

HUMAN RIGHTS MONITORING INSTITUTE



HUMAN RIGHTS IN LITHUANIA
2009–2010
OVERVIEW

Vilnius
2011



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Foreword

When presenting the 2007–2008 Human Rights Overview, we highlighted the ongoing deterioration of human rights situation in Lithuania since joining the European Union. Two years ago, we emphasized the direct link between increasing levels of emigration and lack of foreign investment, on the one hand, and unsatisfactory human rights condition, on the other. We called for expansion of human dimension on political agenda, in which, irrespective of economic prosperity or recession, the attitude of immature democracy prevails that successful economic development will itself solve the issues of such „secondary“ areas as the safeguarding of human rights.

Public discourse and political practice of recent years showed that we were not heard. Human rights situation continued to deteriorate, and the popular joke about mass evacuation began resembling the truth. A breakthrough in foreign investment has also failed to occur.

Instead of care for human rights, a poorly disguised or even proudly displayed hostility towards human rights became obvious. Academics, columnists, politicians and their advisers intimidated the public, claiming that “hyperbolization of human rights”, “creeping liberalist totalitarianism”, “contraposition of hu-

man rights to obligations to family, society and the State”, promotion of equal opportunities policies, – all have a harmful impact on traditional values and lead to a moral downfall, or, in other words, threaten Lithuanian identity or even survival.

Certain legislative initiatives were being justified by the need to revive and strengthen traditional values as opposed to universal human rights standards. The initiatives included: the enactment of the *State Family Policy Concept* along with the preparation of the laws necessary for its implementation; the amendments to the *Law on Protection of Minors against Detrimental Effect of Public Information*; draft amendments to the *Code of Administrative Law Offences*; and the amendment to the *Law on Provision of Information to the Public*.

Disrespect for human rights and the culture of intolerance were openly employed as tools in political competition. In early 2011, political party “Young Lithuania” engaged into electoral campaign in Vilnius with the slogan “With no blue, black, red, and with no gypsies from the slums”, offending and humiliating part of the electorate. Such political practices are unacceptable in society respectful of human rights; it received, however, neither legal nor political response. The party “Young Lithuania” was elected to the Council of Kaunas City Municipality and joined the ruling coalition.

Increasing disregard for human rights is also apparent in legal practice. With the ruling of the court, Nazi symbol became a part of Lithuanian cultural heritage, and the slogan used by radicals “Lithuania for Lithuanians” was considered to be an expression of patriotism. Vigilant to defend the “values” which have caused immeasurable human suffering in the past, the judiciary is unwilling to see potential dangers of the activities of secret services in initiating criminal cases against people in disregard to human rights standards.

Contempt for human rights in public discourse and in political and legal practise, together with the populist manipulation of emotions of the public, has led to a negative attitude towards human rights among the general population. The culture of intolerance spreads to the streets of Lithuania. Annual demonstrations of hate groups became a tradition, which many equate with the expression of patriotism. Commemorating the birthday of Adolf Hitler with anti-Semitic attacks and displays of solidarity with Nazi ideology has also turned into regularly organised events. Meanwhile, talking about human rights is increasingly considered to be unpatriotic.

It is clear that Lithuania is at the crossroads. We should ask ourselves whether our declaration that we were “turning back to Europe” was not hypocritical. Did we honestly wish to become a part

of western cultural and political area? How genuine and truthful is our acceptance of Western values? Do we understand that democracy without human rights cannot exist? Do we understand the nature and purpose of human rights? Is it important for us to respect human dignity, human freedom and freedom of choice? Is it important for us to liberate our creative potential for our own sake and for the well-being our country? Article 1 of *The Universal Declaration of Human Rights* reads: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Does this declaration constitute a threat to our values?

Answers to these questions are essential to our future. Neither economy nor national security will determine Lithuania’s future – whether Lithuanian State will be modern, dynamic, and attractive in all respects, or whether it will become a desert from which people continue to flee. Our country’s destiny will be determined by our choice of values.

It is our hope that the overview of human rights situation in Lithuania in 2009–2010 will contribute to public discussion on the significance of human rights to our community and the State.

The overview is based on in-house research, reports and other documents prepared by government institutions, Lithuanian and international NGOs and intergovernmental organisations, media monitoring data, and consultations with experts. We would like to express our sincere gratitude to our contributors: Margarita Jankauskaitė, Vida Beresnevičiūtė, Vita Petrušauskaitė, Gintautas Sakalauskas, Dovilė Juodkaitė, Klementina Gečaitė, Eglė Kavoliūnaitė-Ragauskienė, Kristina Mišininė, Darius Štītīlis, Deividas Velkas, Rokas Uscila, Inga Abramavičiūtė, Violeta Davoliūtė and Daiva Brogienė.

We would be grateful for readers' feedback and comments.

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Summary

In 2009–2010, **prohibition of torture, and inhuman or degrading treatment or punishment** has been violated in various areas. Lithuanian state institutions failed to comply with their positive obligation to diligently investigate allegations of the abuse of power by the State Security Department and possible detention and torture of persons within the CIA-run Extraordinary Rendition and Secret Detention programme in Lithuania; the highest number of detainees has been recorded, although probation system is yet to be developed; detention facilities remain overcrowded; the conditions of detention degrade human dignity, and, therefore, cases against Lithuania are being brought before the European Court of Human Rights (ECHR); the number of allegations of cruel treatment of detainees and prisoners has increased, and reportedly there were cases of the use of violent interrogation methods. The scale of human trafficking has increased together with the growth in number of underage victims, educated victims, and victims of forced labour; successful investigation of human trafficking cases is obstructed by the lack of effective and accessible victim protection system. In Lithuania, violence against women is more common than in other EU countries; the system of private prosecution leaves the burden of proof on the victim alone. Health care quality in Lithuania

places the country at the bottom of the list of European health care systems; grave violations of the rights of terminal patients, condemning them to suffering, were also recorded.

The implementation of the principle of **equal opportunities and non-discrimination** has suffered a considerable regress. The culture of intolerance became increasingly rooted, but still no hate incitement monitoring body exists; the policy of integration of national minorities became one of the most neglected areas on political agenda; cultural integration is promoted without paying due regard to complex social problems; the project of the law on compensation for the property of Jewish community is still being discussed in the Parliamentary Committees. Lithuania has taken a step backwards in safeguarding the rights of sexual minorities: public intolerance to homosexuals increased due to a number of discriminative initiatives, restricting homosexuals' rights to freedom of expression and assembly, and hatred-inciting political rhetoric; in the eyes of international community, Lithuania acquired the image of homophobic State. The legal framework, necessary for implementation of equal opportunities, is still incomplete.

During the period under review, **the right to a fair trial** was considered to be the most frequently violated civil

right. Serious infringements of this right have been revealed, caused by a disregard of the rules of fair criminal proceedings. Numerous violations of the right to a fair trial and the right to liberty and security of person in the high profile case of Gataevs have led to an unprecedented situation – Gataevs are seeking humanitarian protection in one EU member State – Finland from persecution in Lithuania, another member of the EU. The criminal cases of Gataevs and Egle Kusaite have revealed legally questionable and poorly supervised activities by the State Security Department in investigation of criminal cases. The law enforcement agencies and judiciary treat the defence against criminal accusations as an obstruction to the pursuit of justice. The presumption of innocence is occasionally continued to be ignored by the law enforcement as well as the media. Lithuania has lost 13 cases before the ECHR due to violations of the right to fair trial; 7 of them – due to prolonged judicial proceedings in criminal, civil or tax dispute cases. There is a lack of innovative solutions on how to make the judicial system more accessible, friendly and open to the public; the mechanism of judges' selection is still incomplete despite its obvious but easily removable shortcomings, for example, extending the competence of the Judicial Selection Committee and improving selection criteria. The legal framework for the *actio popularis* is yet to be completed; therefore the courts are still rejecting the applications filed

on the grounds of defending public interest. Despite the fact that courts are provided with quality voice recording equipment, the records are available for the court's administrative use only; it is also problematic to submit comments on the judicial proceedings as the protocol of the hearing becomes available only after the judgement has been passed. The Constitutional Court has also failed to become more accessible to the public as the individual complaint procedure is still non-existent; the third parties, supporting the appeals submitted by the courts or initiating the appeals to the Constitutional Court challenging the constitutionality of the laws, cannot participate in constitutional proceedings. Bailiffs were violating the rights of persons by inadequately charging for their services and unjustifiably increasing the costs of execution of the court orders, and by attempting to recover debts from those who have already paid. There is a lack of data on the condition of crime victims; regular monitoring is not performed, and the last research on the issue was conducted back in 2007.

The tax reform during the recession had a negative impact on the independence and quality of media. Several newspapers and magazines have ceased publication; journalists have lost their jobs or had to look for inadequate means to legalize labour relations. The conflict between criminal and administrative law provisions, emerging in the cases

of defence of the honour and dignity of politicians and State officials, remained unresolved. The judgements passed in such cases constitute a threat to a very special area of **freedom of expression** – press freedom. The problem of hate-inciting online comments was not being solved; social networking sites emerged as a new medium for spread of hatred. The view of pre-trial investigation bodies and judiciary that hate-inciting comments are essentially subjective radical opinions is false and in conflict with the case-law of ECHR in this field. The amendments to *The Law on Protection of Minors against Detrimental Effect of Public Information*, unjustifiably restricting freedom of expression, challenged the political line of EU and the international human rights standards. The amendments of discriminative nature to the *Code of Administrative Law Offences* are currently being discussed in the Parliament; the new project aims to restrict the right to obtain and disseminate information and the right to free assembly.

The period of 2009–2010 has revealed serious problems of legal regulation and practical implementation of **the right to freedom of assembly**. During the peaceful demonstration organised by labour unions which later turned into a riot, extraordinary riot control measures were employed, including the use of rubber bullets, injuring 34 people. Fearing similar incidents, during the period under review the enjoyment of

the right to freedom of assembly was being unreasonably obstructed. The municipalities often refused to reconcile the place, time and the form of assembly, and posed unjustifiable requests to the organisers, for example, to ensure the safety of the participants; the institutions failed to comply with the deadlines set for consideration of the notices and often required to assemble at a different location rather than the one preferred by organizers despite the organizers claiming that the location designated by municipality would not help to achieve the aims of the assembly. In May 2011, the Prosecutor General has actively contributed to further restriction of free assembly, whose actions were later recognised by the administrative court as an attempt to prevent the enjoyment of the right to freedom of assembly. The practice of issuing *permissions* became rooted, although, according to the laws, the implementation of the right to freedom of assembly in Lithuania requires *notice* rather than permission.

The obstacles to the effective enjoyment of **the right to political participation** remained unchallenged in 2009–2010 when compared with the previous period under review, namely 2007–2008. The main problems are related with restrictions of direct democracy: limited possibilities for citizens to initiate a referendum, initiate legislation, file petitions, defend public interest in courts, and also violation of election

procedures, including electoral bribery. Neither the Central Electoral Commission nor the Parliament has taken measures to fight the violations of electoral laws. The *Municipal Councils Election Law* was amended, allowing independent, non-party candidates to participate in municipal elections, although, despite the clarification of the Constitutional Court, such opportunity was not given to non-governmental organisations. The Constitutional Court has also concluded that the *Law on Election to the European Parliament* is unconstitutional because it established an exclusive right of political parties to participate in the formation of legislative institutions. The new *Law on Citizenship* has been passed, restricting the rights of expatriates to participate in Lithuanian politics.

The breaches of **the right to private and family life** have reached a disturbing scale. During the period under review, regular reports appeared in the media on the extensive control of communications, including the surveillance of telephony communications, electronic communications and other forms of communication, carried out by law enforcement bodies. The agencies, conducting intelligence operations and pre-trial investigations, are able to listen to virtually anyone's telephone conversations, and sometimes this is carried out unlawfully. Lithuanian judiciary have created a precedent for the unreason-

able restriction of the right to privacy in labour relations. A rapid spread of unlawful direct marketing has not led to the establishment of effective and deterrent sanctions to the offenders. A number of personal data thefts has increased substantially: personal data was being illegally obtained through the use of secretly set up data scanners on cash machines; fake websites of electronic banking were being designed and circulated; bogus online home appliances sale companies were being set up; confidential information was being extracted by posing as employers. In 2010, in the back yard of the State Social Insurance Agency, discarded documents were found, containing personal data of hundreds of service users. The video surveillance of public spaces, creating an illusion of safety, continued to spread, including schools and public transport, in spite of obligation to provide the evidence of necessity, proportionality and efficiency of such restriction of the right to respect for private life; during a social experiment in monitored public transport facility, the violation of public order and violence were imitated but the law enforcement agencies failed to react. The right to respect for private life was also being infringed by the media – the investigation of the so called “Kaunas paedophilia case” was accompanied by a regular disclosure of the personal data and details of private life of minors involved. The violation of the right to respect for private life in book publishing indicated that the concept of

public person is still misunderstood, that is the distinction is not made between the person having power of public decisions, and the person well known to the public. In 2010, two cases have reached the ECHR challenging the case-law of Lithuanian courts which ordered a small amount of money in non-pecuniary damages when the information offending human dignity and honour has been unlawfully published. The 2007 judgement of the ECHR in the case of *L v Lithuania* has not been executed yet; moreover, the law amendments are being introduced which would mean the refusal to abide by the ECHR judgment, the infringement of the principle of legitimate expectations, and the restriction of transsexuals’ right to privacy. A discriminatory family policy, inconsistent with the European standards, continues and further divides the public. During the period under review, the agreement has not been reached in relation to the assisted reproduction.

Surveys show that **children** in Lithuania are feeling the unhappiest in the Europe. Parents devote to their children an average of 7 minutes of attention a day; the culture of violence prevails in all social strata. The disappearances of children are closely related with widely spread violence: four out of five runaway children are fleeing domestic violence; they also more frequently risk becoming victims of human trafficking. With no law prohibiting all

forms of violence against children, the impunity of perpetrators prevails, and the children who are themselves subject to violence or become witnesses to domestic violence, feel helpless and unprotected. There was an increase in the number of reports of physical, psychological and sexual violence received from residential care and educational institutions. The employees of the care homes fail to report to the police of the existence of prostitution networks in the institutions as they fear losing their jobs or damaging institutions' image. Due to reduced wages it will be even more difficult for children's homes to attract high-level professionals who would be able to protect the interests of the children. The situation of children left without parental care is being further aggravated by the prolonged adoption procedures. The problem of the questioning of children in criminal proceedings remains: specifically designed interview rooms are not always being used; no funding is allocated for psychologists; after working hours, the child protection officers usually do not attend the interviews and do not represent the interests of the children.

Persons with physical disability are socially marginalized due to unadjusted physical and informational environment and lack of suitable residential and transport facilities. Some of health care facilities and educational facilities are unsuited for disabled persons; only one in-

formational TV show is available in sign language; the emergency helpline is not accessible to deaf people; for the blinds, a cash withdrawal limit of 500 LTL per day has been unreasonably set.

The media continued to stigmatize **mentally disabled**; public opinion polls indicate the long lasting and quite negative attitude towards mentally disabled. In 2009, there were 25 institutionalised care facilities for mentally disabled in Lithuania; operating on the basis of social exclusion, they housed over five thousand children and adults. During the monitoring visits, serious human rights violations were recorded. A number of legally incapacitated persons in Lithuania is growing, but the relevant amendments to the laws have not been passed yet, for example, laws, regulating the extent of incapacity, regular revisions of the necessity of restricting means, more effective control of the guardians and the responsibility for improper care. The deficient procedures of involuntary hospitalization are still intact, despite the fact that they violate mentally ill patient's right to information, adequate representation and legal defence. The EU Agency for Fundamental Rights has pointed out that Lithuania is among the worst rated countries in relation to the failure to grant voting rights to the disabled.

Prohibition of Torture and Inhuman or Degrading Treatment or Punishment

During 2009–2010, prohibition of torture, and inhuman or degrading treatment or punishment was being violated in various areas of public life. Lithuanian public institutions failed to comply with their positive obligation to fully investigate the allegations of the abuse of power by the State Security Department officers and the alleged detention of persons during the implementation of the CIA-run Extraordinary Rendition and Secret Detention programme in Lithuania; the highest number of detainees in recent years has been recorded, but probation system is yet to be developed; detention facilities remain overcrowded; detention and prison conditions degrade human dignity, and, as a result, cases against Lithuania are being brought before the European Court of Human Rights; the number of allegations of cruel treatment of detainees and prisoners has increased, and there were also reports of the use of abusive interrogation methods. The scale of human trafficking has increased together with the growth in number of underage victims, educated victims, and victims of forced labour; successful investigation of human trafficking cases is obstructed by the lack of effective and accessible victim protection system. In Lithuania, violence against women is more com-

mon than in other EU countries; private complaint is still necessary to initiate prosecution. Health care quality in Lithuania places the country at the bottom of the list of European health care systems; serious violations of the rights of terminal patients, condemning them to suffering, were also recorded.

Lithuania's Participation in Extraordinary Rendition and Secret Detention Programme

In 2009, Lithuania was named as the third European country, involved in the U.S. Central Intelligence Agency's (CIA) Extraordinary Rendition and Secret Detention programme (the Programme). It has been alleged that a secret detention centre has been set up in Lithuania for an unlawful detention and interrogation of terrorism suspects.¹ During the implementation of the Programme, secret detention centres have been operating in the countries of Asia, Europe and America, where Al-Qaeda terrorist suspects were being held and tortured.²

Secret detention means that a person is being held by the State or individuals acting on behalf of the State *incommunicado*, i.e., preventing detainee from communicating with the outside world, hiding or denying the fact of a detention, the location of a detainee and his or her fate from the family, and preventing the access to legal proceedings

and representation. Extraordinary rendition in an act of transfer of a detainee from one state to another without complying with legal procedural rules necessary for the evaluation of the lawfulness of a detention, which are in force in transferring, receiving or transit country. Secret detention itself amounts to torture and cruel treatment with respect to both, direct victim and victim's family.

The CIA memorandum, which has been made public by the order of U.S President Barack Obama, described in detail methods of interrogation employed at the secret detention sites. The authorized methods included, *inter alia*, water boarding, the slamming of detainees into walls, forced nudity, prolonged sleep deprivation and submerging detainees in the water as cold as 5°C.³ Such interrogation methods amount to torture and inhuman and degrading treatment.

The parliamentary inquiry, which was conducted in 2010 by the parliamentary National Security and Defence Committee (NSDC), confirmed⁴ the participation of the State Security Department (SSD) in the CIA Programme. According to the findings, preconditions were created in Lithuania for keeping secretly detained persons. The Inquiry has failed to establish that prisoners have actually been transported into Lithuania and detained here; it has established, however, that the CIA-linked aircrafts have crossed Lithuanian airspace on a number of oc-

casions and have landed several times at Lithuanian airports.

On 11 December 2010, the Human Rights Monitoring Institute (HRMI) wrote to the Prosecutor General, requesting to launch a pre-trial investigation into the alleged violation of the provisions of the Criminal Code when creating preconditions for transportation of CIA detainees into Lithuanian territory and their unlawful imprisonment.⁵ In the Prosecutor's reply it was indicated that the procedural decision regarding pre-trial investigation will be made after receiving and assessing the findings of the Parliamentary inquiry.

The position of Prosecutor General's Office caused concern in relation to the lack of his independence. The PG Office had an obligation to initiate pre-trial investigation despite the actions, or lack thereof, by other state institutions, especially since the allegations in question concern the crimes committed against the State and possible violations of international law provisions, prohibiting cruel treatment of human beings. The subsequent events only strengthened the suspicions of Prosecutor General's lack of independence.

Following the recommendations of the Commission of Inquiry, in the beginning of 2010, Prosecutor General's Office opened an investigation under Article 228

of the Criminal Code, i.e. the alleged abuse of power by the State officials. After one year, the investigation was closed due to the lack of evidence of the possible abuse of power by the SSD officers.⁶

It is obvious when reading the decision to terminate the investigation that the scope of it was the same as that of parliamentary inquiry. The requests to extend the scope of investigation, encompassing other alleged criminal activities, and investigate the information on the alleged detention in Lithuania and torture of the Palestinian Abu Zubaydah were ignored. All this suggests that the investigation was superficial and inefficient.

When allegations of serious human rights violations arise, state institutions have a positive duty, in accordance with its international obligations, to carry out a full and thorough investigation in order to identify perpetrators and compensate damages to the victims. This procedural obligation remains unfulfilled.

Overcrowded Detention Facilities and Degrading Detention Conditions

In 2009–2010, a more repressive punitive policy resulted in significantly increased number of sentenced persons.⁷ During the period under review, the highest number of inmates was recorded since 2002, i.e. 260 prisoners per 100 000 inhabitants.⁸ Although regis-

tered crime rate in Lithuania is lower than in most European states, judging from the number of inmates, Lithuania is departing from European standards.

The overcrowding of prisons and remand centres lead to a State where both, convicted and arrested but not yet convicted, persons are being kept under conditions that do not meet human rights standards⁹ and break detainees psychologically.¹⁰ Prison cells lack air;¹¹ prisoners are deprived of privacy even when using sanitation equipment; there is a shortage of activities outside the cells.¹² This problem has been repeatedly pointed out by the *European Committee against Torture and Other Inhuman and Degrading Treatment or Punishment*¹³ and the Ombudspersons of Lithuanian Parliament.¹⁴

The overcrowding of prison system causes an increase in the sale and use of drugs.¹⁵ It is believed that 20–50 per cent of inmates are using drugs.¹⁶ Many of them acknowledge that it is relatively easy to obtain drugs.¹⁷ Some of the drug users are infected with HIV and tuberculosis. There is a lack of information, support and treatment for HIV and TBC patients who are released from prison, thus increasing the risk of infection in society.¹⁸

In 2009–2010, Lithuanian prisons were being further dominated by the caste

system.¹⁹ Official orders by prison administration have no actual effect on the inmates belonging to the highest caste. The lowest caste prisoners are forced to undertake the most menial jobs – taking out the rubbish, cleaning the yard and scrubbing the toilets. Provoked or forced by other prisoners, the lowest caste inmates commit the most disciplinary offences.²⁰

During the period under review, practices degrading the dignity of prisoners were recorded. The inmates of Alytus correction facility engaged in a hunger strike, protesting against the inspection of body cavities after their long-term meetings with relatives.²¹ In some of the detention facilities, short-term meetings with relatives have been taking place behind glass partitions;²² the strictest penalties were being enforced even for minor or alleged offences²³ without ensuring an access to appeal procedures.²⁴

According to State statistics, 13 prisoners have committed suicide in 2009.²⁵ It is the highest number in the last 6 years. The rules of correctional institutions require the inmates to abstain from self-harm, and those failing to comply with the rules are subject to punitive measures, for example, transfer to punishment cell. Self-harm actions are, however, an expression of mental or psychological problems and an indicator of suicide risk, and as such, should be addressed by therapeutic rather than punitive measures.

In 2010, the European Court of Human Rights has communicated to the Lithuanian government three cases related to conditions of detention and imprisonment. The appellants complained about the conditions in Luki kių remand and detention centre, and infringements of their rights to privacy and free expression. In previous years, the ECHR found violations of the prohibition of torture and inhuman or degrading treatment or punishment in three cases against Lithuania.²⁶

Lithuanian government and relevant state institutions have been preparing programmes of renovation of detention facilities and humanization of prison conditions for over 10 years. The programme of 2004–2009²⁷ has not been implemented due to lack of funds.²⁸ At the end of 2009, the Government approved the *Detention Facilities Modernization Strategy 2009–2017*,²⁹ aiming to increase the number of rooms at remand centres and ensure safe conditions for execution of detention and serving of sentence along with shifting from dormitory type accommodation to cell accommodation, more rational distribution of the sites of detention and imprisonment, and installation of modern security systems. It is, therefore, crucial to ensure sufficient funding for and control of implementation of the strategy.

The problem of overcrowding could also be addressed by an effective proba-

tion system but it is yet to be developed in Lithuania. Probation is a form of punitive measure which is invoked as an alternative to imprisonment, for example, suspended sentence or probationary release.

According to recent statistics, 30 to 50 per cent of convicted persons serve a full sentence, whereas the rest are released on probation. Other probationary measures such as exemption from a prison term are rare.³⁰ Moreover, the system of exemption contains provisions of corrupt nature;³¹ there were also cases recorded of delayed transfer of exemption cases to the court.³²

The Ministry of Justice has prepared the package of draft laws with a purpose to create efficient probation system aiming at reduction of risk of repeated crimes.³³ This is essentially positive step; however, the number of inmates is planned to be reduced by using electronic tracking devices. Lithuanian probation offices doubt the efficiency of such reform and its cost/benefit ratio.³⁴ There are also doubts as to the lawfulness of such restriction of the right to private life.

Another positive step is the *Programme of Prevention of Criminal Subculture in Detention and Prison Facilities*³⁵ which is currently being implemented; although it is important to note that this

should be considered only as the first step in the reform of the system, leading from social exclusion to social reintegration.

In recent years, the number of allegations of cruel violence against detainees and prisoners has increased;³⁶ cases of the use of violent interrogation methods were reported;³⁷ prosecutors are usually reluctant to investigate such allegations.³⁸

Prison System Management Problems

In recent years, the problems of prison system management became apparent. The enclosed nature of prison facilities allows for abuse of power by prison staff.³⁹ There are many allegations in relation to improper distribution of high-ranking posts⁴⁰ and lack of transparency and efficiency in the use of funds and recourses.⁴¹

Reduced funding for prison system has also diminished work efficiency.⁴² Officers responsible for re-socialisation have workloads far too large for their number.⁴³ For example, one officer at Alytus correction facility is responsible for 55–56 inmates.⁴⁴

An ironic attitude of prison administration towards the prisoners can also be seen as well as an open contempt;⁴⁵

prisoners are blamed for filing too many complaints.⁴⁶ Prison administrations express dissatisfaction that “the EU is forcing to take care of prisoners”.⁴⁷

The employment rates in prisons fail to increase – only less than 20 per cent of inmates have jobs. Even though several EU-funded projects are being implemented, these are mainly short-term measures, failing to create a regularly operating employment system.⁴⁸

Human Trafficking

The recession and increasing unemployment in Lithuania have contributed to the increase in scale of human trafficking.⁴⁹ The qualitative indicators of human trafficking have also changed – there was a growth in numbers of victims of forced labour, underage victims and educated victims.⁵⁰ Although already in 2009 international experts have urged the State to draw attention to this problem, law enforcement officers in Lithuania claimed they have not observed worrisome tendencies in Lithuania,⁵¹ and the response of the Government has also remained fragmented. The long prepared *Programme on the Prevention and Control of Human Trafficking 2009–2012*⁵² has not received an adequate funding, and most of the measures foreseen in the Programme of 2009–2010 have not been implemented.⁵³

According to statistics, in 2009, 57 people were believed to have become victims of human trafficking; 20 were given victim status, 6 of them – underage victims.⁵⁴ The official statistics fail to reveal the actual extent of the problem. Residential care institutions and dysfunctional families are reluctant to report children’s disappearances due to the fear of losing funding or benefits.⁵⁵ National statistics do not correspond to the number of investigations carried out abroad with respect to exploitation of Lithuanian nationals. Human trafficking does not always cross the State border; local human trafficking has also been flourishing. Lured by promises of earning money, women were being persuaded to supply sex services.⁵⁶

Lithuanian Criminal Code defines human trafficking in narrow terms. In Lithuania, unlike in most EU countries, persons who have been trafficked with a purpose of forcing them to steal or commit other criminal acts were not considered to be victims of human trafficking.⁵⁷

Experts emphasize that the provisions establishing criminal responsibility for human trafficking are too casuistic. Criminal acts and forms of human trafficking are listed in the provisions without paying regard to the fact that changing social, economic and other life conditions may lead to the emergence of new forms of human trafficking.⁵⁸ The legis-

lature should revoke the exhaustive list of criminal acts from the provisions regulating human trafficking.

Pre-trial investigations of human trafficking cases are characterized by their prolonged duration; as a consequence, victims of trafficking suffer repeated victimization and violence and are often intimidated by the perpetrators. According to Lithuanian *Caritas* data, victims often remain unprotected from the perpetrators who have actually sold them. During the prolonged investigation, terrified victims frequently change their testimonies and request to close the investigation. The investigators display negative attitudes towards the victims. The lack of efficient and accessible victim protection system obstructs successful pre-trial investigation and future trial.

Domestic Violence

Violence in the close environment can take many forms – physical, psychological, emotional, sexual and financial violence. The latter is especially frequently used by financially better resourced partners, taking the forms of complete budget control, prohibition to undertake employment, or deprivation of money.

The 2010 Eurobarometer survey revealed that violence against women in Lithuania is more common than in oth-

er EU countries. More than half of the respondents indicated they knew at least one woman suffering from domestic violence and at least one person who has been violent against woman.⁵⁹ According to data collected in 2009 by the Police Department, every fifth police call-out regarding domestic conflicts was related to violence against women; in total, 8245 police call-outs, related to violence against women, were recorded.⁶⁰ Research into the cases of domestic violence showed that the attitude to domestic violence as a private matter between the perpetrator and the victim still prevails in society.⁶¹

The United Nations Committee on the Elimination of Discrimination against Women expressed concern in relation to the scale of domestic violence in Lithuania and called for urgent adoption of legal and other measures to fight all forms of violence against women.⁶² However, during the period under review, this problem was not being comprehensively addressed.

Some of the objectives foreseen in 2007–2009 *National Strategy of Reducing Violence against Women*⁶³ and in the 2010–2012 plan for its implementation⁶⁴ were obviously inefficient,⁶⁵ and the planned measures were being implemented inconsistently.⁶⁶ In the beginning of 2009, an informational website *bukstipri.lt*⁶⁷ was launched but in the

same year the domestic violence helpline which was operating from Vilnius Women Centre has been closed due to lack of funding.⁶⁸

In the period of 2009–2010, as in the previous period under review, no comprehensive research into the frequency of violence against men was conducted. In 2009, 64 for cases of violence against men were recorded, where the perpetrator was a spouse or a partner.⁶⁹ Yet the data may not reflect the actual situation as the vast majority of the cases of violence against men remain undisclosed due to manhood stereotypes⁷⁰ and underdeveloped system of support for male victims.

The year 2010 saw the first attempt to legally ensure the safety of domestic violence victims. With this purpose on the agenda, an interdepartmental working group, led by the Ministry of Labour and Social Affairs, drafted the *Law on the Protection from Violence in Private Space*.⁷¹ The draft law, however, appeared to be more favourable to perpetrators than the victims of violence,⁷² and initiatives were taken to improve its provisions before it has reached the stage of parliamentary consideration.⁷³

Violence in private space is being defined in the draft law not as a grave violation of human rights and freedoms,

⁷⁴ but mainly as a “phenomenon” which, due to its “harm to society is categorized as an act having a larger social impact”. The private complaint procedure remained unchanged in the draft law, leaving the burden of proof on the victim alone, and the suggestion to include provisions on mediation and on victims’ and perpetrators’ rights, obligations and responsibility for failure to comply with obligations implied that both, victim and perpetrator are equally responsible for violence and have the same positions for negotiations.⁷⁵ The draft law established legal mechanisms for prevention, protection and support, but failed to foresee adequate deterring measures.

The aim of the draft law was to encourage “solving the problems with non-violent methods”⁷⁶ rather than establish efficient legal framework for the protection from violence. This provision reflects the widespread stereotypes that: victims are to blame for violence too; they have chosen to live with perpetrators; they don’t mind sexual harassment. These stereotypes justify violent environment, encourage the impunity of perpetrators, promote further isolation of victims and impede prosecution.⁷⁷

Domestic violence is a systemic problem requiring coordinated and integrated measures. First of all, the legal framework protecting victims from domestic

violence must be improved. In order to ensure the efficiency of sanctions, it is essential to revoke private complaint procedure in domestic violence cases; investigation of domestic violence cases must be undertaken under the general procedure together with implementation of sanctions protecting the victim, such as eviction of perpetrator from the property and issuing of restraining orders. It is important to establish an effective victim support system by expanding the network of crisis centres, and also strengthen the NGOs, providing legal, psychological, social and other services to the victims. The strengthening of cooperation among such professionals as social workers, law enforcement officers and child protection workers is also crucial in order to achieve long-term and effective results.

Problematic Aspects of Health Policy

Lithuania occupies 31st place out of 34 states on the list of *Euro-Canada Health Consumer Index 2010*, assessing the quality of health care systems.⁷⁸ The index measures the accessibility of country's pharmaceutical and innovation policies, assessed on the basis of what percentage of pharmaceuticals is reimbursed by the State, and the accessibility of innovative medicines to the patients. Lithuania's policies in these categories were ranked as "poor".⁷⁹

Lithuania spends more than one and a half billion LTL on medicines a year,

but the patients are left with little choice as to what drugs to buy.⁸⁰ Individual expenses on drugs have increased in recent years and comprise 30 per cent of total household expenses.⁸¹

In mid-2009, the Ministry of Health started implementing the *Plan on Improving Access to Medicines and Reducing the Prices*.⁸² Improving access to medicines, *inter alia*, means introducing advanced therapies and innovations. When drafting the plan, a separate budget was to be provided for new pharmaceuticals, but later this part of the plan was neglected.⁸³

The second part of the plan brought into effect a policy of drug price reduction, but the prices of reimbursed drugs in majority of pharmacies have increased. The pharmacists have been cutting the prices of partly reimbursed drugs, while the government has been reducing the reimbursements; therefore the surcharge for the patients has increased.⁸⁴ The State Drugs Control Commission found violations of retail mark-ups regulations in 30 out of 36 pharmacies.⁸⁵ The association of Ethical Pharmacy Companies claimed that the current system of reimbursement worsens the accessibility of medicines for patients.⁸⁶

New procedures for obtaining drugs have caused a lot of confusion among patients, doctors and pharmacists.⁸⁷ Now

the doctors issuing prescription must indicate only the general name of the drug rather than the product of specific manufacturer.⁸⁸ The new system is designed to encourage competition among pharmaceutical manufacturers, diminish doctors' financial interests, and give patients a better choice. Computer monitors installed in the pharmacies should enable patients to choose the right product, but the lack of IT skills and abundance of information reduce the chances of choosing the right drug.⁸⁹

There were cases observed of the breaches of the rights of patients with certain illnesses. Patients having multiple sclerosis do not get reimbursement for their drug expenses.⁹⁰ When the new price list of reimbursed medicines comes into effect, the costs of the treatment of Parkinson patients will triple.⁹¹ Treatment of musculoskeletal diseases, affecting thousands of working people, is compensated only for young patients or at the acute stage of the disease.⁹² Medicines for treatment of chronic myeloid leukaemia are reimbursed for one third of the patients.⁹³ In developed countries, this type of drug is prescribed to every patient having chronic myeloid leukaemia, because the drug is able to control the disease and prevent the spread of it without chemotherapy and bone marrow transplantation.⁹⁴

In 2010, a patient with cystic fibrosis was discharged from "Draugystė" sana-

torium because the institution did not get reimbursed for the expenses for her treatment as the expenses were being covered for underage patients only. The recommendations of Seimas Ombudsperson, urging the Ministry of Health to change the legal framework and ensure the accessibility of treatment for all patients, were ignored.⁹⁵

Only 40 patients a month receive innovative medicines for treatment of cancer metastasis although there are 300–500 patients suffering from bone metastasis.⁹⁶ The majority of the patients cannot afford to cover the whole price for the drugs and are, therefore, condemned to suffering.

Recently, the problems of accessibility to medication have become apparent when patients are being brought to hospitals. Hospital treatment is not fully covered from the Social Insurance Fund,⁹⁷ and patients preparing for surgery must buy some of the medicines and medical supplies; such vital procedures as blood transfusion may become inaccessible.⁹⁸

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⁶² Concluding Observations of the United Nations Committee on the Elimination of All Forms of Discrimination against Women, 2008-07-18, CEDAW/C/LTU/CO/4, punktas 74 ir 75, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LTU-CO-4.pdf>

⁶³ The Government Act No. 1330 “On the approval of the National Strategy of Reducing Violence Against Women and the plan for its 2007–2009 implementation”, *Žin.*, 2006, No. 144-5474

⁶⁴ The Government Act No. 853 “On the approval of the 2010–2010 plan for the implementation of the National Strategy of Reducing Violence Against Women”, *Žin.* 2009, No. 101-4216

⁶⁵ For example, the 2010–2010 Plan for the Implementation of the National Strategy for Reducing Violence Against Women fails to establish an objective to design a legal framework for protection of women against violence, and the plan itself is restricted to the evaluation of the situation without foreseeing means for action against violence.

⁶⁶ For example, the 2007–2009 National Strategy for Reducing of Violence Against Women envisioned “to establish specialization of judges in adjudication of family cases”, “to strengthen the protection of domestic violence victims”, “to assess the possibility of revoking of private complaint procedure in domestic violence cases”, but no tangible results were achieved.

⁶⁷ “Internet website – for fighting domestic violence against women” (*in Lithuanian*), *Infolex.lt*, 2009-02-02, http://www.infolex.lt/portal/start_visuom.asp?act=news&Tema=44&str=27414

⁶⁸ “Mamma Rock’n’roll: Can a woman, who is beaten by a man, be happy?” (*in Lithuanian*), *Balsas.lt*, 2010-05-20, <http://www.balsas.lt/naujiena/390656/mama-rocknroll-ar-vyroltalzoma-moteris-gali-buti-laiminga>

⁶⁹ Information of the Statistics Department. Persons, victimized by family members and close relatives” (*in Lithuanian*) <http://www.stat.gov.lt/lt/pages/view/?id=2218&PHPSESSID=d161676f54520c5556d28bdf82f1068f>

⁷⁰ Agnė Didžbalytė. “The analysis of the experiences of male domestic violence victims”, Bachelor Dissertation, Vytautas Magnus University, 2008, Kaunas. P. 3

⁷¹ The draft Law on the Protection from Violence in Private Space No. XIP-2325, 2010-07-23, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=378717&p_query=&p_tr2=

⁷² M. Jankauskaitė. “Protection from violence: Lithuania is inventing a bicycle” (*in Lithuanian*), *Delfi.lt*, 2010-06-26, <http://www.delfi.lt/news/ringas/lit/article.php?id=34839673>

⁷³ “The Human Rights Committee will be improving the draft Law on the Protection from Violence in Private Space” (*in Lithuanian*), *Lrs.lt*, 2010-10-13, http://www3.lrs.lt/pls/inter/w5_show?p_r=4463&p_d=103152&p_k=1

⁷⁴ The Judgement of ECHR of 9 January 2009 in *Opuz v Turkey*, Appeal No. 33401/02, § 160–176

⁷⁵ Explanatory notes to the draft Law on the Protection from Violence in Private Space”, No. XIP-2325, 2010-07-23, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=378718

⁷⁶ *Ibid.*

⁷⁷ Advisory Committee on Equal Opportunities for Women and Men. Opinion on EU Strategy on Violence against Women and Girls, 2010-11-24, www.ec.europa.eu/social/BlobServlet?docId=6574&langId=en

⁷⁸ B.Eisen, A. Bjornberg. *Euro-Canada Health Consumer Index*, 2010, P.14, http://www.fcpp.org/files/1/10-05-10-Euro-Canada_Index_2010_FINAL.pdf

⁷⁹ “Even Albania is ahead of Lithuania” (*in Lithuanian*), *15min.lt*, 2010-09-20, <http://www.15min.lt/naujiena/aktualu/lietuva/euro-canada-health-consumer-index-2010-lietuva-pralenske-net-albanija-56-116476>

⁸⁰ Marijana Jasaitienė. “The anatomy of pharmaceutical business and the search for cheaper drugs” (*in Lithuanian*), *Diena.lt*, 2009-06-30, <http://www.diena.lt/dienrastis/tema/farmacijos-biznio-anatomija-ir-pigesniu-vaistu-paieskos-225888>

⁸¹ “A. Matulas: Next year, the treatment in clinics and hospitals may become more expensive” (*in Lithuanian*), *Bernardinai.lt*, 2009-11-24, <http://www.bernardinai.lt/straipsnis/2009-11-24-a-matulas-kitais-metais-gali-brangti-gydimasis-poliklinikose-ir-ligonese/35940>

⁸² The Order of the Minister of Health of the Republic of Lithuania “On the approval of the measures of the implementation of the plan on the improvement of accessibility to medicines and reduction of prices”, *Žin.* 2009, Nr. 87-3751

⁸³ “New drugs remain unavailable” (*in Lithuanian*), *Lietuvos sveikata*, 2010-11-04, <http://www.pasveik.lt/sveikatos-ir-medicinos-naujienos/nauji-vaistai-lieka-uz-borto-/56105>

⁸⁴ “Pharmacists: The new procedure for obtaining drugs will worsen their accessibility to patients” (*in Lithuanian*), *Lietuvos rytas*, 2010-03-09, <http://m.lrytas.lt/-12681361061266519076-farmacininkai-kei%C4%8Diama-vaist%C5%B3-%C4%AFsigijimo-tvarka-pablogins-vaist%C5%B3-prieinamum%C4%85-pacientams-video.htm>

⁸⁵ “Drug prices in pharmacies have not decreased as much as it was expected” (*in Lithuanian*), *Delfi.lt*, 2010-04-21, <http://www.delfi.lt/>

[news/daily/Health/vaistu-kainos-vaistinesesumazejo-kiek-tiketasi.d?id=31302951](http://www.delfi.lt/news/daily/Health/vaistu-kainos-vaistinesesumazejo-kiek-tiketasi.d?id=31302951);

⁸⁶ *Supra* note 82.

⁸⁷ “New prescription procedures aim at fighting corruption” (*in Lithuanian*), *Balsas.lt*, 2009-07-26, <http://www.balsas.lt/naujiena/302136/nauja-receptu-israsymo-tvarka-sieks-pazabotikorupcija-video>

⁸⁸ R. Šukys. “Drug prescription under general names – one more step in reducing drug prices” (*in Lithuanian*), *Sveikatos apsaugos ministerija*, 2010-05-10, http://www.sam.lt/go.php/lit/R.Sukys_Vaistu_israsymas_bendriniu_pavad/1093

⁸⁹ “Drug prices – on the screen of the monitor; they can be selected on the internet” (*in Lithuanian*), *Sveikatos apsaugos ministerija*, 2010-05-12, http://www.sam.lt/go.php/lit/Vaistu_kainos_monitoriaus_ekrane_jas_ga/1100; Inga Smalskienė. “No longer able to earn extra – patients will suffer” (*in Lithuanian*), *Balsas.lt*, 2009-08-04, <http://www.diena.lt/naujienos/lietuva/nebegales-pasipinigauti-kentes-pacientai-231675>

⁹⁰ “MP: Patients with multiple sclerosis must not be discriminated” (*in Lithuanian*), *Vakarų ekspresas*, 2010-06-03, <http://www.ve.lt/naujienos/visuomene/sveikata/seimunesisetine-skleroze-sergantys-pacientai-negali-buti-diskriminuojami/>

⁹¹ “Government condemns Parkinson patients to wheel-chairs” (*in Lithuanian*), *Balsas.lt*, 2010-07-09, <http://www.balsas.lt/naujiena/432255/serganciuosius-parkinsono-ligavaldininkai-pasmerkia-invalido-vezimeliui;>

⁹² Lina Juškaitienė. “The price of accurate diagnosis” (*in Lithuanian*), *Valstietis.lt*, 2010-

04-10, <http://www.valstietis.lt/Pradzia/Patari-mai/Sveikata-ir-grozis/Tikslios-diagnozes-kaina>

⁹³ “Having received no medication, patients with chronic myeloid leukaemia threaten to sue the State” (in *Lithuanian*), *Lietuvos rytas*, 2010-06-01, <http://sveikata.diena.lt/lt/naujienos/sveikata/vaistu-negave-letine-miolo-leukemija-sergantys-pacientai-grasina-valstybe-paduoti-i-teisma-281416>

⁹⁴ Kristina Garalevičiūtė, Asta Kažukauskienė. “Effective drug – only to every third patient with chronic myeloid leukaemia” (in *Lithuanian*), *Delfi.lt*, 2009-06-29, <http://www.delfi.lt/news/daily/Health/veiksmingas-vaistas-tik-kas-treciam-serganciam-mieloleukemija.d?id=22866244>

⁹⁵ The 2010 annual report of the Ombudspersons of Seimas of the Republic of Lithuania, P. 25, (in *Lithuanian*) <http://www.lrski.lt/files/402.pdf>

⁹⁶ “Cancer treatment experts conclude: It is necessary to optimise the prescription of the drug to the patients” (in *Lithuanian*), *Lrytas.lt*, 2009-09-02, <http://m.lrytas.lt/-12518813921251172869-v%C4%97%C5%BEio-ligos-gydymo-ekspert%C5%B3-i%C5%A1vados-b%C5%ABtina-optimizuoti-vaisto-skyrim%C4%85-pacientams.htm>

⁹⁷ Natalija Kondrotienė. “Free treatment is shrinking” (in *Lithuanian*), *Šiaulių kraštas*, 2009-07-24.

⁹⁸ Kristina Garalevičiūtė. “A. Matulas: New procedures may ruin small hospitals” (in *Lithuanian*), *Delfi.lt*, 2010-03-17, <http://www.delfi.lt/news/daily/Health/amatulas-nauja-tvarka-gali-suzlugdyti-mazas-ligonines.d?id=30111445>

Implementation of Equal Opportunities Policy

In 2009–2010, the implementation of the principle of **equal opportunities and non-discrimination** suffered a considerable regress. The culture of hate took deep root in Lithuania, but still no hate-incitement monitoring body exists; the policy of integration of national minorities became one of the most neglected areas on political agenda; cultural integration is being promoted without paying due regard to complex social problems; the draft law on the compensation for Jewish communal property is still being discussed in the Parliamentary Committees. Lithuania has taken a step backwards in safeguarding the rights of sexual minorities: public intolerance to homosexuals increased due to hate-inciting political rhetoric and a number of discriminative initiatives, restricting homosexuals’ rights to freedom of expression and assembly; in the eyes of international community, Lithuania acquired the image of a homophobic State. Legal framework, necessary for implementation of equal opportunities, remains incomplete.

The Spread of Culture of Hate

In July 2009, a positive step was taken in fighting hate crimes; the amendments to the *Criminal Code of the Republic*

of *Lithuania*¹ were introduced, strengthening the responsibility for hate crimes, committed against people because of their gender, sexual orientation, race, nationality, language, origin, social status, faith, beliefs and opinions.

When comparing with previous years, fewer incidents of incitements to hatred were recorded in 2009, but in 2010 the number has risen again. The official statistics does not, however, reflect the true extent of the hate culture. In Lithuania, no permanent monitoring body for hate-inciting incidents exists; as a result, the statistics is based on the number of the requests to launch a pre-trial investigation, submitted by NGOs. As before, public internet space is the major medium for hateful comments.²

As has become customary,³ in 2009–2010, in Lithuania, a number of hate inciting incidents have occurred. For example, in 2009, in commemoration of Adolf Hitler’s birthday, a Nazi flag was posted in the city of Klaipėda; in the same year, the signs of swastika along with the writing “Kill the Jews” appeared in other cities of Lithuania. The birthday of the father and implementer of Nazi ideology was being celebrated in 2010 as well as 2011. In 2010, a head of pig with a hat and hanks of hair was left near Kaunas synagogue; it was intended to degrade a religious Jew. A black football play-

er from Panevėžys “Ekranas” football team has also become a target of racist insults.⁴

The enjoyment of the right to freedom of assembly was being obstructed for the persons and organisations, raising important political, social, economic and human rights issues;⁵ however, the Independence Day demonstrations on the 11th of March, displaying racist, ethnic, religious and other forms of hatred, have become a tradition.

Municipal officials do not raise doubts as to the conformity of such marches with Lithuanian constitutional values and legislation, when considering the issuing of a certificate on the date, time and place of the assembly. The main street of the capital city is given on the Day of Independence to radical or even extremist skinheads and other persons with famously radical opinions, whose demonstrations are accompanied with flags, bearing skulls and slogans such as “We are white brothers”, “For Lithuania, race and nation” and the like, obviously demoting racial, ethnic and other forms of distinctiveness, enhancing xenophobia and hatred to “others”.⁶ No danger to democratic development of the country was seen by the court in the slogan “Lithuania for Lithuanians”, which ruled that the slogan does not incite hatred.⁷

Public display of hatred was not limited to Vilnius. On 16 February, the Day of Restoration of the State, the so called patriotic demonstrations took place in Kaunas. The 2011 march in Kaunas did not take place without incidents; a racist attack against Pakistani national was reported.⁸

The culture of hatred has penetrated politics. At the beginning of 2011, political party “Young Lithuania” engaged into municipal electoral campaign in Vilnius with the slogan “With no blue, or black, or red, and with no gypsies from the slums”.⁹ This intolerable political activity received neither legal, nor political response. The party was elected to the Council of Kaunas City Municipality and joined the ruling coalition.

There is a lack of understanding in Lithuania, including its political elite, that the culture of hate discredits the country in the eyes of international community,¹⁰ and that the failure to undertake efficient measures to stop it may destroy the foundations of modern Lithuanian statehood – democracy and respect for human rights. Even though the March 11, 2011 demonstration in Vilnius has received wide disassociation and condemnation, active steps to prevent further spreading of hate have not been taken.

The Setback of the Policy on National Minorities

Lithuanian policy of integration of national minorities, which has long been considered as the best example of such policy in Baltic States, became one of the most neglected issues on political agenda. The *Law on National Minorities* seized to exist on 1 January 2010, and the *Executive Order on Reorganization of the Department for National Minorities and Expatriates*¹¹, which brought it to its end, came into effect; this indicates the end of the national minorities’ policy which was being shaped since 1989.

The new draft *Law on National Minorities* is being discussed in Parliament for over 10 years; however, no significant progress can be seen. Currently, the decisions related to national minorities are being taken on an *ad hoc* basis, and the policy is being shaped with no clear direction and understanding of the desired results.

The new directions for the policy of national minorities – the *Strategy on the Development of the Policy of National Minorities until 2015*,¹² *National Anti-Discrimination Programme*,¹³ and the *Programme of Roma Integration into Lithuanian Society*¹⁴ – could be evaluated as positive shifts, but, unfortunately, they reflect a narrow and inert atti-

tude towards integration of minorities. All the documents emphasize cultural integration, and this trend was strengthened by the transfer of functions of the Department of National Minorities and Expatriates to the Ministry of Culture; such emphasis ignores complex social problems, faced by national minorities.

In 2009–2010, certain problems of ethnic groups received more political and media attention, especially the issues of spelling of names in Latin alphabet and compensation for communal Jewish property.

In 2010, without providing rational explanation, Parliament rejected the draft *Law on the Spelling of Names and Surnames in Documents*,¹⁵ which would have allowed spelling of names in native language on the basis of Latin alphabet. The final decision on the use of Latin alphabet in official documents is most likely to be taken by the European Court of Justice in the case of *Runevič-Vardyn*.¹⁶

The draft law on the compensation for Jewish communal property, which was registered in Parliament in summer of 2009, is still being discussed in the Committees, even though the Minister of Justice as well as the Prime Minister have promised a more rapid adoption of this law.¹⁷

The measures approved by the Ministry of Education and Science,¹⁸ facilitating the integration of migrant children into education process, can be viewed positively. Yet the preparation of teachers for the work with migrant children, having differing Lithuanian language skills, remains insufficient.¹⁹

No comprehensive approach still exists in relation to migrant integration, although, from the economic point of view, labour migration to Lithuania is considered to be one of the options of addressing demographic challenges.

Non-existent Roma Integration Policy

Roma community remains the most disliked ethnic and social group in Lithuania. More than half of the respondents of public opinion polls would not want to live in the neighbourhood or work with people of Roma origin or rent them an apartment.²⁰

During the period under review, the journalists were associating people of Roma origin exceptionally with illegal activities, and, in doing so, have contributed to the formation of negative public attitudes, although Article 54 of the *Code of the Ethics of Journalists and Publishers* states that “a journalist and publisher shall not associate criminal acts with national or ethnic origin of the suspect, the

accused or the convicted person, and shall not emphasize such association.” In 2009 alone, HRMI recorded and referred for investigation to the Inspector of Journalistic Ethics 37 publications, allegedly inciting ethnic strife.

Although the period of 2009–2010 witnessed the adoption of the decisions which were significant to the Roma community, such as the conclusion of Parliamentary Ombudsperson on the Kirtimai settlement in Vilnius and the final judgement of the court in the case of demolition of residential buildings in Kirtimai, carried out by Vilnius municipality back in 2004, no significant changes occurred in the situation of Roma community, and the major problems of integration were not addressed.

In 2009 report, Parliamentary Ombudsperson noted the failure of institutions and agencies to take active steps in addressing the deep-rooted problems, and recommended to ensure funding for the implementation of measures foreseen in the programmes of integration. In the report, the Ombudsperson stressed the necessity to ensure housing rights of the Roma minority, and to establish a social services mechanism for skills development.²¹

Despite Ombudsperson’s recommendations, the situation has been moving to-

wards the opposite direction. The *2008–2010 Programme of Roma Integration into Lithuanian Society* received only one-third of funding needed, and its implementation was discontinued. The Ministry of Culture was assigned to prepare the 2010–2012 Programme, but in the spring of 2011, during the time of preparation of this overview, such programme has not yet been drafted.²²

On 23 September 2010, the Supreme Administrative Court of Lithuania has issued a final judgement in the case of the demolition of residential buildings in Kirtimai settlement on 2–3 December 2004, which was being carried out by Vilnius municipality. The Court noted that Vilnius municipality has exceeded its authority when demolishing the buildings; demolition works were being conducted in breach of procedural rules; demolition works began in winter without providing accommodation for those whose houses were demolished. The Court awarded non-pecuniary damages for 20 appellants, ranging from 1500 to 3500 LTL.²³ The officials responsible for unlawful decisions and their implementation were not sanctioned.

Although the judgement was favourable to the applicants, the future of Kirtimai settlement, housing about 1/3 of Roma population, remains uncertain. In autumn 2010, media reports appeared on the planning of further demolition

works,²⁴ but the formal plans of the Vilnius Municipality in relation to the issues of land and property ownership have not been adopted.

Homophobia – State’s Policy?

During the period of 2009–2010, Lithuania has taken a step backwards in ensuring the protection of the rights of sexual minorities. Public intolerance to homosexuals increased due to hate-inciting political rhetoric and a number of discriminative initiatives, restricting homosexuals’ rights to freedom of expression and assembly; in the eyes of international community, Lithuania acquired the image of a homophobic State.

Opinion polls, conducted in 2010, showed that, compared with 2008, the perception of discrimination against sexual minorities has diminished. The latter attitudes are in sharp contrast with the belief of the same respondents, that publicising information on homosexual orientation of their child would be the gravest violation of the right to privacy. Such contrast serves as an evidence of considerable decrease in tolerance towards the differences in sexual orientation. It is obvious that the problem is going underground – the fact of discrimination is not admitted but it is clearly understood that the child together with the family would suffer because of the public disclosure child’s homosexual orientation.²⁵

On 14 July 2009, Parliament approved the new *Law on Protection of Minors against Detrimental Effect of Public Information*, which equated the promotion of homosexual and bisexual relations with information causing fear and outrage.²⁶ Such law received a well-deserved condemnation from international community. Numerous NGOs compared the discriminative law to censorship and reminded Lithuanian government of its international obligations. Lithuania became subject to close monitoring by the Parliamentary Assembly and Human Rights Commissioner of the Council of Europe. Later amendments to the draft law have left ambiguities in its provisions.

The attempts to restrict the spread of information on homosexual relations to the public resulted in the amendments to the *Law on Provision of Information to the Public*. The amendments prohibited publication of information of advertising nature, which contains “manifestations or promotion of homosexual relations.”²⁷ Although the authors of the amendments argued that this obviously discriminatory provision was a technical error, the law containing this wording came into force in 2010.

In 2009, it was suggested to establish criminal liability for public agitation for homosexual relations.²⁸ Another proposal of the same MP introduced an

administrative penalty for “promotion of homosexual relations or financing of promotion in public spaces”, which would incur a fine of “one thousand to five thousands litas”.²⁹ Both draft laws, under the pressure from international community³⁰ and local NGOs, were withdrawn at the end of 2010.

However, another discriminatory initiative, which appeared at the end of 2010, was approved by parliament for further consideration. The initiative proposed to amend the *Code of Administrative Law Offences*, introducing a fine for “promotion” of homosexuality.³¹ In spring 2011, this formulation was changed, and the amended draft law was approved for consideration. The new version suggests imposing penalty for publicly showing contempt for constitutional moral values and family concept as defined by Constitution, and for organisation of events contrary to public morals.³²

The draft legislation, contradicting the principle of equality, was being justified by the need to preserve traditional family values and protect persons appreciating heterosexual relations. When speaking in the Parliament, some MPs did not avoid using intolerant rhetoric: “I believe that this would solve many problems, no permissions for gay parades would be issued, there would be no tension in the public, and we would not have to fight against all those sex-

ual perversions.”³³ This and similar claims show that the initiators of homophobic laws and their supporters lack understanding and human sensitivity.

Immaturity of some politicians and part of the public were highlighted by the march “For Equality”, which was organised in May 2010 in Vilnius with an aim to draw attention to discrimination on the basis of sexual orientation. *Baltic Pride 2010* did not take place without incidents. The protesters, who, together with the onlookers, made up a crowd three times larger than the demonstrators, poured out their anger with hateful slogans, demeaning posters, and open attacks. The protesters threw sound bombs, smoke cartridges and stones at the police. On the other bank of the river Neris, a wooden cross was being displayed; in the Cathedral Square, a prayer campaign was taking place in response to the demonstration of sexual minorities.³⁴ Two MPs who were the most active in inciting unrest, have avoided legal responsibility because the Parliament refused to lift their immunity. In doing so, Parliament members expressed their support for such actions.

Incomplete Legal Framework for Implementation of Equal Opportunities

During the period under review, Lithuania has failed to fully transpose into

national legislation the EU directives 2000/43/EB, 2000/78/EB, 2002/73/EB and 2006/54/EB, allowing NGOs to represent the victims of discrimination in legal proceedings.³⁵

Although the *Law on Equal Opportunities* and the *Law on Equal Opportunities for Men and Women* provide such opportunity for NGOs, without necessary amendments to the *Code of Civil Proceedings* and accompanying legislation, it cannot be put into practise. The process of adoption of the necessary amendments, which were prepared in 2009 and 2010, has not moved forward.³⁶

In 2009, the Equal Opportunities Ombudsperson prepared a draft plan for *National Action for Equality Statistics* which is a positive step towards introducing an adequate system for collection of equality statistics.³⁷ It is important to ensure that the Government approves the plan and guarantees its consistent implementation.

¹ The Law on the Amendment and Complement of Articles 170, 191, 192 of the Criminal Code and the Complement of the Code with Article 170¹, No. XI-330, Žin. 2009, Nr. 87-3663

² The Office of the Prosecutor General of the Republic of Lithuania. “The 2010 Report of the Special Investigations Unit at the Office of the Prosecutor General”, No. 17.9.-234, 2011-01-28, P. 8, (*in Lithuanian*) <http://www.prokuraturos.lt/nbspnbspnusikalrimai>

žmoniškumui/ tabid/221/Default.aspx; see more at “Freedom of Expression” section of the Overview

³ Human Rights Monitoring Institute. “Human Rights in Lithuania 2007–2008: Overview”, P. 46–48.

⁴ “Such simple household Lithuanian fascism...” (*in Lithuanian*), *Anarchija.lt*, <http://www.anarchija.lt/politika/10403.html?task=view>; “For Ademolu, racists attacks caused a smile”, *Alfa.lt*, 2010-04-01, http://www.alfa.lt/straipsnis/10338961/?Ademolu.rasistiniai.ispuoliai.sukele.sypsena=2010-04-01_14-55 “Anti-Semitic attack in Kaunas – a head of pig left near the synagogue” (*in Lithuanian*), 2010-08-21, *Delfi.lt*, <http://www.delfi.lt/news/daily/crime/antisemitinis-ispuolis-kaune---prie-sinagogos-numesta-kiaules-galva.d?id=35683875>

⁵ See “Freedom of Expression” section of the Overview

⁶ Mindaugas Jackevičius. “Nationalist Slogan “Lithuania for Lithuanians” outraged human rights defenders” (*in Lithuanian*), *Delfi.lt*, 2010-03-15, <http://www.delfi.lt/news/daily/lithuania/article.php?id=30017907>

⁷ *Supra* note 3, P. 47.

⁸ „During the demonstration in Kaunas the slogan “Lithuania for Lithuanians” was chanted, after the march a Pakistani national was attacked” (*in Lithuanian*), *Delfi.lt*, 2011-02-17, <http://www.delfi.lt/news/daily/lithuania/kaunesurengtose-eitynese-skambejo-sukiai-lietuvalietuviams-po-ju-nukentejo-pakistano-pilietis.d?id=42096967>

⁹ Eglė Samoškaitė. „Kuodytės’s assistant campaigns with slogan “Against blue, black and

red” (in *Lithuanian*), *Delfi.lt*, 2011-02-08, <http://www.delfi.lt/news/balsuok2011/naujienos/dkuodytes-padejejas-rinkejus-agituoja-sukiu-pries-zydrus-juodus-ir-raudonus.d?id=41787103>

¹⁰ Eglė Digrytė. “Norwegian Ambassador: The demonstration “Lithuania for Lithuanians” was shocking!” (in *Lithuanian*), *Delfi.lt*, 2010-03-19, <http://www.delfi.lt/news/daily/lithuania/norvegijos-ambasadorius-eitynes-lietuva-lietuviams-sokiravo.d?id=30166409>

¹¹ The Act of the Government of the Republic of Lithuania “On Restructuring of the Department of National Minorities and Expatriates under the Government of the Republic of Lithuania and of the Lithuanian Repatriation Information Centre”, No. 634, *Žin.* 2009, Nr.77-3177

¹² The Government Act “On the Approval of the Strategy on the Development of the Policy of National Minorities until 2015”, Nr.1132, *Žin.* 2007, Nr.112-4574

¹³ The Government Act „On the National Anti-Discrimination Programme 2009–2011“, No.317, *Žin.* 2009, No. 49-1964; The Government Act „ On the National Anti-Discrimination Programme 2006–2008“, No. 907, *Žin.* 2006, No. 100-3872;

¹⁴ The Government Act „On the Programme of Roma Integration into Lithuanian Society 2008–2010“, No. 309, *Žin.* 2008, No. 42-1555; The Government Act „On the Programme of Roma Integration into Lithuanian Society 2000–2004“, No. 759, *Žin.* 2000, No. 54-1580

¹⁵ The draft Law on the Spelling of Names and Surnames in Documents, No. XIP-1644(2), 2010-03-29, <http://www3.lrs.lt/pls/inter2/dok->

www3.lrs.lt/pls/inter2/dok-paieska.showdoc_l?p_id=368047

¹⁶ “The Advocate General of the European Court of Justice issued a decision in the case of Runevič-Vardyn, C-391/09”, *Teisingumas.lt*, 2010-12-17, (in *Lithuanian*) <http://www.teisingumas.lt/naujienos/aktualijos/europos-sajungos-teisingumo-teismo-generalinis-advokatas-paskelbe-isyvada-byloje-runevic-wardyn-c-391-09>

¹⁷ Digrytė, E. “R. Šimašius: It would be healthy to solve the question of compensation for Jewish communal property as soon as possible” (in *Lithuanian*), *Delfi.lt*, 2009-12-14, <http://www.delfi.lt/news/daily/lithuania/rsimasius-butu-sveika-zydu-turto-kompensavimo-klausimo-imtis-kuo-greiciau.d?id=26844691>; “A.Kubilius: We expect to solve the issue of compensation for Jewish communal property till mid-year” (in *Lithuanian*), *Delfi.lt*, 2010-03-12, <http://www.delfi.lt/news/daily/lithuania/article.php?id=29938549&rsslink=true>

¹⁸ The Order of the Minister of Education and Science “On the Procedure of Education of Foreigner and Repatriate Children and Adults in Levelling Courses”, No. ISAK-1800, *Žin.* 2005, No. 109-3991

¹⁹ The Report of Lithuanian Children Rights Ombudsperson “On the Integration of Migrant and Repatriate Children in the Schools of Lithuania”, Nr. 15-2008/KI-6, 2009-01-21, (in *Lithuanian*) http://www3.lrs.lt/pls/inter/dba_intra.vaikai?sakid=5329&dokid=83163&kalbid=1

²⁰ Institute for Ethnic Research. Opinion poll of Lithuanian population (15 July 2010–2 August 2010) , 2011-01-04, (in *Lithuanian*) <http://www.ces.lt/2010/09/lietuvos-gyventoju-nuomones-apklauso-2010-m-liepos-15-d-rugpjucio-2-d-rezultatai/>

²¹ The Office of the Ombudspersons of Seimas of the Republic of Lithuania. Informational Bulletin. Protection of Human Rights: Roma Rights, January – June 2009, No.23(38), (*in Lithuanian*) <http://www.lrski.lt/files/362.doc>

²² “Roma integration into labour market remains problematic” (*in Lithuanian*), *Delfi.lt*, 2010-05-30, <http://www.delfi.lt/news/daily/lithuania/romu-integravimas-i-darbo-rinka-tebera-problematiskas.d?id=32940817>

²³ The Judgement of 23 September 2010 of the Supreme Administrative Court of Lithuania in the case No. A-444-1003/2010

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²⁶ The Law on Protection of Minors against Detrimental Effect of Public Information, *Žin.*, 2009, No. 86-3637; See more in „Freedom of Expression“ section of the Overview

²⁷ Mindaugas Jackevičius. “Gays angry over the censorship of commercials, Seimas argues it’s just a technical error” (*in Lithuanian*), *Delfi.lt*, 2010-11-18, <http://verslas.delfi.lt/Media/gejai-pasipiktino-reklamos-cenzura-seimas-teisinasi-technine-klaida.d?id=38310085>

²⁸ The draft Law on the Complement of the Criminal Code with Article 310(1), No. XIP-

668 (2), 2009-06-16, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=346178&p_query=&p_tr2=

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³⁰ „EP liberals urge Lithuanian government institutions to respect the rights of sexual minorities“ (*in Lithuanian*), *Delfi.lt*, 2010-11-18, <http://myep.delfi.lt/archive/article.php?id=38713911>

³¹ The draft Law on the Complement of the Code of Administrative Law Offences with Article 214³⁰ and Complement of the Articles 224 and 259¹, No. XIP-2595, 2010-10-19, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=383747&p_query=Homoseksuali%F8%20santyki%F8&p_tr2=1

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See more in “Freedom of Expression” section of the Overview

³³ The transcript of irregular morning plenary session in Seimas No. 267, No. 151, 2010-11-23, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=385963

³⁴ Rita Gečiūnaitė. “Monsignor Svarinskas: those supporting sexual minorities are backward people” (*in Lithuanian*), *Alfa.lt*, 2010-05-08, <http://www.alfa.lt/straipsnis/10356315/?>

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³⁵ The explanatory notes to the Draft Law on the Complement of Article 56 of the Civil Code, No. XIP-392, 2009-03-05, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=338508

³⁶ The Draft Law on the Complement of Article 56 of the Civil Code, Nr. XIP-392, 2009-03-05, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=338506; The Draft Law on the Complement of Article 56 Paragraph 1 of the Civil Code, No. XIP – 2347, 2010-08-26, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=379879

³⁷ The 2009 Report of the Equal Opportunities Ombudsperson, P. 120-122, (*in Lithuanian*) http://www.lygybe.lt/assets//LGKT%20ataskaita%202009_kovo_15.doc

Right to Fair Trial

During the period under review, the right to a fair trial was considered by public opinion to be the most frequently violated civil right. Serious infringements of this right have been revealed, which were caused by a disregard of the fair trial guarantees. Numerous violations of the right to a fair trial and the right to liberty and security of person in the case of Gataevs have led to an unprecedented situation – Gataevs are seeking humanitarian protection in one EU member-State, Finland, from persecution in Lithuania, another member of the EU. The cases of Gataevs and Eglė Kusaitė have revealed questionable and poorly supervised activities by the State Security Department in their investigation of criminal cases. The law enforcement and judiciary treat the defence against criminal charges as an obstruction to the pursuit of justice. The presumption of innocence is continued to be ignored by the law enforcement as well as the media. Lithuania has lost 13 cases before the ECHR due to violations of the right to a fair trial; 7 of them – due to prolonged judicial proceedings in criminal, civil or tax dispute cases. There is a lack of innovative solutions on how to make judicial system more approachable, friendly and open to the public; the reform of the system of judicial selection and promotion remains incomplete despite its ob-

vious and easily removable shortcomings. Legal framework for the defence of public interest is yet to be completed; as a result, the courts are still rejecting applications filed on the grounds of protection of public interest. Despite that the courts are provided with quality voice recording equipment, the records are available for the court's administrative use only; it is also not possible to challenge the accuracy on records of judicial proceedings as the protocol of the hearing becomes available only after the judgement is passed. The Constitutional Court has also failed to become more accessible to the public as the individual complaint procedure is still non-existent; litigation parties, initiating appeals to the Constitutional Court, which challenge the constitutionality of the laws, or supporting the appeals submitted by the judge, cannot participate in constitutional proceedings. State Guaranteed Legal Aid offices restrict the accessibility of legal aid to those eligible. Bailiffs were violating the rights of persons by inadequately charging for their services, unjustifiably increasing costs of the execution of court orders, and attempting to recover debts from those who have already paid. There is a lack of publicity and data on the condition of crime victims; regular monitoring is not performed, and the last research was conducted back in 2007.

The Right to a Fair Trial – Most Frequently Violated Civil Right

According to the opinion poll, conducted at the end of 2010, Lithuanians' distrust of judiciary and law enforcement is growing. On the scale from 1 (least frequently violated) to 10 (most frequently violated), assessing which institutions most frequently violate human rights, the respondents of 2010 poll gave the average of 6,61 to the judiciary; the average of the same type of poll in 2008 was 5,99, and in 2006 – 5,94. Prosecution office received the following assessment: in 2006 – 5,5, in 2008 – 5,94, in 2010 – 6,39.

In 2010, the number of respondents believing that person's guilt is determined by the court, has decreased by 9 per cent (in 2008 – 83 %, and in 2010 – 74%), and the number of those not knowing or unable to answer the question of what institution determines the guilt has increased from 3 % to 8 %.

In the light of these responses, it is not surprising that, as in previous years, among civil and political rights included in the poll (right to a fair trial, right to security of person, right to freedom of expression, right to political participation, right to property, right to respect for private life), the right to fair trial was considered to be the most violated

right (in 2006 – the average of 6,6, in 2008 – 6,5, and in 2010 – 6,8).¹

Serious Breaches of the Right to a Fair Trial

One of the main reasons why Lithuanian society mistrusts judiciary and law enforcement is a number of recently unveiled serious breaches of the right to fair trial, resulting from the institutional bias investigating and adjudicating criminal cases.

In 2009, the founders of children care home “Native Family”, Chechen spouses Hadijat and Malik Gataevs, were convicted behind the closed courtroom doors. The spouses were accused of criminal actions against their dependant: violence, threats to kill, abuse of authority, and extortion. The pre-trial investigation as well as the trial were marked by a number of violations of the right to a fair trial and security of person, and received an extensive attention in Lithuania and abroad. Gataevs fled from Lithuanian justice to Finland, where their request for humanitarian protection is being considered. This unprecedented case, when the protection from persecution in one EU state is being sought in another EU state, has damaged Lithuania’s image as a democratic country, respectful of the rule of law and human rights, especially since Lithuanian Supreme Court found the trial of Gataevs to be unlawful.

On 23 May 2010, the Supreme Court overruled the judgement of Kaunas District Court, which sentenced Gataevs to imprisonment, and sent the case back for appeal proceedings. The Court concluded that the appellants’ right to a fair trial was violated when keeping the spouses detained after serving the sentence of the first instance court, because the court order, authorizing detention, was issued exceptionally at the request of the Prosecutor. By granting the request to detain the appellants, the Court of Appeal implied that it considered them guilty, and therefore breached the principle of impartiality. The Supreme Court also noted that the Court of Appeal wrongfully took a decision to adjudicate the case behind the closed doors, without providing any reasonable justification for the decision, and, in doing so, violated the right to public trial.²

The case of Gataevs together with the case of Eglė Kusaitė, which attracted considerable attention from the public, revealed an active and insufficiently controlled involvement of the State Security Department (SSD) in investigation of criminal cases. The purpose of such involvement and its lawfulness raises doubt.

It is still unclear why the institution, responsible for state security, got involved into the dispute between Gataevs and their dependant, and why the

SSD sought a conviction in this case. There is evidence that the SSD attempted to influence the outcome of the case by putting pressure on witnesses, even when the case was already on trial.

Due to the efforts of the SSD, Eglė Kusaitė was accused of a very serious crime – a conspiracy to commit an act of terrorism. In accusing Kusaitė, Lithuanian institutions cooperated with secret services and prosecutors of Russian Federation, which has a distinct perception of terrorism from the one recognized by the EU. The charges were based exceptionally on information, gathered during intelligence operations.

It is important to note that prosecution office and the courts are able to control only some of the intelligence activities, carried out by the SSD, and in cases where the authorisation of such actions is needed, it is being granted without due consideration of the validity of the request. Subsequently, the charge based on intelligence information determines the scope of trial proceedings, and the requests by the defence to extend the scope of judicial investigation usually are of no avail. In this way, the judiciary restricts the right of the defence to present evidence and contest the charges. Furthermore, the trial process of Gataevs and Kusaitė revealed that the judiciary considers the defence against the charges to be an obstruction to the pursuit of justice.

Criminal bias manifested itself not only in judiciary and law enforcement. Some legislators attempted to impose a legal limitation on the effective enjoyment of the right to defence. In 2010, the initiatives were re-launched to amend the *Advocacy Law* in order to legalize intelligence actions against private lawyers suspected of criminal activities, including such actions as seizure of documents or control of correspondence and communications.³ However, the amendments, enabling law enforcement and judiciary to get hold of such information, would breach the principle of confidentiality between the lawyer and the client. The draft amendments were rightly rejected.

As in previous years, during 2009–2010, the principle of presumption of innocence was being ignored, and not only by media,⁴ but also by the law enforcement officers, who did not avoid making public comments on pre-trial investigation material and the guilt of the accused.⁵

The situation in criminal proceedings raises serious concern. Sporadic initiatives to improve the situation, for example, the revocation of the provision under which the acquittal of the accused is considered a flaw of prosecutor's work, are not enough. The issues of the activities and competence of the judiciary, law enforcement and security serv-

ices have exceeded their institutional frames, becoming a political problem, which deserves an urgent attention from the highest State officials.

Prolonged Judicial Proceedings

In 2009–2010, Lithuania has lost 13 cases⁶ before the European Court of Human Rights where the court found violations of Article 6 of the European Convention of Human Rights, protecting the right to a fair trial. In 10 cases, violations were found due to prolonged judicial proceedings in criminal, civil and tax dispute adjudication.⁷

In the case *Sulcas v Lithuania*, the Court found that the criminal proceedings against the applicant, that were taking place for 8 years and 9 months, breached his right to a fair trial. The Court concluded that the delay was due to mistakes made by state institutions. The Court also ruled that, due to prolonged proceedings, applicant's right to an effective remedy was infringed, and, for the first time in the case against Lithuania, found violation of Article 13 of the Convention.⁸

In the case *Vorona and Voronov v Lithuania*, the civil proceedings took 8 years and 6 months. The Court drew attention to the fact that the undue delay was caused by the mistakes or ne-

glect on the part of institutions, for example, the experts provided their conclusion only after more than 3 years.

The case "*Impar*" v Lithuania was the first case against Lithuania before the ECHR, where the Court applied Article 6 in relation to tax dispute proceedings, which took 6 years and 1 month. The Court found that the nature of tax law provisions, imposing liability, the aim to punish and the proportion of the fine lead to the conclusion that the proceedings equated to criminal procedure.

In June 2010, the amendments to the *Criminal Code* came into force, which extended the time limitations for reaching the conviction.⁹ Law experts, sceptical about the amendments, claimed that previous time limitations were long enough (from 2 to 20 years), and the main problem is failure to actively investigate on the part of pre-trial investigation bodies.¹⁰ The new limitations allow carrying out investigative actions for a longer period of time, creating preconditions for abuse and violation of the right to a hearing within a reasonable time.

It has been pointed out a number of times, that the prolonged judicial proceedings became a systemic problem,¹¹ therefore, as a positive step should be assessed the draft law, prepared by the

Ministry of Justice, amending Article 6.272 of the *Civil Code*, which provides the opportunity to award damages for prolonged investigation or judicial proceedings.¹²

On the other hand, it is important to note that the proposed amendment provides an exhaustive list of circumstances, when the damages are awarded. In this way, the damages arising from other circumstances such as unlawful detention cannot be awarded because unlawful detention is not included on the list. It was emphasized two years ago, that legal regulation and practical implementation of temporary detention is a problematic area because no efficient means of protection against arbitrary detention exist.¹³ Such provision is contrary to Article 30 of the Constitution providing that the redress for pecuniary and non-pecuniary damage shall be established by law.

*Openness, Accessibility
and Transparency of Judicial System:
problematic aspects*

The negative outcome of public opinion polls is mainly determined by the belief of the majority of the respondents that the court is not easily accessible, closed, unfriendly and socially insensitive institution. There is a lack of innovative solutions on how to make judicial system more open and friendly to the pub-

lic, and improve its accessibility and transparency. Separate individual initiatives remain incomplete or even distorted, and the mistrust in judiciary is further growing.

In 2009, the President of Lithuania approved new work *Rules for the Judicial Selection Committee* and the new *Criteria for Selection of Judges*. The new regulations improved the selection process and criteria, and therefore should be considered as a step towards more transparent and open selection of judges. However, the selection system is still incomplete and contains obvious shortcomings, which could be easily eliminated.

The existing criteria of the selection of judges provides for the assessment of personal qualities, general competence, motivation and “other criteria which are recognized by the Selection Committee as significant.” Without the definition of these concepts, however, the Committee has no opportunity to objectively assess the level of conformity of the candidates with these criteria, especially bearing in mind the fact that the Selection Committee members lack relevant knowledge; as lawyers themselves, they do not have competence to assess such psychological aspects like personal qualities, abilities and motivation.

Such composition of the Selection Committee, vagueness of personal and

value-based criteria, and considerable weight, given to legal knowledge, specific legal work experience and opinion of the court for which the candidates are being selected, determine that other qualities and skills, essential for judicial work remain unassessed, among them appropriate intellectual abilities, including the ability of independent and critical thinking and reasoning, eagerness to seek professional knowledge, equanimity, self-confidence, social sensitivity and empathy, ability to communicate and express ideas clearly orally and in writing, organisational skills. In Lithuania, personality/cognitive tests of the candidates are not performed as well.

The criteria against which legal work experience is assessed should be amended. Current selection procedure gives preference to work experience obtained in courts, prosecution office and private legal practice. However, legal experience gained in State and municipal institutions, international and non-governmental organisations is devalued. Court experience is most appreciated, and, therefore, priority is being given to young law clerks, which frequently have no other professional and life experience than the one acquired in specific courts. Successful law clerkship in a widely criticized judicial system is being held as an evidence of suitability of the candidate for the same system. Giving preference to candidates having

PhD is also has no reasonable explanation and is, therefore, discriminatory.

Reinstatement of lay judges in court proceedings is being considered as one of the ways to open the courts for the public, but constant talks about the necessity of lay judges without providing the actual model for the implementation of this proposal are damaging; the less informed part of the public starts believing populist declarations that it is the “judges clan” which does not want lay judges in courts.

Lately, there was an increase in attempts on the part of the active community members to defend public interest in courts; however, the draft *Law on Defence of Public Interest in Civil and Administrative Proceedings* is not being adopted by Parliament since 2006. Without the necessary legal framework, courts reject the complaints by the applicants, lodging claims on the grounds of protection of public interest.

On 1 July 2010, the new amendment to the *Law of Courts* came into effect, allowing tape-recording during court proceedings.¹⁴ The purpose of this innovation was to ensure the transparency of the proceedings and the accuracy of the assessment of the evidence. However, the record is not available to the parties, and it cannot be used as a procedural

tool, because, according to the courts, the record is being made for “administrative purposes” only. That means, the records are accessible to judges and court administration, and the parties must, as before, rely on incomplete and often inaccurate hand-written transcript of the hearings. Such use of this innovation causes a well justified dissatisfaction of the litigating parties.

Moreover, hand-written records become available to the parties for comments next day after the judgement is announced, because this is when, according to the judges, the court hearing ends. There is no possibility to comment on the records of the hearings when the case is pending. This means, the court may pass its judgement relying on inaccurately recorded information. Even in cases when the parties draw the attention of the judge to factual mistakes in the records, and the judge agrees with their observations, this does not influence the judgement which at that time has already been passed. Such interpretation of the end of the court hearing is unacceptable from the procedural point of view and undoubtedly contributes to the mistrust of judiciary.

In 2009–2010, the Constitutional Court has also failed to become more accessible to the public; the idea of individual complaint, which was being considered for several years, ended up in the drawers of Parliamentary Commit-

tees.¹⁵ It is essential to return to the implementation of the idea after making necessary improvements. Current conception only lengthens the list of persons who can appeal to the Constitutional Court regarding the constitutionality of legislation, but the option of direct individual appeal to the Constitutional Court in relation to alleged violation of constitutional rights is not foreseen. The implementation of the individual complaint procedure without making necessary corrections would only increase the disappointment of the public, because such procedure cannot be considered as an effective way to defend infringed human rights, and can only prolong court proceedings.

During the period under review, no specific steps were taken in ensuring compliance with the principles of equality and adversity of proceedings¹⁶ before the Constitutional Court, while also making it more accessible to the public. Until now, the litigating party, supporting the judge’s appeal to the Constitutional Court regarding constitutionality of a law, cannot participate in constitutional proceedings even though the conclusion of the Constitutional Court often determines the final ruling. The hope for positive changes is encouraged by the fact, that at the beginning of 2011, the idea of allowing third parties to get involved into constitutional proceedings received support from newly appointed judges of the Constitutional Court.¹⁷

An important factor in improving the accessibility of the courts, especially for low-income individuals, is an opportunity to apply for a State-guaranteed legal aid. However, the level of public awareness regarding this option remains low. Public opinion polls indicated that one third of the respondents have never heard of State-guaranteed primary legal aid, and more than half lacked knowledge regarding free legal representation in court.¹⁸

State Guaranteed Legal Aid offices interpret the provisions of the *Law on State Guaranteed Legal Aid* in a very formalist manner, and, in doing so, restrict the access to legal aid to those eligible. For example, in one case, monthly income of the applicant, consisting of 120 LTL after deduction of debt, recovered by a bailiff, was assessed as sufficient for covering 50 per cent of legal costs.¹⁹

The Rights of Crime Victims

Neither in 2010 report on legal aid,²⁰ nor in 2009 report on the audit of legal representation in court,²¹ the issue of representation of crime victims is addressed; the needs of the victims as well as the extent of the aid required are not analysed.

Last independent research on the situation of crime victims in Lithuania was conducted back in 2007. In other coun-

tries, for example, Denmark, Sweden or Norway, victimological surveys are conducted nearly annually in order to ensure regular monitoring of victims' rights and immediate response in case of any new problems. Regular gathering of data as well as its analysis is essential for the adequate safeguarding of the rights of the victims.

It is difficult to evaluate the efficiency of victims' protection because the data on the protection of victims as well as the amount of funding allocated for this purpose are not made public.²² This creates preconditions for abuse – in 2008, it was disclosed that the apartment in Vilnius, equipped according to *the programme of Witness and Victim Protection* was being unlawfully occupied by the former head of the Police Department instead of being used for its designated purpose.²³

As a positive step in the field of the protection of the victims of violent crimes can be assessed the new edition of the *Law on Compensation for Damages Caused by Violent Crimes*.²⁴ It broadened the definition of a violent crime, widened the circle of persons having right to compensation, established a clear procedure for execution of the court order to compensate damage, broadened options for advance compensation, and established higher compensation rates. As violent crimes were recognized the following acts: murder, severe or mild injury, mod-

erate, serious or very serious crime against liberty of person, and sex crimes and offences. Henceforth, law enforcement and judiciary have an obligation to inform the victims of their right for compensation.

However, there is a lack of data in order to assess the effectiveness of compensation system. Under the law, applications for compensation are received and compensation is granted by the Ministry of Justice and its subordinate institutions. In 2009, the Ministry of Justice took decisions on 220 applications, 166 of which were granted and 54 were rejected.²⁵ Given that in 2009, 252 homicides, 220 severe injuries, and 149 rapes (including attempts to rape)²⁶ were recorded, the conclusion can be drawn that the majority of the victims are reluctant to apply for compensation.

The Problems of Bailiffs' Practice

According to the findings of research, conducted in 2009, 95 per cent of cases managed by bailiffs contained violations of relevant regulations. In most cases, violations were related to unreasonable calculations of enforcement costs, i.e. bailiffs fail to apply correct rates for their services. For example, a bank operation regarding a lien costs 5 LTL for the bailiff, and the client is charged six times higher rate of 30 LTL excluding postage fees.²⁷

During the period under review, the reports repeatedly appeared in media about the inconveniences suffered by honest debtors – individuals who have already paid the fine, kept receiving debt collection letters in their workplaces.²⁸ For example, a woman responsible for car accident was searching a month for the information on how and whom to pay damages awarded by the court. After transferring money, she received a debt recovery letter from the bailiff, requesting to pay 403 LTL, and later the amount increased to 600 LTL.²⁹

¹ Representative opinion poll of Lithuanian population “How the public assesses human rights situation in Lithuania?” (*in Lithuanian*), 2010-11-03-2010-11-15, http://www.hrmi.lt/uploaded/PDF%20dokai/Vilmorus_Apklausos_Rezultatai_20101210.pdf

² The Judgement of 23 March 2010 of the Supreme Court of Lithuania in the criminal case No. 2K-122/2010

³ The draft law on the amendment of Article 46 Paragraph 3 of the *Advocacy Law* No. XIP-1238, 2009-10-29, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=356445

⁴ Nerijus Povilaitis. “The hearing of the trial of Chechen abusers of orphans – behind the closed door” (*in Lithuanian*), *Lrytas.lt*, 2009-02-24, <http://m.lrytas.lt/-12354893771234766825-na%C5%A1lai%C4%8Dius-engusi%C5%B3-%C4%8De%C4%8D%C4%97n%C5%B3-byla-u%C5%BE-u%C5%BEdar%C5%B3-dur%C5%B3.htm>

⁵ V. Trainys. “Prosecutor: Shots were fired by D. Kedys ” (in *Lithuanian*), *Lrytas.lt*, 2010-05-22, http://m.lrytas.lt/?data=20100522&id=akt22_a2100522&view=2; J. Girdvainis, A. Zinkuvienė. “The story of Kedys was wrapped up hastily” (in *Lithuanian*), *Respublika.lt*, 2010-05-26, http://www.respublika.lt/lt/naujienos/lietuva/nusikaltimai_ir_nelaimes/skubiai_baigta_dkedzio_istorija/

⁶ The annual 2009 report of the representative of Lithuanian Government at the European Court of Human Rights, 2010-03-01, (in *Lithuanian*) <http://www.tm.lt/dok/Vyr%20atstovo%20EZTT%20ataskaita%20uz%202009.pdf>; The annual 2010 report of the representative of Lithuanian Government at the European Court of Human Rights 2011-03-16, http://www.tm.lt/dok/atask/LRV%20Atstoves%20EZTT%20Ataskaita_2010.pdf

⁷ ECHR Judgement of 20 January 2009 in *Norkūnas v Lithuania*, Appeal No. 302/05; ECHR Judgement of 20 January 2009 in *Četvertakas and others v Lithuania*, Appeal No. 16013/02; ECHR Judgement of 7 July 2009 in *Padalevičius v Lithuania*, Appeal No. 12278/03; ECHR Judgement of 7 July 2009 in *Vorona and Voronov v Lithuania*, Appeal No. 22906/04; ECHR Judgement of 21 July 2009 in *Aleksa v Lithuania*, Appeal No. 27576/05; ECHR Judgement of 16 October 2009 in *Naugžemys v Lithuania*, Appeal No. 17997/04; ECHR Judgement of 21 July 2009 in *Igarienė and Petrauskienė v Lithuania*, Appeal No. 26892/05; ECHR Judgement of 5 January 2010 in *Impar v Lithuania*, Appeal No. 13102/04; ECHR Judgement of 5 January 2010 in *Šulcas v Lithuania*, Appeal No. 35624/04; ECHR Judgement of 20 April 2010 in *Novikas v Lithuania*, Appeal No. 45756/05.

⁸ Article 13 of the European Convention on Human Rights: „Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.“

⁹ The Law on Amendment and Complement of Article 95 of Criminal Code, Complement of the Code with Article 170(2) and Complement of the Annex to the Code, No. XI-901, 2010-06-15, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=375951

¹⁰ Ginta Gudauskaitė. “Extension of criminal responsibility limitations: An opinion “against”, *Infolex.lt*, 2010-05-18, (in *Lithuanian*) <http://www.infolex.lt/portal/start.asp?act=news&Tema=50&str=39405>

¹¹ Human Rights Monitoring Institute. “Human Rights in Lithuania 2007–2008: Overview”, P. 41.

¹² The draft law on the Complement of the Civil Code of the Republic of Lithuania with Article 6.272 and Complement of the Code with Article 6.273, No. 10-5013-02, 2011-03-10, http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=76928&p_org=&p_fix=y&p_gov=n

¹³ *Supra* note 11, P. 39

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²⁴ The Law on the Amendment of the Law on Compensation for Damages Caused by Violent Crimes, *Žin.* 2008, No. 137-5387

²⁵ The annual 2009 report of the Ministry of Justice of the Republic of Lithuania, 2010-04-08, http://www.tm.lt/dok/atask/2009_m_veiklos%20ataskaita_3.pdf

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Freedom of Expression

Tax reform during the economic downturn had a negative impact on the independence and quality of media. Several newspapers and magazines have ceased publication; journalists have lost their jobs or had to look for inadequate means to legalize labour relations. The conflict between criminal and administrative law provisions, emerging in the libel cases, remained unresolved. The judgements passed in such cases constitute a threat to a very special area of freedom of expression – press freedom. The problem of hateful online comments was not being addressed; social networking sites emerged as a new medium for the spread of hate. The attitude of the pre-trial investigation bodies and judiciary that hate-inciting comments are mainly subjective radical opinions is incorrect and contrary to the case-law of the ECHR in this field. The amendments to the *Law on Protection of Minors against Detrimental Effect of Public Information* unjustifiably restricted freedom of expression and challenged the political line of the EU as well as international human rights standards. Amendments of discriminative nature to the *Code of Administrative Law Offences* are currently being discussed in Parliament; the new project aims to restrict the right to obtain and disseminate information and the right to free assembly; such restrictions are based on value criteria, which cannot be subject to legal regulation, and

lack precision, necessary for fair functioning of legislation.

The period of 2009–2010 has revealed serious problems of legal regulation and practical implementation of the right to freedom of assembly. During a peaceful demonstration organised by labour unions which later turned into a riot, extraordinary riot control measures were employed, including the use of rubber bullets, injuring 34 people. Fearing similar incidents in the future, the enjoyment of the right to freedom of assembly in 2009–2010 was being unreasonably restricted. Municipalities were often refusing to settle the time, place and form of an assembly, and were posing unreasonable requests to the organisers, e.g., to ensure the safety of the participants; the institutions failed to comply with the deadlines set for consideration of notices and often required to assemble at a location other than the one preferred by organizers, despite the organizers claiming that the location designated by municipality would not help to achieve the aims of the assembly. In May 2011, the Prosecutor General has actively contributed to further restriction of free assembly; Prosecutor's actions were later recognised by the administrative court as an attempt to prevent the enjoyment of the right to freedom of assembly. The practice of issuing *permissions* became rooted, although, according to the legislation, the implementation of the right to freedom of assembly in Lithuania requires *notice* rather than permission.

Right to Obtain and Disseminate Information

Impact of the Tax Reform on the Quality of Media

In 2009–2010, negative consequences of the global financial crisis and recession¹ affected Lithuania too. Preferential VAT for periodicals was withdrawn and additional social insurance contributions were added to royalties, without considering possible long-term negative effects in relation to the independence and quality of media.

Disregarding the protests by various organisations uniting the authors, in 2009 Parliament passed the amendments to the *Value Added Tax Law*,² revoking preferential 5 per cent VAT for periodicals, which has been applied for a long time. Lithuanian Publishers Association together with Lithuanian Book Publishers, European Publishers Federation and International Publishers Association succeeded only in achieving a gradual implementation of the reform – until 31 December 2010 a 9 per cent tariff was applicable to publishers, and afterwards a 21 per cent tariff came into effect.³

Because of the new tax policy, since the beginning of 2009, newspapers and magazines began ceasing publication and journalists were fired. Commissioned journalism became even more widespread, and the general quality of the me-

dia has suffered.⁴ The poor condition of Lithuanian public information sector was also noted in *Freedom House* report.⁵

In 2010, there were cases recorded that journalists were forced to legalise labour relations and copyright work by obtaining bogus business licenses,⁶ although journalism is not on the list of the activities, requiring such license.⁷

Problematic Aspects of Libel cases

As has already been observed, the number of criminal cases brought for defamation and insult of public person increased substantially;⁸ however, the conflict between administrative and criminal law provisions, arising in such cases, remained unaddressed.

The *Criminal Code of the Republic of Lithuania (CrC)* as well as the *Code on Administrative Law Offences (CALO)* and the *Civil Code (CC)* provides for liability for insult. Article 155 of the CrC establishes responsibility for insulting a person regardless of his or her status and position held; however, Article 290 – *lex specialis* – covers insult of any public official except politician. Article 214(6) of the CALO protects exceptionally the honour and dignity of the President of the Republic, and Article 187 protects the honour and dignity of the officers of certain agencies. Article 2.24 of the CC provides for

civil liability for dissemination of information, degrading honour and dignity of a person. The provisions of CrC and CALO mention “an insult” but the concept itself is not defined.⁹

On 9 November 2010, a Vilnius resident was prosecuted for sending an insulting letter to the State President. Vilnius Circuit Court classified his actions as an attempt to insult the President and imposed a fine of 5,2 thousand Litās.¹⁰ Meanwhile, on 17 December 2010,¹¹ an author of an insulting online comment was held liable for administrative law offence, incurring a fine of 750 Litās.¹²

The judgements passed in the cases of the defence of the honour and dignity of public persons constitute a threat to a very special area of freedom of expression – press freedom.

In 2009, an ex-candidate in presidential elections brought a libel case against a journalist for publishing information on his alleged relations with KGB and other allegedly offending information. The Court found the journalist guilty, imposing a fine of 10,4 thousand Litās, and awarded to the applicant 15 thousand Litās in non-pecuniary damages and 7,6 thousand Litās for litigation costs.¹³

The Court disregarded the doctrine of a wider scope of criticism in respect to a

public figure. According to the doctrine, public official must accept that his or her actions, including the actions performed before becoming public person, may attract relatively more attention and stronger criticism.¹⁴ In such cases, preference must be given to the public’s right to be informed, ensuring the protection of honour and dignity with less restricting measures accordingly.

As a good practice example can serve the efforts by the applicants to defend their rights embracing extrajudicial measures, i.e. by submitting complaint to the Inspector for Journalist Ethics, responsible for supervising the implementation of the *Law on Provision of Information to the Public*. In cases where the decisions of the Inspector, requiring refuting false information, are ignored, politicians and public officials should defend their rights in civil proceedings.

It is necessary to eliminate the ambiguous regulation of liability for insulting public person. The disputes between journalists and public officials and politicians should be dealt with under civil law procedures. The purpose of civil law measures in such cases is not to penalize the journalist financially but restore the damaged reputation. Pursuant to the Civil Code, a person who disseminated false information is exempted from civil liability if the information published was about a public person and his or her actions carried out in public

or official capacity, and the publisher can prove that he or she has acted with no malicious intent, and has honestly sought to inform the public of the person and his or her actions.

Due to increased number of appeals to court, requesting to impose temporary protection measures, which would ban or restrict the dissemination of certain information, the statements began appearing in media, alleging censorship and persecution for criticism of public officials.¹⁵ However, a justified ban on dissemination of certain information is usually aimed at the protection of the public from false and unethical information rather than censorship.¹⁶ Media freedom should not be perceived as freedom to disseminate unverified information. In a democratic society, valuable information is the one which is obtained from reliable sources and published without infringing the rights and freedoms of others.

Recently, the concept of journalism is interpreted broader, giving exclusive rights as well as certain duties to online *bloggers*.¹⁷ The understanding of these duties is a necessary condition for the consolidation of ethical media in Lithuania.

Issues of Combating Incitement to Hate

In 2009–2010, the problem of hate inciting online comments was not being

solved.¹⁸ Furthermore, a new medium for the spread of hatred emerged in the shape of social networking sites.¹⁹ Often the information disseminated through social networking sites, exceeding the scope of protection of free expression, is being stored in the servers, operating abroad, and therefore it is difficult, if not impossible, to bring the disseminators of such information to justice.

In Lithuania, no institutional mechanism exists, which would effectively deal with the incidents involving hate speech. *National Anti-Discrimination Programme 2009–2010* fails to address this issue.²⁰ NGOs and private persons, not indifferent to the problem, were further attempting to fill the gaps in the consistent hate speech monitoring.

Since 1 January 2010, the Inspector for Journalist Ethics has taken over the duty of the Commission for the Ethics of Journalists and Publishers to make decisions on whether the information published in the media is inciting hate against a group of people because of their gender, sexual orientation, race, nationality, language, origin, social status, faith, beliefs and opinions.²¹ However, with no adequate resources provided for the implementation of this function, the control of the information disseminated through online comments has failed to improve.

On 26 May 2009, the Supreme Court of Lithuania upheld the decision made by the lower instance courts that the online commentator, who encouraged skinheads to “invade the gypsy settlement”, did not incite hatred.²² In this way, a previously criticized doctrine was established in the case-law, requiring proving direct malicious intent of the accused.²³ In addition, the court concluded in its judgement that there is no sufficient legal ground to recognise *an opinion* as an incitement to violence against a group of people because of their ethnic origins.

The “opinion” argument is widely used when closing pre-trial investigations or acquitting the accused in hate speech cases. The law enforcement and judiciary take the view that contemptuous statements are to be regarded as categorical subjective opinions, expressed in a wording not acceptable to everyone and based on subjective interpretation.

Such reasoning is erroneous and contrary to the case-law of the European Court of Human Rights. The distinction between facts and opinions is significant in libel cases, because the requirements of truth and accuracy are not applicable to opinions. However, there is no reasonable ground for stating that an opinion cannot incite to hatred. An opinion, which ridicules or expresses contempt for someone due to their belonging to a certain group, is precisely what is considered to be an incitement of hatred.

In mid-2010, the amendments to the *Criminal Code* came into force, imposing criminal liability for public approval, denial or serious trivialisation of Nazi and Soviet crimes. Under the new provisions, two pre-trial investigations were opened; one case, involving the denial of the Soviet aggression,²⁴ has already reached the court, and the other, related with an alleged denial of the Holocaust,²⁵ was closed due to the lack of convincing evidence.

The ECHR defined the holocaust denial as a distinct category of racial self-expression, consisting of two main components: denial of crimes against humanity and incitement of hatred against Jewish community.²⁶ It is important, that the courts, analysing the content of such self-expression, evaluate historical and social context and take into account international standards. Unfortunately, in Lithuania, the universally recognized Nazi symbol was acknowledged by the court as a cultural heritage, which is allowed to be displayed in public.²⁷

The *Criminal Code* also provides liability for incitement of hate and denial of international crimes for legal entities, but this provision has not been applied yet.²⁸ The opposite trend – the one of exemption from liability of legal entities – can be identified. On 18 October 2010, the amendments to the *Law on the Provision of Information to the Public*²⁹ have re-

duced the scope of publishers' editorial responsibility for dissemination of information. In this way, the operators of the websites gained an opportunity to avoid responsibility for online comments, posted on their website.

Homophobia-Inspired Restrictions of Free Expression

In July 2009, the Parliament, after rejecting President's veto, approved a new edition of the *Law on Protection of Minors against Detrimental Effect of Public Information*.³⁰ The amendments attracted strong criticism from international, foreign and Lithuanian institutions, organisations and human rights defenders, including EU institutions and international human rights NGOs, Human Rights Watch³¹ and Amnesty International among other.³²

The law in question recognized as having detrimental effect on minors the information, "promoting homosexual, bisexual or polygamous relationships", "distorting family relations and expressing contempt for family values". According to legislators, such information would harm mental health of minors, their physical, mental and moral development. The adoption of this law openly challenged the values of the European Union and international human rights standards. With the enactment of this law, a groundless restriction was imposed on the right to free expression,

or, more precisely, the right to obtain and disseminate information. The provisions were also evaluated as discriminatory in nature.

In December 2009, Parliament, after taking into consideration the draft amendments, proposed by the President, has changed the provision, which would have restricted public discourse on homosexual relations, although the current edition of the law should still be evaluated negatively. When compared with the previous edition of this Law, the number of criteria determining detrimental information has doubled, but the majority of them are not clearly defined and cause problems in their application.³³

The Parliament did not abandon its attempts to limit dissemination of information on homosexual relations, and, at the end of 2010, approved for consideration the draft law on the amendments to the *Code of Administrative Law Offences*.³⁴ The amendments proposed imposing penalty for publicly showing contempt for constitutional moral values and family concept as defined by Constitution, and for organisation of events contrary to public morals.³⁵

With adoption of this law, the right to obtain and disseminate information as well as the right to free assembly would be restricted. The restriction of these rights is possible, but the restricting law

must meet certain requirements. One of the main requirements is the clarity of the legal wording, necessary for every reasonable person to be able to foresee the consequences of his or her actions. The concepts used in the draft law provisions such as “public morals”, “constitutional moral values” and “fundamentals of the family” are not defined either in Lithuanian Constitution, or lower legislation, or the case-law. The proposed draft law also fails to provide definition.

Besides, the wording “organisation of events contrary to public morals” is redundant because the *Law of Assemblies* already determines the events which are prohibited, and establishes responsibility for their organisation. Furthermore, the explanatory note of the draft law indicates the discriminatory nature of the provision. The authors of the draft law explicitly state that the purpose of this provision is to ban the “organization of events contrary to public morals, such as homosexual demonstrations and parades”. This purpose clearly contradicts European legal and political principles, which reject homophobia.

Freedom of Assembly

The period under review has revealed serious issues of legal regulation and practical implementation of the right to free assembly.

On 16 January 2009, a peaceful demonstration organized by labour unions, which sought to express disapproval of the reforms carried out by the ruling coalition parties, has turned into a riot. During the riot, 34 protesters and several police officers were injured, and the damage caused was estimated at 2 million Litass.³⁶ Due to public order violations, 119 individuals were charged with administrative law offences, whereas 29 individuals were accused of committing criminal acts³⁷ and convicted by the first instance courts.³⁸

Although the organisers were also charged with administrative law violations, the court closed the case after consideration. The court found that the organisers have lawfully exercised their rights, and the law does not oblige the organisers to discontinue demonstration if another, unauthorized assembly breaks through, even if the latter interferes with the former.³⁹

Extraordinary security measures which were employed during the riot, injuring several people, attracted significant public attention. The concerns were also being raised in relation to the pictures of suspected offenders and witnesses, published on the website of Vilnius District Police Department.

The State has a positive obligation to take all necessary measures to ensure

the safety of peaceful assembly. In the event of unrest, the measures taken to suppress the unrest must be proportionate to the aim sought. This, first of all, means that the officers must take all the steps necessary to avoid harm to peaceful demonstrators.

It is clear that the lawfulness and proportionality of the use of extraordinary measures, especially the rubber bullets, warranted a separate investigation, because the actions of police officers resulted in injuries sustained by peaceful demonstrators, and this circumstance contradicts the statements made by the responsible officers that the measures used were proportionate. By the way, it has been claimed that rubber bullets were being shot at the knee level of the protesters, but at least one participant got injured by the bullet to the head. The lawfulness and proportionality of the use of rubber bullets caused doubt among the officers too, as they hurried to deny the fact that the bullets were ever used. However, after the evidence emerged, it was being further claimed that the use of extraordinary measures was lawful and proportionate in given circumstances.

The publication of the pictures of the demonstrators on the police website infringed the right to peaceful assembly and the right to respect for private life. There is no doubt the law allows publishing pictures of a suspect. However,

the posting of the pictures of the demonstrators, and the statement that in the photos the “suspected riot participants and witnesses are captured” may have degraded dignity and damaged the reputation of the individuals involved, because no distinction was made between the “suspects” and the “witnesses”. Therefore, every individual captured in the pictures have had reasons to believe that he or she was being suspected of participation in the riot.

Fearing repetition of similar incidents in the future, in 2009–2010 the enjoyment of the right to peaceful assembly was being unreasonably obstructed. Municipalities were often refusing to settle the place, time and form of an assembly, and were posing unreasonable requests to the organisers, e.g., to ensure the safety of the participants; the institutions failed to comply with the deadlines set for consideration of notices and often required to assemble at a location other than the one preferred by organizers, despite the organizers claiming that the location designated by municipality would not help to achieve the aims of the assembly.⁴⁰ The issue of certificates, confirming the date, time and location of assembly, was being refused without providing reasoned explanations.

In June 2010, the court concluded that the refusal by the Vilnius municipality to issue certificate confirming the date, place and time of the assembly to the

Socialist People's Front party was based on the unreasoned assumption that the assembly would cause a threat to public safety and security of the State, public order, public health and morals and the rights and freedoms of others, and therefore unlawfully restricted the constitutional right to peaceful assembly.⁴¹

Lithuanian Association of Small Entrepreneurs and Traders was requested by Vilnius municipality to organise their rally not at the Gediminas Avenue – centrally located street in Vilnius, but by the entertainment facility outside the centre, even though this would have directly inhibited the achievement of the purpose of the assembly – to draw attention of the state institutions, located at the Gediminas Avenue.⁴²

Vilnius City Municipality decided to set a permanent location for all assemblies. Initially, the location by one of the entertainment facilities was chosen.⁴³ After several months, the location was changed to one of the parks and then again to the parking lot nearby the sports arena.⁴⁴ It was being required that all assemblies took place at the designated location disregarding their purposes. However, the Constitutional Court stressed that the provision of the *Law of Assemblies*, allowing the municipality to set a steady location for assemblies should not be interpreted as giving municipality the discretion to prevent people from as-

sembling at a location other than the one chosen by municipality.⁴⁵

The Ombudsperson of Parliament has established that Vilnius Municipality often refused to issue certificate with the set time, date and place of the assembly without providing specific reasons and evidence and relying on assumptions only; it failed to consider positive measures to ensure the right to free assembly.⁴⁶

In May 2010, the Prosecutor General has actively contributed to further restricting the right to free assembly. Although Vilnius Municipality issued the certificate to the organizers, the later actions of the Prosecutor General, taken only a few days before the demonstration, were aimed at the *de facto* ban of the event.

In the request submitted by the Prosecutor General to Vilnius District Administrative Court it was indicated that the State will be unable to fulfil its obligation to ensure the safety of the participants. On 5 May 2010, the court, after considering the request, temporarily suspended the validity of the certificate, which permitted to organise the demonstration.⁴⁷

On 7 May 2010, Lithuanian Supreme Administrative Court upheld the complaint by the organizers and annulled the decision to suspend the validity of

the certificate made by the lower instance court. The judges noted that in his request the Prosecutor General *de facto* sought to put a ban on the demonstration although the ban may lawfully be imposed only after the case is examined in full by the court and the judgement is passed.

The Court concluded that the Prosecutor General failed to provide convincing evidence that the State has been unable to ensure the safety of the participants. According to the Court, the suspension of the certificate before the case has been examined in full would infringe the principle of the presumption of lawfulness and deter people from enjoying their right to free assembly.⁴⁸ The judgement by the Supreme Administrative Court was passed one day before the planned event. Although several incidents were recorded during the demonstration, neither the participants nor other individuals were harmed.

In Lithuania, a flawed practice of issuing permissions for organisation of assembly became rooted, although, according to the legislation, a notice rather than permission is necessary in order to organize an assembly, i.e. the organizers have to give notice to local authorities, which then have an obligation to issue a certificate or to initiate negotiations with organisers on the time, date and place of the assembly. Only after negotiations fail, the issuance of a cer-

tificate can be refused, and the refusal must be accompanied by evidence and arguments. Pursuant to Article 12 of the *Law of Assemblies*, the refusal letter must be issued at the day of the decision and must state grounds for refusal.

The refusal may be appealed to court, but this remedy is not efficient. Pursuant to the *Law of Assemblies*, the notice of assembly must be examined and the decision must be taken no later than 48 hours before the event. The refusal may be appealed to court in 10 days after the decision. The court must then decide on the appeal in no more than 3 days. Therefore, the situation may occur when the court passes its judgement already after the date the event was planned. This legal gap creates preconditions to actually ban the event, even if the court would later conclude that the refusal was unlawful and unfounded.

In December 2009, Vilnius municipality refused to issue certificate to political party leader to organise a rally near the Parliament. The court found that the decision was unfounded, but the organiser received the court judgement one day before the planned rally, and, therefore, the rally has failed to take place.⁴⁹

Although during the period under review it was obvious that the improvements to the *Law of Assemblies* were inevitable, only in spring 2011 the process of adop-

tion of the necessary amendments⁵⁰ in the Parliament has moved forward. When further considering the proposed amendments, it is essential to take into account the clarifications of the Constitutional Court and progressive case-law in this field. Municipal officials, responsible for implementation of the law, must undertake training on the nature of the right to free assembly, its content and scope, and the rights and obligations of the organizers and state institutions.

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²³ *Supra* note 18, P. 24

²⁴ „A pre-trial investigation has been launched into public statements of A. Paleckis“ (in Lithuanian), *Diena.lt*, 2010-12-30, <http://www.diena.lt/naujienos/lietuva/del-a-paleckio-viesuteiginiu-pradetas-ikiteisminis-tyrimas-323123>

²⁵ „Prosecution Office: Pre-trial investigation has been opened regarding Stankeras’s publication“ (in Lithuanian), *Alfa.lt*, 2010-11-19, http://www.alfa.lt/straipsnis/10427154/?Prokuratura..pradetas.ikiteisminis.tyrimas.del.Stankero.publikacijos.Veide=2010-11-29_16-08

²⁶ ECHR judgement of 24 June 2003 in *Garaudy v France*, Appeal No. 65831/01

²⁷ Denisas Nikitenka. “Lithuanian swastikas – permitted“ (in Lithuanian), *Ve.lt*, 2010-05-18, <http://www.ve.lt/naujienos/kriminalai/klaipedosteismas-lietuviskos-svastikos---nedraudziamos>

²⁸ The 2010 Report of Special Investigations Department at the Office of Prosecutor General of the Republic of Lithuania, 2011-01-28, (in Lithuanian) <http://www.prokuraturos.lt/LinkClick.aspx?fileticket=xyZjtZNtKeo=&tabid=221>

²⁹ The Law on the Amendments of Articles 2, 5, 19, 22, 25, 26, 28, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 44, 47, 48, 49, 50, 52, 54 and Annex, the Complement with Articles 34(1), 34(2), 40(1) and the Introduction of New Third Section of the Law on Provision of Information to the Public, *Žin.*, 2010, No. 123-6260

³⁰ The Law on Protection of Minors from Detrimental Effect of Public Information, *Žin.*, 2009, No. 86-3637

³¹ E. Digrytė. „Human Rights Watch“ urges Lithuania to comply with its obligations and stop discriminating gays“ (in Lithuanian),

Delfi.lt, 2009-07-13, <http://www.delfi.lt/news/daily/lithuania/article.php?id=23079042>

³² „Amnesty International“ appealed to Valinskas regarding the law on protection of minors” (*in Lithuanian*), *Alfa.lt*, 2009-07-13 http://www.alfa.lt/straipsnis/10281556/?Amnesty.International.del.nepilnameciu.apsaugos.istatymo.kreipesi.i.Valinska=2009-07-13_13-47

³³ “Any promotion of sexual relations is detrimental to minors” (*in Lithuanian*), *Balsas.lt*, 2009-12-22, <http://www.balsas.lt/naujiena/325378/bet-kokiu-lytiniu-santykiu-skatinimas-zalingas-nepilnameciam>

³⁴ Eglė Samoškaitė. „Seimas is keen to consider Grazulis’s aspiration to ban public promotion of homosexual relations” (*in Lithuanian*), *Delfi.lt*, 2010-11-12, <http://www.delfi.lt/news/daily/lithuania/seimas-nusiteikes-svarstyti-pgrazulio-sieki-drausti-viesa-homoseksualiu-santykiu-propagavima.d?id=38492797>

³⁵ The Draft Law on the Amendments of Article 224 and 259(1) and the Complement with Article 214(30) of the Code of Administrative Law Offences” No. XIP-2595(2), http://www3.lrs.lt/pls/inter3/dokpaieska.susije_1?p_id=397252

³⁶ Mindaugas Jackevičius, Inga Saukienė, Evaldas Utyra, Eglė Digrytė, Rasa Lukaitytė. “Riots in front of the Seimas: 151 rioters arrested, 34 rally participants injured” (*in Lithuanian*), *Delfi.lt*, 2009-01-17, <http://www.delfi.lt/news/daily/lithuania/article.php?id=20111082>

³⁷ “Prosecutors have successfully completed the case of the riots at the Seimas: 29 suspects have been identified” (*in Lithuanian*), *Teisingumas.lt*, 2009-07-01, [\[baige-riausiu-prie-seimo-rumu-byla-nustatyti-29-siuo-nusikaltimu-itariami-asmenys\]\(http://www.delfi.lt/news/daily/lithuania/nuosprendi-apskunde-beveik-visi-seimo-riausininkai.d?id=44073351\)](http://www.teisingumas.lt/naujienos/aktualijos/prokurorai-sekmingai-</p>
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³⁸ Dainius Sinkevičius. „Almost all of the “Seimas rioters” appealed the judgement” (*in Lithuanian*), *Delfi.lt*, 2011-04-06, <http://www.delfi.lt/news/daily/lithuania/nuosprendi-apskunde-beveik-visi-seimo-riausininkai.d?id=44073351>; Dainius Sinkevičius. „The rioter, having absconded to England: please understand, I was immature teenager” (*in Lithuanian*), *Delfi.lt*, 2011-04-19, <http://www.delfi.lt/news/daily/lithuania/anglijoje-slapstesis-riausininkas-prasau-suprasti-buvau-nesubrendes-paauglys.d?id=44567269>

³⁹ Dainius Sinkevičius. “Leaders of Labour Unions acquitted in Seimas riots case” (*in Lithuanian*), *Delfi.lt*, 2009-04-14, <http://www.delfi.lt/news/daily/lithuania/article.php?id=21671790>

⁴⁰ “Government afraid of rallies” (*in Lithuanian*), *Delfi.lt*, 2010-09-21, <http://www.delfi.lt/news/daily/lithuania/valdzia-bijo-mitingu.d?id=36734835>

⁴¹ “The Court has ordered the municipality of the capital city to permit SPF rally” (*in Lithuanian*), *Balsas.lt*, 2010-06-22, <http://www.balsas.lt/naujiena/430201/teismas-ipareigojo-sostines-savivaldybe-leisti-slf-mitinga>

⁴² Ugnė Naujokaitytė. “It is being proposed to organise the rally at Vilnius Sports Palace” (*in Lithuanian*), *Alfa.lt*, 2009-01-21, http://www.alfa.lt/straipsnis/10247926/?Mitinga.siuloma.rengti.prie.Vilniaus.sporto.rumu=2009-01-21_15-17.

⁴³ The Council of Vilnius City Municipality “Resolution. On determination of permanent time and location for assemblies”, No. 1-1378,

2010-01-27, <http://www.vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30180441&Version=1>

⁴⁴ The Council of Vilnius City Municipality “Resolution. On determination of permanent time and location for assemblies”, No. 1-1521, 2010-04-28, <http://www.vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30182705>

⁴⁵ The Constitutional Court ruling of 7 January 2000 “On the constitutionality of Article 6 Paragraph 2 of the Lithuanian Republic Law of Assemblies”, para. 7, 8 and 12, case No. 11/99, <http://www.lrkt.lt/dokumentai/2000/n000107.htm>,

⁴⁶ The Report of Seimas Ombudsperson V. Pilipavičienė 2009-10-12, No. 4D-2009/3-485, (*in Lithuanian*) <http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3930>

⁴⁷ “The Court prevents this week’s homosexual parade”, *Ve.lt*, 2010-05-05, <http://www.ve.lt/naujienos/lietuva/lietuvos-naujienos/teismas-uzkerta-kelia-homoseksualu-eitynems/>

⁴⁸ The Lithuanian Supreme Administrative Court judgement of 7 May 2010 in administrative case No. AS⁸²²-339/2010

⁴⁹ “The Court: there were no grounds for not allowing A. Paleckis to protest near the Seimas” (*in Lithuanian*), *Kaunodiena.lt*, 2010-01-15, <http://kauno.diena.lt/naujienos/lietuva/teismas-nebuvo-pagrindo-a-paleckiui-neleisti-mitinguoti-prie-seimo-258353>.

⁵⁰ The Draft Law on the Amendment of the Law of Assemblies, No. XIP-1599, 2009-12-21, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=361834

Right to Political Participation

Obstacles to the effective enjoyment of the right to political participation remained unchallenged in 2009–2010 when compared with previous years. The main problems are related to restrictions of direct democracy such as limited possibilities to initiate a referendum, initiate legislation, file petitions, and defend public interest in courts, and with violation of election procedures, including electoral bribery. Neither the Central Electoral Commission nor the Parliament has taken measures to combat the violations of electoral laws, and adopted decisions further complicated the use of the right to vote. The *Municipal Councils Election Law* was amended, allowing independent, non-party candidates to participate in municipal elections, although, despite the clarification by the Constitutional Court, such opportunity was not given to non-governmental organisations. The Constitutional Court has also concluded that the *Law on the Election of European Parliament* is unconstitutional because it established an exclusive right of political parties to participate in the formation of Europarliament. A new edition of *Law on Citizenship* was adopted, restricting the rights of expatriates to participate in Lithuanian political life.

*Problem of Accommodation
of Lithuanian Citizenship
with Citizenship of Other States*

In 2009–2010, heated discussions have been taking place among Lithuanian politicians, constitutional law and human rights experts and Lithuanian expatriates because of one of the main prerequisites of participation in political life – the right to citizenship.

In 2006, the Constitutional Court has clarified that the possession of dual citizenship should be allowed in exceptional cases only, and concluded that the *Law on Citizenship* is unconstitutional and requires an entirely new version.¹

The Parliament managed to achieve an agreement only at the end of 2010. In 2009, the draft law which has been prepared by the working group, appointed by the then President Valdas Adamkus, was substantially modified by the Parliament. The legislators suggested allowing having dual citizenship to a wide circle of individuals, including Lithuanians, who left Lithuania after 11 March 1990, and acquired citizenship of the State belonging to the European Union or NATO.²

President Dalia Grybauskaitė disagreed with the broad interpretation of the right to citizenship and returned the draft law to Parliament without signing it but pro-

posing her own amendments.³ According to the President,⁴ the Chair of the Parliamentary Legal Affairs Committee,⁵ and other politicians and lawyers, the broader interpretation of the right to Lithuanian citizenship could only be introduced by the amendments to the Constitution that requires a referendum. In December 2010, Parliament, having taken into account the suggestions made by the State President, adopted a new edition of the *Law on Citizenship*.

Under the new law, the right to dual citizenship is granted to persons deported or having fled Lithuania before 11 March 1990 and their descendants; persons having acquired Lithuanian citizenship as an exception; persons, having refugee status and also, in several circumstances, persons under the age of 21.⁶ Pursuant to the law, dual citizenship is not available to those having left the country after 11 March 1990, i.e., individuals who conceivably are maintaining or willing to maintain ties with Lithuania, speak Lithuanian language and are likely to participate in political life of the country. Expatriates did not hide their disappointment with the new law.⁷

Breaches of Electoral Rules

As previously, during the period under review, the rules of political campaigning were being breached. Before the elections of the European Parliament, people

were complaining that they have been receiving text messages, urging to vote for candidates from various parties.⁸

One of the most serious violations of the voting rights is electoral bribery. In the district of Šilutė–Šilalė, during the elections for two vacated Parliament seats, two pre-trial investigations were opened into the allegations of electoral bribery.⁹ The first investigation ended with the questioning and release of one person.¹⁰ The second one was closed after determining that no criminal act has been committed.¹¹ Voters were also being bribed during 2011 municipal elections.¹² The latter elections were marked by an exceptional number of breaches of electoral procedures: 255 reports on violations were received, and 14 pre-trial investigations were launched.¹³

The fact of acceptance of electoral bribery is striking; it is obvious that it has become a commonplace phenomenon. If in 2004, the Chair of the Parliament, responding to the electoral bribery incidents, claimed that “elections are degenerating”,¹⁴ so in 2011, the Chair of the Parliament, reacting to the same type of incidents, called the Central Electoral Commission “to analyze why during the last elections a *higher than usual* [highlighted by HRMI] number of bribery cases were reported”.¹⁵ New ways to bribe the voters are emerging, for example, political parties cover customers’ debts to the shops.¹⁶ Monitoring indicates

that increase in electoral bribery is directly related with pre-poll voting; the more people choose to cast an early vote, the more cases of bribery are recorded.

Another serious problem, which has been an issue for many years, is manipulation of voters’ will, when the voters are not sure if the elected politician will actually take the seat. The choice is usually determined by political calculations rather than by willingness to represent the voters.¹⁷ After the 2011 municipal elections, out of 1526 elected, 312 persons gave up their mandate.¹⁸ It is difficult to assess this as something other than a massive deception of voters.

Unfortunately, neither the Central Electoral Commission, nor the Parliament have taken effective measures to combat violations of electoral legislation. Quite the contrary, some of their decisions impede the exercise of the active right to vote. Those willing to cast their early votes in Presidential elections were forced to stand in long queues. A couple of years ago, it was possible to cast the vote at 900 post offices throughout the country, but now it is allowed to vote only at local municipalities, and there are only 60 of them in Lithuania.¹⁹ Attempting to remedy the situation, the Parliament passed amendments to the *Law on Municipal Councils Election*, *Law on Seimas Election*, *Law on European Parliament Election*, *Law on Presidential Election* and *Law on Referenda*,

extending the time period for the pre-poll voting.²⁰ However, the amendments are insufficient to solve the issue.

The high number of undistributed voter certificates also raises concern. During the 2009 Presidential election, 13 per cent of voter's certificates have not been handed out.²¹ This was the first election when certificates were being delivered to the voters by a selected tender, State enterprise "Lithuanian Post" rather than by the Central Electoral Commission. The postmen have been facing difficulties when delivering certificates, because they had to hand them to every voter personally or to the person living together, without being able to leave them with the neighbours or throw into the mailbox. It appeared that a lot of voters either did not live at the declared addresses or have left the country altogether.²²

Already back in 2007, the Constitutional Court has concluded that the prohibition for non-party candidates to stand for municipal elections is unconstitutional.²³ On 30 June 2010, the Parliament, attempting to remedy the situation, introduced the amendments to the *Law on Municipal Councils Election*, allowing independent candidates to stand for elections.²⁴ However, notwithstanding the considerations of the Constitutional Court that the established criteria would allow for participation of independent candidates as well as, for example, NGOs, the Parliament failed

to provide such opportunity in the law. Such failure should be viewed as a fear on the part of political parties to lose their influence in municipal councils.²⁵

On 9 November 2010, the Constitutional Court concluded that the provisions of the Article 36 of the *Law on the Election of European Parliament*, providing that Lithuanians as well as the citizens of other European Union States can stand for the elections to the European Parliament only when they are included into the political parties' candidates list, are unconstitutional. The Court emphasized that legal regulation must not be such as to grant an exceptional right to political parties to form legislative institutions.²⁶ The provisions will have to be changed before the next elections.

Limited Opportunities for Direct Democracy

The issues related with referenda and legislative initiatives²⁷ remained unaddressed.

Because of the strict requirements to initiate a piece of legislation, such as the requirement to collect 50 thousand signatures in 2 months, not even single initiative during the period of 2009–2010 has been successful. During the period, two initiatives among others aimed at lowering the requirements for legislative initiatives.

In 2009, signatures were also being collected in order to set the lower number of signatures necessary for initiation of referenda, reducing it from 300 thousand to 100 thousand signatures. The initiative also sought to acknowledge the referendum as valid if the same number of voters had taken part in it as in previously held elections.²⁸ In 2010, signatures were collected for the amendments to the *Law on Referenda* and *Law on Legislative Initiatives*, with a purpose to extend the term for collecting signatures for legislative initiative from 2 to 4 months, whereas for referendum – from 3 to 6 months.²⁹ Both initiatives were to no avail.

Although the Articles 9 and 68 of the Constitution foresee the possibility for the citizens to directly participate in the democratic governance and influence the legislative process, these rights are not actually enforced. The gap between the law and the actual situation weakens the capacity of civil society and contributes to the public distrust of the State. It is clear that separate citizen initiatives are unable to change the situation, and, therefore, the maturity of politicians will determine whether the necessary amendments to the laws will be made.

The *actio popularis* right remains unrealized.³⁰ The courts reject complaints, lodged on the grounds of protection of public interest because the legal framework for the defence of public interest

has not been completed yet as the draft *Law on Defence of Public Interest in Civil and Administrative Proceedings* has not been discussed in Parliament since 2006. It is important to ensure that the President's initiative, encouraging the adoption of necessary laws, would be actually implemented.³¹

The issues of the limited scope of the right to petition are still relevant: only 50 per cent of submitted requests are recognized as petitions by the petition commissions; in the majority of municipalities not even a single petition was presented since the adoption of the *Law on Petitions*; some municipalities have not yet appointed petition commissions. In 2010, the Government approved the *Concept on Presentation, Consideration and Implementation of Conclusions of Petitions*, which aims to widen the circle of persons who can file a petition, and simplify the procedures for presentation and consideration.³²

From the human rights point of view, one of the most significant positive shifts in the legislative process is the procedure, enacted by the Ministry of Justice, of mandatory publication of draft legislation. State and municipal institutions have an obligation to publish drafts of legislation on their official websites.³³

¹ The Constitutional Court ruling of 13 November 2006 „On the constitutionality of the

acts of law regulating citizenship of Lithuanian Republic“, case No. 45/03-36/04, <http://www.lrkt.lt/dokumentai/2006/n061113.htm>. “The provision of the Article 12 of the Constitution, stating that a person can be a citizen of Lithuanian Republic and also citizen of another state, means that such cases, as established by law, must be very rare, and that the cases of dual citizenship must be particularly rare, i.e. exceptional, and that, according to Constitution, such legal regulation is not permissible when dual citizenship becomes a widespread phenomenon rather than exception.“

² The Draft Law on Citizenship, Article 7, No. XIP-353GR, 2010-12-02, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=386577&p_query=&p_tr2=

³ The Decree of the President of the Republic of Lithuania „On the return for reconsideration of the Citizenship Law as adopted by Seimas of the Republic of Lithuanian “ Žin. 2010, No. 137-7013

⁴ Sergio Bruno. „President vetoed the controversial Citizenship Law“ (*in Lithuanian*), *Hamburgas.de*, 2010-11-20, <http://www.hamburgas.de/2010/11/20/prezidente-vetavo-priestaringai-vertinama-pilietybes-istatyma/>

⁵ „, edbaras: We should prepare for referendum on dual citizenship“ (*in Lithuanian*), *Alfa.lt*, 2010-11-28, http://www.alfa.lt/straipsnis/10425302/?Sedbaras..reiketu.rengtis.referendumui.del.dvigubos.pilietybes=2010-11-18_17-20

⁶ Article 7 of the Citizenship Law

⁷ Stasys Gudavičius. “Lithuanian expatriates in the ES and NATO will have no dual citizenship“ (*in Lithuanian*), *Diena.lt*, 2010-12-02,

<http://www.diena.lt/naujienos/lietuva/lietuvos-emigrantai-es-ir-nato-dvigubos-pilietybes-netures-papildyta-14-val-315764>

⁸ „An investigation has been opened in relation to R. Paksas’s campaigning text messages“ (*in Lithuanian*), *Delfi.lt*, 2009-06-03, <http://www.delfi.lt/news/balsuok2009/euoparlament/article.php?id=22472848>

⁹ „In the district of Šilalė–Šilutė, two pre-trial investigations have been launched into alleged electoral bribery“ (*in Lithuanian*), *15min.lt*, 2009-11-16, <http://www.15min.lt/naujiena/aktualu/lietuva/silales-silutes-apygardoje-del-galimo-balsu-pirkimo-pradeti-du-ikiteisminiai-tyrimai-56-71398>

¹⁰ „In the district of Šilalė–Šilutė, two pre-trial investigations have been launched into alleged electoral bribery“ (*in Lithuanian*), *Bernardinai.lt*, 2009-11-16, <http://www.bernardinai.lt/straipsnis/2009-11-16-silales-silutes-apygardoje-del-galimo-balsu-pirkimo-pradeti-du-ikiteisminiai-tyrimai/35465>

¹¹ Information from Šilutė circuit prosecution office

¹² Nerijus Povilaitis. „In Kaunas region, a voter has been bribed with 4 Litas“ (*in Lithuanian*), *Lrytas.lt*, 2011-02-28, <http://www.lrytas.lt/print.asp?data=&k=news&id=12988859871296837685>

¹³ „On Sunday, the police received 181 reports on alleged electoral law violations“ (*in Lithuanian*), *Balsas.lt*, 2011-02-28, <http://www.balsas.lt/naujiena/527344/policija-sekmadienigavo-181-pranesima-apie-galimus-rinkimupazeidimus/1>

¹⁴ Human Rights Monitoring Institute. “Human Rights in Lithuania 2004: Overview”, P. 11

¹⁵ „The Chair of Seimas raises doubts of the transparency of early voting“ (*in Lithuanian*), *Delfi.lt*, 2011-03-02, <http://www.delfi.lt/news/daily/lithuania/seimo-vadove-suabejojo-isankstinio-balsavimo-skaidrumu.d?id=42632947>

¹⁶ „New method of bribing voters– covering their shopping debts“ (*in Lithuanian*), *Alfa.lt*, 2010-12-18, http://www.alfa.lt/straipsnis/10430749/?Naujas.budas.papirkineti.rinkejus..apmoketi.ju.skolas.parduotuvese=2010-12-18_19-03

¹⁷ *Supra* note 12, P.12

¹⁸ E. Šepetytė. „The slogan for next election – „I will not give up my mandate!“ (*in Lithuanian*), *Delfi.lt*, 2011-04-23, <http://www.delfi.lt/news/ringas/lit/esepeyte-kitu-rinkimu-sukisneatsisakysiu-mandato.d?id=44657723>.

¹⁹ „In Vilnius, long queues formed at ballot boxes“ (*in Lithuanian*), *Viskas.lt*, 2009-05-14, <http://www.viskas.lt/portal/block/110/article/7059>.

²⁰ „Seimas extended the time period for early voting“ (*in Lithuanian*), *Vtv.lt*, 2010-12-14, <http://www.vtv.lt/naujienos/rinkimai/seimas-pailgino-balsavimo-is-anksto-laika.html>

²¹ The voter’s certificates have not been handed to 16,7 per cent of Vilnius residents, 20,4 – Kaunas, 20,8 – Klaipėda, 18,5 – Alytus, 15,6 – Šiauliai, more than 30 – Neringa, 25,7 – Visaginas, 24,3 – Palanga, 18 – Utena region residents.

²² Jurga Tvaskienė. „With no certificates – one third of a million voters“ (*in Lithuanian*), *Delfi.lt*,

2009-05-14, <http://www.delfi.lt/news/balsuok2009/president/article.php?id=22120033>

²³ The Constitutional Court ruling of 9 February 2007 „On the Constitutionality of the Article 34 of the Law of Assemblies of the Republic of Lithuania“, case No. 06/07, <http://www.lrkt.lt/dokumentai/2007/n070209.htm>

²⁴ The Law of Assemblies, Žin. 2010, No. 86-4523

²⁵ „Community organisations aim to stand for municipal elections“ (*in Lithuanian*), 2010-06-21, *Delfi.lt*, <http://www.delfi.lt/archive/article.php?id=33736403>; “The fear of “independent” candidates forces political party leaders to come up with new “tricks”” (*in Lithuanian*), *Demokratija.eu*, 2010-07-10, http://www.demokratija.eu/index.php?option=com_content&view=article&id=13:ndj&catid=11:paskutin-es-naujienos&Itemid=12

²⁶ The Constitutional Court ruling of 9 November 2010 „ On the Constitutionality of the Article 36 of the Law on European Parliament Election of the Republic of Lithuania“, No. 26/2009, <http://www.lrkt.lt/dokumentai/2010/n101109.htm>.

²⁷ Human Rights Monitoring Institute. “Human Rights in Lithuania 2007-2008: Overview”, P. 13–14.

²⁸ „Initiators of the referendum admitted surrendering” (*in Lithuanian*), *Alfa.lt*, 2009-08-27, http://www.alfa.lt/straipsnis/10287972/?Referendumo.iniciatoriai.pripazino.kapituliave=2009-08-27_18-31

²⁹ „Social-liberals failed to collect necessary signatures for amendments to the laws“ (*in Lithuanian*), *Alfa.lt*, 2010-09-07, <http://www>.

alfa.lt/straipsnis/10407404/?Socialliberalams.nepavyko.surinkti.parasu.teikti.istatymu.pataisoms=2010-09-07_19-05

³⁰ *Supra* note 25, P. 15–16

³¹ “President takes initiative to improve the laws regulating defence of public interest” (*in Lithuanian*), *Delfi.lt*, 2010-11-05, <http://www.delfi.lt/news/daily/lithuania/prezidente-imsis-iniciatyvos-tobulinti-istatymus-reglamentuojancius-viesojo-intereso-gynima.d?id=38243553&rsslk=true>

³² The Government Act „On the Approval of the Conception on Presentation, Consideration and Implementation of Conclusions of Petitions“, 31 March 2010, Nr. 348, Žin. 2010, Nr. 40-1907

³³ The Government Act „On the Amendment of the Government Act of 18 April 2003 No. 480 “On the Approval of the Procedure on General Requirements for the Official Websites of State and Municipal Institutions and Agencies”, 15 April 2009, No. 312, Žin. 2009, No. 49-1959.

Right to Private and Family Life

The breaches of the right to private and family life have reached a worrying scale. During the period under review, media regularly reported on the extensive control of electronic communications, including surveillance of telephony communications, and other forms of communication, carried out by the law enforcement agencies. Agencies, conducting intelligence operations, are able to control virtually anyone’s telephone conversations and sometimes this is being carried out unlawfully. Lithuanian judiciary created a precedent for unreasonable restriction of the right to respect for private life in labour relations. A rapid spread of an unlawful direct marketing has not led to the establishment of effective and deterrent sanctions to the offenders. The number of personal information thefts has increased substantially: personal data was being illegally obtained through the use of data scanners and secret set ups on cash machines; fake websites of electronic banking were being designed and circulated; bogus online sale companies were being set up; confidential information was being extracted by posing as employers. In 2010, in the back yard of the State Social Insurance Agency, discarded documents were found, containing personal data of hundreds of service users. Video surveillance of public and private spaces continued to spread, in-

cluding schools and public transport, without providing evidence of the necessity, proportionality and efficiency of such restriction of privacy, thus creating an illusion of safety; a social experiment, imitating violation of public order and violence did not attract any attention of the law enforcement bodies. The right to respect for private life was being infringed by media – the investigation of the so called “Kaunas paedophilia case” was accompanied by a regular disclosure of personal data and details of private life of minors involved. Violations of the right to privacy in book publishing indicated that the concept of “public person” is still misunderstood; in particular distinction is not being made between a person having power of public decisions and a person well known to the public. In 2010, two cases have reached the European Court of Human Rights, challenging the Lithuanian case-law offering minor awards in non-pecuniary damages for the unlawfully published information offending human dignity. The 2007 judgement of the ECHR in the case of *L v Lithuania* has not yet been implemented; moreover, the amendment to the relevant legislation has been drafted, which would signify an explicit refusal to abide by the ECHR judgment, would infringe the principle of legitimate expectations, and restrict transsexuals’ right to respect for private life. Discriminatory family policy, inconsistent with the ECHR case-law and dividing the public, is being pursued further. During the period under review,

an agreement has not been reached yet in relation to the legal regulation of assisted reproduction.

Privacy in Cyber Space

During the period under review, regular media reports appeared on the extensive control of electronic communications, including surveillance of telephony communications, and other forms of communication, carried out by the law enforcement agencies. Although, pursuant to Article 22 Paragraph 3 of the *Constitution*, information on private life shall be collected only by a reasoned court order and only in accordance with the law, the particularly easy procedure for obtaining court sanction, authorizing control of electronic communications, causes serious concern.¹ Currently, the court orders are not sufficiently reasoned and substantiated, and the courts are keen to authorize the control without careful consideration of the requests.

In 2009, allegations appeared that the State Security Department intercepted Vilnius based journalists’ telephone communications under the order served by iauliai district court.² The Parliamentary Commission for Control of Intelligence Activities, having investigated the circumstances of interception of journalists’ conversations, concluded that the agencies, conducting intelligence operations, can control virtually anyone’s telephone communications and, in

some instances, this is being carried out unlawfully.³ Lithuania should take into account good practices of other democratic states and ensure that the reports on the extent of intelligence activities are accessible to the public. The Supreme Court of Lithuania should draw its attention to the poor quality of the work of the courts in authorizing the control of electronic communications.

Lithuanian courts, relying on the U.S. legal doctrine on provider's exemption rule⁴ which allows an employer to monitor electronic workplace of an employee, created the basis for an unfounded restriction of the right to respect for private life in labour relations. In 2010, Vilnius District Administrative Court concluded that an employer has the right to know for what purposes employees are using computers and of their activities during working hours, and, therefore, it is lawful to monitor the employees' conversations on the "Skype" software.⁵

The ECHR has stressed on several occasions, that employees may have reasonable expectations to privacy in their electronic workplace, and that this right should be restricted in exceptional cases only.⁶ Hence the Lithuanian courts should apply in similar cases the principles of proportionality, transparency and respect for privacy. The main guidelines for the privacy protection at the workplace should be regulated by law,

detailing the procedure of electronic workplace monitoring.⁷

Security of Personal Data

In 2009, a new edition of the *Law on Legal Protection of Personal Data*⁸ came into effect, which should be evaluated as a positive step towards clearer data management procedures and more efficient supervision. But legislators should take into account the circumstance that the *EU Data Retention Directive*, which has been transposed into national legislation, was evaluated by international experts as irrelevant and bureaucratic.⁹

In 2009–2010, the extent of illegal direct marketing was increasing at a high rate. Customers were receiving commercial text messages¹⁰ and electronic mail letters.¹¹ The advertisements appeared, offering to purchase data bases, containing information on legal entities and physical persons, which could then be used for sending *en masse* commercial proposals.

The *Law on Protection of Personal Data*¹² and the *Law on Electronic Communications*¹³ provide that in order to manage personal data for direct marketing purposes it is necessary to obtain prior consent from the customer, but the maximum fine for the breach of this requirement is mere 2 000 LTL (for repeated

violation).¹⁴ Aiming to reduce the extent of direct marketing, it is necessary to make the amendments to the relevant legislation and foresee efficient and deterring sanctions for the offenders.

During the period under review, the popularity of social networking sites – *Facebook*, *Twitter*, *LinkedIn*, *One.lt*, *Klase.lt*, *Frype.lt* – was increasing rapidly. Lithuania is among the top countries in the world with respect to the increase in numbers of social networking sites users. In September–October 2009 alone the number of *Facebook* users from Lithuania has soared by almost 50 per cent: from 220 thousand to 320 thousand users.¹⁵

The users of social networking sites are posting a variety of personal information, ranging from name, surname and personal interests to home address and personal pictures. A survey conducted in 2010 revealed that, among the surveyed users from Lithuania, 79 per cent allow to identify themselves from their profile pictures, and 81,6 per cent allow to identify their friends.¹⁶ The increased flow of information, related to personal life and professional activities of internet users, had a negative impact on their privacy.¹⁷

In 2010, during the inspection performed by the State Data Protection Inspectorate (SDPI), it was established that only two out of six inspected com-

panies informed the SDPI on the automated processing of personal data. A number of other breaches have also been found: users were not given the opportunity to express their consent with the rules of social network site as this was being done automatically; personal data was being processed without clear purpose, without determination of the amount of data, and its retention period; in some instances, the data was being processed in violation of direct marketing regulations.¹⁸

2009–2010 witnessed a significant spread of personal data thefts. For the purposes of criminal profit,¹⁹ personal data was being illegally obtained through the use of data scanners and secret set ups on cash machines;²⁰ fake websites of electronic banking were being designed and circulated; bogus online sale companies were being set up;²¹ confidential information was being extracted by posing as employers.²²

In 2010, four 18–20 years old Lithuanian youngsters have broken into one of the most secure electronic mail systems in the world, and, posing as account holders, were sending electronic letters asking for money. 30 individuals became victims of this illegal personal data theft.²³

The legislators should take into consideration the recommendations by the Eu-

ropean Commission²⁴ and the Organisation for Economic Cooperation and Development²⁵ to lay down the provisions in the *Criminal Code*, establishing identity theft as a distinct criminal act.

The careless attitude of state institutions towards personal data has been criticized also in the past. In 2010, in the back yard of the State Social Insurance Agency, discarded documents were found, containing personal data of hundreds of service users. The official documents could be seen, containing names and surnames of individuals, their personal identification numbers, and also personal data on insured individuals, obtained from the companies: names, surnames, personal identification numbers, and the amount of earnings and contributions.²⁶

The good SDPI practice of carrying out inspections in the areas of processing of sensitive personal data is commendable and should be performed regularly. Internet users themselves should not stay indifferent to the breaches of privacy and should pay more attention to the protection of their private data. The users' privacy in social networking sites is proportionate to the extent of personal data, published by the users themselves, but the State has a responsibility to educate people, especially the young ones, on the advantages and dangers of the cyber space.

Further Spread of Unfounded Video Surveillance

During 2009–2010, the issue of rapid spread of video surveillance, which has already been discussed in previous *Overviews*,²⁷ remained unresolved. In July 2009, it was reported that, for the purposes of crime prevention, 95 CCTVs have been installed in the city of Vilnius. In several schools in Lithuania, video surveillance equipment has been installed at the central entrance, sports hall, canteen, lobbies, classrooms and even in a cloakroom.²⁸

During the period under review, public transport system also became subject to video surveillance. In 2010, ten trolleys in Vilnius were equipped with CCTVs.²⁹ Technical features of the video cameras allow for surveillance range of 360 degrees, encompassing also the range beyond the transport facility. Furthermore, the cameras sensitively capture the sound, and the recorded data might be additionally processed so as to highlight any details which are of interest to the monitoring person, e.g., to discern data on an ID card in an open wallet.³⁰ According to Vilnius authorities, the main purpose of the CCTV surveillance on public transport is the monitoring of drivers' behaviour, preventive control of passengers' behaviour and the safety of passengers and drivers.³¹

A social experiment, conducted in one of the Vilnius city trolleybuses, revealed that the information collected through the video surveillance system fails to receive a response. During the experiment, imitating breaches of public order as well as violence, neither the driver, nor the law enforcement paid any attention.³²

It has been observed that those managing personal data are either reluctant to inform the persons about them being subject to video surveillance or fail to inform in an appropriate manner. The SDPT carried out an inspection of petrol stations and found that in more than 80 per cent of the cases, there were no adequate signs, notifying of the cameras installed.³³

From the human rights point of view, the mass surveillance practice is a negative phenomenon, especially when the equipment is costly and inefficient. Criminological researches indicate that CCTVs in the cities do not have a significant impact on crime rates,³⁴ and therefore, in order to ensure public safety, less restrictive measures should be chosen. It should also be noted that a person or a legal entity, seeking to set up a video surveillance system, has an obligation to justify the aim of the surveillance and prove its actual social necessity – the mere “protection of safety” slogan is not enough.

Violations of Privacy in the Field of Public Information

During 2009–2010, media has been focusing on one high profile case, the so called “Kaunas paedophilia” case.³⁵ The discussion of the circumstances of the case in the media was accompanied by a regular disclosure of private data and details of private life of minors involved.³⁶

The minor, having become a focus of attention, was being filmed, photographed, and forced to answer the questions about her relations with her mother in front of TV cameras and infuriated mob. According to specialists, the girl suffered psychological and emotional abuse and was traumatized.³⁷ In the media, uncontrolled discussions were taking place, illustrated by unfounded speculations about the details of the alleged sexual abuse of the minors.

On 16 July 2010, Kėdainiai Region Circuit Court ruled that the interference into the private life of a child cannot be justified by the public’s right to know the circumstances of the case, even if it concerns important public issues. Accordingly, the Court decided to impose temporary protection measures – to prohibit the media to talk to the girl or show her image while preparing reports and publications until the civil litigation in relation to determination of the permanent place of residence of the child is over. The Inspector for Journalists’

Ethics was assigned for the first time the execution of such court order.³⁸

Media managers should consult more often with competent institutions regarding publication of sensitive information, related to private lives of persons; apart from imposing penalties, the Inspector for Journalists' Ethics also gives consultations to the media before publication of information.

Not only media, but also state institutions failed to ensure the protection of privacy of the minors, involved in the high-profile case.³⁹ The 2008 proposition by the Inspector for Journalists' Ethics, suggesting administrative liability for state and municipal institutions for disclosing private information on persons (including minors) and publishing it and, in doing so, infringing the confidentiality requirements and the rights of individuals, should be given due consideration.⁴⁰

The number of violations of the right to respect for private life has increased in a very specific area – book publishing.⁴¹ There were cases recorded when, without person's permission, information of biographical nature was collected and published. This is new phenomenon in Lithuania and a challenge to a person's privacy, indicating that the concept of "public person" is still being misinterpreted; in particular, the distinc-

tion is not being made between a person having a power of public decisions and a person known to the public. A known person is being treated by the media as a public figure.

Lithuanian courts continue to devalue the significance of violations of privacy. In 2007–2008 *Human Rights Overview*, two cases were reported where the courts found violations of the right to respect for private life.⁴² In one of those cases, Lithuanian Supreme Court upheld the judgements made by lower instance courts, which have found violations of the right to image and the right to respect for private life, but five times reduced the award in damages.⁴³ Such judicial practice raises doubts.

Because of the judicial practice to award small amounts in damages for offending honour and dignity by publishing private information, in 2010, the ECHR has referred to the government two cases against Lithuania.⁴⁴

Safeguarding Privacy of Transsexual Persons

In 2009–2010, the ECHR judgement in the case of *L v Lithuania* has not been executed. In 2007, the Court concluded that the situation contrary to the European Convention of Human Rights can be eliminated only by the adoption of the *Gender Reassignment Law*.⁴⁵ In 2010, the

failure to execute the judgement was being discussed by the Committee of Ministers of the Council of Europe.

Currently, an individual having undergone a gender reassignment surgery and seeking to change his or her civil status and the civil records accordingly, must apply to court. Other individuals, wishing to change civil status records, may apply directly to their municipal civil registration department.

On 29 November 2010, Lithuanian Supreme Administrative Court ruled that such procedure not only violates the principle of equality before the law, but it also cannot be considered as an appropriate form of legal recognition of gender reassignment in the light of Article 8 of the Convention.⁴⁶ The Court concluded that the lack of adequate procedures for the change of civil status documents and the lack of legal regulation of gender reassignment surgery and treatment create preconditions for non-pecuniary damages to arise. In this particular case, the court awarded to the applicant 30 000 LTL compensation in damages from the State.⁴⁷

At the end of 2010, the Ministry of Justice prepared amendments to the *Civil Code*,⁴⁸ which would permit to change civil status documents on the basis of medical certificate attesting completed gender reassignment. An institution, au-

thorized by the Government, is to be instructed to set the procedure for issuing such certificates. The Ministry of Health has criticized this proposal since it would delegate for the executive regulations to envision cases when such certificates shall not be issued. This would mean that the executive regulation would determine the circumstances of restriction of person's right to change his or her gender. The Ministry of Health has also noted that the draft law provisions are not sufficiently clear.⁴⁹

At the beginning of 2011, a draft amendment to the *Civil Code* was registered in Parliament, aiming to prohibit gender reassignment surgeries in Lithuania, and in cases, when such surgery has been performed abroad, to allow changing civil status documents only under the order served by the court.⁵⁰ The adoption of this amendment would signify an explicit refusal to abide by the ECHR judgment, would infringe the principle of legitimate expectations, and would unjustifiably restrict transsexuals' right to respect for private life.

Discriminative Family Policy

In 2009–2010, the steps were being taken in Lithuania to implement the *Family Policy Concept*, approved in 2008. On 1 October 2010, the broadly criticised *National Agreement on Creating a Family-Friendly Environment*⁵¹ has been signed, which has divided the society.⁵²

The Concept equates family with the marriage between man and woman,⁵³ thus creating discriminative legal implications. For example, narrow family concept has negative effects on child adoption. Currently, distinct rights are granted to those married and those having created a family without marriage.⁵⁴

Discriminative practices could be avoided if the State accepted the social reality, acknowledged the existence of various forms of family and avoided distinguishing marriage as the sole legal fact on the basis of which legal family relations may be formed.⁵⁵

Despite the observations made by the United Nations Human Rights Committee,⁵⁶ the family policy was being enforced together with the elimination of state institutions responsible for implementation of gender equality. After the plans to establish the Ministry of Family and Social Affairs have failed, the Ministry of Labour and Social Affairs was restructured: the department of Equal Opportunities and Social Integration was abolished, which contained the section of Gender Equality, and the new Family Welfare department was created; such restructuring has contrasted family and equal opportunities policy.

In 2009, new amendments to the *Civil Code* and the *Civil Procedure Code* were prepared, setting up procedure for regis-

tering and annulling partnership.⁵⁷ Designing of the legal framework for civil partnership should be evaluated as a positive step, but, nevertheless, this legal framework does not grant civil partnership rights to the partners of the same gender. In 2010, the ECHR has acknowledged that the concept “family life” includes same-sex partners, living in a stable *de facto* partnership just as it includes the same type of relations between the partners of the opposite sexes.⁵⁸

This discriminative attitude towards same-sex partnership is highlighted by the fact that in 2010 Lithuania has not joined 14 other EU States, which decided to co-regulate divorce procedures of the citizens of different States, because the proposed regulation encompassed same-sex marriages.⁵⁹

Reproductive Rights

In 2009–2010, despite the obligations undertaken by the State under the *Cairo Programme of Action*,⁶⁰ the issue of the adoption of the *Strategy on Reproductive Health* remained unresolved.⁶¹

During the period under review, an agreement on legalization of assisted reproduction has not been reached. In 2010, two draft laws were registered, aiming to regulate assisted reproduction procedures. The draft *Law on Assisted Reproduction*⁶² allows for gamete dona-

tion and embryo freezing; under the draft *Law on Artificial Reproduction*⁶³ the conditions of *in vitro* fertilization would be regulated more stringently: it is being suggested to produce only as many embryos as can be simultaneously transferred to the uterus, with a maximum limit of three embryos. The age limit for women, who may undergo *in vitro* fertilization, also differs – 50 and 45 years accordingly.

While no political consensus is being reached regarding support to 50 thousand infertile families in Lithuania, their number increases by 2 thousand families each year. Every fifth-sixth family in Lithuania cannot have children.⁶⁴ Opinion polls, conducted in 2009, suggest that 48 per cent of population approve the right of an infertile family to undergo assisted reproduction.⁶⁵

In 2010, the draft amendment to the *Law on Medical Practice* suggested to introduce the right of the obstetricians to refuse carrying out abortion. Such law would restrict woman's right to freely choose a doctor and the accessibility of the procedure of termination of pregnancy. The draft law fails to foresee the procedure of the declaration of refusal to perform abortion, i.e., it remains unclear how women will obtain information on the doctors performing and not performing abortions, and how women, living in remote towns and villages would be able to terminate preg-

nancy should all the doctors in the area refuse to carry out abortions.

¹ Tomas Čyvas, Dailius Dargis. “Wiretapped Lithuania” (*in Lithuanian*), *Balsas.lt*, 2009-06-01, <http://www.balsas.lt/naujiena/293919/pasiklausoma-lietuva>

² Eglė Digrytė. “D. Kuolys: The SSD have been obtaining in Šiauliai the authorization to listen to journalists’ telephone conversations” (*in Lithuanian*), *Delfi.lt*, 2009-10-22, <http://www.delfi.lt/news/daily/lithuania/dkuolys-sankcijas-klausyti-zurnalistu-pokalbiu-vsd-gaudavo-siauliuose.d?id=24971853>

³ “Parliamentary Commission: In Lithuania, virtually any person’s conversation can be tapped” (*in Lithuanian*), *Vė.lt*, 2010-01-15, <http://www.ve.lt/naujienos/lietuva/lietuvos-naujienos/seimo-komisija-lietuvoje-galima-pasiklausyti-bet-kurio-zmogaus-pokalbio/>

⁴ Provider’s exemption means that if an employer provides conditions for an employee to use the equipment owned by the employer in order to perform job functions, e.g. email account, then the employer has the right to inspect the electronic work place of the employee.

⁵ The judgement of Vilnius District Court of 6 May 2010 in *J.B. v. UAB “Turto administravimo grupė”*; Dainius Sinkevičius. “The Court: Employer can check what an employee is writing on “Skype” (*in Lithuanian*), *Delfi.lt*, 2010-05-13, <http://www.delfi.lt/archive/print.php?id=32222785>

⁶ The ECHR judgement of 25 June 1997 in *Halford v United Kingdom*, Appeal No. 20605/92

⁷ See Finland’s Law on Protection of Privacy in Workplace, No. 759/2004, <http://www.mol>

fi/english/working/ProtectionPrivacyWorkingLife2004.pdf

⁸ The Law on Protection of Private Data, Žin. 2008, No. 22-804

⁹ State Data Protection Inspectorate “Data Protection Overview. Efforts of making European data protection legislation more relevant to the 21st Century” (in *Lithuanian*), *Infolex.lt*, 2009-05-28, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&Str=30489>

¹⁰ “Consumers – caught in the cobwebs of SMS lotteries” (in *Lithuanian*), *Verslo žinios*, 2009-07-03, http://vz.lt/straipsnis/2009/07/03/Vartotojai__SMS_loteriju_voratinkliuose

¹¹ “The Court found violations regarding direct marketing” (in *Lithuanian*), *Infolex.lt*, 2009-07-16, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&str=31705>

¹² See Art. 14 para. 1

¹³ See Art. 69 para. 1

¹⁴ Articles 214-23 of the Code of Administrative Law Offences

¹⁵ “New project has been launched, rating the popularity of Lithuanian “Facebook” profiles” (in *Lithuanian*), *Technologijos.lt*, 2009-11-12, <http://www.technologijos.lt/n/technologijos/it/straipsnis-9915/straipsnis?name=straipsnis-9915&l=2&p=1>

¹⁶ Marius Kalinauskas. “Problematic issues of personal data disclosure on social networking sites” (in *Lithuanian*), conference material from “Social technologies ’10: challenges, opportunities, solutions”, P.183–190, http://www.mruni.eu/mru_lt_dokumentai/fakultetai/socialines_

[informatikos_fakultetas/Renginiai/Social_technologies_paskutinis.pdf](http://www.mruni.eu/mru_lt_dokumentai/fakultetai/socialines_informatikos_fakultetas/Renginiai/Social_technologies_paskutinis.pdf)

¹⁷ The working group of data protection of Article 29, “Opinion 5/2009 on social networking sites on the internet”, *Ec.europa.eu*, 2009-06-12, (in *Lithuanian*) http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp163_lt.pdf

¹⁸ State Data Protection Inspectorate “Summary of the results of the inspection carried out in relation to the lawfulness of the management and the extent of personal data of the users of social networking sites” (in *Lithuanian*), *Ada.lt*, 2010-12-29, <http://ada.lt/index.php?lng=lt&action=page&id=20119>

¹⁹ Aleksandra Gudilkina. “Leaked data have made debtors of nine young people” (in *Lithuanian*), *Delfi.lt*, 2010-09-23, <http://pilietis.delfi.lt/news/nutekinti.d?id=36820101>

²⁰ Tadas Irvinskas. “In Kaunas, a data scanner has been found on a cash machine” (in *Lithuanian*), *Diena.lt*, 2009-07-07, <http://www.diena.lt/naujienos/kriminalai/kaune-ant-bankomatorastas-duomenu-skaitytuvas-papildyta-227069>

²¹ “Cheats’ bait – Christmas discounts” (in *Lithuanian*), *Delfi.lt*, 2010-12-10, <http://mokslas.delfi.lt/technology/sukciai-pakiso-jauka-kaledines-nuolaidas.d?id=39537045>

²² “Data thieves target job seekers” (in *Lithuanian*), *Delfi.lt*, 2009-02-11, <http://www.delfi.lt/news/daily/crime/article.php?id=20516203>

²³ “Gmail.com’s nightmare – youngsters from Elektrėnai” (in *Lithuanian*), *Diena.lt*, 2010-06-03, <http://www.diena.lt/dienrastis/uzribis/-gmail-com-siaubas-jaunuoliai-is-elektrenu-281729>

²⁴ Communication from the Commission to the European Parliament, the Council and the Committee of the Regions “Towards a general policy on the fight against cyber crimes“ (in English) COM(2007)267, 2007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0267:FIN:EN:PDF>

²⁵ Organisation for Economic Cooperation and Development „Online Identity Theft“ (in English), 2009, http://www.keepeek.com/Digital-Asset-Management/oecd/science-and-technology/online-identity-theft_9789264056596-en

²⁶ Rasa Lukaitytė. “Residents’ data managed by “Sodra”– in garbage bags near containers” (in Lithuanian), *Delfi.lt*, 2010-10-26, <http://www.delfi.lt/archive/print.php?id=37881225>

²⁷ Human Rights Monitorin Institute. “Human Rights in Lithuania 2007–2008: Overview”, P. 29

²⁸ Lina Vyšniauskienė. “Attention! You are being monitored by a video camera” (in Lithuanian), *15min.lt*, 2009-07-28, <http://www.15min.lt/naujiena/miestas/vilnius/demesio-jus-stebi-vaizdo-kameros-41-50244>

²⁹ Vilma Danauskienė. “Lazdijai high school students will be monitored by CCTVs” (in Lithuanian), *Lrytas.lt*, 2010-08-26, <http://m.lrytas.lt/-12828256421281078727-lazdij%C5%B3-gimnazistus-steb%C4%97s-vaizdo-kameros-nuotraukos.htm>

³⁰ “In Vilnius trolleybuses – “WiMAX” connection and video surveillance cameras” (in Lithuanian), *Balsas.lt*, 2010-09-24, <http://www.balsas.lt/naujiena/503386/vilniaus-troleibusuose-wimax-rysys-ir-vaizdo-stebejimo-kameros>

³¹ Indrė Vainalavičiūtė. “What will be filmed by cameras in public transport?” (in Lithuanian), *Balsas.lt*, 2010-08-20, <http://www.balsas.lt/naujiena/498536/ka-filmuos-kameros-miesto-transporte>

³² “Does the installation of expensive video surveillance cameras ensure safety?” (in Lithuanian), *Hrmi.lt*, 2010-11-09, <http://www.hrmi.lt/naujiena/570/>

³³ State Data Protection Inspectorate, “Summary of the results of the inspection carried out in relation to the management of personal data obtained by video surveillance in petrol stations” (in Lithuanian), *Ada.lt*, 2009-11-24, <http://www.ada.lt/images/cms/File/naujieniu/Degaliniu%20tikrinimo%20rezultatai.pdf>

³⁴ Alan Travis. „CCTV schemes in city and town centres have little effect on crime, says report”, *Guardian.co.uk*, 2009-05-18, <http://www.guardian.co.uk/uk/2009/may/18/cctv-crime-police>

³⁵ Section 2.2 of the 2009 annual report of the Inspector for Journalists’ Ethics , “Media in 2009: paedophilia case and the pre-trial investigation in media”, <http://www3.lrs.lt/docs2/VJQMMAYI.PDF>

³⁶ Eglė Digrytė. “Inspector for Journalists’ Ethics: Kaunas paedophilia case – a cash cow” (in Lithuanian), *Delfi.lt*, 2010-04-03, <http://verslas.delfi.lt/Media/zurnalistu-etikos-inspektore-kauno-pedofilijos-byla---pasipelnymosaltinis.d?id=30716165>

³⁷ Inga Saukienė. “Psychiatrist: people waking at Venckai home are doing the most damage to the girl” (in Lithuanian), *Delfi.lt*. 2010-05-20, <http://www.delfi.lt/news/daily/kedys/psichi>

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³⁸ The judgement of Kėdainiai Region Circuit Court of 16 July 2010 in civil case No. 2-1950-550/2010

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⁴⁰ The 2009 annual report of the Inspector for Journalists’ Ethics, P. 45, <http://www3.lrs.lt/docs2/VJQMMAYI.PDF>

⁴¹ Dovilė Trepkevičiūtė. “The book on Lavrinovičiai has been published but permission is still absent?” (*in Lithuanian*), *Alfa.lt*, 2010-08-03, http://www.alfa.lt/straipsnis/10398233/?Knyga.apie.Lavrinovicius.isleista..o.leidimo.nera.=2010-08-03_11-16

⁴² Human Rights Monitoring Institute. “Human Rights in Lithuania 2007–2008: Overview”, P. 31

⁴³ The judgement of Lithuanian Supreme Court of 13 February 2009 in civil case No. 3K-3-26/2009

⁴⁴ *Mertinas and Mertinienė v Lithuania*, Appeal No. 43579/09; *Žvagulis v Lithuania*, Appeal No. 8619/09; The 2010 annual report of the representative of Lithuanian Government at the European Court of Human Rights, P. 38, http://www.tm.lt/dok/atask/LRV%20Atstoves%20EZTT%20Ataskaita_2010.pdf

⁴⁵ Human Rights Monitoring Institute. “Human Rights in Lithuania 2008–2009: Overview”, P. 52

⁴⁶ The judgement of Lithuanian Supreme Administrative Court of 29 November 2010 in administrative case No. A⁸⁵⁸-1452/2010

⁴⁷ *Ibid.*

⁴⁸ The draft Law on the Amendment of Article 2.27 of the Civil Code of the Republic of Lithuania No. 10-4254-01, 2010-10-19, http://www.lrs.lt/pls/proj/dokpaieska.showdoc_1?p_id=57981&p_org=&p_fix=n&p_gov=n

⁴⁹ The concluding observations of the Ministry of Health “On the Harmonization of the draft Law on the Amendment of Article 2.27 of the Civil Code of the Republic of Lithuania”, 2010-11-03, http://www.lrs.lt/pls/proj/dokpaieska.showdoc_1?p_id=60147&p_org=&p_fix=n&p_gov=n

⁵⁰ The draft Law on the Amendment of Article 2.27 of the Civil Code of the Republic of Lithuania No. XIP-2988, 2011-03-08, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=393793&p_query=&p_tr2=

⁵¹ National Agreement on Creating a Family-Friendly Environment, *Lrs.lt*, 2010-06-21, http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_1?p_id=376067&p_query=&p_tr2=

⁵² “Social democrats will not sign the National Agreement on Creating a Family-Friendly Environment” (*in Lithuanian*), *Lrytas.lt*, 2010-05-26, <http://www.lrytas.lt/-12748658751273774515-socialdemokratai-nepasira%C5%A1ys-nacionalinio-susitarimo-d%C4%97l-%C5%A1eimai-palankios-aplinkos-papildyta.htm>; “*In the National Agreement on Creating a Family-Friendly Environment – State’s interference in personal relationships*” (*in Lithuanian*), *Lijot.lt*, 2010-10-29, <http://www.lijot.lt/NewsList.aspx?CategoryID=3&NLNewsID=3806;>

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⁵³ *Supra* note 42, P. 60

⁵⁴ Eglė Samoškaitė. “V.Mizaras: In Lithuania, people who created a family without marriage are being ignored” (in *Lithuanian*), *Delfi.lt*, 2010-11-27, <http://www.delfi.lt/news/daily/lithuania/vmizaras-lietuvoje-ignoruojami-zmones-sukure-seima-bet-nesudare-santuokos.d?id=39042589>

⁵⁵ *Supra* note 52

⁵⁶ United Nations Committee for the Elimination of Discrimination against Women, „Concluding observations: Lithuania“, CEDAW/C/LTU/CO/4, 2008-07-18, para. 72-73, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LTU-CO-4.pdf>

⁵⁷ Accompanying documents to the draft Law on the Amendments of Articles 2.18, 2.19, 3.16, 3.140, 3.229, 3.230, 3.231, 3.232, 3.234, 3.235 of the Civil Code and the Complement of the Code with Articles 3.2291, 3.2292, No. 8035_2 (3) (LD), 2009-10-07, http://www.lrs.lt/pls/proj/dokpaieska.showdoc_1?p_id=6011&p_org=8&p_fix=&p_gov=n

⁵⁸ The ECHR judgement of 24 June 2010 in *Schal and Kopf v Austria*, Appeal No. 30141/04, § 94

⁵⁹ “EU divorce regulations are not suitable for Lithuania because of homosexual marriages” (in *Lithuanian*), *Veidas.lt*, 2010-06-14, <http://www.veidas.lt/aktualijos/lietuva/es-skyrybu-reglamentavimas-lietuvai-netinka-del-homoseksualu-santuoku>

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⁶⁰ Programme of Action of the United Nations Conference on Population and Development 7.7-7.8 p., <http://www.iisd.ca/Cairo/program/p00000.html>

⁶¹ “A. Čaplikas: we will attempt to reconcile differing views” (in *Lithuanian*), *Aina.lt*, 2009-07-09, <http://www.aina.lt/naujienos/sveikata/6268-a-caplikas-bandysime-iveikti-pozituriu-skirtuma.html>

⁶² The draft Law on Assisted Insemination, No. XIP-2388, 2010-09-14, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=380793

⁶³ The draft Law on Artificial Insemination, No. XIP-2502, 2010-10-12, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=382967

⁶⁴ Ombudsperson of Seimas Romas Valentukevičius, Report No. 4D-2009/1-162, “On the inquiry carried out on the initiative by the Seimas Ombudsperson into alleged violations of the rights of persons to safe and healthy environment”, <http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3616>

⁶⁵ “Almost half of the Lithuanian population support artificial insemination” (in *Lithuanian*), *Delfi.lt*, 2009-04-02, <http://www.delfi.lt/news/daily/Health/article.php?id=21288930>

Rights of Vulnerable Groups

Children Rights

Children in Lithuania feel the unhappiest in Europe. Parents devote to their children an average of 7 minutes of attention a day; child abuse is spread in all social strata. Disappearances of children are closely related with widely practiced physical violence and emotional abuse: four out of five run-away children are fleeing domestic violence; they also are at a higher risk of becoming victims of human trafficking. With no law, prohibiting all forms of violence against children, the impunity of perpetrators prevails, and the children who are subject to violence or become witnesses of domestic violence, feel helpless and unprotected. There was an increase in the number of reports of physical, psychological and sexual abuse, received from residential care and education institutions. Foster care home staff fails to report to the police of the existence of prostitution networks in the institutions as they fear losing their jobs or damaging the institution's image. Due to reduced wages it becomes even more difficult for foster care homes to attract high-level professionals who would be able to protect the interests of the children. Situation of children left without parental care is being further aggravated by the pro-

longed adoption procedures. The problem of the questioning of children in criminal proceedings remains unresolved: specifically designed interviewing rooms are often not being used; no funding is allocated for forensic psychologists; after working hours, child protection officers usually do not attend the interviews and do not represent the interests of the children.

Insecurity of Children

A survey conducted by UNICEF showed that Lithuanian children feel the unhappiest in Europe. During the survey it has also been established that Lithuanian parents devote to their children an average of 7 minutes of attention a day.¹ This data correlates with the indicators of violence against children in close relations – in 2009, the Children Rights Ombudsperson received the highest number of complaints regarding violence against children when compared with the previous years (in 2009 – 195 complaints, in 2008 – 142, in 2007 – 91). Among the cases reported, the most frequent was violence in the closest – family – environment (89 complaints).² According to the information gathered by the Child Rights Protection Services under the Ministry of Labour and Social Welfare, in 2009, a total of 1203 reports of children victims of physical abuse were received by municipal child protection services.³

Disappearances of children are also closely linked with violence: four out of five runaway children flee domestic violence.⁴ The majority of the disappeared children become victims of human trafficking or are recruited into criminal gangs and taken abroad.⁵ In 2009, information appeared about the girls from Pagėgiai orphanage, who became assistants to the organized criminals from Tauragė town, carrying out their illegal activities abroad.⁶

After the so called “paedophilia scandal”, the public became particularly interested in the issue of sexual abuse of children at home. The media reported a number of cases of molestation, exploitation for prostitution or sexual assault of minors in the domestic environment.⁷ Often, it was the lack of competence and cooperation among the state institutions that allowed continuation of abuse. In 2009, while awaiting the judgement by the court of appeals in the case of sexual assault on disabled minor, it has been found that the child was being repeatedly sexually abused by father.⁸ In another case, the police have refused, on the grounds of difficulties in gathering evidence, to open an investigation into the complaint filed by a mother regarding her sexually assaulted daughter. Thus the actions of the perpetrator – the father of the girl – have not been stopped, she was further suffering sexual, physical and psychological abuse, and was being forced to have sexual intercourse with strangers for financial gain.⁹

Although already back in 2006 the United Nations Child Rights Committee issued recommendations to Lithuania to fill legal gaps and protect children from corporal punishment,¹⁰ in 2010, the Parliament has rejected the amendments to the *Child Protection Law*,¹¹ imposing a prohibition of all forms of violence against children. The draft law defined violence against a child – a person under the age of 18 – as all forms of physical, sexual, psychological and emotional abuse, humiliation and exploitation, lack of care or neglect, causing danger to the life, actual or potential harm to health, survival, development and dignity of the child, including corporal punishment.

Some of the MPs openly expressed their approval of corporal punishment, labelling it as an effective parenting technique.¹² Without the adoption of the law, explicitly prohibiting corporal punishment, the impunity of the perpetrators prevails, and the children who are subject to violence or become witnesses of domestic violence, feel helpless and unprotected.

Vulnerability of Children in Residential Care and Education Institutions

In 2009–2010, there was an increase in the number of reports on physical, emotional and sexual abuse among and against children in foster homes, and the children leaving the institutions were facing difficulties of social inte-

gration, some of them were being recruited to criminal gangs.

In 2009–2010, with an unjustifiable delay, the reorganization of the residential care system was underway. The *Plan on Reorganization of Child Care Facilities Network*, approved on 11 October 2007 by the order of Labour and Social Welfare Minister, foresaw that beginning with 2010 the number of places in each of the facilities will not exceed 60 persons, and the work in the institutions will be organized in accordance with the principles of foster families.¹³ It is anticipated that by 2015 the number of children in each foster family will not exceed 8.

According to the 2009 data of the Statistics Department, only a small minority of children live in small foster-family type foster homes, while the vast majority still live in large public foster care institutions.¹⁴ According to the Social Welfare and Labour Ministry, in 2010, 25 public care institutions were larger than 60 places.¹⁵

As a part of the *Plan on Reorganization of Child Care Facilities Network*, from 1 January 2010, the job descriptions of foster care home staff have been changed. Former foster home tutors became social pedagogues and social workers. The new procedures have brought confusion within the institutions. Until this day, there is no unified

staff system – depending on decisions of care facilities' administration, the number of social pedagogues and social workers differs. The salaries of the latter have been cut, the social-economic guarantees have worsened, and the workload has increased.¹⁶

Although the more stringent educational requirements for the foster homes personnel should be evaluated positively, the reform itself, however, lacks clarity and consistency. The reform caused a frequent change of the foster care home staff, causing unjustifiable stress for children who have developed emotional relationships with their tutors.¹⁷ Because of reduced wages, the foster care homes will face even more difficulties in attracting high-level specialists, who would be able to protect the interests of the children.

There is a considerable shortage of psychological help services in foster homes. Despite the obvious necessity of such services, some foster care homes have cancelled psychological support services. For example, a few years ago, foster care home in Valkininkai “Spengla” became known publicly because of its problematic situation,¹⁸ but it is exactly the foster home that refused the services of a psychologist.¹⁹

In 2009–2010, the process of transferring of the foster care homes founder

status to municipalities was taking place. The purpose of the transfer was to bring social services closer to families and create opportunities for municipalities to develop alternative services, aimed at reduction of the number of children in foster homes. The association of the directors of Lithuanian foster care homes made an appeal, challenging the expediency and timeliness of the process, and, basing on economic reasons, suggested postponing the reform until 2015. The Child Rights Ombudsperson expressed concern that such suggestions ignore the principle of the best interests of the child.²⁰

During the period under review, frequent reports appeared that children from foster homes are being recruited to criminal gangs or become victims of human trafficking, and that they suffer physical and emotional abuse and sexual exploitation. Investigation in 2010 revealed that three persons have been sexually abusing orphans since 2006.²¹ Police officers claim knowing of the cases when care home employees fail to report to the police of the existence of prostitution networks in the institutions as they fear losing their jobs or damaging the institution's image.²²

In 2009–2010, no effective measures have been taken to reduce social isolation of children leaving foster care home and help them to integrate into society. The biggest challenges are

faced by orphans turned adults – they lack social and professional skills, and there is no procedure set for providing such adults with social housing.²³

The situation of children left without parental care is further aggravated by the prolonged adoption procedures. In 2010, the majority of children listed for adoption were older than 10 years. Usually Lithuanian families do not wish to adopt children of this age. It is necessary to solve more efficiently the issue of restriction of parental authority and optimize the procedure for international adoption, in order to ensure the right of the child to a family.²⁴

It is necessary to reform large foster care institutions without further delay: split them into small family-type homes, develop the system of alternative social services and encourage the establishment of foster families. The legal framework should be improved in order to provide preferential social housing for young adults, who are leaving foster homes. The government must also pay regular attention to the qualifications and fair pay for the specialists working at foster homes.

Children in Criminal Proceedings

In 2010, the issue of questioning of children in criminal proceedings was intensely discussed. Currently, there are more than 30 interviewing rooms for children

installed in Lithuania in various courts and police stations, but they are rarely used. In 2009, 20 interviews were conducted in the interview rooms for children in Kaunas, 8 – in Klaipėda, and 9 – in Šiauliai. Since around 3000 children annually become crime victims and, about the same number of them are crime witnesses in Lithuania,²⁵ such extent of the use of the rooms is of little value.

The main problem is the lack of qualified forensic psychologists, who would be able to carry out the interviews. In the *National Programme on Prevention of Violence Against and Support for Children 2008–2010*²⁶ no funds were allocated to finance the services of such specialists. In Klaipėda city, a psychologist, after conducting two interviews with child victims, wrote a resignation letter because she was not able to do such a complex job without an adequate pay.²⁷

A survey conducted in 2009 indicated that the interests of the children are not protected because of the poorly organised work procedures of the child protection services. When the necessity arises to interview children in criminal investigation, the child rights protection officers do not attend the interviews and do not represent the interests of the children after their working hours.²⁸

According to Article 186 Paragraph 5 of the *Criminal Procedure Code*, a psy-

chologist or child rights protection officer must be present during the questioning of underage victim or witness. Experts have established that because of the poor organisation of the interviews during criminal proceedings, victims suffer secondary trauma, and the reliability of their testimonies might decrease. It is therefore necessary not only to install new interview rooms for children, but also to ensure that they are being interviewed by qualified and competent specialists.

Rights of Persons with Disability

On 27 May 2010, the Parliament has ratified the UN Convention on the Rights of Persons with Disability. This is an important step, but the gap between the provisions of the Convention and their actual implementation remains. Persons with physical disability are socially marginalized due to unadjusted physical and informational environment and the lack of suitable residential and transport facilities. Some of the health care and educational facilities are unfit for the disabled; only one informational TV show is available in sign language; emergency helpline is not accessible to deaf people; for the blinds, a cash withdrawal limit of 500 LTL per day has been unreasonably set.

Media continued to stigmatize mentally disabled; public opinion polls indicate a long lasting and extremely negative

attitude towards mentally disabled and persons suffering from mental illness. In 2009, there were 25 institutionalised care facilities for mentally disabled in Lithuania; operating on the basis of social exclusion, they housed over five thousand children and adults. During monitoring visits, a number of serious human rights violations were recorded.

The number of legally incapacitated persons in Lithuania is rapidly growing, but drafted relevant legislative amendments have not yet been passed, in particular, amendments regulating the extent of legal incapacity, regular revisions of the necessity of restricting means, stricter control of guardians and the responsibility for improper care. Deficient procedures of involuntary hospitalization are still intact, despite the fact that they violate mentally ill patients' rights to information, adequate representation and legal defence. The EU Agency for Fundamental Rights has pointed out that Lithuania is among the worst rated countries in safeguard voting rights of the disabled.

Right to Accessible Environment

In 2009, there were 685 persons with physical disability in Lithuania, who were identified as being in need of adapting their homes to their disability; the number of adapted homes reached 262.²⁹

In 2010, disabled persons themselves were given the opportunity to adjust their homes to their needs and get reimbursed for the expenses.³⁰ According to the new programme, the expenses are reimbursed after the adjustment works have been completed and home adjustment commission have evaluated the results. However, very few persons with disability or their families can afford the adjustment works given such delay of compensation.

Fact-finding inquiry in 2010 revealed that Lukiškės branch of Vilnius Central Clinic³¹ and Žagarė dispensary³² facilities were unadjusted for people with limited movement ability. The *Law of Construction* and technical regulations oblige to adapt newly built or reconstructed structures to the needs of the disabled, however, such regulations do not include health care facilities, which were built several decades ago.

Limited accessibility of the environment prevents the disabled from obtaining professional education and working in the environment, adapted to their needs.³³ Currently, only Vytautas Magnus University and the Music and Theatre Academy provide the appropriate conditions for students with disabilities; the rest of the higher education institutions are adjusted only partially.³⁴ Inaccessible environment limits academic mobility of the students. In 2008–2009,

only 4 students with disability participated in the Erasmus/Socrates programme, and not a single disabled student has come to study in Lithuania.³⁵

Persons with visual and hearing disabilities are facing inaccessibility of information. Currently, only one informational TV show is available in sign language.³⁶ Many websites remain inaccessible to the disabled, despite the recommendations issued by the Committee for the Development of Information Society.³⁷

Informational environment, unadjusted to persons with sensory disabilities, makes them feel unsafe in emergency situations – the emergency helpline is still inaccessible to deaf people.³⁸

On 26 May 2010, Vilnius Circuit Court ruled that the “Swedbank” bank must ensure the opportunity for the blind persons to read the contract documents in Braille before signing them, and stop restricting the opportunity to use payment cards when paying for goods or services. Before the judgement, a cash withdrawal limit of 500 LTL per day was applicable for the blind people.³⁹

Disabled children do not receive adequate support; a tendency remains to isolate them or attempt to “cure” them rather than integrate into society. In Lithuania, there are still cases recorded

when a disabled child is not welcome in an ordinary school because the school cannot be bothered to look for a teaching assistant for the child.⁴⁰

Negative Public Perceptions of Mentally Disabled

Public opinion polls indicate a long lasting negative attitude towards mentally disabled and persons suffering from mental illness. The 2010 *Eurobarometer* survey showed that for 52 per cent of the respondents it would be challenging to communicate with a mentally disabled person. The EU average is 22 per cent.⁴¹

2009–2010 revealed multiple cases when mentally disabled became victims of bullying. The residents of Tauragė have been entertaining themselves by filming mentally disabled and posting the videos online.⁴²

According to sociologists, main feature of the whole post-soviet block countries is the lack of research, involving persons with mental disability themselves. They are being talked of, but not being talked to.⁴³

Media has been depicting mentally disabled persons in a negative light – they were being described as aggressive and dangerous; such attitude not only

influences public opinion, but may also lead to the increasing legal restrictions imposed on persons with mental disabilities. The experience of Western countries shows that the appropriately given information may break down prejudices and stereotypes about mentally disabled.⁴⁴

Serious Human Rights Violations in Mental Health Care Facilities

In 2009–2010, no particular steps were taken towards the implementation of the *Mental Health Strategy*.⁴⁵ In 2009, there were 25 institutions for mentally disabled in Lithuania; operating on the basis of social exclusion, they housed over five thousand children and adults. These numbers are unacceptably high, bearing in mind that European states had been urged for decades to replace institutional care with community services.⁴⁶

In 2009, the group for monitoring human rights conditions in closed institutions, operating within the Office of Parliamentary Ombudspersons, together with the representatives from Psychiatric Clinic at Vilnius University visited five mental health care facilities and recorded a number of serious human rights violations.

In the facilities, a negative attitude towards the mentally disabled still prevails. The institutions are located in

remote areas, away from the cities; many of them are fenced, and the windows still have bars. The residents of the institutions are not encouraged to learn or become independent.

Monitored facilities contain isolation premises for residents, and various freedom restricting measures are being employed, including physical constraint or medication, but the use of such methods is poorly or not at all regulated. During the visits, there were testimonies recorded of cruel and degrading treatment, for example, forced injections, isolation, or tying to the bed for a prolonged period of time which resulted in urinating in bed. After the 2008 visit, the European Committee against Torture has also expressed its concern in relation to the degrading behaviour in psychiatric hospitals and mental health care institutions.

Some institutions are unable to ensure the rights of the patients to access health care services because of the shortage of psychologists and mental health nurses, and the psychiatrists provide only occasional consultations. On the other hand, individuals cannot refuse psychiatric treatment if prescribed by doctor.

In all of the visited facilities, the residents' right to privacy is being infringed – their privacy is not being paid any regard and the whole life of residents

is public.⁴⁷ In social care institutions, residents' rights to personal and family life are substantially restricted. The menstrual cycle of women is carefully monitored, and forced contraception is applied. Currently, there is no social care institution in Lithuania, where a woman, having given birth to a child, or a family could raise the child; the infant is separated and transferred to infant care home.

In 2010, allegations appeared that the underage patients of the "Venta" nursing home for mentally disabled children and youth were being tied in straight-jacket shirts, their food was being stolen, and they were being physically abused. The staff would tie more active patients so that they themselves could sleep at night. Although restraining measures can be employed only at the psychiatrist's instruction, such specialist was not available at the institution concerned. In this case, it is difficult to prove the staff's abuse of authority because mentally handicapped persons cannot be held witness in criminal proceedings.⁴⁸

The 2010 study conducted by the Global Initiative in Psychiatry revealed that mental health care institutions fail to ensure the patients' right to adequate quality of services, right to information and right to appeal decisions made by staff and administration. The institutions have no functioning complaints system.

Lacking information on their condition and rights, the patients cannot effectively complain against violation of their rights.

The State must cease further investment in the institutional mental health care system. Government actions and resources must be aimed at the development of alternative community care services, enabling human beings to live in dignity. The *Mental Health Strategy* should become a tool for safeguarding the rights of vulnerable individuals rather than an empty political declaration.⁴⁹

Nonconformity of the Procedure of Legal Incapacitation to International Standards

Although, in democratic states, legal capacity of a person is being restricted only in exceptional cases, in Lithuania the number of legally incapacitated persons is rapidly growing – during the first half of 2009 the number of incapacitated persons have increased by 2,3 thousand.⁵⁰ Until the end of 2010, the data base of legally incapacitated individuals was being managed by the Notary Chambers, but in 2011 this function was transferred to the newly established Register of Legally Incapacitated Persons and Persons with Limited Legal Capacity.⁵¹

In 2009, the Ministry of Health created a working group with a purpose to im-

prove legal framework for regulating the issues of legal incapacitation and State guaranteed legal aid. The main objectives of this initiative were to broaden the application of the concept of limited legal incapacity, establish a system of regular revision of the necessity of the restricting measures, increase supervision of guardians and foresee accountability for improper care.⁵² Although the necessary amendments to the *Civil Code* and *Civil Procedure Code* were prepared, the community of the disabled persons has not been informed about the amendments.⁵³ The amendments were not passed.

In 2009, the Lithuanian Supreme Court ruled that two equally important criteria are necessary in order to determine legal incapacity – medical and social. It is not enough for a person to be ill with mental disease; the other important factor is person's inability to comprehend and control his or her actions. Likewise, if a person is unable to take care of his or her social life, health, financial interests, this does not in itself constitute a basis for legal incapacity without psychiatric expertise. Recognising legal incapacity is one of the ways of safeguarding the rights of persons. When the person cannot be recognized as legally incapable according to the law, but he or she is nevertheless unable to take care of him or herself, the institution for care and nursing may protect the person's rights and interests

embracing other legal measures such as, for example, the guardianship of capable persons.⁵⁴

As it has been observed several times, even the most progressive case-law cannot replace an adequate legal regulation.⁵⁵ Until now, the notion of legal incapacity is being used for the purposes of profiting for other persons rather than applied in exceptional cases only to safeguard the rights of persons with mental problems.⁵⁶ Unjustifiable delay in adopting necessary legislation not only prevents a number of people from enjoying their constitutional rights, but is also contrary to Lithuania's international obligations, *inter alia*, the United Nations Convention on the Rights of Persons with Disability that was incorporated into national legislation in 2010.⁵⁷

Deficient Procedures of Involuntary Hospitalization

During the time period between 1 May 2009 and 12 May 2010, 268 individuals have been involuntarily hospitalized in 9 health care facilities.⁵⁸ Despite the more stringent requirements for forced hospitalization, set in 2010 by the *Law on Compensation for Damage to the Rights and Health of Patients*, the majority of the patients of psychiatric health care facilities report that during the period of hospitalization they have been pressured

to accept an inpatient care, and in the cases of refusal, they have been made subject to forced hospitalization. During the period under review, the deficient procedure of forced hospitalisation has not yet been amended.

The investigation conducted by the Parliamentary Ombudsperson revealed that, when applying forced hospitalization procedures, frequently the rights of patients were being violated, such as the right to information, adequate representation and legal defence.⁵⁹ For example, in 2009, the psychiatrist at Vilnius Central Clinic referred the patient for hospitalization, grounding the decision solely on medical records, and without examining the patient himself.⁶⁰

The issue is being aggravated by the lack of legal regulation for involuntary hospitalization procedures: it is not determined how to ensure the patient's right to be heard by the court; who and how should bring the patient to the judge; and the circumstances when decision could be taken by psychiatric health institutions rather than by the courts.⁶¹ The administration of the institutions often fails to inform the patients and their representatives of the fact that the case of involuntary hospitalization is referred to the court and of the patient's right to participate in the court proceedings. Because of the lack of regulation, some institutions determine the procedures themselves.

In the *Civil Procedure Code*, the possibility of appeal against the extension of involuntary hospitalization and treatment has not been foreseen. Forced hospitalization is a restriction of person's liberty equivalent to detention, but detention can be appealed, whereas the extension of forced hospitalisation cannot.⁶²

Restrictions of the Right to Vote

In its 2010 report, the EU Agency for Fundamental Rights has pointed out that Lithuania is among the worst rated countries in safeguarding the voting rights of the disabled.⁶³

In Lithuania, the right to vote is granted to all persons except those recognized as legally incapable; however, after each election a number of complaints is received from persons with disability because of the balloting conditions unadjusted to their needs.

Article 29 of the *UN Convention on the Rights of Disabled Person* obliges the state parties to ensure that the voting procedures, premises and material are adequate, accessible, easy to understand and use, and to protect the rights of the disabled for secret ballot and expression of his or her will with a help from the person of his or her choice, if necessary.

Despite the declared equal opportunities to vote, the disabled persons frequently

cannot use their right because of the physical environment unadjusted to their needs.⁶⁴ The majority of the polling stations are not accommodated for the physically disabled, and even though the disabled have the right to cast their vote from home, one still needs to fill in the request and submit it to the local electoral committee.⁶⁵ Although the law provides for the relatives, family members or guardians to submit the request on behalf of the disabled person, they are not sufficiently informed of this option.

The disabled are not keen to let the electoral committee members into their homes. Even though the voters casting their votes from home are informed in advance of the visits by electoral committee members, this information is provided in the form of a written announcement hanged on the wall rather than given in person by telephone or my other means.

Obstacles are also faced by the blind and deaf voters. The electoral laws provide the possibility for another person to cast the vote on behalf of the disabled.⁶⁶ However, the Lithuanian Society for the Blind and Visually Impaired claims that the voters with accompanying persons face difficulties at the polling stations.⁶⁷

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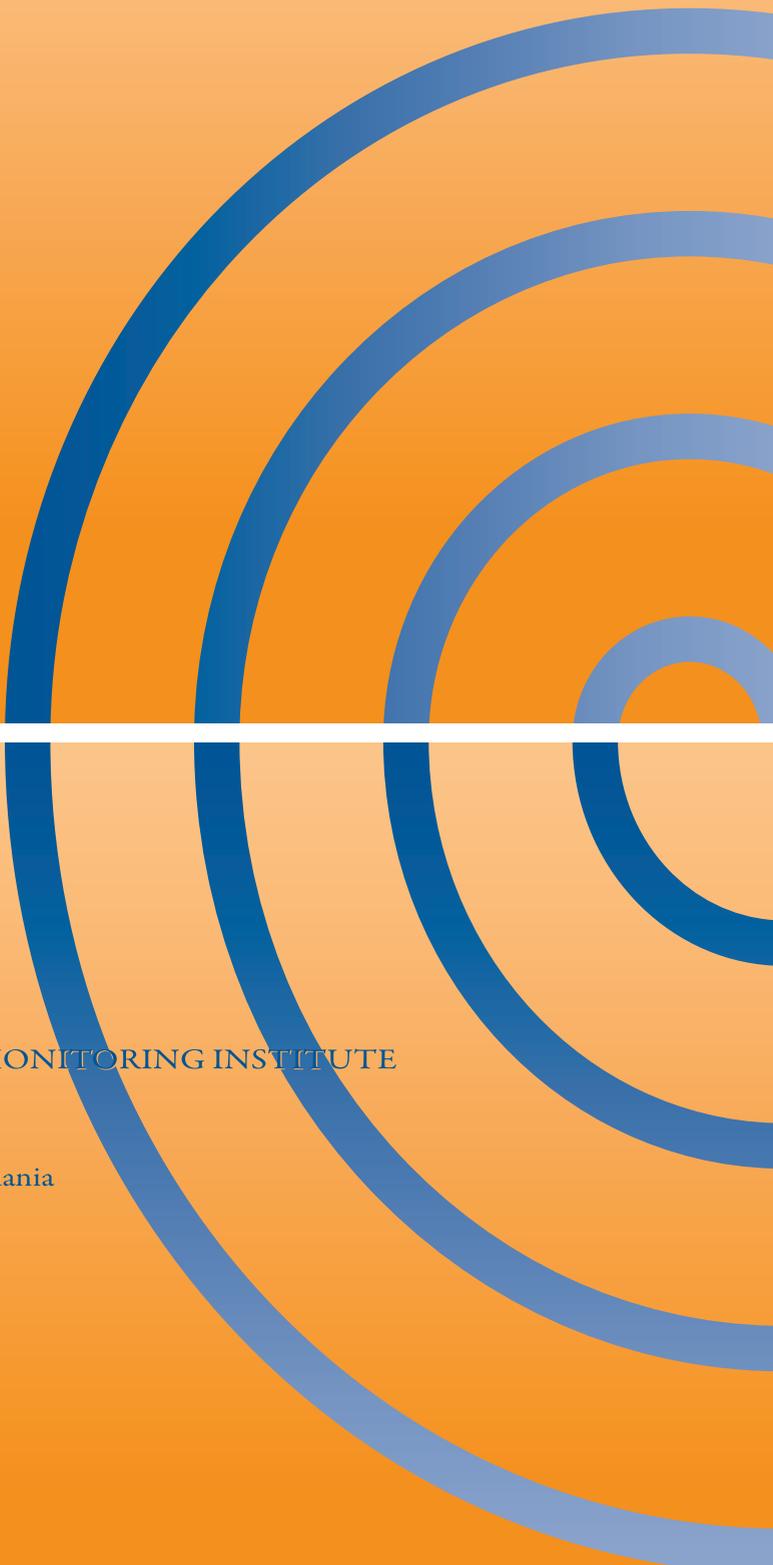
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