level, discussions about hate crime prevention are often limited to encouraging victims to report crimes more actively. However, in order to ensure a properly functioning hate crime prevention system, it is important to think not only about encouraging victims to report crimes, but also about detailed criminal and victimological research, ensuring the rights of victims, as well as ensuring that victims receive appropriate support and aid which is currently insufficient in Lithuania.

## Sources:

1. For more information about hate crimes, see: Methodological recommendations for the peculiarities of the organization, supervision and execution of pre-trial investigation regarding criminal offenses based on racial, nationalistic, xenophobic, homophobic or other discriminatory motives, approved by Order No.12.14-40 of the Prosecutor General of 23 December 2009, <http://www.prokuraturos.lt/data/public/uploads/2015/12/met-rek-del-neapykantos-2009-12-23.pdf>
2. Constitution of the Republic of Lithuania, part 4 of Article 25, <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>
3. Alternative report to the United Nations Committee on the Elimination of Racial Discrimination (CERD), 2015, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT\\_CERD\\_NGO\\_LTU\\_22231\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT_CERD_NGO_LTU_22231_E.pdf)
4. Information Technology and Communications Department under the Ministry of the Interior, "Statistics on crime and pre-trial investigations", <https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminių-tyrimu-statistika-1>
5. Global periodic reviews during the process. General Assembly of the United Nations, Human Rights Council, "Report of the Working Group of the Universal Periodic Review. Lithuania", 27 December 2016, [http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20\(vertimas%20%C4%AF%20liet\\_%20k\\_.pdf](http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20(vertimas%20%C4%AF%20liet_%20k_.pdf)
6. Public opinion survey commissioned by the Institute for Ethnic Studies of the Lithuanian Social Research Centre, 2015, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2015.pdf>
7. Human Rights Monitoring Institute, Representative Survey of the Lithuanian Population of 2016, "The view of the society on the human rights situation in Lithuania", [https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016\\_santrauka.pdf](https://hrmi.lt/wp-content/uploads/2016/12/Apklausa-2016_santrauka.pdf)
8. Information Technology and Communications Department under the Ministry of the Interior, <http://old.ird.lt/statistines-ataskaitos/?lang=lt&rt=1>
9. Izabelė Švaraitė, "How many hate crimes are actually being committed in Lithuania?", *Mano Teisės*, 31 January 2017, <http://manoteises.lt/straipsnis/kiem-lietuvoje-tiesu-ivykdoma-neapykantos-nusikaltimu/>; Chef of Gaspar's restaurant G.Fernandes became victim of a racist attack while defending his neighbour from intruders", *15min.lt*, 21 August 2016, <https://www.15min.lt/vardai/naujiena/lietuva/nuo-isibroveliu-kaimyne-gynes-restorano-gaspar-s-sefas-g-fernandesas-patyre-ju-rasistini-ispuoli-1050-842646?all%E2%80%A6>
10. "Another attack in Rukla: locals threw stones at Syrian teenagers", *Alfa.lt*, 28 October 2016, <https://www.alfa.lt/straipsnis/50097695/dar-vienas-ispuolis-rukloje-vietiniai-siru-paauglius-apmete-akmenimis>; Vygdandas Trainys, "Attack against refugees in Rukla: the circle of suspects is narrowed down", *lyrytas.lt*, 24 October 2016, <https://lietuvosdiena.lyrytas.lt/kriminalai/2016/10/24/news/ispuolis-pries-pabegeles-rukloje-itariamuju-ratas-siaureja-892666/>; Dominykas Griežė, "Racist attack against a black woman in Vilnius: aggressive Lithuanian got away easily", *Alfa.lt*, 18 November 2016, <https://www.alfa.lt/straipsnis/50105534/vilniuje-rasistinis-ispuolis-pries-juodaode-agresyvus-lietuvissisuko-lengvai>
11. Human Rights Monitoring Institute, "Response to hate crimes: review of the situation in Lithuania", 2017, <https://hrmi.lt/wp-content/uploads/2017/12/Atsakas-%C4%AF-neapykantos-nusikaltimus-2017-1.pdf>
12. Human Rights Monitoring Institute, "Response to hate crimes: review of the situation in Lithuania", 2017, <https://hrmi.lt/wp-content/uploads/2017/12/Atsakas-%C4%AF-neapykantos-nusikaltimus-2017-1.pdf>
13. Human Rights Monitoring Institute, "Response to hate crimes: review of the situation in Lithuania", 2017, <https://hrmi.lt/wp-content/uploads/2017/12/Atsakas-%C4%AF-neapykantos-nusikaltimus-2017-1.pdf>
14. Ruling of the Supreme Court of Lithuania of 1 March 2016 in criminal case No. 2K-86-648/2016
15. Judgment of the European Court of Human Rights of 15 October 2015 in the case *Perinçek v. Switzerland*, Application No. 27510/08, <http://hudoc.echr.coe.int/eng?i=001-158235>
16. European Court of Human Rights of 13 August 2015 in the case "Beizaras and Levickas v. Lithuania", application No. 41288/15, <http://hudoc.echr.coe.int/eng?i=001-175326>
17. "Strasbourg Court accepts petition by Lithuanian same-sex couple accused of "eccentric behaviour", 2017, <http://www.lgl.lt/naujienos/strasburo-teismas-nagrinės-ekscenrisku-elgesiu-apkaltintu-homoseksualiu-vaikinu-is-lietuvis-skunda>
18. Public Institution European Foundation for Human Rights, "Insulting foreigners in Lithuania is not a racist crime", 2017, <http://manoteises.lt/straipsnis/ismadinti-uzsienietii-babajumi-lietuvoje-ne-rasistinis-nusikaltimas/>
19. "The court decided: A racist attack was recognized as a hate crime", *Infoplex.lt*, 14 September 2017, <http://www.infoplex.lt/portal/start.asp?act=news&Tema=1&Str=62300>
20. Ministry of Foreign Affairs of the Republic of Lithuania, "Second report of Lithuania for the Universal Periodic Review Mechanism of the United Nations Human Rights Council", 3 November 2016, <https://www.urm.lt/default/lt/naujienos/jt-zmogaus-teisius-tarybos-vykdomos-visualines-periodines-perziuros-metu-pristatytat-antroji-lietuvos-ataskaita>
21. For example, the European Commission against Racism and Intolerance, "ECRI report on Lithuania. Fifth Monitoring Cycle", 18 March 2016, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Lithuania/LTU-CbC-V-2016-020-LIT.pdf>, United Nations General Assembly, Human Rights Council, "Report of the Working Group of the Universal Periodic Review. Lithuania", 27 December 2016, [http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20\(vertimas%20%C4%AF%20liet\\_%20k\\_.pdf](http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20(vertimas%20%C4%AF%20liet_%20k_.pdf)
22. Order of the Minister of the Interior of the Republic of Lithuania of 21 November 2016 on the formation of a working group, No. IV-813
23. For example, "Action Plan for the Promotion of Non-Discrimination for 2017-2019" (Order on the Approval of the Action Plan for the Promotion of Non-Discrimination for 2017-2019, 15 May 2017, No. A1-250, <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f1e7b66ae890e1368363>)
24. Ministry of Justice of the Republic of Lithuania, "Plan for the implementation measures of the recommendations which were provided to the Republic of Lithuania during the second cycle of the Universal Review of the United Nations Human Rights Council and which Lithuania has approved", [https://docs.google.com/document/d/1y4bdVgPClly0n6HyDf09yDbod17iaudNzGzY2L\\_85M8/edit](https://docs.google.com/document/d/1y4bdVgPClly0n6HyDf09yDbod17iaudNzGzY2L_85M8/edit)

# V. RIGHT TO A FAIR TRIAL



## V. RIGHT TO A FAIR TRIAL

### Rights of suspects

*Karolis Liutkevičius*

During the period of 2013-2016, 3 European Union directives came into force which strengthen the protection of procedural rights of suspects and accused persons in criminal cases: directives on the right to interpretation and translation,<sup>1</sup> on the right to information<sup>2</sup>, and on the right to access a lawyer<sup>3</sup> in criminal proceedings. Formally the provisions of all three directives were transposed to Lithuanian law. However, in practice, many questions arise whether certain standards provided in these EU laws are properly ensured in Lithuania.

#### *The right to interpretation and translation*

Amendments of the Code of Criminal Procedure (CCP) to transpose the EU directive on the right to interpretation and translation were adopted in 2013. This process demonstrated a particularly formalistic approach: amendments were only comprised of a record that the CCP implements this directive.<sup>4</sup> The official position was that the legal acts of the Republic of Lithuania comply with the EU standards and no amendments are necessary.

However, this position did not convince the European Commission. In November 2016, the European Commission warned Lithuania about the infringement procedure regarding the directive on the improperly transferred right to translation and interpretation.<sup>5</sup> The Commission indicated that the following requirements of the directive were not transposed to Lithuanian law:

- to ensure interpretation and translation for the suspect when communicating with their lawyer,
- to establish a procedure to evaluate whether the suspect requires an interpreter,

- authorities are not given discretion to decide whether the suspect requires translation of documents which would not be translated under normal circumstances is not established,
- the requirement to translate the European Arrest Warrant in all cases is not established.

In response to the warning of the European Commission,<sup>6</sup> the Ministry of Justice prepared additional amendments of the CCP, adopted in April 2017.<sup>7</sup> These amendments included all the provisions indicated by the Commission as missing, however, with certain reservations: the court and pre-trial investigation institutions were not given discretion to decide on their own initiative that certain case documents should be translated – this can be done only after receiving a request from the suspect. It was also established that the defence lawyer must communicate with the client in a language understood by the latter, and participation of an interpreter must be ensured only if the lawyer is not able to do so. The amendments also established a requirement of confidentiality which is particularly important for defence – the interpreter cannot be questioned on circumstances which became known to them while interpreting between client and lawyer.

### *Right to information*

The EU directive on the right to information in criminal proceedings, establishing the right of suspects to receive information about allegations against them, the case materials, and their rights, came into force in 2014. One of the key features of this directive is that each arrested suspect must be notified of his rights, and served a written document, letter of rights, which lists and describes the essential rights of suspects and accused persons in the criminal proceedings. This document can play a vital role in ensuring a fair investigation and trial for the suspect, as the latter must understand their rights to be able to effectively participate in the criminal proceedings.

During the period of 2016-2017, the Human Rights Monitoring Institute researched the transposition of the EU directive on the right to information to Lithuanian law, while paying particular attention to the notification of suspects about their rights.<sup>8</sup> Most provisions of the directive were transposed or were already present in Lithuanian law before the adoption of the directive. However, the Lithuanian version of letter of rights<sup>9</sup> can hardly be considered a proper implementation of the directive.

One of the requirements of the directive is to provide information in simple and accessible language.<sup>10</sup> Therefore, the letter of rights

must be prepared so that it would be understandable to those who do not have a legal background. Meanwhile, the letter used in practice describes the rights of suspects in complicated legal language which uses legal terms without additional explanations. The rights are described in long and complicated sentences without addressing the reader directly, but, instead, talking about the suspect in third person. Practitioners of the field – police and criminal case lawyers – also believed that the notification about suspects’ rights is difficult to understand and could be improved.

Essentially, the letter of rights currently used in Lithuania is merely a formal implementation of the EU directive requirements to have such a document, and does not actually satisfy the needs of suspects to receive information about their rights. Therefore, the General Prosecutor’s Office, which prepares the form of the letter of rights, should update the currently used letter in order to achieve clarity and better comprehension of its contents.

### *Right to defence*

EU directive on the right of access to a lawyer in criminal proceedings had to be transposed to the Member States’ law until November of 2016.<sup>11</sup> The provisions of this directive were transposed to Lithuanian law slightly late – in May 2017, after adopting amendments of the Code of Criminal Procedure.<sup>12</sup> Even though the CCP already met most of the new requirements, changes were made in areas which raised questions in practice:

- it was clearly specified that the defence lawyer has the right to meet the defendant before questioning,
- it was established that the lawyer can take an active role in questioning and other investigative actions – ask questions and make statements which must be noted in the protocol,
- if the suspect refuses the services of a lawyer, consequences of such decision must be explained to the suspect in understandable language.

In order to evaluate how the right to defence is implemented in practice, the Human Rights Monitoring Institute carried out a research on the implementation of the right of access to a lawyer and free legal aid in 2016-2017.<sup>13</sup> The research revealed that, during their first interrogation, suspects refused the services of a lawyer in more than half of the cases analysed in the research and selected randomly. Suspects were more likely to fully admit their guilt during

questioning where a lawyer was not present. According to specialists, suspects refuse the services of a lawyer because they misjudge the seriousness of their situation and because they cannot afford to hire a lawyer. The research also found cases where minors, persons with mental health disorders or psychosocial disability, and persons who did not understand Lithuanian were not represented. In practice, there is lack of clear guidelines for assessing the circumstances and the vulnerability of the suspect in order to determine whether the participation of a lawyer is necessary.

When analysing the use of state-funded legal aid in practice, its quality was the main identified problem. Surveyed specialists evaluated the quality of these legal services as very average, while some lawyers were concerned that some of their colleagues providing state-funded legal aid participate in the process only formally and perform the role of a “token lawyer”. Specialists believe that the insufficient quality of service is caused by the excessive workload of lawyers, low wages and an un motivating remuneration system.

Accused persons were represented by state-funded lawyers in the absolute majority of cases analysed in the research. Thus, it is necessary to address the identified problems in order to achieve fair and just criminal proceedings. It is important to establish a clear system for proportional distribution of workload among lawyers, as well as to ensure that lawyers are paid adequately for their services. It is also necessary to establish an effective mechanism ensuring the quality of state-funded lawyers’ services.

**Sources:**

1. Directive of the European Parliament and of the Council 2010/64/EU on the right to interpretation and translation in criminal proceedings, 20 October 2010, <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>
2. Directive of the European Parliament and of the Council 2012/13/EU on the right to information in criminal proceedings, 22 May 2012, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32012L0013>
3. Directive of the European Parliament and of the Council 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, 22 October 2013, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32013L0048>
4. Law on the Supplementation of the Annex of the Code of Criminal Procedure, 26 November 2013, No. XII-617, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.460861>
5. Justified opinion of the European Commission intended for the Republic of Lithuania on 17 November 2016, No. C(2016) 7368, <https://e-seimas.lrs.lt/rs/lasupplement/TAP/67d3f730e20411e6be918a531b2126ab/fb4ccdc3e20411e6be918a531b2126ab/>
6. Explanatory Note for the Draft Law Amending Articles 8, 71(1) and 80 of the Code of Criminal Procedure, 24 March 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/b227e6f0105a11e7b6c9f69dc4ecf19f>
7. Law Amending Articles 8, 71-1 and 80 of the Code of Criminal Procedure, 27 April 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e55bda322f0a11e79f4996496b137f39>
8. Human Rights Monitoring Institute, “Report on the rights in Lithuania: regulation and practice”, 2017, <https://hrmi.lt/wp-content/uploads/2017/06/Prane%C5%alimas-apie-teises-Lietuvoje-2017.pdf>
9. Order of the Prosecutor General on the approval of the forms of criminal procedure documents, 29 December 2014, No. I288, 1.159 p., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a967f6d0906f11e48028e9b85331c55d>
10. Directive of the European Parliament and of the Council 2012/13/EU on the right to information in criminal proceedings, 22 May 2012, Art. 4., p. 4, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32012L0013>
11. Directive of the European Parliament and of the Council 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, 22 October 2013, Art. 15, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32013L0048>
12. Law on the Amendment of Articles 10, 44, 48, 50, 52, 69, 69-1, 71-1, 72, 128, 140, 168, 190, 192, 196, 197, 233 and the Annex, 11 May 2017, No. XIII-357, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/251abba23c6211e79f4996496b137f39>
13. Human Rights Monitoring Institute, “Accessible Justice. The Right to a Lawyer and the Right to Legal Aid in Criminal Proceedings”, 2017, <https://hrmi.lt/wp-content/uploads/2017/11/Prieinamas-teisingumas.pdf>

## Rights of victims

*Natalija Bitiukova, Erika Leonaitė*

44 724 persons were registered as victims of criminal offenses in 2016, 44 023 – in 2017.<sup>1</sup> Since not all victims report crimes to the police, the actual number of persons who suffered material, physical or psychological damages due to criminal offenses is even higher. Based on sociological studies, around 30 percent of the entire population of Lithuania become victims of various criminal offenses each year.<sup>2</sup> According to the official data, in 2016-2017 most of the victims suffered material losses and (or) physical violence, while cases of psychological and sexual violence were registered less often.

**Table No. 1. Damage suffered by victims in 2016-2017<sup>3</sup>**

Material damage		Physical violence		Psychological violence		Sexual violence		Neglect	
2016	2017	2016	2017	2016	2017	2016	2017	2016	2017
11881	10320	8851	8934	838	896	125	113	27	32

During the reviewed period, the first European Union's legal instrument codifying the rights of victims of crimes, the Victims' Rights Directive, was transposed into Lithuanian law.<sup>4</sup> The amendments to the Criminal Procedure Code and other laws which came into force in 2016 is one of the most significant reforms in Lithuania oriented towards strengthening victims' procedural position in criminal proceedings.<sup>5</sup> The following new procedural guarantees should be noted:

- The victim has a right to be accompanied during police interviews, in closed court hearings, etc., by a person chosen by the victim – family member, friend, representative of a support organization, in order to provide them with emotional support.
- An obligation was introduced for law enforcement officers to carry out an assessment of victim's special protection needs. This assessment has to be carried out no later than during the first interview. The aim of this assessment is to identify the circumstances that lead to risks for the victim to experience psychological or emotional trauma, criminal influence or other negative consequences.
- Organizational measures were determined which help protect victims from negative experiences related to participation in criminal proceedings: interviews by an officer of the same

gender as the victim, interviewing the victim only once, interviews by pre-trial judge, etc.<sup>6</sup>

Despite these welcome changes, some systemic problems related to victims' possibilities to effectively participate in pre-trial and court proceedings were not solved during the review period.

First of all, victims' interests in criminal proceedings are not sufficiently guaranteed due to extremely limited access to legal aid. According to the existing regulation, state-funded legal aid can be provided for victims, regardless of their level of income or property, only concerning the compensation of damages resulting from the crime.<sup>7</sup> However, with respect to other procedural issues, e.g., testifying in court or appealing the decisions of the investigator or the court, free legal aid is provided only to victims of crime who receive particularly low income (4000 euros per year or 333.33 euros per month).<sup>8</sup>

Lack of legal representation of victims may create favourable conditions for defence lawyers to pressure the victim to make certain procedural decisions, for example, to reconcile with the offender. This is a common practice in cases of domestic violence.<sup>9</sup> Also, investigators or prosecutors do not always provide sufficient explanations on victim's rights. Even though it is considered that the victim's rights and interests are defended by the prosecutor, the requirement of impartiality determines that victims can hardly expect to receive any advice from the prosecutor on how to act during the court hearing and how to respond to inappropriate questions. Conflict of interests between the victim and the prosecutor may also occur, e.g. if the prosecutor decides to terminate the investigation.

In 2017, the Human Rights Monitoring Institute submitted recommendations to the Parliamentary Human Rights Committee suggesting to create legal preconditions for granting legal aid at least for those victims who are considered vulnerable according to the Victims' Rights Directive.<sup>10</sup> In the same year, the Ministry of Justice prepared corresponding amendments to the Law on State-Guaranteed Legal Aid.<sup>11</sup> They should be considered by the Parliament during the spring session of 2018.

The second area of concern is the lack of victim support services which would include provision of information, emotional and psychological support, as well as practical support, e.g., provision of necessary accommodation. Support services are provided in Lithuania only to victims of domestic violence, human trafficking and sexual exploitation. Such situation does not comply with the Victims' Rights Directive which requires the State to provide general victims' support (i.e. not limited to certain types of victims). Therefore,

Lithuania was criticized in the European Parliament's report on the transposition of the Victims' Rights Directive.<sup>12</sup>

The third area which requires changes relates to the trust of victims in law enforcement authorities. According to the data from different studies, more than a third of persons who fall victims to criminal offenses in Lithuania choose not to report the crime to the police. One of the most common reasons for that is the lack of trust in the ability of the police to solve the crime, as well as slow police work.<sup>13</sup>

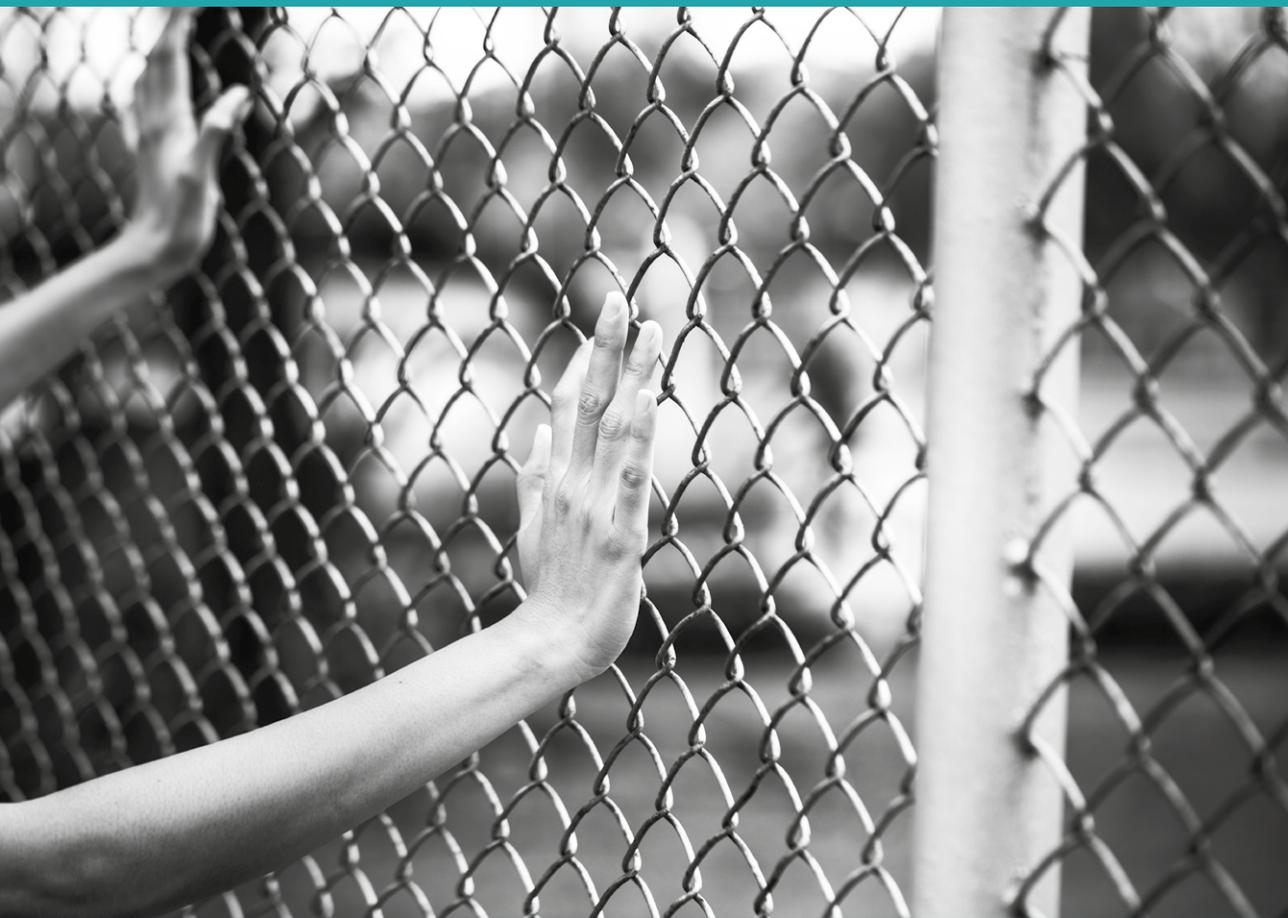
During the reviewed period, the Lithuanian court system has taken welcome steps in order to better ensure the interests of victims in criminal proceedings. For example, a volunteer service was established in courts which provides emotional support for victims and witnesses; a virtual courtroom was created; pamphlets with information for victims and witnesses were prepared, and trainings for judges on the needs of victims were organized.<sup>14</sup>

Nevertheless, there is a clear need to ensure continuous and systematic improvement of the abilities of law enforcement officers to communicate with victims respectfully and professionally, particularly with victims who are more vulnerable due to their age, disability or other reasons. So far, initiatives in this area can be described as fragmented rather than sustainable.

## Sources:

1. Data of the Information Technology and Communications Department under the Ministry of the Interior, Form\_50-ITI, [https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminių-tyrimu-statistika-1/view\\_item\\_datasource?id=6781&datasource=19051](https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminių-tyrimu-statistika-1/view_item_datasource?id=6781&datasource=19051)
2. Data of the public survey, carried out on 3 August – 30 October 2017 under the order of the Ministry of the Interior, presented on 26 January 2018 during the conference “Rights of victims in Lithuania: changes and prospects”.
3. Data of the Information Technology and Communications Department under the Ministry of the Interior, Form\_50-ITI, [https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminių-tyrimu-statistika-1/view\\_item\\_datasource?id=6781&datasource=19062](https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminių-tyrimu-statistika-1/view_item_datasource?id=6781&datasource=19062)
4. 2012/29/EU Directive of the European Parliament and of the Council of 25 October 2012 which establishes the most necessary standards for the rights of victims, their support and protection, and which amends Council Framework Decision 2001/220/TVR, <https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32012L0029>
5. Law amending Articles 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 and the Annex of the Code of Criminal Procedure, and supplementing the Codex with Articles 27<sup>1</sup>, 36<sup>3</sup>, 56<sup>1</sup>, 186<sup>1</sup>, 17 December 2015, No. XII-2194, <https://www.e-tar.lt/portal/lt/legalAct/1085d150aee411e5b12fbb7dc920ee2c>, came into force on 1 March 2016.
6. Order of the Prosecutor General “On the approval of the recommendations for the assessment of special protection needs of victims”, 29 February 2016, No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>.
7. Law on State-Guaranteed Legal Aid, 28 March 2000, No. VIII-1591, Art. 12 (1), p. 2, <https://www.e-tar.lt/portal/lt/legalAct/TAR.EAA93A47BAA1/cjidLVmZhI>
8. Data of 1 January 2018. The provided numbers reflect situations when a person has no dependants. <http://teisinepagalba.lt/lt/antrine/tm/skaiciuokle/>
9. Adutavičiūtė, M. and others, “Victims’ Rights Directive: a New Approach to Victims of Domestic Violence”, Vilnius, Human Rights Monitoring Institute, 2014, p. [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf), p. 20.
10. Vulnerable groups include victims of terrorism, organized crime, human trafficking, gender-based violence, domestic violence, sexual abuse or exploitation and hate crimes, as well as victims with disabilities (Recital 57 of the Preamble to the Directive, Art. 22, p. 3).
11. Draft Law on the Amendment of Articles 2, 11, 12, 13, 14, 15, 18, 19, 21, 22, 23, 24, 29, 30, 31, 32, 34 and the Annex of the Republic of Lithuania Law on State-Guaranteed Legal Aid No. VIII-1591, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/ec9f5200082011e8802fc9918087744d?positionInSearchResults=0&searchModelUUID=0dde06ef-e4b5-4a4b-be29-fdcf5c340f2c>
12. The Victims’ Rights Directive 2012/29/EU. European Implementation Assessment, p. 54, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS\\_STU\(2017\)611022\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU(2017)611022_EN.pdf)
13. E. Visockas, “Trust in Criminal Justice Institutions in Lithuania”, Legal Issues, 2016, No. 2(92), p. 112, <http://teise.org/wp-content/uploads/2017/02/Visockas-2016-2.pdf>
14. Teismai.lt, “Tips for witnesses and victims”, <http://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/pagalba-liudytojams-ir-nukentejusiesiems/patarimai-liudytojams-ir-nukentejusiesiems/4763>

## VI. RIGHT TO LIBERTY



## VI. RIGHT TO LIBERTY

### Pre-trial detention

*Karolis Liutkevičius*

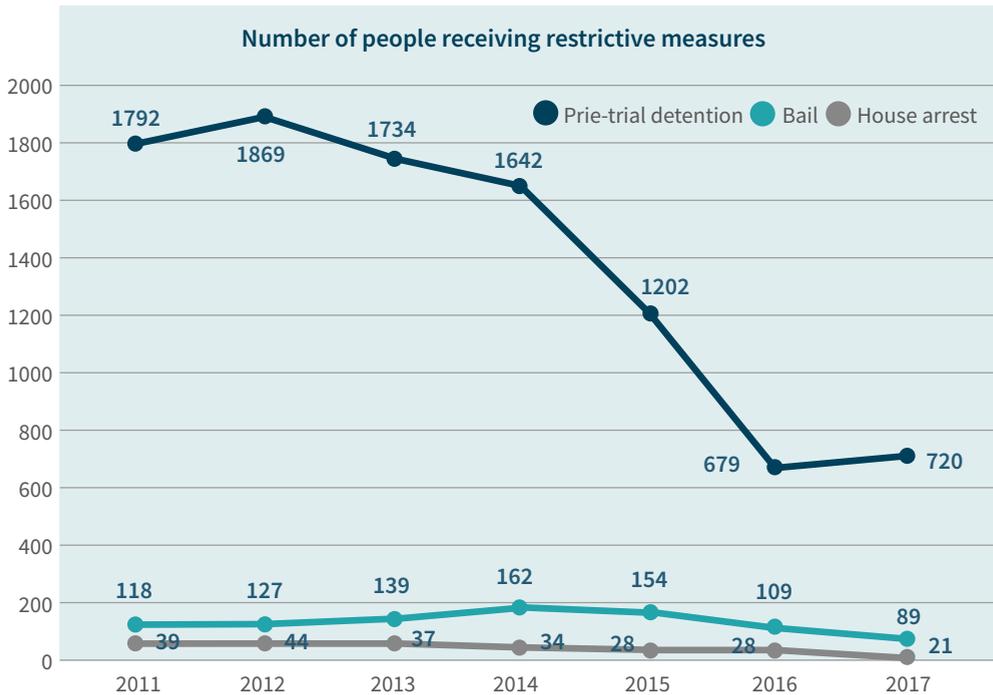
Pre-trial detention is a measure of liberty restriction which can be applied to a crime suspect during the investigation and trial. By its very nature, it is imprisonment prior to the judgment of the court, since a person is put in a custodial institution, a remand prison, where conditions are often even worse than in ordinary prisons. Therefore, this measure is considered to be a very serious restriction of a person's rights to liberty.

Under Lithuanian laws, detention can be applied only as a last resort in order to ensure that the suspect does not flee, interfere with the investigation or commit other crimes, and milder measures such as bail or house arrest are insufficient. Despite that, for many years, detention in Lithuania was applied very willingly: the courts grant around 95% prosecutors' requests for detention, and detention itself was applied several times more often than bail and a dozen times more often than house arrest.<sup>1</sup> Some criminal law experts stated that pre-trial detention has been abused by using it as a way to apply pressure for extracting a testimony or confession.<sup>2</sup>

Nevertheless, the situation changed significantly over the past years. In the beginning of 2015, the Code of Criminal Procedure was supplemented with a new alternative for detention – intensive surveillance, i.e. surveillance using an electronic ankle bracelet.<sup>3</sup> And in June 2015 amendments were made to the detention application procedures.<sup>4</sup> These amendments were aimed at promoting application of alternative restrictive measures by allowing judges to choose other measures instead of detention at their own discretion, when a request for detention is made, and obliging them to clearly justify their decision, if they dismiss alternative measures as unsuitable. The maximum period of detention during the pre-trial investigation was also reduced, and the defence were granted the right to access evidence on which the request for detention is based.

It seems that the reform took place not only in laws, but also in practice: since 2015, the number of pre-trial detainees per year

noticeably decreased and in 2016-2017 was two times lower than several years ago.<sup>5</sup> However, statistics show that trust in alternatives to detention, bail and house arrest, is not increasing – application of these measures had no significant changes, and the courts satisfied around 95% of requests for pre-trial detention during 2015-2017.<sup>6</sup> On the other hand, decreasing detention numbers show that the application of this measure is requested much less often, therefore a conclusion can be made that its application is becoming more responsible.



#### Sources:

- Human Rights Monitoring Institute, "Application of detention in Lithuania. Research report", 2015, p. 12-13, <https://www.hrmi.lt/uploaded/TYRIMAI/Suemimo%20taikymas%20Lietuvoje%20-%202015.pdf>
- Ibid.
- Law on the Amendment and Supplementation of Articles 71, 75, 120, 121, 126, 132, 139, 179, 183, 218, 219, 233, 236, 261, 273, 279, 285, 286, 317, 319, 426, 427, 428, 429, 432 of the Code of Criminal Procedure, and on the Supplementation of the Codex with Articles 131-1, 430-1, 2 July 2013, No. XII-498, Art. 6, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.453253>
- Law on the Amendment of Articles 121, 123, 125, 126, 127, 130, 131 and 181 of the Code of Criminal Procedure, 25 June 2015, No. XII-1878, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/fee128e21fec11e585eaba374ef4b409>
- Information Technology and Communications Department under the Ministry of the Interior, Data of the Departmental Register of Criminal Acts, <https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminiu-tyrimu-statistika-1>
- Data on 2015-2017 provided by the National Courts Administration according to individual requests

## Parole and probation

*Gintautas Sakalauskas*

The number of persons on parole in Lithuania continued to steadily decrease during the overviewed period: in 2016, only 826 people were released from prison on parole (1082 – in 2015), which comprised only 30 percent of all convicted persons who were released during that year.<sup>1</sup> Reintegrating a person who has served the full sentence into society is much more difficult, as the person is not supervised by probation services after release.

Discrepancies in the case law in this area drew the attention of a number of scholars analysing the problems of the execution of sentences.<sup>2</sup> The courts reject approximately 50 percent of parole commissions' decisions granting parole. Even though it is exactly these commissions that are in position to assess the possibilities of a person to reintegrate into the society under probation conditions.

Cases of other forms of probation, suspension of imprisonment sentences, have also steadily decreased prior to 2014. In 2014 it was applied to 1255 persons (5.9 percent of all convicted persons), while in 2003 execution of a custodial sentence was suspended for 3725 persons (21.2 percent).<sup>3</sup> In 2015–2016, after introducing the possibility to suspend custodial sentences for serious crimes,<sup>4</sup> this number has slightly increased by up to 7–9 percent. However, amendments that came into force on 28 September 2017<sup>5</sup> unjustifiably removed<sup>6</sup> this possibility once again, therefore decrease of sentences' suspension is likely again.

Even though probation conditions are violated by only a very small portion of probated persons (2–3 percent),<sup>7</sup> the probation system is being constantly and unduly compromised.<sup>8</sup> At the end of 2016 conditions for parole became even stricter and the possibilities to terminate suspension of sentences were expanded.<sup>9</sup>

On 23 May 2017, in the case of *Matiošaitis and Others v. Lithuania*,<sup>10</sup> the European Court of Human Rights found a violation of the European Convention on Human Rights Article 3, which prohibits torture, because Lithuanian law does not provide prisoners serving a life sentence with a realistic possibility to apply for a commutation of their sentence. Even though the Human Rights Monitoring Institute and other experts on human rights encouraged to immediately prepare and adopt the necessary law amendments, this was not done as of the beginning of 2018.

## Sources:

1. Summary of the number and composition (according to committed crime, age, term of sentence, etc.) of persons sentenced to serve a term of imprisonment of the Prison Department under the Ministry of Justice of the Republic of Lithuania, and their changes in 2016, <http://www.kaldep.lt/lt/kalejimu-departamentas/administracine-informacija/ataskaitos/metines.html>. There was no information for 2017 when preparing the publication.
2. Sakalauskas, Gintautas, "Parole release from prison upon entry into force of the Probation Law: theory and practice", Legal issues, 2013, No. 4 (82), p. 5–39; Michailović, Ilona; Jarutienė, Liubovė, "Problems of application of parole release from prison in Lithuania", Criminology Studies, 2016, No. 4, 145–182; Vosyliūtė, Andželika, "Parole as a precondition for integration: problems of court judgments", International comparison, tendencies and prospects of the application and execution of sentences in Lithuania (scientific editor Gintautas Sakalauskas), Law Institute of Lithuania, 2017, p. 159–180.
3. Report on the examination of criminal cases of the National Courts Administration. Types of penalties and sanctions (in 1st instance courts) in 2003–2016.
4. Law on the Amendment of Articles 27, 38, 39, 55, 56, 60, 62, 75, 179 and 187 of the Criminal Code of the Republic of Lithuania, 19 March 2015, No. XII-1554. <https://www.e-tar.lt/portal/legalAct.html?documentId=be5972c0d16611e4b-cd1a882e9a189f1>
5. Law on the Amendment of Articles 43, 47, 54, 62, 63, 64, 68-1, 68-2, 71, 75, 90, 226 and 227 of the Criminal Code of the Republic of Lithuania, 28 September 2017, No. XIII-653, <https://www.e-tar.lt/portal/legalAct.html?documentId=d13dec70a9c411e78a4c904b1afa0332>
6. Sakalauskas, Gintautas, "On the draft law amending Article 75 of the Criminal Code of the Republic of Lithuania, No. XIIIIP-708", Teisės E-aktualijos, 2017, No. 2, p. 16–32.
7. Sakalauskas, Gintautas, Jarutienė, Liubovė, "Evaluation of the effectiveness of probation. Scientific research of the Law Institute of Lithuania", Law Institute of Lithuania, 2015, p. 27.
8. Daumantė Baranauskaitė, "Probation of convicts – is it worth making the rules stricter? ", Manoteises.lt, 12 April 2016, <http://manoteises.lt/straipsnis/nuteistuju-probacija-ar-grieztinimas-pasiteisins/>
9. Law on the Amendment of Articles 6, 22, 23 and 30 of the Law on Probation of the Republic of Lithuania, 3 November 2016, No. XII-2721. <https://www.e-tar.lt/portal/legalAct.html?documentId=67114020a67f11e69ad4c8713b612d0f>
10. Judgment of the ECtHR of 23 May 2017 in the case of Matiošaitis and Others v. Lithuania (Applications Nos. [22662/13](#), [51059/13](#), [58823/13](#), [59692/13](#), [59700/13](#), [60115/13](#), [69425/13](#) and [72824/13](#)), <http://hudoc.echr.coe.int/eng?i=001-173623>

## Involuntary psychiatric hospitalization

*Karilė Levickaitė*

The right to liberty and security of a person is enshrined, among other, in the United Nations Convention on the Rights of Persons with Disabilities<sup>1</sup> (the Convention), ratified by Lithuania. Its Article 14 obliges countries to ensure that deprivation of liberty of a person would in no way be justified by his disability, including mental health disorders. Psychiatric treatment should be provided only after receiving an informed consent of the person concerned.<sup>2</sup>

These requirements are incompatible with involuntary hospitalization and treatment still applied all over the world. This question causes a lot of disagreements and battles of opinions both in the professional and the mental health services users' communities. In 2017, the United Nations Special Rapporteur on the right to health, prof. Dainius Pūras, made a report<sup>3</sup> which challenged involuntary hospitalization and treatment conditions, which have been applied in global psychiatric practice for many years as a "medical necessity" or due to "danger posed by the person", by emphasizing their subjectivity and stigmatizing nature. It was suggested to stop the application of forced measures, and focus on alternative psychosocial services instead.

Conditions for involuntary hospitalization Lithuania are laid out in two laws: the Law on Mental Health Care<sup>4</sup> (the Law) and the Civil Code.<sup>5</sup> The Law provides that if a person suffering from severe mental illness refuses to be hospitalized, he may be forcibly hospitalized only if his actions pose a real threat to his own health or life, or to the health or life of others around him.

However, these conditions were expanded by amending the Civil Code at the beginning of 2016: involuntary hospitalization may be applied to a person who has a mental disorder and whose actions or inactions pose a real threat to his own health or life, or the health, life and property of others around him. This was not the only attempt to expand the conditions of involuntary hospitalization over the past years, contrary to the human rights standards, international obligations, and recommendations to Lithuania by the United Nations.<sup>6</sup>

At the beginning of 2016, the Ministry of Health prepared a draft amendment to the Law on Narcological Supervision providing involuntary treatment for alcoholism.<sup>7</sup> At the beginning of 2017, an amendment to this law<sup>8</sup> was registered by members of the national Parliament, Rimantė Šalaševičiūtė and Remigijus Žemaitaitis, however it was not adopted. It was a paradox that such a proposal was

submitted at all, since a decision was made to scrap the Law on Narcological Supervision altogether after the adoption of an updated version of the Law on Mental Health Care. A new version of the latter was considered by the same Ministry since 2014.

In 2017, during the spring session of the Parliament, there was a failed attempt to extend the allowed term of involuntary hospitalization prior to a court decision. The Law on Mental Health Care allows a term of two days, while the Civil Code – a term of three working days. Member of the Parliament Antanas Matulas proposed<sup>9</sup> amending both laws by allowing to hospitalize a person for up to seven days without judicial authorization.

Member of the Parliament Rimantė Šalaševičiūtė registered an amendment to the Law on Mental Health Care in the summer of 2017, seeking to expand the grounds for involuntary hospitalization by matching them with those provided in the Civil Code.<sup>10</sup> The project was not considered. A further expansion of grounds for involuntary hospitalization was suggested by the draft amendment to the Law submitted to the Government on 11 December 2017:<sup>11</sup> involuntary hospitalization may be applied to a person with mental and behavioural disorders, if it is evident from the behaviour of such a person that his actions or inactions pose a real threat to his own health or life, or the health, life and/or property of others around him.

It seems that politicians' attempts to expand the grounds for involuntary hospitalization are related to the interpretations of high-profile events,<sup>12</sup> by exploiting the stigma of persons with mental health disorders. In view of tragic events that shocked the public and significantly increased awareness in matters related to the rights of children, politicians' attention was gradually directed towards the abusers of children, by selectively accentuating issues of alcohol addiction. Instead of systemic reforms and development of modern social and health services ensuring human rights,<sup>13</sup> proposals were continuously made to expand the grounds for involuntary hospitalization, as a solution to help the fight against the spread of addictions and other inconvenient social problems in Lithuania.<sup>14</sup> These tendencies were condemned by human rights experts.<sup>15</sup>

The coalition of non-governmental organizations and experts "Mental Health 2030"<sup>16</sup> was particularly critical towards the absurd grounds of involuntary hospitalization proposed in 2016, and to be applied to persons suspected of having mental or behavioural disorders due to the use of psychoactive substances, and who are prone to using violence. The Coalition pointed out<sup>17</sup> that instances of violence are and must be dealt with using existing law enforcement measures, and not medical measures, as is clearly defined by laws.

In 2016, when Juras Požėla became the Minister of Health, the Ministry applied to the Regional Office for Europe of the World Health Organization for a consultation on the preparation of a new version of the Law on Mental Health Care. Such progressive actions in the legislative process are uncommon in Lithuanian mental health care policy, which tends to ignore international recommendations and is reluctant to involve non-governmental organizations in the preparation of laws.

Around 5 percent of all patients in the Republican Vilnius Psychiatric Hospital are treated involuntarily. However, only a small percentage of them appeal the conclusions of the medical committee. This information was provided to the Parliamentary Commission for Suicide and Violence Prevention which visited this hospital in autumn 2017.<sup>18</sup> This is an unprecedented case when politicians showed interest in the activities of this large, closed psychiatric institution. Valentinas Mačiulis,<sup>19</sup> who ran this stagnant hospital for over 30 years, was dismissed at the end of 2017 on suspicion of taking advantage of his official position. Psychiatrist prof. Arūnas Germanavičius, who is known for his progressive views, was appointed to be the new director of the hospital.<sup>20</sup>

The participation of a patient is not ensured when courts order involuntary treatment. Courts make decisions based on documents provided by doctors, without hearing the patient. Such practice is criticized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>21</sup> (Committee). The new Draft Law on Mental Health Care aims to regulate the person's participation in court proceedings.

The Seimas Ombudsmen agree to the recommendations of the Committee after evaluating the human rights situation in two psychiatric hospitals in 2017.<sup>22</sup> The current practice of issuing court decisions authorizing forcible hospitalization without right of appeal, and under which legal aid is not provided for the person in question violates human rights. Even though the new Draft Law indicates that the forcibly hospitalized person has the right to file a court appeal against the psychiatrist's decision to apply involuntary hospitalization, it still does not establish a clear process, legal safeguards and procedures for filing an appeal.

Procedures for informing patients about their condition and prescribed treatment, in order to agree on voluntary treatment, are not ensured nor provided in detail. This makes the human right to refuse hospitalization dubious in Lithuania.

It is important to regulate the possibility for forcibly hospitalized people to seek the opinion of an independent psychiatrist or

commission, as the courts currently base their decisions on a single assessment of mental health. Without such a possibility, persons lack evidence in court proceedings.<sup>23</sup> It is necessary to ensure a clear separation between involuntary hospitalization and involuntary psychiatric treatment. These important aspects are not provided in the new Draft Law.

Arguments of the supporters of involuntary hospitalization in the global discourse are based on the right to receive treatment which is pitted against the freedom to refuse treatment.<sup>24</sup> However, necessary treatment is wrongly identified as involuntary hospitalization. Repressive measures should be replaced with help in making decisions and a range of patient-oriented psychosocial services not limited to prescription of medication.<sup>25</sup> The necessity of such practices is highlighted by the international network of mental health service users.<sup>26</sup>

#### Sources:

1. Republic of Lithuania Law on the Ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, 27 May 2010, No. XI-854, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.373548?fwid=j9ohh9rnt>
2. Guidelines of Art. 14 of the Convention on the Rights of Persons with Disabilities of the United Nations Committee on the Rights of Persons with Disabilities, September 2015, <http://www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc>
3. Agenda No. 3 of the 35th Session of the UN Human Rights Council, 6-23 June 2017, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/21)
4. Republic of Lithuania Law on Mental Health Care, 6 June 1995, No. I-924, [https://www.e-tar.lt/portal/lt/legalAct/TAR.4043B97881A2/TAIS\\_259559](https://www.e-tar.lt/portal/lt/legalAct/TAR.4043B97881A2/TAIS_259559)
5. Law on the Approval, Entry into Force, and Implementation of the Civil Code of the Republic of Lithuania, 18 July 2000, No. VIII-1864, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687>
6. Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of Lithuania, 20 April 2016, <http://www.ndt.lt/wp-content/uploads/Neigaliuju-teisiu-komiteto-rekomendacijos-Lietuvai-4.doc>. Agenda Item No. 6 of the 34th Session of the UN Human Rights Council, 27 February – 24 March 2017, [http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20\(vertimas%20C4%AF%20liet\\_%20k\\_.pdf](http://www.tm.lt/dok/UPR%20ataskaita%20d%C4%97l%20Lietuvos%20(vertimas%20C4%AF%20liet_%20k_.pdf)
7. “A project was prepared on the involuntary treatment of alcoholism”, *Izinios.lt*, 7 January 2016, <https://www.lzinios.lt/lzinios/sveikata/parengtas-projektas-del-priverstinio-gydymo-nuo-alkoholizmo/215650>

8. Law on the Amendment of Articles 7 and 15 of the Republic of Lithuania Law on Narcological Supervision No. VIII-156, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/64c5bdd002661e7ae41f2dbc54c44ce>
9. “The term of involuntary treatment of persons with mental disorders will not be extended”, *Izinios.lt*, 30 April 2017, <https://www.izinius.lt/izinius/lietuva/priverstinio-gydymo-del-psichikos-sutrikimu-laikotarpiu-nebus-pratestas/243117>
10. Dalia Plikūnė, “The idea of R. Šalaševičiūtė angered M. Majauskas: a proposal was made to increase the number of forcibly treated patients”, *delfi.lt*, 13 October 2017, <https://www.delfi.lt/news/daily/lithuania/r-salaseviciutes-ideja-papiktino-m-majauska-siulo-plesti-prievarta-gydomu-zmoniu-skaiciu.d?id=76045839>
11. Law on the Amendment of the Republic of Lithuania Law on Mental Health Care No. I-924, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/e2951350de7511e782d4fd2c44cc67af>
12. Karilė Levickaitė, “The fires of mental health cannot be extinguished by force”, *manoteises.lt*, 7 December 2015, <http://manoteises.lt/straipsnis/psichikos-sveikatos-gaisrai-prievarta-neuzgesinami/>
13. Rugilė Audėnienė, “Former dentist trapped by schizophrenia: help does not reach people living in the region”, *alfa.lt*, 5 June 2016, <https://www.alfa.lt/straipsnis/50029776/sizofrenijos-spastai-buvusiai-odontologei-pagalba-provincijos-serganciuju-nepasiekia>
14. “S. Skvernelis supports the proposal to isolate alcohol users”, *delfi.lt*, 8 January 2016, <https://www.delfi.lt/news/daily/lithuania/s-skvernelis-palaiko-siulyma-izoliuoti-alkoholi-vartojancius-asmenis.d?id=70060328>
15. Agnė Skaramakaitė, “Human rights expert Dovilė Šakalienė criticized the involuntary treatment of alcoholism”, *15min.lt*, 7 January 2016, <https://www.15min.lt/naujiena/aktualu/lietuva/zmogaus-teisiu-eksperte-dovile-sakaliene-sukritikavo-priverstini-alkoholizmo-gydyma-56-564795>
- Jonas Ruškus, “Mental health care: help or abuse?”, *manoteises.lt*, 17 October 2017, <http://manoteises.lt/straipsnis/psichikos-sveikatos-prieziura-prievarta-ar-pagalba/>
16. The Coalition “Mental Health 2030”, [http://www.perspektyvos.org/lt/koalicija\\_psichikos\\_sveikata\\_2030.html](http://www.perspektyvos.org/lt/koalicija_psichikos_sveikata_2030.html)
17. The prospects of mental health, the Coalition “Mental Health 2030” applied to the Minister of Health regarding the Law on Mental Health Care, 29 April 2016, [http://www.perspektyvos.org/lt/naujienos/koalicija\\_psichikos\\_sveikata\\_2030\\_kreipesi\\_i\\_sveikatos\\_apsaugos\\_ministra\\_del\\_psichikos\\_sveikatos\\_prieziuros\\_istatymo](http://www.perspektyvos.org/lt/naujienos/koalicija_psichikos_sveikata_2030_kreipesi_i_sveikatos_apsaugos_ministra_del_psichikos_sveikatos_prieziuros_istatymo)
18. Rūta Pukenė, “Visiting a psychiatric hospital: another state within a state”, *delfi.lt*, 11 October 2017, <https://www.delfi.lt/news/daily/lithuania/apsilanke-psichiatrijos-ligonineje-tai-dar-viena-valstybe-valstybeje.d?id=76024817>
19. Liepa Želnienė, “Dismissed Valentinas Mačiulis did not hold back on throwing diagnoses at the team of Minister A.Veryga”, *15min.lt*, 2 November 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/is-darbo-metamas-valentinas-maciulis-ministro-komandai-negaili-savu-diagnoziu-56-875974>
20. Donata Majauskienė, “Former adviser of A.Veryga assumed a position in Vilnius Psychiatric Hospital”, *15min.lt*, 3 January 2018, <https://www.15min.lt/naujiena/aktualu/lietuva/buves-a-verygos-patarejas-isisarbino-vilniaus-psichiatrijos-ligonineje-56-905278>
21. European Council, Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 19 May 2011, <https://rm.coe.int/1680697337>; European Council, Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 4 June 2014, <https://rm.coe.int/1680697367>
22. The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on the Human Rights Situation in the Psychiatric Clinic of the Hospital of Lithuanian University of Health Sciences Kauno Klinikos and in the Public Institution Vilnius City Mental Health Centre, 15 June 2017, No. 2017/1-35 [http://www.lrski.lt/images/dokumentai/2017-06-08\\_Atask\\_del\\_zm\\_t\\_psich\\_istaigose\\_NR\\_35-2017.pdf](http://www.lrski.lt/images/dokumentai/2017-06-08_Atask_del_zm_t_psich_istaigose_NR_35-2017.pdf)
23. Judgment of the Vilnius Regional Court of 15 March 2016 in the civil case No. e2S-449-653/2016 <http://eteismai.lt/byla/39442528908382/e2S-449-653/2016>
24. Freeman MC, Kolappa K, de Almeida JM, Kleinman A, Makhshvili N, Phakathi S, Saraceno B, Thornicroft G. Reversing hard won victories in the name of human rights: a critique of the General Comment on Article 12 of the UN Convention on the Rights of Persons with Disabilities. *Lancet Psychiatry*. 2015 September 2.
25. Mental Health Europe, “Compulsory psychiatric treatment and its alternatives - the facts” <https://mhe-sme.org/compulsory-psychiatric-treatment-and-its-alternatives-the-facts/>
26. European Network of (Ex-) Users and Survivors of Psychiatry, “Forced psychiatric interventions constitute a violation of human rights and disable care”, 16 April 2016, [http://enusp.org/wp-content/uploads/2016/03/Statement\\_ENUSP\\_29March2016\\_part-of-Tinas-campaign-on-absolute-prohibition.pdf](http://enusp.org/wp-content/uploads/2016/03/Statement_ENUSP_29March2016_part-of-Tinas-campaign-on-absolute-prohibition.pdf)

# VII. DEPRIVATION OF LIBERTY



## VII. DEPRIVATION OF LIBERTY

### Children's socialization centres

*Karilė Levickaitė*

The Ministry of Education and Science took action in response to the release of a scandalous report of the Seimas Ombudsmen on the use of “relaxation rooms” (a form of solitary confinement) in socialization centres, and the events in Švėkšna Special Education Centre that shocked the public: an interinstitutional plan was approved at the end of 2015,<sup>1</sup> even though there are reports that the relaxation rooms were still being used.<sup>2</sup>

When a new version of the Law on the Child's Minimum and Medium Care came into force,<sup>3</sup> it established that a measure of the medium care of a child – sending a child to a socialization centre – should be applied only in exceptional cases and for the shortest possible period of time. The list of child support measures in the municipality was expanded, including family support.

Adopted amendments to the Law on Education expand complex support.<sup>4</sup> An interinstitutional cooperation coordinator of the municipality will consolidate all institutions when addressing issues of ensuring the welfare of specific children.<sup>5</sup> This position was implemented in municipalities as a state-delegated function in 2017.<sup>6</sup>

Educational measures and recommendations for the minimum and medium care of children were approved in order to provide the necessary help for children with poor socialization skills.<sup>7</sup> However, it remains unclear how they will be coordinated when there are no necessary services,<sup>8</sup> particularly in related to mental health,<sup>9</sup> which was also pointed out by the Ombudsman for the Protection of Children's Rights. According to the data of the National Centre for Special Needs Education and Psychology, educational institutions are the most common providers of support.<sup>10</sup> Even though municipalities lack a variety of services and target programmes for children with delinquent behaviour, they rarely purchase services from the non-governmental sector, and care little about the funding, quality and continuity of these services.<sup>11</sup>

The dynamics of the numbers of children in socialization centres are decreasing: there were 118 children living in these centres in 2015, 88 – in 2016,<sup>12</sup> and there were a total of 66 children living and studying in five Lithuanian socialization centres in September 2017<sup>13</sup>. Širvėna socialization centre was closed in 2017.<sup>14</sup> Plans were made to close Vilnius Children's Socialization Centre for girls, and Kaunas Children's Socialization Centre in the beginning of 2018.<sup>15</sup>

After the reform, only three socialization centres would remain in 2019: a centre for boys in Gruzdžiai, and two new centres (one for boys and one for girls) in Kėdainiai and Kelmė districts. The Ministry of Education and Science will seek to create a family environment in the facilities by allocating over 5 million euros for this project.<sup>16</sup> However, infrastructure and education alone are insufficient measures, as children with poor socialization skills require consistent psychotherapeutic work and behavioural correction programmes.

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#### Sources:

1. Order of the Minister of Education and Science on the approval of the 2015-2017 interinstitutional plan for the provision of complex aid and improvement of the quality of activities of special education schools/centres and children's socialization centres, 22 December 2015, No. V-1325, <https://www.e-tar.lt/portal/lt/legalAct/e2428930a94f-11e5be7fbc3f919a1e7e>
2. Dainius Sinkevičius, "Girls rioting in the socialization centre received pity: their lives are already ruined", delfi.lt, 15 June 2016, <https://www.delfi.lt/news/daily/crime/pasigailejo-socializacijos-centre-maistavusiu-merginu-ju-gyvenimas-ir-taip-sugriautas.d?id=71564794>
3. Law Amending the Republic of Lithuania Law on the Child's Minimum and Medium Care No. X-1238, 29 June 2016, No. XII-2535, <https://www.e-tar.lt/portal/lt/legalAct/70593dd04a7311e6b5d09300a16a686c>
4. Law Amending the Republic of Lithuania Law on Education, 17 March 2011, No. XI-1281, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.395105/ZPzOxUEnvH>
5. Order of the Minister of Education and Science, Minister of Social Security and Labour and Minister of Health on the Approval of the Description of the Procedure of Coordinated Educational Aid, Social and Health Care Services, 28 August 2017, No. V-651/A1-455/V-1004, <https://www.e-tar.lt/portal/lt/legalAct/5321ed508d7211e7a-3c4a5eb10f04386>
6. "The welfare of children will be ensured by an interinstitutional cooperation coordinator" *regionunaujienos.lt*, 2 November 2017, <http://www.regionunaujienos.lt/vaiko-gerove-rupinsis-tarpinstitucinio-bendradarbiavimo-koordinatoriumus/>. "An interinstitutional cooperation coordinator started working in the municipality", *alytus.lt*, 2 November 2017, [http://www.alytus.lt/naujienos-top/-/asset\\_publisher/WmP1bf8RTFLG/content/savivaldybe-je-dirbti-pradejo-tarpinstitucinio-bendradarbiavimo-koordinatoriumus](http://www.alytus.lt/naujienos-top/-/asset_publisher/WmP1bf8RTFLG/content/savivaldybe-je-dirbti-pradejo-tarpinstitucinio-bendradarbiavimo-koordinatoriumus). "An interinstitutional cooperation coordinator already working in the municipality", *kretinga.lt*, 13 October 2017, <https://www.kretinga.lt/node/10665>

7. Order of the Minister of Education and Science on the recommendations of the organization, coordination and control of the implementation of child's minimum and medium care measures or educational measure in the municipality, 5 July 2017, No. V-555, <https://www.e-tar.lt/portal/lt/legalAct/651a79c062eb11e7b85cfdc787069b42>
8. Modesta Gaučaitė, "Research revealed a hidden problem in the protection of the rights of children", Irytas.lt, 26 April 2017, <https://lietuvoisdiena.irytas.lt/aktualijos/2017/04/26/news/tyrimas-atskleide-uzslepta-vaiko-teisiu-apsaugos-problema-947916/>
9. Statement of the Ombudsman for Children's Rights of the Republic of Lithuania on the availability of services provided by differentiated complex family and children support centres, 1 August 2017, No. (6.7-2016-44)PR-133, [http://vtaki.lt/lt/media/force\\_download/?url=/uploads/documents/docs/403\\_845ae667c836075e4014b58657d2bfc.pdf](http://vtaki.lt/lt/media/force_download/?url=/uploads/documents/docs/403_845ae667c836075e4014b58657d2bfc.pdf)
10. Analysis "Child's minimum and medium care in Lithuania and abroad: legal and practical aspects", 2015. [http://www.smm.lt/uploads/documents/tyrimai\\_ir\\_analizes/Vaiko%20minimali%20ir%20vidutinė%20priežiūra%20Lietuvoje%20ir%20užsienyje%20teisiniai%20ir%20praktiniai%20aspektai.pdf](http://www.smm.lt/uploads/documents/tyrimai_ir_analizes/Vaiko%20minimali%20ir%20vidutinė%20priežiūra%20Lietuvoje%20ir%20užsienyje%20teisiniai%20ir%20praktiniai%20aspektai.pdf)
11. Research "Implementation of the provisions of the Law on the Child's Minimum and Medium Care in municipalities", 2015. [http://www.smm.lt/uploads/documents/tyrimai\\_ir\\_analizes/Vaiko%20minimalios%20ir%20vidutinės%20priežiūros%20įstatymo%20nuostatų%20įgyvendinimas%20savivaldybėse.pdf](http://www.smm.lt/uploads/documents/tyrimai_ir_analizes/Vaiko%20minimalios%20ir%20vidutinės%20priežiūros%20įstatymo%20nuostatų%20įgyvendinimas%20savivaldybėse.pdf)
12. Report of the Ministry of Education and Science of the Republic of Lithuania for 2016, [https://www.smm.lt/uploads/documents/tyrimai-ir-studijos/%C5%A0vietimo%20ir%20mokslo%20ministerijos%202016%20m\\_%20veiklos%20ataskaita.pdf](https://www.smm.lt/uploads/documents/tyrimai-ir-studijos/%C5%A0vietimo%20ir%20mokslo%20ministerijos%202016%20m_%20veiklos%20ataskaita.pdf)
13. Skirmantas Pabedinskas, Kristina Jackūnaitė, "Children's socialization centres are being closed", LRT.lt, 11 September 2017, <http://www.lrt.lt/naujienos/lietuvoje/2/185942/uzdaromi-vaiku-socializacijos-centrai>
14. Order of the Ministry of Education and Science on the liquidation of Širvėna children's socialization centre, 1 June 2017, No. V-439, <https://www.e-tar.lt/portal/lt/legalAct/f4563e0046bf11e7846ef01bfff9b64/jXauXoxsAr>
15. Liepa Želnienė, "Two half-empty children's socialization centres to be closed until February: around 90 people will lose their jobs", 15min.lt, 31 October 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/du-pustusciai-vaiku-socializacijos-centrai-bus-uzdaryti-iki-vasario-darbo-neteks-apie-90-darbuotoju-56-874538>
16. "Plans are made to reform children's socialization centres", *smm.lt*, 31 October 2017, [https://www.smm.lt/web/lt/pranesimai\\_spaudai/naujienos\\_1/planuojama-pertvarkyti-vaiku-socializacijos-centrus-](https://www.smm.lt/web/lt/pranesimai_spaudai/naujienos_1/planuojama-pertvarkyti-vaiku-socializacijos-centrus-)

## Prisons

*Gintautas Sakalauskas*

The number of prisoners in Lithuania continues to remain (since 2011) the highest compared to other European Union countries. On 1 September 2017, there were 235 prisoners per 100,000 people living in Lithuania,<sup>1</sup> which is several times more than the EU average. Among countries belonging to the Council of Europe, the number of prisoners was higher only in Russia (420), Turkey (285), and Georgia (254).

The average duration of prison sentences is becoming longer: it was 80 months in 2016,<sup>2</sup> which was the highest average since 1990. Since 2006, it increased by as much as 38 percent. The average duration of a prison sentence actually served was 34 months (it increased by 36 percent during the same period). The percentage of persons who have to serve longer prison sentences is also increasing: at the beginning of 2017, 50 percent of all convicts were serving sentences longer than 5 years,<sup>3</sup> while only 37 percent with such sentences were registered in 2006. Considering the negative effects of imprisonment proven by criminological studies and highlighted in international standards, such tendencies create particularly unfavourable conditions for ensuring human rights in prisons, as well as the reintegration of prisoners back into the society after serving their sentence.

In 2016, 14 prisoners committed suicide in Lithuanian prisons<sup>4</sup>. This is the highest number of prisoners committing suicide per year since 1990. More than 100 convicts committed suicide in Lithuanian prisons over the past 10 years. The number of HIV cases began to grow once again: there were 23 new HIV cases registered in institutions subordinate to the Prison Department in 2015, 70 cases – in 2016, and 83 cases – over the first 10 months of 2017.<sup>5</sup> According to the data of the Prison Department, at the beginning of 2018, there were 314 people infected with HIV in Lithuanian prisons,<sup>6</sup> while the Ministry of Health and the Ministry of Justice fail to agree on who should treat them.<sup>7</sup>

In 2016, the Law Institute of Lithuania carried out a study during which 680 adult prisoners of all Lithuanian prisons were surveyed.<sup>8</sup> According to the collected data, 68.4 percent of surveyed prisoners felt depressed, 65.4 percent felt lonely, 45.7 percent felt that they could no longer endure another day in prison, 50.9 percent were often irritated and angry, 62.4 percent often felt tense, and 19.6 percent no longer saw any meaning in their life. Only 25 percent of respondents were provided with an individual sentence (social rehabilitation)

plan, and only 20 percent of prison workers showed interest in the personal position of prisoners or talked to them about their sentences right after they were brought to the prison institution.

Lithuanian national courts paid out 174 thousand euros of compensations for prisoners in 2014, and 1.3 million euros in 2016<sup>9</sup> due to inhumane<sup>10</sup> and degrading conditions. The number of complaints of prisoners is increasing each year,<sup>11</sup> and the Supreme Administrative Court of Lithuania case-law confirms that prison conditions still often do not meet the minimum legal requirements, which makes it possible for prisoners to demand compensation for suffered damages.<sup>12</sup>

The Committee for the Prevention of Torture (CPT) visited Lithuania in September 2016 and published their report at the beginning of 2018.<sup>13</sup> The CPT report repeated the same remarks made in the previous reports regarding poor prison conditions, overcrowding, violence inside prisons, improper response to the latter, frequent violations of human rights, failure to ensure health care, lack of staff and proper training for them, etc., while stressing once more that these problems only continue to increase and they are not being solved for many years now. It can be said that this report of the Committee is even stricter than earlier reports on Lithuania.<sup>14</sup>

On 8 December 2015, the European Court of Human Rights made a decision in the case of *Mironovas and Others v. Lithuania*<sup>15</sup> where it indicated the key aspects considered when evaluating whether prison conditions are in violation of Article 3 (prohibition of torture) of the European Convention on human Rights. This decision also provided key principles for determining the size of compensations for non-pecuniary damage. After this decision, cases on unsuitable prison conditions are classified by the ECtHR as recurring cases which do not raise complex issues under the Convention, therefore they are handed over to a committee of 3 judges, instead of 7. Also, new petitions have been communicated to the Government under simplified procedures, which proposes that the parties come to a peaceful settlement in accordance with compensation amounts proposed by the Court, according to the practice developed in the case of *Mironovas and Others v. Lithuania*.<sup>16</sup>

In 2016, the United States Department of State issued a report on the human rights situation in Lithuania which once again highlighted the particularly poor conditions in Lithuanian prisons.<sup>17</sup> It is unfortunate that poor prison conditions have already become a part of the image of Lithuania in the international arena, as the situation in prisons best reflects the level of civilisation of a country.<sup>18</sup> The mistreatment of prisoners is also revealed by publications in the media.<sup>19</sup> However, as in earlier years, not all publications are ethical

and strive to objectively assess the situation. There are also articles that mock prisoners and aim to turn the public against them.<sup>20</sup>

So far not a single new prison institution has been built, even though new infrastructure would allow to assure the rights of prisoners more effectively and would create conditions for development of a new penitentiary culture in Lithuania. It was planned that new institutions will be built in Vilnius, Klaipėda and Šiauliai in 2015, as well as in Panevėžys in 2017. According to the comments of auditors, the plan was revised the construction of these institutions was postponed to 2022.<sup>21</sup> The National Audit Office of Lithuania states<sup>22</sup> that “even during the slow modernisation of prison facilities, the Prison Department and its subordinate institutions fail to ensure that funds intended for buildings’ renovation are used cost-efficiently and in accordance with laws”.

The past years particularly exposed problems in prison system management and corruption within the system<sup>23</sup> which undoubtedly had and still have an impact on ensuring human rights, of prisoners and employees, in prisons. This was further detrimental to the trust in this system which also partially led to the lack of staff.<sup>24</sup> Poor system management and failure to allocated adequate care for employees’ rights is not only a violation of their rights but also a good precondition for poor relations with prisoners, negative attitudes towards them, and towards their work, which also leads to an increasing number of violations of prisoners’ rights.<sup>25</sup>

However, the prison system also has a few positive aspects, such as introduction of halfway houses, slightly more frequent short trips home and short trips outside of prison. Nevertheless, attention should be paid to the fact that prisoners have to meet very strict conditions to be able to move to halfway houses. Therefore, even though these houses are able to accommodate very few prisoners, not all of the vacancies are being filled. Halfway houses must become an integral part of the general social integration chain of prisoners. However social integration carried out in prisons lacks direction, systematic implementation and consistency. The quality of the social integration programmes raises many doubts, institutions lack properly trained staff to implement these programmes, and their effectiveness is unclear.<sup>26</sup>

The prison system in Lithuania requires radical changes as it continues to drift further away from European standards. Its systematic problems are not being addressed and are increasing over time,<sup>27</sup> therefore it will also be increasingly harder to handle them in the future.

## Sources:

1. World Prison Brief, <http://www.prisonstudies.org/map/europe>
2. Summaries of the number and composition (according to committed crime, age, term of sentence, etc.) of persons sentenced to serve a term of imprisonment in the Prison Department under the Ministry of Justice of the Republic of Lithuania, and their changes in 2006–2016, [http://www.kaldep.lt/lt/kalejimu-departamentas/administracine\\_informacija/ataskaitos/metines.html](http://www.kaldep.lt/lt/kalejimu-departamentas/administracine_informacija/ataskaitos/metines.html)
3. Ibid.
4. Reports on the disclosed illicit relations, confiscated prohibited items and criminogenic condition of prisons of the Prison Department under the Ministry of Justice of the Republic of Lithuania, [http://www.kaldep.lt/lt/kalejimu-departamentas/administracine\\_informacija/ataskaitos/metines.html](http://www.kaldep.lt/lt/kalejimu-departamentas/administracine_informacija/ataskaitos/metines.html)
5. Donata Majauskienė, “The spread of HIV in prisons causes concern”, *Delfi.lt*, 23 December 2017, <https://www.delfi.lt/news/daily/lithuania/ziv-plitimas-laisves-atemimo-istaigose-kelia-nerima.d?id=76734961>
6. Austėja Masiokaitė, “Drug and HIV problems in prisons can only be eliminated with reformation”, *15min.lt*, 4 February 2018, <https://www.15min.lt/naujiena/aktualu/lietuva/narkotiku-ir-ziv-problemos-kalejimuose-neliks-tik-juos-pertvarkius-56-920668>
7. Lauryna Vireliūnaitė, “While HIV carriers are waiting for treatment, ministries disagree on the funds for treating prisoners”, *15min.lt*, 4 February 2018, <https://www.15min.lt/naujiena/aktualu/lietuva/kol-ziv-infekcijos-nesio-tojai-laukia-gydymo-ministerijos-gincijasi-is-kieno-lesu-turi-buti-gydomi-kaliniai-56-918294>
8. The research data will be summarised in a monograph which should become available in the second half of 2018.
9. BNS, “Modernisation of prisons is slow and inefficient, and compensations are paid out due to poor prison conditions”, *15min.lt*, 3 August 2015, <https://www.15min.lt/naujiena/aktualu/lietuva/ikalininimo-istaigos-modernizujamos-vangiai-ir-netaupiai-del-blogu-kalejimo-salygu-mokamos-kompensacijos-56-519489>
10. Jūratė Skėrytė, “The Ministry of Justice sticks to its plans to move Lukiškės prison to Pravieniškės”, *Delfi.lt*, 26 February 2017, <https://www.delfi.lt/news/daily/lithuania/teisingumo-ministerija-neatsisako-planu-lukiskiu-kalejima-iskelti-i-pravieniskes.d?id=73870778>
11. Sigita Jacinevičienė-Baltaduonė, “Why should the state pay convicts?”, *15min.lt*, 3 September 2017, <https://www.delfi.lt/news/daily/law/kodel-valstybe-turi-moketi-nuteistiesiems.d?id=75640047>
12. Review of the Case-Law of the Supreme Administrative Court of Lithuania of 2016, <http://www.lvat.lt/lt/teismu-praktika/teismo-metiniai-pranesimai.html>
13. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), <https://www.coe.int/en/web/cpt/lithuania>
14. BNS, “Prison conditions in Lithuania criticised by the Council of Europe”, *Lrt.lt*, 3 February 2018, <http://www.lrt.lt/naujienos/lietuvoje/2/202085/europos-taryba-kritikuoja-kalinimo-salygas-lietuvoje>
15. Judgment of the ECtHR of 8 December 2015 in the case of *Mironovas and Others v. Lithuania*, Applications Nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13), [http://lrv-atstovas-eztt.lt/uploads/MIRONOVAS\\_ir\\_kiti\\_2015\\_sprendimas\\_FINAL.pdf](http://lrv-atstovas-eztt.lt/uploads/MIRONOVAS_ir_kiti_2015_sprendimas_FINAL.pdf)
16. Government representative in the European Court of Human Rights, “The Court approved peaceful agreements in cases regarding unsuitable prison conditions”, <http://lrv-atstovas-eztt.lt/lt/naujienos/teismas-patvirtino-taikius-susitarimus-bylose-del-netinkamu-kalinimo-salygu>
17. Lithuania 2016 Human Rights Report of the United States Department of State, <https://t.usembassy.gov/lt/2016-m-jav-valstybes-departamento-pranesimas-apie-zmogaus-teisiu-padeti-pasaulyje/>
18. The Law Institute of Lithuania, “Human rights in prisons as a mirror of the condition of a country”, 19 December 2017, <http://teise.org/lt/zmogaus-teises-kalejime-kaip-padeties-valstybeje-veidrodys/>
19. Saulius Chadasevičius, “Confessions of the wife of a prisoner: prison is turning my husband into an ‘animal’, and I feel like trash myself”, *15min.lt*, 16 July 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/kalinio-zmonos-ispazintis-is-mano-vyro-pataisos-namuose-daro-zveri-pati-jauciuosi-kaip-atmata-59-824476>
20. M., “The real life of prisoners revealed by their loved ones: ‘I pity them’”, *Lrytas.lt*, 18 June 2017, <https://bendruokime.lrytas.lt/isklausykite/2017/06/18/news/nuteistuju-artimieji-papasakojo-apie-kitoki-kaliniu-gyvenima-man-ju-gaila-1613426/>; “Prison reforms: changes must be made both in prison facilities and in the minds of people”, *Delfi.lt*, 6 May 2016, <https://www.delfi.lt/multimedija/atsakomybepokytiszmogus/kalejimu-reformos-turi-keistis-ne-tik-patalpos-bet-ir-visuomenes-pozitrus-i-nuteistuosius.d?id=71197794>; “Letter from the wife of a prisoner: it is a shame to live in such a country”, *Delfi.lt*, 5 May 2016, <https://www.delfi.lt/pilietis/voxxpopuli/kalinio-zmonos-laiskas-geda-tokioj-lietuvoj-gyventi.d?id=71190100>; Sofija Buivydytė, “Clergyman from Alytus: a human being should not fear another human being”, *Delfi.lt*, 21 March 2016, <https://www.delfi.lt/multimedija/atsakomybepokytiszmogus/alytaus-dvasininkas-zmogus-neturi-bijoti-zmogaus.d?id=70695218>; Vaidas Saldžiūnas, “Only Russians and Belarusians are ahead of Lithuania in the terrible list”, *Delfi.lt*, 9 March 2016, <https://www.delfi.lt/multimedija/atsakomybepokytiszmogus/baisiame-sarase-lietuva-lenkia-tik-rusiai-ir-baltarusiai.d?id=70624228>
20. Petras Kurlmelis, “Prisoners are milking the state without feeling any guilt”, *Valstietis.lt*, 14 October 2016, <http://valstietis.lt/naujienos/salyje/kaliniai-be-jokio-sazines-grauzimo-melzia-valstybe>; Dainius Sinkevičius, “Prisoners receive good news from the Government: solid compensations will be paid out”, *Delfi.lt*, 27 August 2017, <https://www.delfi.lt/news/daily/law/kaliniamas-gera-zinia-is-vyriasybes-bus-ismoketos-solidzios-kompensacijos.d?id=75579027>; Asta Kuznecovaitė, “Strasbourg Court helps prisoners to milk Lithuania”, *Lrytas.lt*, 10 November 2017, <https://lietuvsdiena.lrytas.lt/aktualijos/2017/11/10/news/strasburo-teismas-padede-kaliniamas-melzti-lietuva-3462823/>
21. BNS, “Modernisation of prisons is slow and inefficient, and compensations are paid out due to poor prison conditions”, *15min.lt*, 3 August 2015, <https://www.15min.lt/naujiena/aktualu/lietuva/ikalininimo-istaigos-modernizujamos-vangiai-ir-netaupiai-del-blogu-kalejimo-salygu-mokamos-kompensacijos-56-519489>

22. ELTA, "The National Audit Office of Lithuania: the Ministry of Justice fails to control the Prison Department", *Vakarų Ekspresas*, 3 August 2015, <http://www.ve.lt/naujienos/lietuva/lietuvos-naujienos/valstybes-kontrolė-teisingumo-ministerija-nesusitvarko-su-kalejimu-departamentu-1384090/>; The National Audit Office of Lithuania, "On the results of the financial (legality) audit carried out in the Ministry of Justice of the Republic of Lithuania", 30 July 2015, No. FA-P-40-5-15-1, [https://www.vkontrolė.lt/audito\\_ataskaitos.aspx?tipas=1](https://www.vkontrolė.lt/audito_ataskaitos.aspx?tipas=1)
23. Robertas Šarknickas, "Shadows of mismanagement in prisons", *15min.lt*, 29 September 2017, <https://www.delfi.lt/news/ringas/politics/r-sarknickas-neukiskumo-seseliai-laisves-atemimo-istaigose.d?id=75901141>
24. BNS, "Three prison officers caught drunk at work", *Lrytas.lt*, 30 October 2017, <https://lietuvosdiena.lrytas.lt/kriminalai/2017/10/30/news/trys-ikalinimo-istaigu-pareigunai-suciupti-neblaivus-darbe-jie-nusalinti-nuo-pareigu-3339880/>
25. Vytenis Miškinis, "Execution in Alytus Correctional Facility: 39 injured prisoners after a search conducted by officers", *15min.lt*, 19 October 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimai/irnelaimes/egzekucija-alytaus-pataisos-namuose-po-pareigunu-kratos-39-suzaloti-nuteistieji-59-869228>
26. Vaičiūnienė, Rūta, Viršilas, Vaidas "The implementation and application of social rehabilitation in Lithuanian correctional facilities". Scientific study. Vilnius: Law Institute of Lithuania, 2017, <http://teise.org/wp-content/uploads/2018/01/Vai%C4%8Di%C5%ABnuien%C4%97-Vir%C5%Aililas.pdf>
27. Augustinas Šulija, "Ineffective prison system in Lithuania has the largest number of prisoners in the EU", *Bernardinai.lt*, 15 July 2017, <http://www.bernardinai.lt/straipsnis/2017-07-14-neveikiancioje-lietuvos-ikalinimo-sistemoje-didziausias-kaliniu-skaicius-es/161682>

## Life imprisonment

*Karolis Liutkevičius*

In May of 2017, the European Court of Human Rights ruled that the prohibition of ever commuting life sentences, applied in Lithuania, violates prisoners' rights.<sup>1</sup> In the case of *Matiošaitis and Others v. Lithuania*, which began back in 2013, the Court found that by applying such prohibition Lithuania is violating Article 3 of the European Convention on Human Rights which prohibits inhuman or degrading treatment or punishment.

The applicants in this case were 8 prisoners serving life sentences for various grave crimes. They applied to the Court in order to prove that the State does not provide them with a real opportunity to commute their sentence, even if their behaviour improves and they no longer pose threat to the society. The Code of the Enforcement of Punishments prohibits the application of parole for prisoners serving life sentences.<sup>2</sup> The only legal possibility for such sentences to be commuted is being granted pardon by the President.

After evaluating the Presidential pardon application procedures, the European Court of Human Rights determined that, even though the procedures themselves are clear and unambiguous, it is not mandatory to indicate the specific reasons of a decision to refuse to satisfy the requests of prisoners to be pardoned. It remains unclear to prisoners how they should change to be able to receive a pardon. In addition, decisions on whether to grant or refuse a Presidential pardon cannot be appealed against in court.

The Court also evaluated the fact that prisoners serving a life sentence are almost never granted a pardons. Based on statistics, only one prisoners was pardoned out of 35 who requested, therefore the Court acknowledged that the arguments of applicants that this was an exceptional case were justified.

According to the case law of the European Court of Human Rights, the right of convicts to have their sentence reviewed translates to a real review of all relevant information in order to assess whether their continued imprisonment is justified on penological grounds. Furthermore, convicts must know what they must do and how they must change in order to be considered for early release.

According to the Court, prisoners should not be deprived entirely of hope that, some day, they will be able to prove through their actions that they have changed for the better. Condemning them to spend the rest of their life in isolation, without any hope of proving

that they've changed, results in conditions that are degrading to human dignity. The Court further noted that the State is not currently planning to reform this area of law. In view of these circumstances, the Court unanimously held that Lithuania violated Article 3 of the Convention.

The Human Rights Monitoring Institute participated in the proceedings as a third party in support of the applicants and, after the ruling, submitted proposals to the Ministry of Justice for amendments of law suggesting expanding application of parole to include life prisoners. As of beginning of 2018, amendments implementing the European Court of Human Rights ruling were not adopted.

#### Sources:

1. Judgment of the ECtHR of 23 May 2017 in the case of *Matiošaitis and Others v. Lithuania*, Application No. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13, <http://hudoc.echr.coe.int/eng?i=001-173623>
2. The Code of the Enforcement of Punishments of the Republic of Lithuania, 27 June 2002, No. IX-994, Art. 159 (current version), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.171368/UfTbyLHxol>

# VIII. PROHIBITION OF VIOLENCE



## VIII. PROHIBITION OF VIOLENCE

### Domestic violence

*Laima Vaigė*

The number of emergency calls related to domestic abuse has been increasing in Lithuania over the past two years. The police received over 38 thousand calls in 2015, and over 60 thousand calls in 2016.<sup>1</sup> In 2013, police received over 21 thousand calls, thus the number of emergency calls over the past years has almost tripled.

However, the percentage of launched investigations is decreasing, i.e. pre-trial investigations were launched following 46 percent of emergency calls in 2013, and only following 28 percent of emergency calls in 2015.<sup>2</sup> Only half of the cases reached the courts. The United Nations Special Rapporteur on Violence against Women pointed out that the numbers of reported violence reveal whether women trust in state measures against violence, while the percentage of cases that end in convictions show whether the legal and political measures and changes have an actual effect.<sup>3</sup>

The currently growing number of reports show that victims of domestic violence are beginning to trust the state to defend them against violence. However, the decreasing percentage of cases that are decided by court reveal problems in the implementation. It is recommended to closely monitor the percentage of cases that end judgments, which would reveal the effectiveness of state measures. It is also recommended to monitor whether court judgments provide actual protection for victims against recurring violence.

Over 50 percent of all the launched pre-trial investigations are terminated due to reconciliation and (or) after the victims change their testimonies. Politicians and police representatives associate this with improperly chosen restrictive measures,<sup>4</sup> i.e. during most investigations, abusers sign an agreement to not leave the country. Thus, they are allowed to return to the same household where they used violence, and are able to influence the victims. In August 2017, the recommendations of the Prosecutor General were changed by indicating that if an investigation into domestic violence is not completed within two days through accelerated criminal proceeding, prosecutors

should apply for the obligation to be imposed on the abuser to live separately from the victim.<sup>5</sup> However, though it is usual in Lithuania to regulate this area through recommendations, this form of regulation leaves wide discretion to individual prosecutors.

A new consolidated version of the Law on the Protection against Domestic Violence came into force in January 2017.<sup>6</sup> The law was amended several times in order to implement European Union legislation, to separate the areas of operation of restrictive measures (applicable according to the Code of Criminal Procedure) and temporary protection measures (applicable according to this law), as well as to clarify the obligations of police officers, the rights of the abuser and the victim, etc. More precise regulation and transposition of secondary EU legislation (Victim's Rights package) into national law is a positive development. Efforts were also taken to establish a procedure for assessing the special protection needs of victims.<sup>7</sup>

Another positive development is that the Law on the Fundamentals of the Protection of the Rights of the Child was finally amended, and physical punishments against children and their neglect were prohibited, and the procedures of taking a child from his or her family were revised<sup>8</sup>. This reform became known as "Matas' Reform", as it was initiated after the murder of a four-year-old boy Matas by his mother and stepfather. Proper implementation of legal provisions and continuation of the reform child's rights should significantly improve the legal protection of children who are the most vulnerable victims of domestic violence.

At the same time, it should also be mentioned that, after the latest amendments to the Law on the Protection against Domestic Violence, temporary protection measures (obligation to live separately and (or) not to seek contact with the victim) can only be applied when there is a risk of violence or if the victim requests this measure in writing. The laws are becoming increasingly complex and it is not easy for law enforcement officers to apply them. In the case of domestic violence, both the assessment of the risk of repeated violence (based on the mentioned law), and the assessment of the special protection needs of victims (applicable to all victims of crime under the Recommendations of the Prosecutor general and) should be carried out. Thus, practical problems of implementation might become more evident in the future. Implementation of these legal provisions should be carefully monitored to assess if victims are truly protected against violence, and whether liability for a false report of violence is not disproportionately applied if victims change their testimonies.

According to the Eurobarometer survey of 2016, nearly half of Lithuanians believe that violence is often provoked by the victim. The

number of people in Lithuania with this opinion is three times higher than the European average.<sup>9</sup> In addition, Lithuanians often believe that sexual abuse against a partner, wife, or girlfriend should not always be considered a crime. Compared to previous research (2010), the number of people with such opinions increased by as much as 10 percent, which is the highest percentage in Europe.<sup>10</sup> The Office of the Equal Opportunities Ombudsman received similar data after commissioning a national study: half of all the Lithuanians believe that women are to blame for the violence against them.<sup>11</sup> A more detailed study should be carried out in order to explore the reasons, why the Lithuanian society remains tolerant to domestic violence, and, possibly, is even becoming more tolerant and not *vice versa*.

Experts have repeatedly raised the issue of inadequate prevention of violence, which is focused on peaceful resolution of conflicts and avoids introducing structural changes.<sup>12</sup> Non-governmental organisations repeatedly applied to the governing bodies asking to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which provides detailed measures for preventing violence and was signed by the European Union in May 2017. Recommendations to ratify the Convention were also provided by the UN Committee on the Elimination of Discrimination against Women. However, ratification of the Convention is still strongly opposed in Lithuania, and it was still not submitted to Lithuanian Parliament for ratification at the end of 2017.

At the same time, without any public discussions, the Law on Family Strengthening was adopted in 2017.<sup>13</sup> It provides for several levels of institutions and organisations, aimed at strengthening the family. Their functions also include prevention of domestic violence and abuse. The preamble to the law states that the “complementarity of a man and a woman” is the foundation of a family, thus the area of application of this law should be understood in line with this vision.

However, preventive activities aimed at encouraging abusers and victims to remain a family, as well as educating the society on the natural complementarity of sexes, would conflict with the vision on the prevention of violence which is advanced by the United Nations, the Council of Europe and the European Union, and which is based on the prohibition of gender based discrimination. Thus, a question arises whether the aforesaid law is compatible with the obligations of Lithuanian state under international law.

And lastly, non-governmental organisations have pointed out that funding of support services for victims of domestic violence has been insufficient.<sup>14</sup> There is still a lack of services to help protect victims against repeated domestic violence. For example, even in Kaunas, a

major city in Lithuania, there are no temporary accommodation services for victims of violence.<sup>15</sup> In December 2017, non-governmental organisations stated that a funding of 4 million euros per year was required instead of the assigned 666 thousand euros.

#### Sources:

1. Artūras Bajorinas, “Statistics and trends”, Police Department under the Ministry of the Interior, *pasibelsk.lt*, 2016, <http://pasibelsk.lt/infografikas/>
2. Ibid.
3. Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences, Indicators on violence against women and State response, 2008 (A/HRC/7/6), [www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-6.doc](http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-6.doc)
4. “Termination of more than half of investigations of domestic violence are viewed by politicians as the mistakes of prosecutors”, *Bns.lt*, 28 June 2017, <http://www.bns.lt/topic/1911/news/53136465/>
5. Jūratė Skėrytė, “Prosecutors are ordered to apply the separation of abusers from their victims more frequently in domestic abuse cases”, *Delfi.lt*, 26 August 2017 <https://www.delfi.lt/news/daily/lithuania/prokurorams-nurodyta-smurto-artimoje-aplinkoje-bylose-dazniau-reikalauti-gyvenimo-skyriumi.d?id=75586883>
6. Law on the Protection against Domestic Violence, 26 May 2011, No. XI-1425, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.400334/xBNxqinWnE>
7. Order of the Prosecutor General on the approval of the recommendations for the assessment of special protection needs of victims, 29 February 2016, No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>
8. Law on the Fundamentals of the Protection of the Rights of the Child, 14 March 1996, No. I-1234, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.26397>
9. “Buildings in Vilnius will light up in orange in solidarity to women who were victims of violence”, *Lrt.lt*, 24 November 2017, <http://www.lrt.lt/naujienos/lietuvoje/2/194579/solidarizuojantis-su-smurta-patyrusiomis-moterymis-vilniaus-pastatai-nusvis-oranzine-spalva>
10. Eglė Zicari, “Lawyer Laima Vaigė: laws enable to view violence against women as a communication issue”, *euroblogas.lt*, 20 March 2017, <https://euroblogas.lt/2017/03/20/teisininke-laima-vaige-istatymai-leidzia-ziureti-i-smurta-pries-moteris-kaip-i-bendravimo-problema/>
11. “Half of the Lithuanian population believes that women are to blame for violence against them”, *15min.lt*, 28 November 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/puse-lietuvos-gyventoju-tiki-kad-moterys-pacios-kaltos-del-smurto-pries-jas-56-887936>
12. “Leaders of Lithuania are encouraged to not waste the state budget and combat violence effectively”, *manoteises.lt*, 24 November 2017, <http://manoteises.lt/straipsnis/lietuvas-vadovai-raginami-nebesvaistyti-biudzetu-lesu-ir-kovoti-su-smurtu-is-esmes/>
13. Republic of Lithuania Law on Strengthening of the Family, 6 November 2017, No. 17495, <https://www.e-tar.lt/portal/lt/legalAct/a92aa040c2bd11e79122ea2db7aeb5f0>
14. Modesta Gaučaitė, A protest for victims of violence in Seimas: “For shame, Prime Minister!”, *Lrytas.lt*, 12 December 2017, <https://lietuvsodiena.lrytas.lt/aktualijos/2017/12/12/news/seime-protestas-del-smurto-auku-geda-premjere--3860619/>
15. “No necessary support is provided to victims of violence in Kaunas, specialists call the situation a scandal”, *15min.lt*, 28 November 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/smurto-aukos-kaune-reikiamos-pagalbos-nesulaukia-specialistai-situacija-vadina-skandalu-56-887722>

## Violence against women and sexual harassment

*Laima Vaigė*

Even though laws combat violence against women only in a neutral way, i.e. just like any other violence, excluding the gender aspect, violence against women remains very common and has its own dynamics. During the reviewed period, there were reports in the media on sexual and physical abuse from well-known artists, e.g., reports about the abusive behaviour of a well-known film director<sup>1</sup> and a famous musician<sup>2</sup>. There were also reports about state officials who abused their partners.<sup>3</sup> According to the Eurobarometer, the number of murdered women continues to remain high in Lithuania, a leader in Europe for the number of homicides of women committed by their spouses or partners per capita, among 13 analysed European countries which have reliable data.<sup>4</sup> It is recommended to monitor and collect data on the dynamics of such violence.

In 2016, Lithuanian courts adopted judgments in a number of high-profile cases concerning murder of women. For example, a man who had raped and murdered a student was sentenced to 20 years in prison,<sup>5</sup> and a life sentence was given to men who had raped and burned a minor girl in the town of Dembava.<sup>6</sup> However, punishments are only one of the aspects in combating violence against women. Substantial and long-term changes require not only reactive but also proactive measures against violence, including prevention of violence and raising intolerance towards the culture of violence.

According to the recommendations for Lithuania by the United Nations Committee on the Elimination of Discrimination against Women,<sup>7</sup> the adoption a national programme or strategy for the reduction of violence against women is recommended, to plan specific action for combating the culture of sexual and physical abuse against women, and to implement zero tolerance for violence against women. When preparing and reforming national measures in this field, the General Recommendation No. 35 of the UN Committee on the Elimination of Discrimination against Women should be followed.<sup>8</sup>

However, there is no political will to ratify the Istanbul Convention which is the main international law providing detailed measures for combating violence against women. A lot of unfounded rumours are being spread about this Convention.<sup>9</sup> For example, it is stated that the Istanbul Convention establishes a new ideology proclaiming that violence is the result of discrimination only.<sup>10</sup>

Instead, the opposite is true – in the Istanbul Convention, domestic violence is partially separated from discrimination, whereas any

form of violence against women is considered to be a form of discrimination in the United Nations Convention on the Elimination of All Forms of Discrimination against Women,<sup>11</sup> ratified by Lithuania in 1979. Even though there was a common belief that the Lithuanian Parliament was not ready to prohibit violence against children, such prohibition was finally adopted in 2017 (“Matas’ Reform”). The question remains whether the murders and violence against women still fail to show the necessity to undertake international obligations and reform the area of combating violence against women.

At the end of 2017 there were discussions that the legal culture in Lithuania is unfavourable to women who were victims of sexual abuse.<sup>12</sup> Lithuanians often tend to justify sexual abuse,<sup>13</sup> while both the legal culture and the public officials’ views are affected by stereotypes and prejudice.<sup>14</sup> As mentioned before, there is a large gap in the area of general measures aimed at prevention of violence against women.<sup>15</sup> It also complicates prevention of violence in specific cases.

After amendments in 2013, the Criminal Code provides that, in case of sexual violence, “a person shall be liable only if the victim or the victim’s representative files a report, or under the requirement of the prosecutor, or when a pre-trial investigation is launched after the signs of domestic violence are determined.”<sup>16</sup>

Thus, sexual domestic violence, which is considered to be a matter of public significance in the Law on the Protection against Domestic Violence, is treated differently than sexual violence in other environments (street, a party, on a date, etc.) and is not considered to be a matter of public significance. If a woman was raped by someone not close to her, she must actively demand justice in her case, file a report, etc. Though later the investigation is carried out according to general procedures, victims of sexual violence often lack resources to act quickly and actively during the initial period, and they also lack necessary support. In addition, victims who withdraw their complaints and change their testimonies may be convicted for giving false testimonies.

Non-governmental organisations and a member of the national Parliament applied several times to the Minister of Social Security and the Minister of Health requesting establishment of at least one centre to provide combined specialised services for women who were victims of sexual abuse.<sup>17</sup> It should be noted that the establishment of geographically proportionally distributed centres providing specialised support for women victims of violence was also recommended to Lithuania by the United Nations Committee on the Elimination of Discrimination against Women.<sup>18</sup>

In 2017, the *#MeToo* movement dominated the headlines. This movement opposes sexual violence and harassment against women. There were several high-profile cases in Lithuania. For example, a member of the Parliament was accused of sexual harassment,<sup>19</sup> the head of the Juozas Miltinis Theatre was tried for forcing sexual relations,<sup>20</sup> and a well-known film director was accused of sexual abuse.<sup>21</sup> Even though a lot of women shared their experiences in social networks, only several<sup>22</sup> cases of sexual harassment reached the courts.

In 2017, the Constitutional Court, in the course of impeachment proceedings, concluded that the actions of member of the Parliament Kęstutis Pūkas, who sexually harassed his assistants, amounted to a serious violation of the Constitution and a breach of oath.<sup>23</sup> This conclusion should be considered as an important step in fighting gender based discrimination, the most serious form of which is violence against women.

Among other things, the Constitutional Court noted that “harassment encroaches on a person’s physical or psychological integrity, disturbs his/her physical, mental, or spiritual state, restricts the expression of his/her freedom of physical activity, of his/her intellectual and creative freedoms, thus, also the expression of his/her free personality, and can make his/her relations with other persons more complicated. Harassment [including sexual harassment] can lead to long-term or even permanent consequences that adversely affect a person’s private and social life”.<sup>24</sup> Therefore, even though sexual harassment and abuse still remain relatively latent, there is hope that courts will take such cases more seriously in the future.

## Sources:

1. "Artist Paulė Boculaitė spoke out about the physical and sexual abuse from Šarūnas Bartas", *zmones.lt*, 13 November 2017, <https://www.zmones.lt/naujiena/lietuva/apie-fizini-ir-seksualini-saruno-barto-smurta-prakalbo-ir-dailininke-paule-boculajte-3-765540>
2. Dainius Sinkevičius, "Eleonora Sebrova accuses Egidijus Dragūnas of violence and death threats", *Delfi.lt*, 11 October 2017, <https://www.delfi.lt/veidai/zmones/krata-e-draguno-namuose-tik-pradzia-buvusi-mylimoji-e-sebrova-kaltina-smurtu-ir-net-grasinimu-nuzudyti.d?id=76021731>
3. "A soldier and a police officer suspected of abusing their wives on All Saints' Day", *15min.lt*, 2 November 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/karys-ir-angelas-sargas-itariami-visu-sventuju-diena-smurtave-pries-zmonas-59-875814>
4. "Buildings in Vilnius will light up in orange in solidarity to women who were victims of violence", *Lrt.lt*, 24 November 2017, <http://www.lrt.lt/naujienuos/lietuvoje/2/194579/solidarizuojantis-su-smurta-patyrusiomis-motermis-vilniaus-pastatai-nusvis-oranzine-spalva>
5. "V.Jankauskas will serve 20 years for the rape and murder of a student", *lrytas.lt*, 10 March 2016, <https://lietuvsodi-ena.lrytas.lt/kriminalai/2016/03/10/news/studente-izzagines-ir-nuzudes-v-jankauskas-kales-20-metu-844734/>
6. "Executioners of Dembava who burned a teenager alive received no pity and will serve life sentences", *Delfi.lt*, 24 May 2016, <https://www.delfi.lt/news/daily/crime/gyva-paauGLE-sudegine-dembavos-budeliai-nesugraudi-ju-laisves-atemimas-iki-gyvos-galvos.d?id=71357526>
7. UN Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Lithuania, 18 July 2014, paragraph 23 (b), [http://lmlt.lt/wp-content/uploads/2015/11/Rekomendacijos-Lietuvai-2014\\_LT.pdf](http://lmlt.lt/wp-content/uploads/2015/11/Rekomendacijos-Lietuvai-2014_LT.pdf)
8. General Recommendations No. 35 of the UN Committee on the Elimination of Discrimination against Women on gender-based violence against women, updating general recommendation No. 19 on violence against women, 14 July 2017, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)
9. Gintautas Vaitoška, "Gintautas Vaitoška. Istanbul Convention: boys will be girls!", *Delfi.lt*, 9 December 2017, <https://www.delfi.lt/news/ringas/lit/gintautas-vaitoska-stambulo-konvencija-berniukai-bus-mergaites.d?id=76524059>
10. Izabelė Švaraitė, "Istanbul Convention: fears and how it really is", *manoteises.lt*, 23 June 2017, <http://manoteises.lt/straipsnis/stambulo-konvencija-baimes-ir-kaip-yra-tiesu/>
11. United Nations Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, No. 21-549, <https://www.e-tar.lt/portal/lt/legalAct/TAR.8AA8BB1C3C27>
12. Rūta Pukenė, "Events in a well-known bar in Vilnius opened Pandora's box: more shocking circumstances are being revealed one after another", *delfi.lt*, 1 December 2017, <https://www.delfi.lt/news/daily/liuania/ivykiai-garsiamie-vilniaus-bare-atvere-pandoros-skrynija-viena-po-kitos-aiskeja-vis-baimesnes-aplinkybes.d?id=76517453#>
13. Human Rights Monitoring Institute, "Eurobarometer: Lithuanians are most likely to justify sexual violence in the EU", 29 November 2016 <http://hrmi.lt/eurobarometer-lithuanians-tend-to-justify-sexual-and-psychological-violence/>
14. Vilana Sotirovič, Laima Vaigė, "Challenges for preventing violence against women in Lithuania". *Philosophy, Sociology*, 2017, T. 28, No. 4, p. 268–278
15. Laima Vaigė, "Prevention of violence against women: gaps in national law", *Jurisprudence*, 2016, 23(1), p. 89–107.
16. Law on the Approval and Entry into Force of the Criminal Code, 26 September 2000, No. VIII-1968, part 5 of Article 149, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/CXvlmbEApq>
17. "Ministers encouraged to establish a help centre for victims of sexual abuse", *Delfi.lt.*, 4 December 2017, <https://www.delfi.lt/news/daily/liuania/ministrai-raginami-steigti-pagalbos-centra-seksualines-prievartos-aukoms.d?id=76538891>
18. UN Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Lithuania, 18 July 2014, paragraphs 23 (d) and (e), [http://lmlt.lt/wp-content/uploads/2015/11/Rekomendacijos-Lietuvai-2014\\_LT.pdf](http://lmlt.lt/wp-content/uploads/2015/11/Rekomendacijos-Lietuvai-2014_LT.pdf)
19. Ignas Jačauskas, Saulius Jakučionis, "Several young women appealed to the Prosecutor General's Office after being sexually harassed by K. Pūkas," *Delfi.lt*, 15 March 2017, <https://www.delfi.lt/news/daily/liuania/kelios-merginos-del-k-puko-seksualinio-priekabiavimo-kreipesi-i-generaline-prokuratūra.d?id=74061214>
20. Ingrida Stenulienė, "Former head of Juozas Miltinis Theatre Studio in Panevėžys says that he is not guilty of sexual harassment" , *Delfi.lt*, 10 November 2017, <https://www.delfi.lt/news/daily/liuania/buves-j-miltinio-teatro-vadovas-kaltas-del-seksualinio-priekabiavimo-neprisipazista.d?id=76318219>
21. Monika Gimbutaitė, "R. Šimašius is initiating the termination of the lease contract with the Studio of Š.Bartas" *15min.lt*, 13 November 2017, <https://www.15min.lt/kultura/naujiena/kinas/r-simasius-iniciuoja-sutarties-nutraukima-su-s-barto-studija-kinema-4-880684>
22. Kristina Aržuolaitienė, "Both women and men can be victims of sexual harassment: why do they stay silent and how to recognise victims?" *15min.lt*, 13 November 2017, <https://www.15min.lt/gyvenimas/naujiena/santykiai/seksualiai-priekabiaujama-ir-prie-moteru-ir-prie-vyru-kodel-jie-tyli-ir-kaip-tai-atpazinti-1024-880362>
23. Conclusion of the Constitutional Court on whether the actions of member of the Seimas of the Republic of Lithuania Kęstutis Pūkas, against whom an impeachment case has been instituted, are in conflict with the Constitution of the Republic of Lithuania , 19 December 2017, KT20-11/2017. <http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1771/content>
24. *Ibid*, paragraph 20.4.

## Violence against children

*Živilė Kėrytė*

### *Changing attitudes*

In a sense, Lithuania society is already fighting violence. A number of social campaigns or other large-scale events are organised that help understand the magnitude of the phenomenon. Over the past few years, Lithuania took several essential steps in the field of protection of the children's rights. The long-discussed amendments to the Law on Fundamentals of Protection of the Rights of the Child, prohibiting physical punishment of children were finally adopted on 14 February 2017,<sup>1</sup> largely thanks to the determination and courage of non-governmental organisations.

This law has been revised and supplemented several times. A new term – mediation (conciliatory mediation) was used in the latest version of the law.<sup>2</sup> In cases of conflict between the parents or other representatives of the child, peaceful agreements via mediation are encouraged. Mediation in cases of divorce is gradually becoming a part of everyday practice and directly contributes to the protection of the rights of the child. On 3 August 2017, recommendations were approved for schools, establishing the criteria for recognising domestic violence, as well as prescribing actions in the event of suspicion of possible domestic violence.<sup>3</sup>

In 2016-2017, Lithuanian municipalities began implementing EU funded communal family home projects, prepared according to the “Complex services for families” measure. More and more initiatives and programmes focusing on prevention and early intervention are being implemented. Parents are participating in parental skill development programmes, they often show interest and search for solutions to various challenges themselves, and are rarely afraid or avoid seeking help. Most schools have implemented one or several programmes for the prevention of bullying and the development of social and emotional competencies of children, during which they learn to recognise their own feelings and the feelings of others, control their anger, cooperate and express constructive criticism.

However, this is still not enough, and speaking out about violence is still dangerous, particularly for children or others who are fully dependent on their abusive family members, because they still have to continue living in the same environment. Lithuania does not have a sufficiently effective system for the protection of victims of violence – there is lack of institutions that could accommodate

children and (or) their family members suffering from domestic violence. There is also lack of specific support measures for victims, their family members and even the abusers themselves.

Violence is still common in Lithuania and people tend to tolerate it despite of various anti-violence campaigns. One of the reasons for the latter is that many good initiatives are organised as project activities which end with the deadline of the project. Public authorities are not adopting good practice examples as continuous practice. For example, the early identification, prevention and intervention model (API) for families experiencing post-divorce or separation conflicts,<sup>4</sup> which is considered to be a good practice example,<sup>5</sup> was temporary and did not come into force as a mandatory measure in the event of divorce. It seems that a new model will be developed for the prevention of violence against children in the event of difficult divorce, as the need for such support remains.

The proposed standard is “do not beat your children or you will be severely punished”, which is another reason why communicating with children without force is failing to become the norm. Bad decisions produce problems – providing the society with laws focusing on punishments essentially repeats the behaviour of parents towards their children or the behaviour of an abuser towards its victim – “if you do not listen / do as I say, I will punish you”. Laws should be created to defend and protect children, women, men and the country, therefore their application should also have the aspects of protection and defence. Punishment and discipline are different things. Parents should know why it is more important to use discipline instead of punishment, as well as know how to tell the difference between the two measures.

Lithuanian people will have to face other difficult stages – changing attitudes of parents, specialists, the media, politicians, as well as the entire society. It is not easy to adopt and implement the Law on Fundamentals of Protection of the Rights of the Child. It does not take long to adopt or amend laws – sometimes it only takes a month to do so. Whereas the formation and establishment of economic conditions for the implementation of the law can take much longer – one or two years. However, it may take several decades to transform old habits, views, cultural codes and value systems, which is a huge challenge. These time periods explain why the current system for the protection of children’s rights cannot be changed immediately. It can take several years for it to adapt to the new institutional framework and for the old values and attitudes of the society to change.

### *The role of the media*

The media today is full of reports of aggression, violence and disrespect. We hear and read on how adults solve their conflicts, celebrate various events and occasions, and “take care” of their children or their elderly parents. The media tends to report violent events in detail – how, when and who was abused: *“hit his head with a clay bowl <...> threatened to cut his throat with a bowl shard”; “hit his daughter over the head and used the iron wire to hit her on the back, legs and hands”; “mother kicked her 3 year old daughter in the head”*.<sup>6</sup>

However, the media is also changing – it not only informs people, but also contributes to changing their values and perceptions. The media plays a major role in highlighting the problems of violence against children for the society and the politicians, as it speaks about which behaviours towards children are acceptable and unacceptable, what is considered to be “normal” in the society, and what is a “deviation”. Sometimes the media has more power to correct the children’s rights protection policy than the specialists working in this field.<sup>7</sup> However, in some cases, people forget that it is particularly important to follow certain principles of information related to the protection of the rights of children: children often tend to blame themselves for the violence directed toward them, therefore the media should be particularly sensitive to the needs of children when disclosing and publishing cases of violence.

The media today is faced with a contradiction: on the one hand, people have the right to know the whole truth with all the details, and the media has the freedom to express its opinion. The media aims to publish cases of violence hoping to decrease violent behaviour. On the other hand, the consequences of publishing a story that is painful to both sides (the victim and the abuser) are not necessarily positive to the victim.

At the same time, the media often tends to push the provision of information to the extreme – by reporting even the smallest details of violence, describing how violence was carried out and what damages were suffered by the victim. However, in most cases, the reasons of violence and its remote consequences are not mentioned, while methods of providing a solution and support for the victim (psychological help lines are only a minimal support) and especially for the abuser are not discussed. Most attention is paid to revealing the truth (indicating the offender) and discussing measures to punish the abusers.

The presentation of such painful stories results in the feelings of fear and helplessness among members of the society, including victims and abusers who themselves are often psychologically traumatized

and have no skills on how to create healthy interpersonal relationships and change their inappropriate behaviour.

### *Lack of cooperation / communication between institutions*

Even though laws are very important, however, results in the field of children's rights protection can be difficult to achieve (can take many years to do so) and limited, without education, discussions and joint efforts of all interested institutions. Specialists working in child and family welfare institutions have pointed out that the support system which is gradually being implemented in Lithuanian municipalities is only the first step. It is very important to not forget that joint efforts and improvement of specialists' competencies (there is both lack of skills in working with families, and lack of specialists to work with families) contribute greatly to the effectiveness of the support system.<sup>8</sup>

It is no surprise that the child rights protection system still lacks integrity. The system is rigid,<sup>9</sup> as each institution or specialist is working "for its own benefit". There are several operational aspects that could be improved regarding institutions that ensure the welfare of children and families.

The allocation of the roles of different institutions and specialists is unclear. There is a huge need for algorithms in Lithuania, i.e. for cases of taking children away from their families, suicides, post-divorce or separation conflicts, and domestic abuse. However their development should include a precondition that the case of each family is unique in order to avoid the inflexibility of solutions and actions.

Specialists from different institutions lack information about the nature and specifics of the work performed by other specialists working with cases of violence. For example, psychologists know nothing about the role of law enforcement authorities in cases of violence against children, while institutions that defend and protect children know nothing about the role of psychologists, family counsellors and mediators.

The ambiguous situation of non-governmental organisations (NGOs) in Lithuania should also be noted.<sup>10</sup> There is no clear strategy on the cooperation between the State and NGOs, and municipalities also lack the desire to cooperate with NGOs when purchasing their services, therefore the role of NGOs remains unclear. State and municipal institutions use the ideas developed and tested by NGOs only in exceptional cases, however they often create conditions for NGOs to compete among themselves and with other institutions.

There is lack of support and cooperation when solving various issues relevant to the society.

It is worth starting with the reduction of tolerance towards violence and changing the attitudes to the phenomenon of violence by constructing new narratives in our daily activities and in the concept of the community, society, the media, and different institutions. Concepts such as “*safety, care, emotional support and help, communication without violence, cooperation, discipline and positive parenting*” should become dominant in our daily speech. This may sound declaratively, however, these concepts are important to societies that do not tolerate violent behaviour.

#### Sources:

- 14 February 2017, No. XIII-204, Law on the Amendment of Articles 2, 6, 10, 49, 56, 57 of the Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child No. I-1234 and Supplementation of the Law with Article 2<sup>1</sup>. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/7d592952f37411e6be918a531b2126ab>
- 28 September 2017 No. XIII-643. XIII-204, Law Amending the Law on Fundamentals of Protection of the Rights of the Child No. I-1234. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e711b850aa6011e7a65c90dfe4655c64>
- “School staff receive recommendations on how to recognise abused children”. 15 min. 10 August 2017, <https://www.15min.lt/naujiena/aktualu/svietimas/mokyklu-darbuotojams-rekomendacijos-kaip-atpazinti-smurta-patyrusius-vaikus-233-838158>. Order of the Minister of Education and Science of the Republic of Lithuania of 3 August 2017, No. V-625. “Recommendations for schools on the criteria for recognising domestic violence, as well as actions in the event of suspicion of possible domestic violence”. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d0361a6278e511e7aefae747e4b63286>
- The Institute of Family Relations (2016). The early identification, prevention and intervention model (API) for families experiencing post-divorce or separation conflicts. Kaunas. [http://ssinstitut.lt/uploads/images/ssi\\_api\\_fina2.pdf](http://ssinstitut.lt/uploads/images/ssi_api_fina2.pdf)
- Feasibility Study (2017). Civil Society Development Agency. Vilnius. [http://www.3sektorius.lt/docs/PVPA\\_galimybiu\\_studija\\_su\\_citata\\_2017-12-19\\_12\\_36\\_49.pdf](http://www.3sektorius.lt/docs/PVPA_galimybiu_studija_su_citata_2017-12-19_12_36_49.pdf)
- “Teenage girl found after running away from her guardian who beat her and threatened to cut her throat”; 15min.lt, 11 October 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/rasta-nepilnamete-pabegusi-nuo-ja-sumusios-ir-gerkle-perpjauti-grasinusios-globej%E2%80%A6>; “Domestic abuse: father beat his sixteen-year-old daughter with a wire from an iron”, 15min.lt, 9 September 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/smurtas-seimoje-tevas-sesiolikmete-dukra-nuplake-lygintuvo-laidu-59-851136>; “Mother living in Telsiai kicked her 3-year-old daughter in the head”, 15min.lt, 15 August 2017, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/telsiuose-motina-spyre-3-metei-i-galva-59-840034>.
- The “Reform of Matas” begins: child’s rights protection divisions will be centralised and available 24/7”, 15min.lt, 28 September 2017, <https://www.15min.lt/naujiena/aktualu/lietuva/mato-reforma-priimta-vaiku-apsaugos-skyriai-bus-centralizuoti-ir-budes-visa-para-56-859582>
- “L. Kukuraitis: “Today is a legendary day – Seimas approved the future of a new high-quality child rights protection system”, socmin.lt, 28 September 2017, <https://socmin.lrv.lt/lt/naujienos/kukuraitis-siandien-legendine-diena-seimas-pritare-naujos-kokybes-vaiko-teisiu-apsaugos-sistemas-ateiciai>
- “Majauskas: the culture of violence is thriving in the country and must be stopped”, alfa.lt, 13 September 2017, <https://www.alfa.lt/straipsnis/50215207/majauskas-salyje-klesti-smurto-kultura-tam-butina-pagaliau-pa-deti-taska>
- Kėrytė, Ž. (2015). Lithuanian NGOs that provide psychosocial services: the compatibility of social mission and entrepreneurship. Doctoral dissertation. Vytautas Magnus University. Kaunas.

# IX. HUMAN TRAFFICKING AND OTHER FORMS OF EXPLOITATION



## IX. HUMAN TRAFFICKING AND OTHER FORMS OF EXPLOITATION

*Akvilė Kriščiūnaitė, Karolis Žibas*

Human trafficking is among the largest-scale crimes in the European Union and the entire world. According to the data of the Council of Europe, human trafficking is the most profitable crime after arms trafficking and drug trafficking. The EU Strategy towards the Eradication of Trafficking in Human Beings (EK 2012) states that these activities bring a revenue of tens of billions of euros for organised crime groups.<sup>1</sup>

In 2016, non-governmental organisations in Lithuania provided support for 179 people who were recognised as victims of human trafficking. 88 people out of the latter were men who were used for forced labour and crimes. These people are usually victims of modern slavery, brought for labour in Western European countries.<sup>2</sup> Compared to the so-called unofficial statistics, the numbers of official statistics are much lower. In 2016, 29 pre-trial investigations were launched into cases of human trafficking and exploitation among which human trafficking was the most commonly suspected criminal activity.

It should be noted that the number of exposed crimes of human trafficking (various forms) is gradually growing.<sup>3</sup> It can be stated that this shows an improvement in the competencies of law enforcement officers to recognise human trafficking crimes. On the other hand, based on the observations of victims, the competence of civil servants is not always sufficient. State-funded lawyers lack experience dealing with human exploitation, therefore non-governmental organisations were often forced to hire private lawyers.<sup>4</sup> Lack of knowledge of civil servants concerning human exploitation is also revealed by case law. Often human trafficking victims themselves are punished. These victims are usually women accused of prostitution or children forced to commit crime.<sup>5</sup>

In 2016, amendments to the Criminal Code came into force which expanded the definition of human trafficking by including fraud, recruiting, physical violence, threatening, as well as the dependence and vulnerability of victims. Specific human trafficking instances were named: slavery, prostitution, pornography, forced marriages, forced labour and services, forced begging and forced criminal activities. A minimum custodial sentence of two years was set, while the maximum was increased from eight to ten years. These amendments to the Code create conditions for easier identification of human trafficking cases, thus helping to prevent human exploitation more effectively.<sup>6</sup>

Due to these reasons the Government's initiative to organise training for civil servants encountering human exploitation in their work is commendable. In 2016, 84 judges and their assistants participated in a programme aimed at improving specialists' knowledge on the experiences and rights human trafficking victims.<sup>7</sup> Training on human trafficking and exploitation was also organised for the police and the State Border Guard Service.<sup>8</sup> However, in order to prevent this form of crime and ensure the rights of victims, it is particularly important to also continue improving the knowledge of civil servants in the future.

In analysing the situation of victims, it should be emphasized that there is still lack of assurance of human trafficking victims' rights. The victim is obliged to give evidence in court, however, current conditions require for the victims to be present in the court room when giving evidence, forcing them to face their abuser. Even though technologies enabling victims to give evidence remotely are allowed by law, they are rarely used in practice. This situation violates the victims' right to receive protection – confrontation with their abusers may lead to repeated trauma. In addition, such conditions often become the reason why victims no longer want to testify, as they may be threatened by their abusers even in the court room.<sup>9</sup>

One of the more positive aspects is that funding was increased almost twofold for non-governmental organisations providing services for victims of human trafficking. On the other hand, based on the evaluations of the representatives of non-governmental organisations, the provided funds are still insufficient for the wages of specialists and implementing the prevention programme.<sup>10</sup>

In June of 2016, a support centre was opened in Vilnius for children who were victims of sexual abuse. It is the first specialized care institution for sexually abused children, which provides combined psychological, legal and medical aid.<sup>11</sup> Despite this positive initiative, it is important to strengthen the mechanisms for the identification

of children who are being exploited and the protection system of children, particularly those who are living in orphanages. The need for the latter was revealed by a case that shocked the society – the discovery of a network of children sexual exploitation in Viešvilė children's foster care home.<sup>12</sup>

An important step in ensuring the rights of victims of human trafficking and exploitation was made with the establishment of the Commission for the Coordination of the Fight against Trafficking in Persons. The Commission provides periodic evaluations of responsible authorities and will be preparing recommendations, and carrying out monitoring of the action plan to combat trafficking in human beings.<sup>13</sup> In addition, a plan to combat trafficking in human beings for 2017-2019 was approved in 2016. One of its main objectives is to improve prevention of human trafficking on a municipal level. Establishment of coordination groups for combating human trafficking in municipalities is planned, as well as to improve the competence of municipal employees in combating human exploitation. The plan envisages organization of information campaigns for the public, and creation of targeted preventive measures for vulnerable groups. Particularly commendable are the objectives to strengthen the victim support system and improve the competence of civil servants encountering human trafficking.<sup>14</sup>

Nevertheless, latest studies<sup>15</sup> reveal the general problematic context of the fight against human trafficking: lack of a strategy, lack of funding, and ineffective interinstitutional and intersectoral coordination. Despite the functioning system coordinating the fight against human trafficking, systematic implementation of the fight and preventive measures against human trafficking are ineffective in practice. Even though public authorities and non-governmental institutions are actively working in the field of combating human trafficking, there is a lack of communication and coordination of joint actions: there are no formal procedures which would direct victims to appropriate public authorities or non-governmental organisations, and the roles of organisations implementing victim support and preventive measures are not defined.

Since 2013, the anti-trafficking policy in Lithuania is regulated on the basis of general measures instead of long-term strategies and actions plans. Lithuania does not have an independent rapporteur for analysing and presenting the human trafficking situation. Despite the efforts of non-governmental organisations, without a long-term strategy, their project activities on combating human trafficking remain fragmented. These problems in combating trafficking raise questions on the effectiveness of the existing system.

Thus far, Lithuania only focused on human-trafficking victims and prevention related to the processes of emigration of the Lithuanian population. In other words, victims of human trafficking were brought back from the so-called target countries for emigration. However, in 2016–2017, the exploitation of third country citizens was observed in Lithuania with the increasing number of work permits issued to foreigners (third country citizens). Studies<sup>16</sup> have shown that the specific labour immigration situation in the labour market created the potential of vulnerability and exploitation. Labour immigrants often have dangerous, less paid jobs, are exploited by their employers and often become victims of discrimination, thus they are one of the most vulnerable groups in the EU in terms of changes in the labour market structure.

These challenges are gradually becoming relevant to Lithuania as well. In recent years, there were a few reports in the media about the exploitation of labour immigrants and even human trafficking or modern slavery processes.<sup>17</sup> Unfortunately, no studies were carried out in Lithuania on the exploitation of immigrant labour, therefore it is difficult to measure the extent of exploitation. However, it is important to point out the fact that labour migrants are more vulnerable in the labour market than Lithuanian citizens due to language barrier, lack of knowledge of labour rights and legal framework. Therefore it is necessary to expand the general mechanism for the protection of employees in Lithuania, improving the protection of labour rights and employment relations of migrants.

## Sources:

1. Žibas K. (2016). Exploitative Sham Marriages and Trafficking in Human Beings in Lithuania. In: Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia. Viuhko M., Lietonen A., Jokinen A., Joutsen M. (eds.). The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). Helsinki 2016. ISBN 978-952-5333-96-1, ISSN 1799-5590, ISSN-L 1237-4741, p. 254–318.
2. Report of the Ministry of the Interior “Situation in the field of combating human trafficking in Lithuania of 2016”, 2017, [https://vrm.lrv.lt/uploads/vrm/documents/files/LT\\_versija/Viesasis\\_saugumas/Prekyba\\_zmonemis/Ataskaita-2016-kova-su-prekyba-zmonemis.pdf](https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Viesasis_saugumas/Prekyba_zmonemis/Ataskaita-2016-kova-su-prekyba-zmonemis.pdf)
3. Ibid.
4. US Department of State, “Trafficking in Persons 2017 Report: Country Narratives”, 2017, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271229.htm>
5. Ibid.
6. Law on the Amendment of Articles 147 and 157 of the Criminal Code of the Republic of Lithuania, 12 May 2016, No. XII-2340, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/44c3cfd01e4c11e6acbed8d454428fb7?jfwid=-15zxvvpki2>
7. US Department of State, “Trafficking in Persons 2017 Report: Country Narratives”, 2017, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271229.htm>
8. Ibid.
9. Ibid.
10. Ibid.
11. “A unique support centre for children was opened in Lithuania”, Bernardinai.lt, 3 June 2016, <http://www.bernardinai.lt/straipsnis/2016-06-03-lietuvoje-atidarytas-pirmas-regione-unikalus-pagalbos-centras-vaikams/145165>
12. “Paedophilia scandal in Viešvilė children’s foster care home: its director is a suspect”, delfi.lt, 17 March 2015, <https://www.delfi.lt/news/daily/lithuania/pedofilijos-skandalas-viesviles-vaiku-namuose-itariamasis-direktorius.d?id=67459956>
13. Resolution of the Government of the Republic of Lithuania “On the coordination of the fight against trafficking in persons”, 11 August 2016, No. 785, <https://www.e-tar.lt/portal/lt/legalAct/19730980609211e68abac33170fc3720>
14. Order of the Minister of the Interior “On the 2017-2019 action plan to combat trafficking in human beings and its approval”, 29 August 2016, No. IV-598, <https://www.e-tar.lt/portal/lt/legalAct/5b99fd306ddc11e6a014b8463e530a88>
15. Žibas K. (2016). Exploitative Sham Marriages and Trafficking in Human Beings in Lithuania. In: Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia. Viuhko M., Lietonen A., Jokinen A., Joutsen M. (eds.). The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). Helsinki 2016. ISBN 978-952-5333-96-1, ISSN 1799-5590, ISSN-L 1237-4741, p. 254–318.
16. Karolis Žibas, Eleonora Lekavičiūtė. Labour migration processes in Lithuania.//Lithuania’s social development. Changes in the labour market: problems and possibilities. 2017, No. 6, p. 54-70. Lithuanian Social Research Centre. ISSN 2029-963X.
17. Example, “9 Ukrainians saved during a State Border Guard Service operation preventing them from being transported from Lithuania to other countries as slaves”: <https://www.15min.lt/naujiena/aktualu/nusikalTIMAIIR-nelaimes/lietuvos-pasienieciai-su-uzsienio-kolegomis-isarde-prekybos-zmonemis-tinkla-59-838086>; “Lithuanians exploited in their own country: people were paid wages that barely reached 120 euros”: <http://www.delfi.lt/verslas/verslas/lietuvoje-isnaudojami-nepalieciai-sako-kad-mokejo-vos-120-euru-algos.d?id=75321853>; “Slavery in the XXI century Lithuania: Ukrainians were sold as slaves”: <https://www.15min.lt/verslas/naujiena/finansai/ukrainieciai-662-769098>

# X. MIGRANT AND REFUGEE RIGHTS



## X. MIGRANT AND REFUGEE RIGHTS

### Migrant rights

*Akvilė Kriščiūnaitė, Karolis Žibas*

The Lithuanian society is culturally closed, connecting people coming from countries different culturally, first of all to a threat instead of an opportunity to enrich its own culture or for economic growth. Based on the results of the public opinion survey in 2017, almost half of the surveyed Lithuanians would not want to have Muslims as their neighbours, 24% – would not like to live near Hindus or Buddhists, and 18% – near black people.

It should be noted that in terms of most of these groups, public opinions of the 2017 survey were more hostile than the opinions of the survey in 2016.<sup>1</sup> To summarize the data of the research by the Institute for Ethnic Studies of the Lithuanian Social Research Centre, it can be stated that Lithuania is culturally closed to immigrants from culturally different countries. An “economic aspect” is also evident in Lithuania related to competition between most of the population and immigrants in terms of social and economic resources.

Negative public opinions concerning immigration and refugees in 2016 and 2017 are associated with the so-called “refugee crisis” and information provided by the media about the international flows of asylum seekers. Studies have shown that the Lithuanian media often portrays the negative stereotypes of immigrants, particularly if they are Muslims. Such content encourages the society to be muslimophobic and xenophobic, and has a negative effect on specialists responsible for the integration of immigrants and refugees. A hostile environment pushes immigrants to self-isolation.<sup>2</sup> Such circumstances prevent immigrants from becoming full members of the society, and their integration becomes particularly difficult.

To sum up, it can be stated that the public lacks information about international migration processes and immigrants living in Lithuania. The media is probably the most important and most popular form of contact between immigrants and the society, therefore it is no surprise that opinions on immigrants are mostly influenced by information provided by the media and attitudes in public discourse instead of social relations, like direct contacts and experiences.

Moving on from structural to institutional factors of integration, it should be noted that immigrants living in Lithuania face the lack of intercultural competences of civil servants and employees of non-governmental organisations. In order to reduce immigrant discrimination in terms of the society and services provided to them, it is important to improve the cultural awareness situation in the country. Children's general education programmes should have more information about non-European cultures. It is important to prepare a state programme for the development of cultural competences which would ensure that specialists communicating with immigrants are culturally literate.<sup>3</sup>

The amendments to the Law on the legal status of foreigners" adopted in June of 2016, addressing employment opportunities for foreigners, are commendable. More favourable conditions were established for foreign company directors and members, as well as highly qualified persons and their family members to obtain temporary residence permits in order to live in Lithuania. Also, foreigners who are studying or improving their professional skills in Lithuania were provided with better employment conditions.<sup>4</sup>

On the other hand, the small amendments to the Law on the Legal Status of Foreigners adopted in 2016-2017 are mostly cosmetic changes focused on satisfying the needs of the labour market instead of the needs of the migrants themselves. Even though conditions for family reunification were improved for qualified foreigners, most of the migrants' rights restrictions remain unchanged since 2013-2014.

The "stagnation" of the integration policy is demonstrated by the Migrant Integration Policy Index (MIPEX) which evaluates integration policy measures and compares them in eight policy areas: labour market mobility, education, political participation, access to nationality, family reunion, health care, permanent residence, and anti-discrimination. MIPEX data shows that the Lithuanian foreigner integration policy is essentially unchanged since 2007, which means that Lithuania is at the bottom of EU members' list since 2007.<sup>5</sup>

It should be noted that immigrants encountered another challenge, the availability of information about their rights and services provided to them. Even though the rights of foreigners are established by law, in practice, they are not informed of any of their guarantees. For example, foreigners often face the problem of not receiving any relevant information about the opportunities for reunification of their family.<sup>6</sup>

There is also a lack of other information and integration services. For example, non-EU citizens coming to Lithuania have limited

possibilities to receive services related to job search and improvement of professional skills. The Lithuanian labour market is not attractive to labour migrants who want to stay in the country and integrate into its society. Newly arrived non-EU citizens, particularly those with temporary residence and work permits, do not receive general or specialized support which would ensure their employment according to their professional qualifications or would direct them to the appropriate training programme.<sup>7</sup> In addition, no targeted integration measures are nationally applied for labour immigrants and their family members.

Lithuanian schools are insufficiently prepared to accept immigrant children, as they lack appropriate basic infrastructure. Without specific targeted integration policy measures which would be applied to all immigrant children at different levels of education, potential pupils cannot use all the possibilities provided by compulsory education.<sup>8</sup>

These problems are illustrated by the fact that the Lithuanian migrant integration infrastructure is based exclusively on EU funds and project activities of non-governmental organisations. In other words, the migrant integration policy is formed at a national level, however, an integration policy, formed at a local level, is implemented by the non-governmental sector without any notable support of municipalities or authorities.

It should be noted that political participation possibilities are limited in Lithuania. Even though permanent residents (non-EU citizens) are able to vote and participate in municipal council elections, the right of non-EU citizens to participate in the country's political life is restricted, because they cannot become members of political parties and associations.

#### Sources:

1. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project "Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring", 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 67-78
2. *Ibid.*, p. 153-158.
3. *Ibid.*, p. 149-158.
4. Law Amending the Republic of Lithuania Law on the Legal Status of Foreigners No. IX-2206, 14 September 2016, No. XII-2609, <https://www.e-tar.lt/portal/lt/legalAct/b6327e007e7311e6b969d7ae07280e89>
5. For more information, see [www.mipex.eu](http://www.mipex.eu)
6. International Organization for Migration, "Family Reunification of TCNs in Lithuania", 2016, p. 6, [http://www.iom.lt/images/publikacijos/failai/1488977006\\_Family%20Reunification%20in%20Lithuania\\_2016\\_4\\_EN.pdf](http://www.iom.lt/images/publikacijos/failai/1488977006_Family%20Reunification%20in%20Lithuania_2016_4_EN.pdf)
7. For more information, see <http://www.mipex.eu/lithuania>, subject "Labour Market Mobility"<sup>8</sup> For more information, see <http://www.mipex.eu/lithuania>, subject "Education"

## Rights of refugees and asylum seekers

*Akvilė Kriščiūnaitė, Karolis Žibas*

After the Convention on the Status of Refugees adopted by the UN in 1951 was ratified by Lithuania in 1997, the country undertook to not only accept refugees, but to also ensure that they are given their fundamental rights and freedoms without any discrimination. Refugees must receive the same rights to education and state support as other citizens of the country, and must be provided with the best possible conditions for finding housing and jobs.<sup>1</sup> Lithuanian laws provide the refugee's right to state support for integration during which education, medical, social and other services should be provided as needed, so that the person would be able to blend into the society and the labour market.<sup>2</sup>

Unfortunately, the implementation of the rights and integration of refugees in Lithuania does not reflect these country's legal obligations. Due to insufficient social support funds, limited integration measures and negative attitudes of the society, refugees remain a particularly vulnerable social group.

Upon their arrival to Lithuania, refugees are greeted by officers and requested to undergo formal procedures, including providing their fingerprints. Even though most refugees who participated in the research stated that officers were respectful to them, the manner of greeting involving police officers and various procedures made some of the refugees feel like criminals.<sup>3</sup>

Refugees have mixed opinions on the living conditions in Rukla refugee reception centre. One of the positive aspects is that the centre provides refugees with the possibility to start adapting in Lithuania, as well as provides them with safety. On the other hand, the integration process is perceived as too slow, and the suitability of the location of the centre for the integration of refugees raises doubts. There is a military base situated in Rukla, making it an inappropriate environment for persons fleeing war. Surveyed residents of the centre admitted that aircrafts flying above the centre are scaring the children, and the location itself reminds them of a military conflict zone from which they were running away. In addition, most asylum seekers stated that the local residents of Rukla are hostile, aggressive and scornful towards them.<sup>4</sup>

Financial support provided for refugees is insufficient even to satisfy their basic needs, thus it is clear to see that there are also not enough funds to help refugees integrate and live in dignity. A single person receives 204 EUR per month, and a mother with a minor

child receives 306 EUR. These amounts must cover their rent, utilities, food, clothes and other household items, as well as transportation costs. After 6 months of integration, the amount of the allowance is reduced by half.<sup>5</sup> Considering the fact that it is difficult for refugees to find a job during their first months living in Lithuania due to the language barrier and negative public attitudes, the size of the provided allowance is insufficient to support oneself or one's family. Thus, refugees are pushed into social exclusion and poverty.<sup>6</sup>

Because of the latter reasons, legal changes that came into force in 2017 and established larger support for the integration of asylum seekers are commendable. Since the 1st of July, refugees were included in the list of additionally supported persons in order to increase employment. Persons studying in vocational schools will receive scholarships, and employers hiring asylum seekers will receive wage subsidies of 75%, thus encouraging the demand for refugees in the labour market. In addition, from now on, support will be provided for various initiatives which are aimed at increasing the employment of persons granted asylum or temporary protection. Also, travel costs of refugees going to work or to classes in order to improve skills necessary for the labour market will be covered.<sup>7</sup>

On the other hand, in the future it is important to ensure that foreign asylum seekers are also provided with support for self-employment. It is difficult for these people to find a hired job due to cultural, language and other barriers, therefore favourable self-employment conditions would be one of the most effective measures for improving their employment rates.<sup>8</sup>

The adoption of legal measures ensuring equal opportunities for asylum seekers to receive social support is also a welcome change. The Law on Benefits for Children,<sup>9</sup> the Law on Assistance in the Case of Death,<sup>10</sup> the Law on the Social Integration of the Disabled<sup>11</sup> and the Law on State Social Assistance Benefits<sup>12</sup> will be applied to this group from 1 October 2017. From now on, the Law on Cash Social Assistance for Low-Income Families will also apply to refugees receiving support during their integration period, if a person's income is lower than the state supported income.<sup>13</sup> Even though insufficient financial support remains a substantial obstacle for the successful integration of refugees, the inclusion of these people in support schemes is perceived as an important step ensuring the right of asylum seekers to social protection and reducing the risk of poverty.

The Law on Declaration of Place of Residence which came into force in 2017 partially solved the issues of the requirement to have a declared place or residence in order to apply for benefits and register children in schools. It was difficult for people to receive the

necessary social services, because landlords often refused to allow foreigners to declare their leased space as their place of residence. One of the positive aspects is the fact that, from now on, people who are granted asylum can be included in the list of persons with no place of residence during the period of provision of state support for integration, thus ensuring the accessibility of necessary services.<sup>14</sup> On the other hand, the problem of the declaration of place of residence still remains after the integration period, therefore it is recommended to apply this practice to all persons who receive asylum or temporary protection, regardless of their integration support status.<sup>15</sup>

Nevertheless, not all integration challenges were overcome with the help of the aforesaid law amendments. For example, integration services are not provided according to the individual needs of refugees. The established integration support deadlines which cannot be changed often prevent the successful inclusion of refugees into the society. Asylum seekers can receive integration support in Rukla reception centre only once, while integration itself last from 3 to 6 months.<sup>16</sup> Integration should not be stopped if a person makes an effort and follows the integration plan, but fails to achieve the necessary result. In this case, individual measures which would be suitable to the asylum seeker should be found.<sup>17</sup>

Successful integration requires effective Lithuanian language lessons, however the effectiveness of the organisation of language courses provided by the refugee reception centre raises doubts. Refugees had negative opinions on the methods for the improvement of language skills and unclear organization of language courses: sometimes people had to wait several months for the courses to start.<sup>18</sup> In order to achieve a sufficient level of language proficiency, it is important to provide the opportunity to attend longer courses of higher quality.<sup>19</sup>

Refugees are not provided with objective information about Lithuania and the availability of relevant services, therefore they are forced to be in the unknown. Studies have shown that information about life in Lithuania provided to refugees before their arrival does not correspond with the actual situation in the country. For example, in Greece, people were told that the living conditions for refugees in Lithuania are the same as in Germany or other European Union countries: free housing is provided and social benefits are higher. Due to such disinformation, the expectations of refugees are different from the reality, causing disappointment and fear for one's future.<sup>20</sup>

People also lack knowledge on the availability and organization of services provided by the refugee reception centre.<sup>21</sup> Thus, refugees

are faced with uncertainty regarding the sufficiency of income in the future, and are insufficiently informed about the integration plan. It is highly unlikely that refugees will become full-fledged members of society under such circumstances.

The availability of mental health services is particularly important due to various challenges faced by people who were granted asylum. However, refugees can use the services of psychologists only with the help of an interpreter, which results in their reluctance to seek help.<sup>22</sup>

Negative public opinions, xenophobia and direct discrimination in everyday life are the essential challenges preventing the successful integration of foreigners. Almost half of the Lithuanian respondents of the 2016 survey of public attitudes indicated that they would not want to live near asylum seekers or lease them their homes, and almost a third of the respondents would not want to work with refugees in the same workplace.<sup>23</sup>

According to the data of the research carried out by the International Organization for Migration, more than half of the respondents tend to see refugees as a potential threat to Lithuania. Lithuanians are mostly worried that the state will suffer financial losses due to the obligation to pay benefits to refugees, and that the crime rates will rise. The opinion of some of the respondents that accepting refugees will not be beneficial for Lithuania is based on their belief that refugees are people “of different culture and faith”, or that they will take away jobs from locals.<sup>24</sup> To sum up the research results, a conclusion can be made that Lithuania has a fear of other cultures. Refugees are stereotyped and perceived as competitors for economic resources.

Hostility toward people who are granted asylum makes it particularly difficult for them to find housing and jobs, increases the social exclusion of asylum seekers, results in the loss of their self-confidence and makes them feel inferior. Successful integration is practically impossible in a society that is hostile toward refugees.<sup>25</sup>

It is necessary to implement an effective anti-discrimination policy both in law and in practice in order to ensure the rights of refugees in Lithuania. Even though discrimination and incitement to hatred on grounds of nationality, race, origin, religion or other group identity is prohibited in Lithuania under the Criminal Code, however, such crimes often remain unacknowledged. Bullying of people because of their affiliation to a certain group is rarely seen as incitement to hatred by the courts.

## Sources:

1. UN Convention on the Status of Refugees, 28 July 1951, <https://www.e-tar.lt/portal/lt/legalAct/TAR.38F-4FAD0CE84>
2. Order of the Minister of Social Security and Labour “On the Approval of the Description of the Procedure of Rendering Support of the Lithuanian State for Integration of Foreigners Granted Asylum in Republic of Lithuania”, 21 October 2004, No. A1-238, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=348692&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348692&p_query=&p_tr2=)
3. International Organization for Migration and European Migration Network, “Transfer of asylum seekers to Lithuania: migrant experiences, expert evaluations and the attitudes of Lithuanians”, 2016, p. 18-27, [http://iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)
4. Ibid., p. 18-28.
5. Resolution of the Government of the Republic of Lithuania “On the Approval of the Description of the Procedure of Provision of State Support for the Integration of Persons Who Have Been Granted Asylum”, 5 October 2016, No. 998, <https://www.e-tar.lt/portal/lt/legalAct/5c01c030913d1e69ad4c8713b612d0f>
6. International Organization for Migration, “The Integration of Asylum Seekers: Legal Regulation and Situation”, 2015, p. 9, [http://www.iom.lt/images/publikacijos/failai/1452248149\\_Prieglobst%C4%AF%20Lietuvoje%20gavusi%C5%B3%20u%C5%BEsienie%C4%8Di%C5%B3%20integracija\\_Nacional%20Report.pdf](http://www.iom.lt/images/publikacijos/failai/1452248149_Prieglobst%C4%AF%20Lietuvoje%20gavusi%C5%B3%20u%C5%BEsienie%C4%8Di%C5%B3%20integracija_Nacional%20Report.pdf);
- International Organization for Migration and European Migration Network, “Transfer of asylum seekers to Lithuania: migrant experiences, expert evaluations and the attitudes of Lithuanians”, 2016, p. 21, [http://iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)
7. Republic of Lithuania Law on Employment, 21 June 2016, No. XIII-2470, <https://www.e-tar.lt/portal/lt/legalAct/422c8b5042b81e6a8ae9e1795984391>
8. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 35.
9. Law on the Amendment of Articles 1 and 4 of the Republic of Lithuania Law on Benefits for Children No. I-621, 15 June 2017, No. XIII-446, <https://www.e-tar.lt/portal/lt/legalAct/ed1116405b2f1e79198ffdb108a3753>
10. Law on the Amendment of Article 5 of the Republic of Lithuania Law on Assistance in the Case of Death No. I-348, 15 June 2017, No. XIII-447, <https://www.e-tar.lt/portal/lt/legalAct/d06c84605b3011e79198ffdb108a3753>
11. Law on the Amendment of Article 1 of the Republic of Lithuania Law on the Social Integration of the Disabled No. I-2044, 15 June 2017, No. XIII-445, [https://www.e-tar.lt/rs/lasupplement/dbf10470318011e78397ae072f58c508/bccca8b2318511e78397ae072f58c508/format/ISO\\_PDF/](https://www.e-tar.lt/rs/lasupplement/dbf10470318011e78397ae072f58c508/bccca8b2318511e78397ae072f58c508/format/ISO_PDF/)
12. Law on the Amendment of Articles 1, 4 and 7 of the Republic of Lithuania Law on State Social Assistance Benefits No. I-6751, 15 June 2017, No. XIII-449, <https://www.e-tar.lt/portal/lt/legalAct/af1c1db05b311e79198ffdb108a3753>
13. Law on the Amendment of Article 1 of the Republic of Lithuania Law on Cash Social Assistance for Low-Income Families (Single Residents) No. IX-1675, 15 June 2017, No. XIII-448, <https://e-seimas.lrs.lt/portal/legalActPrint/lt?fwid=a8205djt&documentId=83237c20558d11e78869ae36ddd5784f&category=TAD>

14. Law on the Amendment of Articles 5, 6, 9, 10 and 13 of the Republic of Lithuania Law on Declaration of Place of Residence, 4 July 2017, No. XIII-600, <https://www.e-tar.lt/acc/legalAct.html?documentId=740ba07067b511e7827c-d63159af616c&lang=lt>
15. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 18-19
16. Resolution of the Government of the Republic of Lithuania “On the Approval of the Description of the Procedure of Provision of State Support for the Integration of Persons Who Have Been Granted Asylum”, 5 October 2016, No. 998, <https://www.e-tar.lt/portal/lt/legalAct/5c01c030913d11e69ad4c8713b612d0f>
17. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 20-21
18. Ibid., p. 28.
19. International Organization for Migration and European Migration Network, “Transfer of asylum seekers to Lithuania: migrant experiences, expert evaluations and the attitudes of Lithuanians”, 2016, p. 22, [http://iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)
20. Ibid., p. 16-23, [http://iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)
21. Institute for Ethnic Studies of the Lithuanian Social Research Centre, report on the research project “Evaluation of the implementation of the integration policy for foreigners granted asylum and integration process monitoring”, 2017, the project was funded by the Research Council of Lithuania (Agreement No. REP2/2016), p. 49.
22. Ibid., p. 51.
23. Ibid., p. 62-65.
24. International Organization for Migration and European Migration Network, “Transfer of asylum seekers to Lithuania: migrant experiences, expert evaluations and the attitudes of Lithuanians”, 2016, p. 22; 41-42, [http://iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)
25. International Organization for Migration, “The Integration of Asylum Seekers: Legal Regulation and Situation”, 2015 , p. 8-9, [http://www.iom.lt/images/publikacijos/failai/1452248149\\_Prieglobst%C4%AF%20Lietuvoje%20gavusi%C5%B3%20u%C5%BEsienie%C4%8D%C5%B3%20integracija\\_National%20Report.pdf26](http://www.iom.lt/images/publikacijos/failai/1452248149_Prieglobst%C4%AF%20Lietuvoje%20gavusi%C5%B3%20u%C5%BEsienie%C4%8D%C5%B3%20integracija_National%20Report.pdf26)
26. “Insulting foreigners in Lithuania is not a racist crime”, European Foundation for Human Rights, 11 May 2017, <http://manoteises.lt/straipsnis/isvadinti-uzsienieti-babajumi-lietuvoje-ne-rasistinis-nusikaltimas/>

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## 2016–2017

### Overview

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Human Rights  
Monitoring Institute

HUMAN RIGHTS MONITORING INSTITUTE

Didžioji st. 5, LT-01128 Vilnius, Lithuania

hrmi@hrmi.lt

www.hrmi.lt



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