



Human Rights  
Monitoring Institute

# Human Rights in Lithuania 2013–2014

## OVERVIEW



# **Human Rights in Lithuania 2013-2014: OVERVIEW**

**Editorial board:**

Dovilė Šakalienė, Jūratė Guzevičiūtė, Natalija Bitiukova, Mėta Adutavičiūtė,  
Karolis Liutkevičius

**Translator:**

Petras Borisovas

**This publication was sponsored by:**



The European Economic Area and  
Norway Grants National Bilateral Fund

The Ministry of Foreign Affairs  
of the Republic of Lithuania

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## ABOUT US

**T**he Human Rights Monitoring Institute (HRMI) is a non-governmental, non-profit organization that aims to contribute to the development of open and democratic society that ensures human rights and freedoms.

HRMI constantly monitors the human rights situation in Lithuania, takes part in the legislative process, analyzes and assesses the work of the authorities, prepares alternative reports to international human rights supervisory bodies, organizes human rights education events, conducts studies and initiates strategic litigation with respect to systemic violations of human rights.

HRMI is primarily active in the following areas: the rights of children, the disabled and persons in closed-type institutions, the fight against discrimination and intolerance, the rights of suspects and defendants, the protection of the rights of victims of domestic violence, trafficking in human beings and other crimes. HRMI work also encompasses the right to respect for private life, as well as the freedoms of assembly, speech and information.



## FOREWORD



*Dovilė Šakalienė*

*Executive Director of the  
Human Rights Monitoring  
Institute*

2013-2014 were marked by Maidan events and unconventional warfare. We found out that we live in a world where it is possible to almost matter-of-factly occupy a part of another European state and wage war with “little green men”. When the nation of Ukraine rose to fight for its freedom to choose and *de jure* join EU geopolitical space, most states saw it as something very far off at first; its struggle seemed romantic and exotic, having very little to do with everyday reality. It looked as though pragmatism, embodied as it were in the arguments for “butter” and “gas pipes”, would prevail in the end.

Were Western civilization as mature as it liked to think it was, its pragmatic desire to create an illusion of “Good Russia” would have started to crack back when Putin and Medvedev, working in tandem, began to progressively violate the fundamental principles of democracy, human rights and liberties in the Russian Federation, when they revived the doctrine of “near abroad” and tried to suffocate civil society with “foreign agent” laws.

The last two years can be rightly called an awakening. It took a downed passenger plane and thousands of lives lost in Eastern Ukraine for the West to finally listen to Lithuania’s position: that democracy in Europe was under a very real threat and that the posters in the hands of protesters, claiming that “War in Ukraine = War in Europe”, reflected our very own shocking reality.

This wake-up call came at just the right moment, for Russia’s radical assault on human rights and liberties also had an enormous impact on Lithuania, whose legislation was quickly adorned with anti-human

rights initiatives that would make even the most loyal Kremlin crony blush. The assault on the European Court of Human Rights, human rights defenders, the European Union and especially the Nordic States had reached such intensity that it became a part of mainstream politics.

The awakening was abrupt, full of heated debates about the red line between the Kremlin and the West, with a gradually dawning understanding of what our real choices in the face of information warfare were. It is good to know that even those politicians who have fully embraced populist anti-human rights rhetoric seemingly avoid the *Novorussiya* project, understanding full well that the restored Soviet empire would probably not bless them with the freedom of speech or movement, the right to free elections and all the other privileges that we now take for granted.

“The Soviet Union is back – it’s here once again and people are again put behind bars for sharing news from the free world,” said Vira, sister of Nadya Savchenko, the Ukrainian pilot who was kidnapped. “The only difference is that nowadays this happens not through leaflets printed by the underground, but through sharing on *Twitter* and *Facebook*; the price, however, is the same – freedom...”

A survey commissioned by HRMI and carried out by Vilmorus in December 2014 revealed that we live in an unprecedented situation – public faith in the ability and willingness of the authorities to remedy rights violations had hit rock bottom. 95% of people who thought that their rights had been violated did not go to any institution for help – they were convinced that it would not change anything. I have no doubt that this is partly a result of the constant influence exerted from without by our eastern neighbour – supporting our own loudmouths when it is convenient, denigrating the “rotten”, “perverted” European Union and trying to prove that the authorities nowadays think nothing of the average citizen.

However, there are signs that the authorities, politicians and officials at the highest level of government are starting to understand the priorities in strengthening national security, as well as the fact that the first and last line of defence is drawn in the minds of our citizens. Just as intelligent parents raise their children by example, it is time for our

country to understand that we can no longer afford the luxury of not having a human rights policy, that the comments of high-ranking officials leave a tangible mark on public opinion and that only a real, honest and transparent approach to old problems can solidify confidence in national human rights protection mechanisms and create a society that is significantly more resistant to manipulation.

It is my hope that the coming year will be marked by real, everyday, practical human rights work that integrates the understanding of our fundamental rights and freedoms into all levels of state activity and ensures that each person is able to access information in a way that he or she understands – thus, ultimately, building a state that no one wants to leave.



## ACKNOWLEDGMENTS

**W**e would like to sincerely thank the experts who contributed to this Overview: Dainius Pūras, Deividas Velkas, Donatas Glodenis, Dovilė Gailiūtė, Dovilė Juodkaitė, Eglė Samuchovaitė, Gintautas Sakalauskas, Inga Abramavičiūtė, Jurgita Poškevičiūtė, Karolis Granickas, Laima Vaigė, Mindaugas Kiškis, Ugnė Grigaitė, Vilana Pilinkaitė-Sotirovič, Virginija Pleckevičienė, Vytautas Mizaras, Jūratė Guzevičiūtė, Mėta Adutavičiūtė, Natalija Bitiukova, Karolis Liutkevičius. We would like to thank Kristina Mišinienė, Aušra Kurienė and Ieva Daniūnaitė for the consultations they provided.

We are also really grateful to those Human Rights Monitoring Institute interns and volunteers who collected information for this Overview or otherwise contributed to its creation in 2013-2014: Alisa Grebinskytė, Darius Buinauskas, Fausta Šimonėlytė, Indrė Urbonavičiūtė, Ingrida Juozulynaitė, Izabelė Nebilevičiūtė, Jurgita Nemeikšytė, Laura Matelionytė, Marija Fedotovaitė, Martynas Šilgalis, Radvilė Laucytė, Rasa Mikalaičiūnaitė, Svajūnė Sirvydytė, Tomas Reves, Vytautas Klimas and others.

We would like to thank the European Economic Area and Norway Grants National Bilateral Fund as well as the Ministry of Foreign Affairs of the Republic of Lithuania for providing financial support for the publication of this Overview.





## FOREWORD BY THE ICELANDIC HUMAN RIGHTS CENTRE

*Margrét Steinarsdóttir*  
Director of the Icelandic  
Human Rights Center

When reading the HRMI's *Human Rights in Lithuania 2013-2014: Overview*, I was even more convinced that human rights and democracy are really two sides of the same coin as well as reminded of the universality of human rights.

An important test of a genuine democracy, for example, is how it treats its' minorities – the importance of a firm commitment to democratic values, human rights and protecting minorities cannot be stressed enough. Therefore, it is important to mainstream human rights into all government action plans and work processes as well as to include them in all educational activities and school curricula from an early age.

Education on discrimination against different minorities such as immigrants, lesbian, gay and transgender persons, young adults from economically disadvantaged background and religious minorities, as well as understanding the core of human rights, should be the main focus of human rights education. Growing up with knowledge and understanding of human rights means that each person is much more likely to freely and unreservedly assume the responsibility of respecting the human rights of others.

Even if the nations of the World have signed and implemented international human rights conventions, there is still dispute on the nature and essence of human rights, what these rights are, whether they are all equally important and whether they differ between countries or continents, how they should be guaranteed and for whom.

These questions and reflections can easily be answered; human rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any

other status. We are all equally entitled to our human rights without discrimination and they can not be bought or earned – you enjoy them for the simple reason that you are a human being. Human rights are all interrelated, interdependent and indivisible. And not least important, human rights are universal and inalienable. As stated in Article 1 of the *Universal Declaration of Human Rights*: “All human beings are born free and equal in dignity and rights.”

Respect for human rights is the root of a democratic society and also the main characteristics of a harmonious and affluent one. I will go as far as to say that if not for the fact that Iceland, my home country, holds human rights and democratic values in high regard, we would not have recovered as well as we have from the recession that hit us even harder than most other countries.

We live in a gender equal society (even if there is still work to be done) and a society which strives to respect the rights of all, which is not least apparent due to the fact that there is always an ongoing and effective dialogue in place, between the Government, NGOs and other relevant stakeholders. When the crisis hit Iceland, the State took care to safeguard the most vulnerable groups in society, by establishing the Well-fare Watch, which monitored the situation of these vulnerable groups. Our strong infrastructure was a crucial factor in our quick economic recovery.

By embracing human rights and democratic values, a deep consensus may be reached in society which leads to the State no longer having any difficulty with fulfilling their human rights obligations.

## SUMMARY

**H**uman Rights in Lithuania 2013-2014: Overview reviews the state of fundamental civil and political rights in Lithuania in 2013-2014. The Overview is structured to reflect the sequence of the rights enshrined in the *European Convention of Human Rights*.

### Right to life

The 2013-2014 period saw **right to life** violations in both national legislation and practice. An amendment to the *Criminal Code* was registered in September 2013 proposing to reinstate the death penalty in Lithuania, but due to the stance of institutions submitting reasoned conclusions this amendment was dropped. The case illustrates a prevalent practice among Lithuanian legislators to ignore fundamental human rights and propose draft legislation that is clearly incompatible with them if it serves populist ends. In 2013, Lithuania lost the case of *Banel v. Lithuania* in the European Court of Human Rights – it was found that Lithuania breached its positive obligation to protect the right to life of the applicant's 13-year old son and failed to investigate the incident properly and in a timely manner.

### Prohibition of torture and inhuman or degrading treatment

There is an increasing number of reports of **domestic violence** – over 40 000 such reports were received in 2013-2014. Even though the requisite legal amendments were adopted, their implementation is quite often inadequate – victims do not receive assistance when perpetrators of violence breach the security measures put in place, a fair share of pre-trial investigations never get off the ground, are terminated or end in reconciliation between the victim and the offender, thus putting the lives of victims in danger.

In addition, domestic violence is still not treated properly in policy documents – in 2014, the government approved an exceptionally backward *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020*, which does not treat domestic violence as a human rights issue. Lithuania was still not ready for a proper implementation of the provisions of the *Victims' Rights Directive* by the end of 2014, in order to ensure the rights of victims of domestic violence.

Lithuanian law does not contain a conceptual definition of **gender-based violence and sexual identity**; despite calls from international human rights institutions and women regularly dying from violence, there is opposition to the ratification of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Following the expiry of the National Strategy for the Reduction of Violence Against Women, there aren't any programmes/strategies to help combat violence against women.

Lithuania lost its second domestic violence case in Strasbourg due to failing to ensure that victims are effectively protected and that their complaints regarding violence suffered are investigated properly – in the case of *D.P. v. Lithuania* (2013), the Government acknowledged that it violated Article 3 of the European Convention on Human Rights (which prohibits torture, inhuman and degrading treatment) and offered compensation to the applicant.

While the overall number of child victims is falling year by year, the least safe place for children is still their home, where they are most often victimised. Unfortunately, this remains a latent crime – child victims officially account for only 7-8% of all victims, even though the majority of Lithuanian parents condone and use **violence against children**. In addition, studies show that in at least 40% of all domestic violence cases against adults, violence is also perpetrated against a child in that same domestic setting.

**The child rights protection system is in poor shape** – children lack information on where to seek assistance, as well as knowledge of safe ways to report any violations of their rights; quite often reports of violence against children are ignored, the danger posed to children by vio-

lent action is downplayed and pre-trial investigations never get off the ground. Professionals working with children do not always carry out their legal duty to report signs of violence. The legislative framework does not ensure that the child is comprehensively protected against all forms of violence, including corporal punishment. These gaps could be closed by the new and fairly progressive draft *Law on Fundamentals of Protection of the Rights of the Child*, submitted by the Government in December 2014.

The Supreme Court of Lithuania changed course in a more positive direction – it treated the harm to children from systemic mental abuse much more harshly. Unfortunately, statistical data pertaining to child victims is still not being collected and published, and it is unclear how many pre-trial investigations into domestic violence against children ultimately reach court.

Even though 2014 saw the transposition of the *EU Directive on Combating the Sexual Abuse of Children* into national law, providing for harsher penalties for sexual offenses against children and establishing special protection measures, its provisions are often violated in practice – on average, the number of times a child must participate in pre-trial investigation procedures and recount the violence suffered stands at 3.5, with 6.8 persons attending a child's interview during judicial proceedings. There is also no provision stating that children must always be treated as vulnerable participants in the proceedings and have access to special protection measures.

**Lithuania still supports a system of institutionalization for infants and children** – up to four thousand children are currently being raised in 106 institutions. Although birth rates across the country are falling and many families with children have already emigrated, the number of institutionalized infants and children up to three years of age remains almost unchanged.

Studies show that institutions do not ensure that children are able to have privacy, personal articles of clothing or possessions, or get timely health care. Despite the fact that children are institutionalized following hardship and traumatic experiences, they have practically no access to psychological-psychotherapeutic aid. The findings of the national

audit conducted by the National Audit Office on 31 January 2014 show that the current child care system is inefficient and does not ensure the best interests of the child. The level of state support received by institutions is several times greater than the support given to caregivers, with adoptive families receiving no support whatsoever – even though this is the best option for children.

In 2014, the Ministry of Social Security and Labour approved the Action Plan for the Transition from Institutional Care to Family and Community-Based Care for Disabled Children and Children Deprived of Parental Care 2014-2020 – while it is in some ways progressive, its stated objective is contrary to the aims of the reform and is not sufficient for real change; some plans even reveal a failure to distinguish between families and institutions.

The **expected results of the de-institutionalization process currently underway in Lithuania are too insignificant** and do not ensure that the desired social inclusion rate will be achieved by the end of the 2014-2020 EU funding period for investment and structural programmes – it is planned to reduce the number of disabled adults entering institutional care by a mere 40% and to overhaul only 5 residential social care institutions for disabled adults. The licensing process for care institutions, which has already attracted more than 100 million LTL (about 29 million Euro) in investment from both the EU structural funds and the national budget, raises suspicions that, instead of developing needed individualized services, funds will once again be diverted to reinforcing a flawed system.

Ignoring calls from UN human rights bodies, the CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as civil society, **Lithuania retained an outdated biomedical mental health care model that violates human rights** and promotes patient exclusion, without ensuring human rights safeguards and independent external monitoring of human rights. The national prevention of torture in facilities where liberty is restricted that the Parliamentary Ombudspersons Office has begun to carry out under the *Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has been met with open hostility – there was an attempt to disqualify the findings of the Ombudspersons when they uncovered multiple human rights violations following

an investigation into the psychiatric clinic of the Šiauliai Hospital, with only human rights organizations, not the authorities, rallying to their defence against this fierce assault. An extremely poor *Mental Health Strategy Implementation and Suicide Prevention Action Plan* that does not comply with modern mental health policy and suicide prevention principles was adopted in 2014.

At the end of 2013, Lithuania had the greatest number of prisoners in the European Union, with only Russia and Belarus beating it in that regard in Europe; the **length of prison sentences also reached its peak** since the restoration of independence. Given the fact that reported crime levels (including overall violent crime) in Lithuania are among the lowest in EU, it is obvious that there is a prevailing tendency in the country to put people behind bars regardless of whether it is necessary or even an effective solution.

As seen from the 2014 report by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the **Lithuanian prison system continues to move away from European standards**. All places of incarceration or temporary detention are overcrowded and do not meet hygiene requirements and human rights standards – because of this, some European countries now refuse to hand over defendants to Lithuania. Prison administrations refuse to take action to fight against the caste subculture that completely demoralizes convicts, further fosters their antisocial tendencies and prevents their re-socialization. The rate of suicide in places of detention is (in relative terms) 3 times higher than the rate of suicide in public. Neither the convicts nor the staff are able to enjoy a safe environment – violence among prisoners, as well as instances of prisoners resisting officers, is on the rise. Any future improvements are contingent on how well and transparently the *Programme for the Modernization of Places of Detention* (adopted in 2014) will be implemented.

By the end of 2014, a total of 246 children with behavioural and emotional problems (expressed through delinquent behaviour) as well as children that have committed a crime but were below the age of criminal responsibility resided in **administrative detention establishments for children** – the six socialization centres and the special education centre in Švėkšna. A large proportion of these children come from care

institutions, with others coming from families experiencing problems. Even though the restriction of a child's liberty should be seen as an extreme and exceptional measure, integral to therapy and help that meet the needs of the child, crisis intervention assistance to families as well as services at home have still not been developed, essentially cementing the factual incarceration of children in the above centres and harming them – and the society – in the long term.

In 2014, the exceptionally poor situation of children with socialisation problems also drew the attention of the UN Committee against Torture, the Parliamentary Ombudspersons Office and the National Audit Office. It was found that children do not receive specialized, individualized rehabilitation services; the prevailing culture of control and punishment together with the predominance of the “law of the jungle” lead to numerous child rights violations, with reports of cruel, inhuman and degrading treatment or punishment, such as using handcuffs, batons and tear gas to subdue children, as well as reports of trafficking in children and exploiting them for the purposes of prostitution.

The asylum seekers residing in and foreigners detained at the **Foreigners' Registration Centre** of the State Border Guard Service attracted the attention of the Parliamentary Ombudspersons Office, the Equal Opportunities Ombudsperson Office and the Institution of the Ombudsperson for Children Rights. It was found that the security measures were inadequate, violent incidents were not being documented properly, it was possible to apply special measures disproportionately and medical assistance was not available.

The accommodation conditions are poor – they are not conducive to protecting the rights and legitimate interests of vulnerable people, guaranteeing human dignity and ensuring the necessary conditions for children. The measures used in the Foreigners' Registration Centre to enforce order and ensure safety, such as surrounding the area with a barbed wire fence and having it guarded by uniformed officers, negatively affect asylum seekers' psychological state. It ignores the fact that many of these people have suffered persecution, torture or other inhuman or degrading treatment and that they need comprehensive help. It was also found that there was discrimination based on religious beliefs – people were being fed food that was prohibited by their religion.



Within the Lithuanian legal system, **life imprisonment** actually means what it says on the tin – that is, the convicted person is imprisoned until his death. The ECtHR has noted that life imprisonment without the slightest chance of review or reduction in length, even in view of significant changes in the prisoner and progress towards rehabilitation, is tantamount to inhuman and degrading treatment of the convict. A possibility for releasing a prisoner must exist if his level of rehabilitation reaches a point where continued detention can no longer be justified. At the end of 2013, the ECtHR agreed to examine the application of a group of life prisoners against Lithuania.

The 2014 report of the US Senate Select Committee on Intelligence regarding the **CIA secret detention and extraordinary rendition program** revealed that the program was ineffective, with responsible officials lying and concealing information, and that the health of at least 39 individuals was seriously harmed through illegal methods. The report indicated that detention site “VIOLET” could have potentially operated in Lithuania. The complaint of Abu Zubaydah against Lithuania is still pending before the European Court of Human Rights.

In 2013, HRMI together with REDRESS appealed to the Prosecutor General to launch a pre-trial investigation regarding the alleged illegal detention of another victim of the CIA program of the victim, Mustafa al-Hawsawi, in Lithuania. The European Parliament also urged Lithuania to carry out an effective investigation in this case. In 2014, the Office of the Prosecutor General launched a pre-trial investigation into the alleged illegal transportation of persons across Lithuanian borders.

## Prohibition of slavery and forced labour

Lithuania still lacks proper legal regulation of **human trafficking** cases involving the sexual exploitation of children and adults – this, in turn, leads to such acts often being classified as much less serious offences in practice. This is especially harmful when cases of child trafficking are not classified properly – persons exploiting children are able to avoid prison sentences (for example, persons that have been selling three girls for a month were sentenced to 150 hours of community service) while victims are not able to enjoy all of the rights and guarantees granted to them by law.

Children living in closed-type institutions, such as care facilities or socialization centres, are particularly vulnerable. In 2014 the public learned that systemic trafficking of children took place in the Švėkšna Special Education Centre – however, the staff completely failed to grasp the essence of this crime and blamed the impaired children. In addition, the pre-trial investigation improperly classified the offence, despite the fact that the Directive 2011/36/EU clearly states that the exploitation of persons under 18 for prostitution must always be treated as trafficking in human beings. As such, it is possible that even this human trafficking case will be punished much less harshly than it should.

While victims of trafficking, including children who are sold to beg, steal or engage in forced labour, receive more attention from non-governmental organizations, there is a lack of awareness of the problem and effective prevention at national level. While there are some stellar examples in certain counties, there are also recorded cases where law enforcement officers are unable to promptly and effectively respond to information regarding the trafficking of children for the purposes of begging or theft, fail to notice long-term nearby recruitment efforts or even punish victims.

## Right to liberty and security

Despite the fact that pre-trial detention is the most severe restrictive measure in criminal proceedings and the fact that remand prisons operate under even stricter regimes and have worse conditions than places of detention, **Lithuanian courts allow more than 95% of all requests for pre-trial detention.** Meanwhile, the probability of a successfully appealing such a decision is low – on appeal, orders for detention are quashed in only about 9% of all cases.

In a 2013 study by HRMI, many police officers, prosecutors and judges confirmed that pre-trial detention is often deliberately abused – not only is used in cases where it is not strictly necessary, it is also employed as a means to put pressure on the suspect, despite the fact that this actually breaches Article 5 of the European Convention on Human Rights. The study also revealed that public opinion and the media hold enormous sway in this regard, with cases where detention is not used

quickly becoming scandalized and cases of unjustified detention flying under the radar – as such, detention is selected as the “safe” option.

Even though the *Law on Probation* together with the amended and supplemented *Criminal Code*, *Code of Criminal Procedure* and *Code of the Enforcement of Punishments* establish a new legal framework for probation in Lithuania, **probation has become even less frequent** than before the adoption of the aforementioned changes. With parole becoming increasingly more rare, the number of prisoners, tension in prisons and the families of the convicted continue to increase, with the latter not understanding why the courts refuse to approve decisions of parole commissions that grant conditional release. Gradual integration measures are used very infrequently and the establishment of halfway houses is grinding to a halt; there is a reluctance to use technological innovations that could effectively reduce prison populations, with only 1 in 6 applications for surveillance via electronic bracelets being granted despite the fact that any related transgressions are few and far between.

## Right to a fair trial

In 2013–2014 Lithuania, when transposing EU directives that lay down minimum standards for the **right of suspects** to translation services and to information in criminal proceedings, did not take all of the recommendations into account – as such, in practice, an unreasonable amount of discretion is left to the investigating officer (for example, whether an interpreter should be called or the defence be allowed access to the materials in the case). The current transposition process of the Directive on the right of access to a lawyer also exhibits significant flaws (for example, the Prison Department approved arrangements that actually hinder lawyers in communicating with defendants).

**Children (especially those deprived of parental care) and persons with mental/intellectual disabilities in Lithuania face systemic barriers and are virtually unable to defend their rights.** Even though the law provides them with a right to free primary and secondary legal aid, this right is near impossible to make use of: social care institutions are located in remote areas outside the community and the mobility of their residents is limited; institutionalized children are not informed about

complaints procedures and the availability of legal aid; lawyers often do lack basic knowledge of how to communicate with children or adults with disabilities or mental health disorders, or are simply prejudiced.

In many cases, children are not allowed to properly participate in legal proceedings: their opinions are ignored and only the position of their representatives (guardians) or legal counsel, or the findings of Child Rights Protection Service specialists or psychologists (which are often prepared without any regard for the proper participation of the child in the proceedings), is considered. Investigators, prosecutors and judges lack in competence when interviewing children, particularly impaired children, and therefore ruin the possibility of gathering important evidence. Interview rooms are either equipped or used improperly. The expert potential of non-governmental organizations remains completely untapped, despite the fact that they are prepared to provide critically important services in legal proceedings.

2013-2014 **saw the expansion of both the list of people capable of providing state-guaranteed legal aid services and the list of people eligible for it** (to include persons declared legally incapable, persons involved in proceedings for the return of a wrongfully removed or retained child and children in all cases where the presence of an authorized representative is deemed necessary). The timeframe for assessing the quality of legal aid work of advocates was also shortened to one month. Unfortunately, overall quality of said services is still low – this is also partly a result of awarding legal aid contracts based on the lowest price tendered during procurement. Loopholes in the system lead to paradoxes where the same person is represented by different lawyers, appointed by two separate institutions, on different issues that are nevertheless directly interrelated.

The National Courts Administration has put in considerable work in 2014 to increase the **openness of the Lithuanian judiciary** on the internet, making tangible efforts to ensure that information relevant to both the average internet user and any person specifically interested in the courts or their operation is available at [www.teismai.lt](http://www.teismai.lt). What is important now is to ensure the availability of feedback and that the information is presented in a way that the average user can understand.

## Right to private and family life

**2013-2014 was a controversial time for reproductive rights in Lithuania.** On the one hand, attempts to ban abortion by law, with exceptions provided in only very narrow circumstances (the draft *Law on the Protection of Life in the Pre-Natal Phase*, submitted by the Electoral Action of Poles in Lithuania) struck a significant chord with the Lithuanian public (and, in most cases, were met with resistance); on the other hand, the debate over the regulation of assisted reproduction resurfaced once more with the Ministry of Social Security and Labour and Ministry of Health preparing two alternate laws on assisted reproduction and related services.

Despite the concern expressed by the UN Committee on the Elimination of Discrimination against Women in its concluding observations and the critical conclusions of the Government, the Parliament's Legal Department as well as its European Law Department, there was no final decision on the draft *Law on the Protection of Life in the Pre-Natal Phase* in 2014, and as such it is likely that Parliament will continue to consider it in 2015.

Even though one in five families in Lithuania have to deal with infertility (potentially rising to one in three families in the future), efforts to adopt the *Law on Assisted Reproduction* are hampered by the negative attitudes of the Catholic Church. The development of the new *Programme for the Preparation for Family Life and Development of Sexuality* is being hindered in exactly the same way – the working group was formed to include organisations that oppose human rights education.

**In essence, the situation in Lithuania with regard to the protection of personal data deteriorated in 2013-2014** – in the context of ever-greater invasions of personal privacy committed by the state and private entities, the regulation of and practices relating to the protection of personal data and privacy have either remained static or sprouted new exceptions – exceptions that served narrow interests. The new national legal regulations adopted in this period (for example, the *Law on Cyber Security*) paid little attention to the constitutional imperative to ensure that interferences with privacy are justified and proportionate. Instead, the prevailing view was that public interests – without exception – trump personal privacy,

with the practice of undifferentiated bulk processing of personal data continuing in this period despite the fact that it was harshly criticized by the EU Court of Justice and Article 29 Data Protection Working Party.

Lithuania is late in updating its sanctions for breaches of personal data protection law, and as such they are still several thousand times lower than what is accepted by EU standards. The resources and factual powers of the State Data Protection Inspectorate are insufficient, and as such the majority of personal data breaches remain under the hood, with those responsible going unpunished. The public sector is responsible for the most serious personal data violations – not only does it possess the greatest quantities of sensitive personal data, it is not sufficiently accountable for protecting them and constantly creates legal exceptions favourable to itself.

**The right to the protection of private life in criminal proceedings was not properly ensured in practice:** in the 2013-2014 period, the courts allowed nearly 99% of law enforcement requests to collect information on the communication between people. At the end of 2013, a massive wiretapping operation targeting Baltic News Service reporters was carried out. While it was later found to be unlawful in court, in practice persons involved the overwhelming majority of such cases (between ten and twenty thousand annually) do not go to court over them, despite enjoying reasonable success rates.

Even though the *Civil Code* provides for the right of an adult person to correct his or her physiological gender via medical means, while the European Court of Human Rights in *L. v. Lithuania* (2007) obliged Lithuania to enact required subsidiary legislation on gender reassignment of **transsexuals**, there are still no procedures for gender-reassignment surgery and altering entries in civil status documents.

The measures contained in the action plan proposed by the Government in 2013 are either out of touch with reality in Lithuania (non-compulsory diagnostic and treatment methodologies will most likely not be developed in reasonable time) or have already been discredited by other state agencies – for example, the simplified procedure for altering entries in civil status documents met its tragic end after Parliament labelled gender-reassignment as “nonsense” and returned the bill to the

Ministry of Justice. Due to the failure to ensure respect for the right to privacy of transgendered individuals, the Committee of Ministers decided to transfer the case of *L. v Lithuania* to the enhanced supervision procedure starting from 2015.

The **regulation of incapacity in Lithuania was reformed from the ground-up**, with limited capacity receiving some modifications and new possibilities, namely, supported decision making and advance directives (living wills); the amendments also provided for a regular review of the status of a person's incapacity. Unfortunately, absolute incapacity was not abolished, despite the fact that such regulations are contrary to the *UN Convention on the Rights of Persons with Disabilities*, which Lithuania ratified in 2010 and under which it is obliged to ensure that no person is ever completely deprived of the right to make decision in all aspects of life. Lithuania retains a distinctly post-Soviet belief that the appointed guardian of a person deemed incapable has the right to make all decisions on the latter's behalf.

## Right to freedom of expression, assembly and religion

In 2013, the Supreme Court of Lithuania (SCL) had to examine the **very first hate crime case** involving a serious dismissal of USSR aggression against Lithuania. In the opinion of SCL, interpreting the events of 13 January 1991 in a way that portrays people being killed or otherwise harmed not by Soviet aggression, but by the others defenders of independence, should not be seen as expressing an opinion, but rather as denying and seriously dismissing USSR aggression.

By the end of 2013, Russian media channels also began showing a distortive interpretation of 13 January 1991 events; as a result, the retransmission of said shows was temporarily suspended in Lithuania and Latvia due to encouraging strife and providing biased information.

**Hate speech and hate crimes** in Lithuania is usually directed against individuals or groups of said individuals on the basis of sexual orientation, race, nationality, language or origin.

Lithuanian law enforcement agencies and courts are not always able to

determine the break where permissible expression ends and hate speech begins. For example, authorities may react inappropriately to artistic expression: a pre-trial investigation for the desecration of national symbols was initiated in 2013 against artists who had interpreted the Lithuanian anthem in their own way to highlight the issues of women's right and equality; an exhibition in 2014 refused to display a work of art portraying a woman, not a man, riding the horse on the national coat of arms.

On the other hand, obvious instances of hate speech or even incitement to violence may go unpunished. For instance, in a 2014 case regarding the potential public incitement to violence against a group of people based on their sexual orientation, the Trakai Regional Court held that no crime was committed. The defendant's comment *"Come on, will these perverts march through just like that - trash. arching their asses. nonsense. The faggots are triumphant, they need to be destroyed, as soon as possible..."* was interpreted as excitement provoked by the *Baltic Pride 2013* event – even though at the time procession was yet to take place.

No less surprising was the decision taken by the district court of Klaipėda, where the victim himself – an 18 year old youth – was accused of acting provocatively. According to the court, a person making a picture of two men kissing available in public should and must have known that his eccentric behaviour will most certainly not contribute to the mutual understanding between persons harbouring different views in society, as well as to the promotion of tolerance. These examples illustrate how Lithuanian courts lack in competence when fighting criminal manifestations of hatred. Law enforcement authorities are also lacking in knowledge in this area.

Even though international organizations have urged respect for the freedom of expression and freedom of the media, **Lithuania has yet to abolish criminal liability for insults and libel**. Legal proceedings against journalists for insults or libel pose an exceptional threat to the freedom of speech and the freedom of expression.

There were attempts to decriminalize insults and libel in 2013-2014, but the Government did not agree to the proposals. They deserve criticism for placing insults outside the remit of the law, i.e. it was not proposed to supplement civil regulations on the rules for defending personal



honour and dignity. Therefore, following the adoption of the bill there would have been no liability for insulting a person and he would not be able to effectively defend himself from the offensive information.

The 2010 amendment to the *Law on the Protection of Minors against the Detrimental Effect of Public Information* was used to **limit the self-expression of LGBT persons** on multiple occasions in 2013-2014. In 2013, a public broadcaster refused to air social advertisements, which depicted openly homosexual people inviting others to participate in the *Baltic Pride 2013* in Vilnius, during the day; a year later, some commercial television channels were reluctant to air another social advertisement – this time promoting a change in public attitudes towards homosexual individuals – for the same reason.

In 2014, a fairy tale book titled “Amber Heart” was deemed to be unsuitable to minors under the age of 14; the book contained several stories about same-sex couples (families) and their relationships. The distribution of the book was put to a stop after discerning the presence of “homosexual propaganda”. What is most surprising is that in its conclusion, the Inspector of Journalist Ethics stated that fairy tales, which presented such relationships as normal and self-explanatory, were harmful to the fragile world-view of children, too invasive, direct and manipulative, and as such were detrimental to individuals under 14 years of age.

Lithuania is characterized by very high rates of teen suicides and bullying; as such, the restriction of the availability of information on sexual orientation doubtlessly contributes to the predominance of homophobic bullying in educational institutions. This, in turn, becomes a risk factor for suicide.

**The protection of journalistic sources** is one of the most important guarantees of journalistic activities. However, in 2013 a court seeking to determine the identity of the person responsible for leaking the classified State Security Department note ordered a journalist to reveal her secret source, sanctioned a search of her house and the seizure of the computers of the editorial staff.

After examining the complaint of the BNS journalist, the Vilnius Regional Court admitted that both the obligation to disclose the source of information and the mandate for the search were unlawfully ordered

by the lower court, noting that such measures may only be used as a last resort – when all other means have been exhausted. Furthermore, the disclosure of a journalistic source threatens not only the freedom of expression of a journalist, but casts shadows over his privacy as well.

In 2014, there was an increased number of cases where the **right of journalists to access public interest information** held by state or municipal institutions was restricted. The exceptions to the provision of information contained in Lithuanian law are too broad and abstractly worded, which allows for their abuse. Furthermore, the overall regulation of access to information still favours the protection of information over the public's right to know – even if the information is clearly in the public interest.

The *Law on Assembly* provides that the right to assembly is to be exercised through notification of intent, not a request for permission. This sort of regulation means that the organizers are given the right to choose the venue, time, purpose and form of the assembly without having to ask for permission first, simply by notifying the municipality of the planned assembly.

Regardless of how unacceptable the ideas aired at the assembly would be, the right to freedom of speech and expression, as well as ensuring the presence of pluralism, are virtues that the state has a duty to protect and help realize through its actions.

Still, despite the fact that the right to freedom of assembly is exercised through notification of intent, there were cases in 2013-2014 of municipalities abusing their powers and violating the *Law on Assembly*. For instance, on 16 January 2013, instead of the venue chosen by the *Lithuanian Gay League* for its assembly (procession), the Vilnius City Municipality designated a different place without obtaining agreement from the organizer. This decision was later quashed by the court.

The new edition of the *Law on Assembly* does not provide for the power of municipalities to refuse coordinating a planned assembly or issuing an assembly certificate on the above grounds listed in the Constitution. In other words, the law abolished the power of municipalities to refuse issuing assembly certificates in cases where the organization of the assembly could possibly prejudice state or public security, public order,

public health or morality or the rights and liberties of others. Under the current regulations, only assemblies already taking place may be interrupted on the grounds specified in the Constitution.

Even though **freedom of religion and religious diversity are part of everyday reality in modern society**, with as many as 59 religious communities being present in the country, the representation of said diversity is still a serious challenge for the media.

The relations between the dominant religious organization in Lithuania and the State has recently shown that secularism (or separation of Church and State) is on the wane, with a stronger connection being felt between the secular and ecclesiastical authorities.

## Prohibition of discrimination

What drew the most attention to the **implementation of equal opportunity** in Lithuania in 2013-2014 were the failed attempts of Parliament to appoint an Equal Opportunities Ombudsperson. At the end of 2013, Parliament rejected professor Lyra Jakulevičienė, the long-term head of the UN Development Programme; in November 2014 it voted against appointing Diana Gumbrevičiūtė-Kuzminskienė, a human rights expert and advocate actively working with equality cases. The latter was passed over for openly supporting same-sex partnerships. At the time of the vote, some members of Parliament expressed concern that the “candidate was silent on and concealed her constant participation in Lithuanian gays and lesbians seminars.”

Such statements reveal the homophobic beliefs held by the MPs and raise the question of whether the Ombudsperson’s appointment process and the adopted protocol resolution complied with the principle of equality enshrined in Article 29 of the Constitution. The failure to appoint an Equal Rights Ombudsperson for two years in a row sends a message that the observance of the principle of equal treatment is not high on the political agenda in Lithuania.

**Gender-based discrimination** is evident in many areas: the wage gap in the country between women and men was 12.5% in 2013 and, compared

to 2012, increased by 0.5%. Women head less than a third of all companies operating in Lithuania. A public survey shows that it is significantly easier for a man to become the head of the company than it is for a woman aiming for the same position. The situation with respect to gender equality is exceptionally severe within the academic community – men occupy all of the highest management positions; women occupy lowest level administrative positions.

It should be noted that the practice of employers asking women about their family situation and future family plans when considering them for a job is still prevalent in Lithuania. These questions bear no relevance to the qualifications of the employee or to working conditions, only giving grounds for discriminating people based on their gender or based on family roles identified with their gender; as such, employers have no right to ask existing or future employees for this information.

According to the 2013 Gender Equality Index, Lithuania ranked 18 out of the 27 European Union Member States. Lithuania scored 43.6 on the Gender Equality Index (with 1 representing complete and total gender inequality and 100 representing complete gender equality). The overall EU score was 54.

**Persons with disabilities face discrimination in many areas of life.** For example, intellectually impaired children have a limited right to education in Lithuania. A 2011 Order of the Minister for Education and Science provided that, from 1 September 2012 onwards, upon completing their basic education students with special education needs resulting from an intellectual disability may continue on to vocational programmes or social skills programmes. This provision prevents them from attaining secondary education, discriminating against them because of their disability and violating their rights.

The prevailing social stigma against people with disabilities, especially the mentally disabled, also determines the quality of life in society enjoyed by persons with disabilities, as well as their social integration. Public opinion studies revealed that the majority believe that people with mental disabilities should live in specially adapted homes (46%); 12% believe that they should live in hospitals; and 10% thought that persons with disabilities should live further away from cities, where

their safety would be ensured. Thus, the majority supports the idea of specialized institutions isolated from the public. Only 27% of respondents felt that these people should be able to live anywhere – just like all other people.

Yet another problem lies with the failure to implement and monitor the *UN Convention on the Rights of Persons with Disabilities*, which Lithuania ratified in 2010. The Convention obliges states to appoint an authority to supervise the implementation of the Convention. In Lithuania, the aforementioned coordination functions have been assigned to the Ministry of Social Security and Labour – however, it is incapable of exercising them, since there is no mechanism by means of which the Ministry could influence other public authorities in order to ensure that they implement the provisions of the Convention within their respective fields of competence.

In Lithuania, it is the **Roma that most often face discrimination because of their ethnicity**. A public attitude survey shows that Roma are still the least liked ethnic group: 66% of respondents would not want Roma neighbours; 48% would not want to work in one work place with them and 60.7% claimed that their opinion of the Roma worsened over the last five years.

In the beginning of 2015, media reported that the Vilnius City Municipality has started to draft a project aimed at relocating Roma to the newly built village. Such initiatives, whereby Roma communities are relocated from one “ghetto” to another, do not contribute to the social integration of the community, do not deal with problems relating to their social exclusion, discrimination and poverty; on the contrary – they further contribute to their stigmatization and exclusion from society. Furthermore, Lithuania still lacks systemic state policies to prevent the early withdrawal of Roma children from education.

The amendments to the *Law on Identity Cards and Passports*, adopted in 2014, which allow the nationality of a citizen to be entered into all passports issued after 1 January 2015 upon request, must be seen as negative. While entries of nationality in passports will not be compulsory and will only be done at the request of the citizen him or herself, this provision allows for the differentiation of people according to their nation-

ality and is bad practice with regard to the fight against discrimination or incitement of ethnic strife in the country.

**Intolerance of sexual minorities remains an acute problem in Lithuania:** as much as 42% of respondents claim that they would be afraid if their child's teacher was homosexual; 37% would not wish to belong to any organization with homosexual members; 35% would not elect an openly homosexual candidate to parliament or municipal council.

Despite the country's international commitments and the interpretation given by the Constitutional Court of Lithuania on concept of family, more than a few draft laws were proposed in Parliament that contained provisions directly or indirectly discriminating against sexual minorities. There were attempts to prohibit same-sex couples from adopting Lithuanian citizens; a proposal to associate family with marriage, fatherhood and motherhood; repeat submissions to establish administrative sanctions for the public denigration of a constitutional virtue – namely, the family – through speech, displayed objects, posters, slogans, audio-visual media and other acts; a proposed amendment to the *Criminal Code*, that sought to establish that criticism and discussion of sexual behaviour or sexual practices, beliefs or opinions, or attempts to persuade someone to change such behaviour, practices, beliefs and opinions did not in themselves amount to insults, stigmatization, incitement to hatred, discrimination or incitement to discrimination; sanctions were proposed for “promoting” unconventional relationships.

**Age discrimination** in Lithuania is most keenly felt in the labour market. The situation of older people in the labour market is rather problematic in Lithuania: only 44.8% of Lithuanian residents aged 50 or above are employed. In terms of employing older people, Lithuania ranks 9<sup>th</sup> in the European Union.

At present, the situation in the labour market is much more favourable to young unemployed people than to their older peers. In 2013, Lithuania paid a lot of attention to the integration of young people into the labour market, and thus the number of young unemployed people fell by almost a quarter in the first half of 2013 (24.7%), while unemployment among older people decreased by 2%.

A 2013 study revealed that old age is thought very little of in Lithuania. The stigma of old age and discrimination against the elderly is stronger in Lithuania than in more advanced European countries – in this respect, Lithuania is closer to post-communist countries and countries in the Mediterranean region.

The key factors promoting **religious discrimination in Lithuania** are the Catholic Church (52%), the media (43%) and regulations that restrict the opportunities available to religious minorities in public (32%). Traditional religious communities are given more rights than religious communities seen as non-traditional – for example, the faith of traditional religious communities may be taught in public schools, the state pays social security and health insurance contributions on behalf of the clergy of traditional religion and interference with religious rites amounts to a criminal offense only when rites of state-recognized religious associations are concerned.

In the beginning of 2013, a draft law was proposed that would have required compulsory religious education in school. The revised bill retained the right of parents to select religious studies or ethics classes for their children, but also provided that familiarization with the fundamentals of religion must become a compulsory part of ethics programmes. This inclusion of the topic of the “fundamentals of religion” in the ethics programme basically attempts to circumvent the parents’ decision on the religious education for their children, as well as the constitutional provision stating that state and municipal educational institutions are secular in nature.

Yet another case of religious discrimination occurred in the Foreigners’ Registration Centre, where Muslims were being given meals without consideration for their religious beliefs (they were given pork without due regard to the fact that its consumption is prohibited in Islam). After investigating the case, the Equal Opportunities Ombudsperson Office found that these people were discriminated against based on their religious beliefs.

## Rights of stigmatized groups

**It is difficult for refugees to successfully integrate into Lithuanian society.** Asylum seekers who have been granted asylum in Lithuania experience the feeling of being inferior, useless and unwanted outsiders – human beings whose human rights are limited, who have been imprisoned or bound both psychologically and geographically.

The very first challenge that many refugees face is their reception and detention upon arrival. Asylum seekers complain of how the officers treat them both during arrest and later on, once they have been accommodated in the Foreigners' Registration Centre.

An incident involving two asylum seekers from Afghanistan being detained and imprisoned in 2013 provides an illustrative example of such practices. State Border Guard Service officers arrested these Afghan nationals – who at the time of detention claimed to be 14 and 17 years old – after they crossed the Lithuanian border; the two youths then had to spend more than three months in the Lukiškės remand prison, locked in together with adult men.

The initiative of the Ministry of the Interior to abolish the Migration Department will have a particularly negative effect on Lithuania's asylum system and the proper guarantee of asylum seekers' rights. At the start of 2015 the Ministry of Interior proposed transferring the competences of the Migration Department to the Police Department and the State Border Guard Service (SBGS). Following the reform, asylum procedures would be entrusted to the SBGS.

The State Border Guard Service is responsible for protecting Lithuanian borders and strengthening national security – it is not the right institution for examining claims for asylum made by foreigners arriving to Lithuania.

**Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state.** Many are prone to thinking that immigrants subsist on taxpayer money and may cause social unrest. These stereotypical attitudes are not based on any practical evidence – the majority of respondents indicated that they have had no personal interactions with any group of immigrants from third countries.



The amendment to the *Law on the Legal Status of Foreigners* entered into force on 1 November 2014, tightening the requirements for temporary residence permits to stay in Lithuania: they set a fairly high bar in terms of required foreign investments, the length of time a company had to have been in operation, the number of jobs it brought and the company's equity capital.

These strict new requirements and criteria make it exceptionally difficult for foreigners to come to and legally operate in Lithuania. Furthermore, foreigners who have already established themselves in Lithuania and have been acting in accordance with the old provisions now find it difficult to remain here and continue their work.

Pharmacotherapy using medical opioids (substitution maintenance therapy) to treat **addiction to psychotropic agents** was first introduced in 1964, but Lithuania adopted it only in 1995. In 2013, there were 4619 persons registered in Lithuania with mental or behavioural disorders as a result of opioid abuse, of which only 539 were undergoing substitution maintenance therapy.

Compared to other European countries, the availability of substitution treatment in Lithuania is limited. Nowadays, only 12 out of 60 municipalities offer substitution therapy; in addition, the centres offering these services are not distributed evenly, which is why some individuals have no access to them at all.

Even though Lithuania was one of the first post-Soviet countries to employ harm reduction programmes with respect to drugs (also known as low-threshold treatment), very little attention is paid to this problem today: there were only 10 needle and syringe exchange offices operating in the country in 2014 (12 in 2010); most offices offer only a very limited range of services, are open for just a few hours a day, often run out of tools or even money for wages due to the fact that they have no regular funding.

The consumption of psychotropic agents in Lithuanian prisons is a two-fold problem. On the one hand, it is in places of detention that a lot of people get their first taste of drugs. On the other hand, prisons focus on finding and controlling drugs, with limited success, but completely fail

to understand the need for addiction therapy, what its benefits are and what harm refusing or terminating treatment may cause to the person and to society, once said person is free.

**The prevalence of HIV infection in Lithuania is now approaching 0.01% of the population**, with the exception of two groups at risk where HIV prevalence has well exceeded the epidemic threshold of 5% – people using injecting drugs and people in prison. HIV prevalence among injecting drug users in Vilnius stands at 9.7%. Since 2012, each year saw more and more new cases of HIV infection crop up in Lithuania.

The main tool for monitoring and assessing the epidemiological status of HIV is HIV testing, which should be easily accessible, free and anonymous. Today the state only funds HIV tests for detained and convicted individuals, blood donors and pregnant women. However, the latter two are not groups that bear highest risk of HIV infection. Lithuania is now the only country in the EU that does not offer state-funded and conveniently accessible tests to individuals belonging to groups with a high risk of HIV infection.

## Right to free elections

In 2004, following impeachment proceedings initiated by Parliament for violating the Constitution and breaking his oath, Rolandas Paksas was removed from office as President. The Constitutional Court ruled that, for committing a gross violation of the Constitution and breaching his oath, he was permanently disqualified from standing for election to the office of President or to the Parliament.

In 2011, the European Court of Human Rights ruled that, by permanently and absolutely disqualifying Rolandas Paksas from standing for election to Parliament, Lithuania violated his right to free elections. In 2014 the UN Human Rights Committee found that an absolute **ban of his passive electoral right** “lacked the necessary foreseeability and objectivity” and thus violated the International Covenant on Civil and Political Rights.

Even though both the ECtHR and the UN Committee recommended

that Lithuania set a more proportional period for the restriction of the passive electoral right, this was not achieved in 2013-2014. Quite the opposite – certain proposals in this context resemble attempts to bypass the Constitution and change certain facts established during the impeachment proceedings. For example, there were calls to annul the impeachment of Rolandas Paksas altogether.

This proposal distorts the essence of the ECtHR and the UN Committee decisions, since neither of them established any new circumstances regarding the impeachment or otherwise questioned their legitimacy. Because the facts as established by the Constitutional Court still persist, an annulment would be unlawful.

Lithuania does not fully guarantee **the right of persons with disabilities to participate in free elections**: only 27% of all polling stations are equipped to accommodate people with disabilities. The municipalities are responsible for providing the facilities for polling and ensuring that they are fit for purpose. In addition, the ability to make use of alternate voting methods has not been ensured in practice.

In 2013-2014, the exercise of political rights of people with disabilities was further hampered by their inability to access information. Blind and partially sighted people do not have access to special voting ballots written in Braille, and as such they are unable to vote by themselves. Information regarding the elections is also in short supply with deaf people: only 10-12% of all campaign broadcasts or information on the elections and the candidates are ever translated into sign language.

Since the possibility of stripping persons of their capacity at law still exists, this violates their right to free elections. Persons stripped of their legal capacity are struck from electoral rolls and cannot vote.

The *Law on Elections to Municipal Councils* was amended at the end of 2012, setting out that only permanent residents of that particular municipality may be elected to a municipal council, namely, i.e. Lithuanian nationals, nationals of other EU Member States who have the right to reside in Lithuania, as well as other persons with the right to permanently reside in Lithuania. **The right of foreigners to free elections is limited**: foreigners with temporary residence permits (non-EU nation-

als) are still excluded from running for office or voting in municipal council elections, while the ability to run for mayor is limited exclusively to Lithuanian nationals.

From 1 January 2015 onwards, EU nationals also became eligible to membership in Lithuanian political parties, provided they do not belong to political parties abroad and have resided in Lithuania for the past 5 years without interruption. EU nationals cannot establish political parties in Lithuania. There is no comparable requirement for Lithuanian nationals to abstain from membership in political parties or organizations abroad.

## RIGHT TO LIFE. ARTICLE 2

**L**ithuania abandoned the practice of capital punishment by 1996 and officially abolished it in December 1998, after the Constitutional Court ruled that the death penalty was unconstitutional.<sup>1</sup> At that time, the Constitutional Court noted that the right to life is the most important innate human right. According to Article 19 of the Constitution, a person's right to life is protected by law, and therefore no legislation should permit depriving a human being of his right to life.

*The Constitutional Court noted that the right to life is the most important innate human right. According to Article 19 of the Constitution, a person's right to life is protected by law, and therefore no legislation should permit depriving a human being of his right to life.*

Lithuania also finds itself under international obligations to abolish the death penalty: in 1999, Lithuania ratified Protocol No. 6 to the European Convention on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty,<sup>2</sup> and in 2013 – Protocol No. 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances.<sup>3</sup> Abolition of the death penalty was also one of the pre-conditions for Lithuania joining in the European Union.

Despite the existence of these national and international commitments, in September 2013, a member of the Parliament proposed an amendment to the *Criminal Code*,<sup>4</sup> which would have reinstated capital punish-

<sup>1</sup> 9 December 1998 decision of the Constitutional Court „On the Constitutionality of the Death Penalty Prescribed by Article 105 of the Criminal Code of the Republic of Lithuania“, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=68774&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=68774&p_query=&p_tr2=)

<sup>2</sup> Law „On the Ratification of Protocol No. 6 to the European Convention on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty“, 22 June 1999, No. VIII-1250, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=83128](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=83128)

<sup>3</sup> Law „On the Ratification of Protocol No. 13 to the European Convention on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances“, 16 October 2003, No. IX-1782, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=220298](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=220298)

<sup>4</sup> Draft Law Amending and Supplementing Article 129 of the Criminal Code, 23 September 2013, No. XIIP-1021, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=456343&p\\_query=mirties%20bausme&p\\_tr2=1](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=456343&p_query=mirties%20bausme&p_tr2=1)

ment in Lithuania. This initiative was triggered by the allegedly uncontrollable criminal situation in Lithuania, terrible events and crumbling security in the country, which would be restored by the reinstatement of the death penalty.<sup>5</sup> The submission of this proposal also deftly played on the public unease following the brutal murder of a 17-year old girl.<sup>6</sup>

After negative conclusions by the Legal Department,<sup>7</sup> the Committee on Legal Affairs,<sup>8</sup> and the European Law Department,<sup>9</sup> the proposed amendments to the *Criminal Code* were abandoned – the draft was found to be incompatible with the Constitution, the European Convention on the Protection of Human Rights and Fundamental Freedoms, Protocols No. 6 and No. 13 to the aforementioned Convention, the European Union Charter of Fundamental Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the resolutions of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe, along with other international documents.

In addition to national legislative initiatives that were incompatible with the right to life, Lithuania actually managed to violate the provision pertaining to the right to life, i.e. Article 2 of the European Convention on Human Rights, in the 2013-2014 period. In 2013, the European Court of Human Rights found against Lithuania in the case of *Banel v Lithuania*. The applicant's son died after being crushed by a collapsing balcony in an abandoned building; the mother claimed that the Vilnius City Municipality had failed to supervise the building properly, leading to her son's death.

The European Court of Human Rights noted that the Convention enjoins States to not only refrain from intentional and unlawful takings of life, but to also take appropriate steps to safeguard the lives of those within their jurisdiction.<sup>10</sup> In other words, the state's obligation to guar-

<sup>5</sup> Explanatory Memorandum to the draft Law Amending and Supplementing Article 129 of the Criminal Code, 23 September 2013, No. XIIP-1021, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=456345](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=456345)

<sup>6</sup> „Young Woman Burned Alive in the Trunk of a Car in Panėvėžys County: a Chronology“, published in *15min.lt* on 21 September 2013, <http://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/automobilio-bagazine-je-panevезio-rajone-gyva-sudeginta-mergina-ivykiu-chronologija-59-371024>

<sup>7</sup> Opinion of the Legal Department on the draft Law Amending and Supplementing Article 129 of the Criminal Code, 30 September 2013, No. XIIP-1021, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=456835](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=456835)

<sup>8</sup> Opinion of the Committee on Legal Affairs on the draft Law Amending and Supplementing Article 129 of the Criminal Code, 9 October 2013, No. XIIP-1021, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=457390](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=457390)

<sup>9</sup> Opinion of the European Law Department on the draft Law Amending and Supplementing Article 129 of the Criminal Code, 11 October 2013, No. XIIP-1021, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=457509](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=457509)

<sup>10</sup> 18 September 2013 ECtHR judgment in the case of *Banel v Lithuania*, application No. 14326/11, para. 63, <http://goo.gl/0jw0Qf>

antee the right to life also includes a duty to take the necessary steps to protect the safety of people in public as well as a duty to guarantee the availability of effective, independent legal processes that are able to determine the factual circumstances of an incident, prosecute the guilty party and provide compensation to the victims for the loss incurred.<sup>11</sup>

After examining the circumstances of the case, the Court focused on the shortcomings of the pre-trial investigation, namely, that the investigating officers acted without due diligence and ignored possibilities of identifying those accountable, including bringing charges against the management of the Vilnius municipality.<sup>12</sup> The Court found a violation of the positive obligation to safeguard the applicant's 13-year old son's right to life, and also ruled that the state failed to investigate this incident properly and on time.<sup>13</sup>

## Findings and Recommendations

- *Even though the legislative initiative to reinstate the death penalty that was incompatible with human rights was abandoned in the Parliament, the case illustrates a prevalent practice among Lithuanian legislators – to ignore fundamental human rights and propose draft legislation that is clearly incompatible with them if it serves populist ends.*
- *The position of the institutions that gave their opinions on the draft law and blocked any further consideration of the matter should be commended – the parliamentary Committee on Legal Affairs, the Law Department and the European Law Department gave reasoned arguments as to why the draft should be dropped, showing that the aforementioned initiative was incompatible with both the Constitution of Lithuania and the country's international human rights commitments.*

<sup>11</sup> 18 September 2013 ECtHR judgment in the case of *Banel v Lithuania*, application No. 14326/11, para. 66, <http://googl/0jw0Qf>

<sup>12</sup> 18 September 2013 ECtHR judgment in the case of *Banel v Lithuania*, application No. 14326/11, para. 71, <http://googl/0jw0Qf>

<sup>13</sup> 18 September 2013 ECtHR judgment in the case of *Banel v Lithuania*, application No. 14326/11, para. 72, <http://googl/0jw0Qf>





# PROHIBITION OF TORTURE, INHUMAN OR DEGRADING TREATMENT. ARTICLE 3

## I. Domestic Violence and Violence against Women

### Domestic Violence

Domestic violence and violence against women are still an exceptionally acute problem in Lithuania. According to the data from the Police Department, the number of reported cases grew in 2013 – in excess of 21,000 reports were registered during that period. 18,000 reports of domestic violence were received in the first eight months of 2014 alone.<sup>14</sup>

On 28 May 2014, the Government approved the *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020*. The Programme demonstrates an exceptionally backward attitude towards the problem of domestic violence, classifying it as an exclusion issue and not a human rights one.

On 28 May 2014, the Government approved the *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020*.<sup>15</sup> The Programme demonstrates an exceptionally backward attitude towards the problem of domestic violence, classifying it as an exclusion issue and not a human rights one. The final version of the Programme was adopted without taking into account the proposals of the experts of the working group and without adhering to international good practice standards.<sup>16</sup>

The *Criminal Code* and the *Code of Criminal Procedure* were amended on 2 July 2013 in order to bring them

<sup>14</sup> “CHR: Domestic violence is leaving the underground, with the latency of this crime decreasing”, 25 September 2014, [http://www3.lrs.lt/pls/inter/w5\\_show?p\\_r=4463&p\\_d=150905&p\\_k=1](http://www3.lrs.lt/pls/inter/w5_show?p_r=4463&p_d=150905&p_k=1)

<sup>15</sup> Resolution No. 485 of the Government “On the Adoption of the National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020”, dated 28 May 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471939&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471939&p_tr2=2)

<sup>16</sup> *Women's Rights – Universal Human Rights* (a coalition), Letter on the implementation of the Law on Protection Against Domestic Violence, 6 October 2014, <https://www.hrmi.lt/uploaded/Documents/Viesi%20pareiskimai/Kreipimasis%20i%CC%A8%20Valstybe%CC%87s%20vadovus%202014%2010%2006.pdf>

in line with the *Law on Protection against Domestic Violence*.<sup>17</sup> The amendments provide that a pre-trial investigation must be initiated in all cases where the offence bears elements of domestic violence, even in the absence of a complaint by the victim or a statement by his/her legal representative.

The *Law on Protection against Domestic Violence* was amended twice in 2013-2014. The amendments clarified the funding procedure for preventive measures in connection with victims of domestic violence. Municipalities must provide for these measures in their strategic plans, while the Government has to fund the prevention activities of non-governmental organizations.<sup>18</sup> In addition, the amendments repealed an oft-criticized wording of a provision of the law, in practice interpreted as an imperative to obtain the victim's written consent to pass on the details of the incident and the victim's contact details to Specialized Support Centres. According to the current wording, police officers must only inform victims that they will be contacted by a Specialized Support Centre for assistance, and then immediately notify the Centre of the incident.<sup>19</sup> There were more amendments, including the obligation of Specialized Support Centres to provide integrated support services for 24 hours a day, which will take effect from 1 January 2016.<sup>20</sup>

However, some loopholes remain even after amending the *Law on Protection against Domestic Violence* and adopting the *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020*. First of all, the protection and guarantees offered by the *Law on Protection against Domestic Violence* is not available to former spouses or long-term partners that do not share a common household. This is because practice tends to interpret "domestic environment" narrowly, taking cue from the provisions of the *Criminal Code* that do not include former spouses or long-term partners.<sup>21</sup> Unfortunately, violence among these people occurs frequently.

<sup>17</sup> Law Amending and Supplementing Articles 167, 409 of the Code of Criminal Procedure, 2 July 2013, No. XII-502 <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=453257&b=>; Law Amending and Supplementing Articles 140, 145, 148, 149, 150, 151, 165 of the Criminal Procedure Code, 2 July 2013, No. XII-501, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=453256&b=>

<sup>18</sup> Law Amending Article 4 of the Law on Protection against Domestic Violence, 2 July 2013, No. XII-474, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=453406&b=>

<sup>19</sup> Law Amending Articles 5, 7, 8 and 9 of the Law on Protection against Domestic Violence, 10 April 2014, No. XII-815, Article 4, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=468928&b=>

<sup>20</sup> Law Amending Articles 5, 7, 8 and 9 of the Law on Protection against Domestic Violence, 10 April 2014, No. XII-815, Article 3, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=468928&b=>

<sup>21</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence", 2014, p. 10-11, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

Furthermore, there still is no national centre to coordinate the activities of all Specialized Support Centres. Even though the 2011 *Order on the Approval of the Specialized Support Centre Programme* provides that the activities of Specialized Support Centres that provide specialized integrated support services to victims of violence are to be monitored by a coordinating centre,<sup>22</sup> up until now all the Specialized Support Centres have operated without a single entity coordinating their actions.

The fact that the funding of Specialized Support Centres is insufficient is another serious problem. Even though now, following corrections to the *Law on Protection against Domestic Violence*, Specialized Support Centres receive 2.6 to 4.5 more reports of incidents, their funding has not gone up at all.<sup>23</sup> At the same time, the demands placed on Specialized Support Centres keep growing: from 2016 onwards, these centres will have to operate for 24 hours a day. In addition, problems relating to the implementation of legislation can be observed in practice: victims of domestic violence quite often do not receive support when the offender breaks the protective measures put in place; a fair share of pre-trial investigations never get off the ground, are terminated or end in reconciliation between the victim and the offender.<sup>24</sup> The persistent belief that reconciliation preserves the family is not only inconsistent with treating domestic violence as an exceptionally dangerous crime, it enables the violence to repeat itself and thus puts the lives of the victims – most of whom are women and children – in jeopardy.

Lithuania must transpose the provisions of the EU *Victims' Rights Directive*<sup>25</sup> into national law by 15 November 2015 – however, by the end of 2014 Lithuania was still not ready for properly implementing the directive in order to ensure the rights of victims of domestic violence.<sup>26</sup> For example, criminal laws do not clearly regulate victims' rights to protection, nor do they cover protection measures or how the latter are to

<sup>22</sup> Order No. A1-534/V-1072/IV-931 of the Minister of Social Security and Labour, the Minister of Health and the Minister of the Interior "On the Adoption of the Specialized Support Centre Programme", dated 19 December 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415786&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415786&p_tr2=2)

<sup>23</sup> Daiva Baranauskienė, "The price for failure to learn was paid in human lives", *manoteises.lt*, 21 January 2015, <http://manoteises.lt/straipsnis/neismoktu-pamoku-kaina-zmoniu-gyvybes/>

<sup>24</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence", 2014, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

<sup>25</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, <http://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:32012L0029&from=en>

<sup>26</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence", 2014, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

be put in place; no methodologies have been established for assessing the risk of secondary or repeat victimization, intimidation or revenge; victims of domestic violence lack the necessary information on criminal proceedings, legal aid, physical protection from intimidation and revenge that is available for themselves and their children.<sup>27</sup>

### Concept of Gender-Based Violence

In its July 2014 Concluding Observations for Lithuania, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) identified the fight against violence against women as one of the key priority areas for Lithuania.<sup>28</sup> It recommended for Lithuania to adopt a comprehensive strategy to supplement the *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020* and to eliminate all forms of public or private sex- and gender-based violence against women; to regularly collect, analyse and publish data on cases of all forms of violence against women and girls that have been reported, investigated and prosecuted; and to establish crisis and walk-in centres that offer protection and assistance to all women who are victims of violence.<sup>29</sup>

In addition, CEDAW Committee recommended speeding up the ratification of the Council of Europe *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention), as well as the process of bringing national legislation in line with it. Lithuania signed the Istanbul Convention on 7 June 2013, at the same time submitting a unilateral declaration that it will apply the provisions of the Convention in accordance to the principles and norms contained in the Constitution of Lithuania.<sup>30</sup> In law, the aforementioned unilateral declaration should be treated as a declarative statement, which means that it does not really reduce or change the state's obligations under the Convention.<sup>31</sup>

<sup>27</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence", 2014, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

<sup>28</sup> UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the fifth period report of Lithuania, 18 July 2014, paragraph 46, <http://www.socmin.lt/download/8045/cedaw%20concluding%20observations%20lt.pdf>

<sup>29</sup> UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the fifth period report of Lithuania, 18 July 2014, paragraph 23(b)-(d), <http://www.socmin.lt/download/8045/cedaw%20concluding%20observations%20lt.pdf>

<sup>30</sup> "Council of Europe Convention on preventing and combating violence against women and domestic violence was signed", 7 June 2013, [http://amb.urmi.lt/popup2.php?ru=bS9rX2FydGlibGUvZmlsZXZmVdl9hcnRyY2xlX3ByaW50Ln-BocA=&tmpl\\_name=m\\_article\\_print\\_view&article\\_id=36097](http://amb.urmi.lt/popup2.php?ru=bS9rX2FydGlibGUvZmlsZXZmVdl9hcnRyY2xlX3ByaW50Ln-BocA=&tmpl_name=m_article_print_view&article_id=36097)

<sup>31</sup> Similar general declarations of intent and derogations are sometimes submitted for religious-political reasons –

The ratification of the Istanbul Convention in Lithuania is strongly opposed by the Lithuanian Bishops' Conference, along with related organizations and politicians,<sup>32</sup> who portray this Convention as a document that would allegedly establish additional genders and legalize gender reassignment.<sup>33</sup> This

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issue has yet to be put forward before the Parliament, despite the fact that, with news of women's deaths resounding throughout the country, the ratification of the Convention would show political will to combat all forms of violence against women and also ensure that women are able to properly enjoy their human rights.

The *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020* continues implementing the provisions of the 2006 *National Strategy for the Reduction of Violence against Women*,<sup>34</sup> in so far as they relate to domestic violence. Unfortunately, this Programme, much like the *Law on Protection against Domestic Violence*, does not contain a definition of gender-based violence. This definition must be enshrined in national law in order to effectively combat violent gender-based crime. International law places an obligation on Lithuania to eliminate this form of violence.<sup>35</sup>

The aforementioned *National Programme* focuses solely on the reduction of the scale of domestic violence, which is why today, after the expiry of the *National Strategy for the Reduction of Violence against Women*, there are no programmes or strategies to combat violence against women generally.

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for example, Saudi Arabia in 1996 and Qatar in 1995 indicated that they would only apply the provisions of the *Convention on the Rights of the Child* to the extent that they do not contradict Islamic law. Status of the UN Convention on the Rights of the Child, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=IV-11&chapter=4&lang=en#EndDec>

<sup>32</sup> Ieva Urbonaitė-Vainienė, "Bishops left stunned: Lithuania seeks to redefine the concept of gender", *delfi.lt*, 9 May 2013, <http://www.delfi.lt/news/daily/lithuania/vyskupai-pribloksti-lietuvoje-siekiama-itvirtinti-kitokia-lyties-samprata.d?id=61346125#ixzz3SCCjYpAk>

<sup>33</sup> "The Istanbul Convention, which legalizes gender reassignment, will not be put forward for ratification in the near future", *bernardinai.lt*, 11 October 2013, <http://www.bernardinai.lt/straipsnis/2013-10-11-lyties-keitima-iteisnanti-stambulo-konvencija-artimiausiu-metu-nebus-teikiama-seimui/108578>

<sup>34</sup> Resolution No. 1330 of the Government "On the Adoption of the National Strategy for the Reduction of Violence Against Women, Together with its Plan of Implementation for 2007-2009", dated 22 December 2006, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=306081](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=306081)

<sup>35</sup> UN Convention on the Elimination of All Forms of Discrimination Against Women, 3 September 1981, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=20416&Condition2=>, General Recommendation No. 19: "Violence against women" of the UN Committee on the Elimination of Discrimination Against Women, 1992, <http://www.refworld.org/docid/52d920c54.html>, 9 June 2009 ECtHR judgment in the case of *Opuz v Turkey*, application No. 33401-02, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92945#{"itemid":\["001-92945"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92945#{)

As evidenced by recent high-profile cases to hit the public, women and girls are often subjected to violence outside the domestic environment as well – for example, during their first dates,<sup>36</sup> or from complete or relative strangers.<sup>37</sup> In the fight against all forms of violence against women, it would be wise to take into consideration CEDAW Committee's recommendation to adopt a strategy supplementing the *National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020* in order to eliminate all forms of violence against women in the private or public spheres.

On 22 October 2013, the European Court of Human Rights gave its decision in the case of *D.P. v Lithuania*, which concerned domestic violence.<sup>38</sup> In a unilateral declaration, the Government admitted to a violation of Article 3 of the *European Convention on Human Rights*, which prohibits torture, inhuman and degrading treatment, and offered compensation to the applicant. The Court decided to discontinue the proceedings. This marks the second time that Lithuania lost a domestic violence case in Strasbourg for not being able to ensure the effective protection of the victim and the proper investigation of her complaints concerning incurred violence.<sup>39</sup>

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## Findings and Recommendations

- *The amendments to the Law on Protection against Domestic Violence that facilitate the protection of the rights of victims of domestic violence, adopted in the 2013-2014 period, must be commended.*

<sup>36</sup> "Court shows mercy to teenager who killed a 13-year old after getting to know her on Facebook", *delfi.lt*, 29 November 2013, <http://www.delfi.lt/news/daily/crime/po-pazinties-per-facebook-trylikamete-nuzudes-paauglys-sulauke-teismo-malones.d?id=63411742>

<sup>37</sup> "Girl burned alive in the trunk of a car in Panevėžys County: a chronology of events", *15min.lt*, 21 September 2013, <http://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/automobilio-bagazineje-panevezio-rajone-gyva-sudeginta-mergina-ivykiu-chronologija-59-371024>; "Valdas J., who gave J. Šikšniūtė a ride to her death, liked to show off", *lytas.lt*, 18 November 2014, <http://www.lytas.lt/lietuvos-diena/kriminalai/i-mirti-j-siksniute-paveze-jes-valdas-j-megdavo-pasipuikuoti.htm>

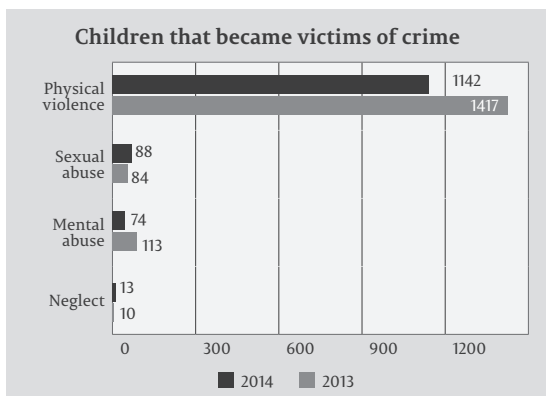
<sup>38</sup> 22 October 2013 ECtHR decision in the case of *D.P. v Lithuania*, application No. 27920/08, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-138514#\["itemid":\["001-138514"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-138514#[)

<sup>39</sup> Lithuania had already been found to have violated the rights of a victim of domestic violence in the case of *Valiulienė v Lithuania*, 26 March 2013 ECtHR judgment, application No. 33234-07, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117636#\["itemid":\["001-117636"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117636#[)

- *In order to continue effectively combating violence against women, it is imperative to ratify the Istanbul Convention.*
- *In order to eliminate certain loopholes, it is necessary to take into account the recommendations submitted by the UN Committee on the Elimination of Violence against Women and supplement the National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020 with a strategy that would aim to combat all forms of violence against women, establish crisis and walk-in centres for women, analyse data and create appropriate coordination and monitoring mechanisms.*
- *It is recommended that a centre coordinating the activities of Specialized Support Centres be established without delay, with sufficient funding being allocated to ensure the continuous operation of Specialized Support Centres.*
- *It is recommended that training concerning the peculiarities of domestic violence be available not only to judges and officials coming into direct contact with the victims of crime, but also to bailiffs and health care professionals, who are often the first to see and can identify traumas associated with violence in their professional capacity.*

### Violence against Children

According to official statistics, in 2014, 2464 children became victims of crime (3041 in 2013), with 1142 falling victim to physical violence (1417 in 2013), 88 to sexual abuse (84 in 2013) and 74 to mental abuse (113 in 2013)



and 13 to neglect (10 in 2013).<sup>40</sup> Most often children suffered at the hands of their parents, guardians or close relatives – in 2014, they were responsible for almost 64% of all child victims (68% in 2013). To compare, 36,7% of children were recorded as victims of their close ones in 2010 (and barely 29% in 2008). It should be noted that the overall number of child victims is shrinking annual-

<sup>40</sup> Information Technology and Communications Department, 2013-2014 data of the Departmental Register of Criminal Offences, [http://www.ird.lt/infusions/report\\_manager/report\\_manager.php?lang=lt&rt=1](http://www.ird.lt/infusions/report_manager/report_manager.php?lang=lt&rt=1)



ly.<sup>41</sup> Therefore, children can feel relatively safe in public – that is, on the street or at school – but not at home, i.e. statistics indicate that children are least safe and most prone to becoming victims in none other than their domestic environment.

The increase in the number of officially reported cases of children being harmed by their close ones could have come about as a result of the application of the *Law on Protection against Domestic Violence*,<sup>42</sup> which hardened the state's stance on domestic violence. Still, children only comprise 7-8% of all victims in statistical data pertaining to domestic violence.<sup>43</sup> From analysing publicly expressed attitudes of parents (the majority of Lithuanian parents condone and use violence against children) it is clear that this is still a latent issue and that official statistics do not reflect the real scope of domestic violence against children.<sup>44</sup>

Studies show that in at least 40% of cases of domestic violence against an adult, violence is also perpetrated against a child in that same environment.<sup>45</sup> But children lack information regarding where to go for help, as well as how to safely report the transgressions of their parents. For example, out of the 268 complaints examined by the Children's Rights Ombudsperson in 2013, only 6 were submitted by children.<sup>46</sup> In addition, children are often not capable of recognizing that violence is being perpetrated against them.

Women suffering from domestic abuse<sup>47</sup> are quite often reluctant to report violence against their children because they fear the potential consequences (the state will put her children into care, grant custody to the offender, etc.)<sup>48</sup> Even when the authorities receive a report of violence

<sup>41</sup> This shift was most influenced by a decrease in the number of property crimes (theft, robbery) against children, with the number of violent crimes remaining largely unchanged

<sup>42</sup> Law on Protection Against Domestic Violence, 26 May 2011, No. XI-1425, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400334&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400334&p_query=&p_tr2=2)

<sup>43</sup> The statistics do not include instances of sexual violence

<sup>44</sup> "Survey finds: more than half of parents beat their children", *delfi.lt*, 14 January 2013, <http://www.delfi.lt/news/daily/education/apklausa-puse-tevu-musa-vaikus.d?id=60413791>; "SOS: half of parents belt their children for discipline", *snaujienos.lt*, 25 February 2013, <http://www.snaujienos.lt/naujienos/miesto-gyvenimas/27585-sos-pus-tv-vaikus-auklja-diru>

<sup>45</sup> Marianne James, "Domestic violence as a form of child abuse: identification and prevention", June 1994, <https://www3.aifs.gov.au/cfca/publications/domestic-violence-form-child-abuse-identification>

<sup>46</sup> Children's Rights Ombudsperson, Activity Report 2013, published on 31 March 2014, No. 4-4, <http://www3.lrs.lt/docs2/ATMQTAUA.PDF>

<sup>47</sup> Around 82% of all victims of violence perpetrated by their close ones are women: see 2012-2013 report of the Police Department, <http://www.bukstipri.lt/uploads/Bajorinas%5B1%5D.pdf>

<sup>48</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence",



against a child submitted by an adult family member, they may choose to ignore it and deflate the danger posed by the violent acts, without launching a pre-trial investigation or even notifying Child Protection Services.<sup>49</sup>

It should be noted that not even specialists working with children are always able to carry out their legal duty to notify the relevant authorities when they notice indications of child abuse.<sup>50</sup> The sum of these reasons leads to the domestic abuse of children remaining a latent crime, with children being unable to make use of the protection and specialist assistance provided by the law.

According to the data provided by the courts, the number of criminal cases regarding domestic violence against children is rising,<sup>51</sup> but it is

difficult to assess the change in prosecution trends because no statistical data pertaining to cases involving child victims – for example, how many cases have been examined, what the defendants were charged with, what the outcome of the proceedings was or what penal sanctions were given to the defendant – is not being collected, compiled and published.

A review of the case law reveals that the hardened stance on domestic violence, especially on mental abuse, is not always reflected in judgments. For example, in 2013 the Supreme Court of Lithuania, after as-

*In 2013 the Supreme Court of Lithuania, after assessing a father's degrading treatment (embarrassing nicknames, insults and shouts), persecution and violation of privacy of (filming, constant stalking) and controlling behaviour towards (grabbed a plugged-in computer, dragged it to another room) his two daughters, aged 11 and 12, found that such actions "formed part of a father's duty to educate his children".*

sessing a father's degrading treatment (embarrassing nicknames, insults and shouts), persecution and violation of privacy of (filming, constant stalking) and controlling behaviour towards (grabbed a plugged-in computer, dragged it to another room) his two daughters, aged 11 and

2014, material collected during study, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

<sup>49</sup> Human Rights Monitoring Institute, "Victims Rights Directive: a New Approach to Victims of Domestic Violence", 2014, p. 15, [https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas\\_auku-teisiu-direkt\\_1.pdf](https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf)

<sup>50</sup> Children's Rights Ombudsperson, Activity Report 2013, published on 31 March 2014, No. 4-4, <http://www3.lrs.lt/docs2/ATMQTAUA.PDF>

<sup>51</sup> "Number of criminal cases regarding domestic violence is increasing: the defence of the rights of the child is the court's priority", 14 July 2014, <http://kauno.teismas.lt/index.php/lt/2012-07-18-06-00-58/teismo-pranesimai/78-naujenos/314-daugeja-baudziam-j-byl-del-smurt-artimoje-aplinkoje-vaik-teisi-gynyba-teismo-prioritetas1>

12, found that such actions “formed part of a father’s duty to educate his children”.<sup>52</sup> It should be noted, however, that the Supreme Court corrected this practice in 2014 by treating harm and danger of systemic mental abuse to children much more harshly.<sup>53</sup>

2014 saw the transposition of the EU *Directive on Combating the Sexual Abuse of Children* into national law – sexual crimes against children received harsher punishments in the *Criminal Code* and special protection measures for child witnesses and victims were included in the *Code of Criminal Procedure*, such as only being required to attend hearings in exceptional cases, the ability to make audio or video recordings of statements, the ability to give evidence using communications technologies without being present in the courtroom, no more than one interview during the pre-trial investigation and other measures.<sup>54</sup>

However, in practice it often happens that the child is “unofficially” interviewed several times before the so-called “official” interview.<sup>55</sup> Furthermore, during the proceedings the child might be interviewed by more than one person about the events – for example, a Child Rights Protection Service specialist, a school psychologist and/or a forensic medical expert.<sup>56</sup> The average number of times children have to participate in procedures and recall the abuse suffered during pre-trial investigation stands at 3.5.<sup>57</sup> The more frequently a child is questioned, the greater the risk that he will suffer repeat trauma or change his evidence.

About a third of child victims are called to attend court hearings, with 6.8 persons on average present at his examination during the proceedings – most often the judge, the prosecutor, the secretary, the suspect’s counsel, the suspect him- or herself and/or a Child Rights Protection Service specialist.<sup>58</sup>

<sup>52</sup> 4 June 2013 ruling of the Supreme Court of Lithuania in criminal proceedings No. 2K-299/2013

<sup>53</sup> 1 July 2014 ruling of the Supreme Court of Lithuania in criminal proceedings No. 2K-347/2014

<sup>54</sup> Law Amending Articles 7, 8, 60, 95, 151, 1511, 153, 162, 307, 308, 309 to, Supplementing the Annex of and Including Articles 1001, 1002, 1521 and 2511 in the Criminal Code, 13 March 2014, No. XII-776, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=467421&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=467421&p_tr2=2); Law Amending Articles 9, 154, 186, 280, 283 to and Supplementing the Annex of the Code of Criminal Procedure, 13 March 2014 No. XII-777, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=467422&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=467422&p_tr2=2)

<sup>55</sup> Consultation with experts from the “Child Support Centre” on 13 January 2015

<sup>56</sup> Consultation with experts from the “Child Support Centre” on 13 January 2015.

<sup>57</sup> Child Support Centre, national report “The Protection of Child Victims in Lithuania”, 2013, [http://www.vaikystebes-murto.lt/\\_sites/paramosvaikamscentras/media/images/Leidiniai/nacional%20report%20lt%20fr%20project.pdf](http://www.vaikystebes-murto.lt/_sites/paramosvaikamscentras/media/images/Leidiniai/nacional%20report%20lt%20fr%20project.pdf)

<sup>58</sup> Child Support Centre, national report “The Protection of Child Victims in Lithuania”, 2013, p. 33, [http://www.vaikystebes-murto.lt/\\_sites/paramosvaikamscentras/media/images/Leidiniai/nacional%20report%20lt%20fr%20project.pdf](http://www.vaikystebes-murto.lt/_sites/paramosvaikamscentras/media/images/Leidiniai/nacional%20report%20lt%20fr%20project.pdf)

The *Code of Criminal Procedure* provides that, in case it is possible that the child will suffer mental trauma or some other serious consequence as a result of being interviewed in court, he or she should not be called to the hearing – instead, either his or her statement, given to the pre-trial investigation judge, is read out in court, or an audio/video recording made during the pre-trial investigation is shown.<sup>59</sup> However, there are no regulations as to who determines if there is a risk of mental trauma or some other serious consequence to the child, or how this assessment is carried out.

The *Victims' Rights Directive* provides that children must always be regarded as vulnerable participants in the proceedings, with special protection measures being available to them.<sup>60</sup> However, unclear procedure and conditions for applying these protection measures may preclude their application. Therefore, it would be reasonable to change the regulations so that special protection measures would always be available to victims and witnesses under eighteen years of age, unless the court orders otherwise in exceptional cases.

The legal protection against violence of children was reinforced after the *Law on Protection against Domestic Violence* came into force at the end of 2011. However, the legislation does not ensure that children are given comprehensive protection against all forms of violence, including corporal punishment. Since the state does not have a clear stance on corporal punishment, society persists in tolerating violence as a means of “disciplining” children; with such attitudes being prevalent, it is difficult to effectively prevent violence against children and educate the public on non-violent methods for bringing up children.

The new draft *Law on the Fundamentals of Child Rights Protection*, submitted to the Government by the Ministry of Social Security and Labour in December 2014, is slated to replace the main law on the protection of the rights of the child currently in force. The new draft law aims to establish a prohibition against all forms of violence, including corporal punishment, to place specialists under a duty to report signs of violence against children, and also regulate the liability and actions

<sup>59</sup> Code of Criminal Procedure, 14 March 2002, No. IX-785, Article 280, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=494011](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494011)

<sup>60</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, Article 20(4), <http://eur-lex.europa.eu/legal-content/LIT/TXT/PDF/?uri=CELEX:32012L0029&from=en>.

of services when providing support to families experiencing difficulties or promptly responding to cases where a child must be removed an unsafe family environment.<sup>61</sup>

## Findings and Recommendations

- *To prohibit all forms of violence against children by law, and to provide measures to enforce the prohibition.*
- *To create an effective mechanism allowing children to safely report violence used against them or any other infringements of their rights.*
- *To engage in the prevention of violence, teaching children to recognize violence and get help, to educate and encourage the public as well as specialists to report cases of violence against children.*
- *To invest in programmes for introducing positive, non-violent methods of child-rearing that are accessible to all parents.*
- *To ensure that perpetrators of violent crimes against children are prosecuted effectively.*
- *To ensure that the child's rights and interests are being protected properly during criminal proceedings, and to provide training for officers, judges and specialists.*
- *To improve the collection and publication of statistical data pertaining to violence against children, especially at the level of the courts.*
- *To more actively inform professionals and the public about their duty to report signs of violence against or mistreatment of children to Child Rights Protection Services.*

## II. Rights of Persons in Closed Type Institutions and Deinstitutionalization

### Residential Care Homes for Infants and Children

The *UN Convention on the Rights of the Child* establishes that children

<sup>61</sup> Law Amending the Law on Fundamentals of Protection of the Rights of the Child, 2014, No. 13-3188-01(09), [http://www.lrs.lt/pls/proj/dokpaieska.showdoc\\_l?p\\_id=284056&p\\_org=7&p\\_fix=y&p\\_gov=y](http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=284056&p_org=7&p_fix=y&p_gov=y)

that are temporarily or permanently deprived of their family environment, or when remaining in said environment is against their interests, have a right to state protection and support.<sup>62</sup> When planning and providing services to families, the state must ensure the child's right to, above all, be raised in his own family, and should only take the child away if all measures to help the family have been exhausted and the efforts of social workers had failed.<sup>63</sup> Should it be impossible for the child to be raised by his biological family, the state must ensure his right to be raised in another family, with institutional



*Photo: the Vilnius Care Home for Infants with Development Disorders, [http://www.alfa.lt/straipsnis/15144893/Vilniaus\\_sutrikusio\\_vystymosi\\_kudikiu\\_namuose\\_bus\\_irengtos\\_vaizdo\\_kameros=2013-07-12\\_21-51](http://www.alfa.lt/straipsnis/15144893/Vilniaus_sutrikusio_vystymosi_kudikiu_namuose_bus_irengtos_vaizdo_kameros=2013-07-12_21-51)*

care being the option of last resort in extreme cases; in fact, the institutionalization of children under three years of age is a violation of their rights in and of itself.<sup>64</sup>

There are 106 residential care institutions for children operating in Lithuania: 5 care homes for infants with development disorders; 8 state-managed children's care homes; 4 residential care homes for children with disabilities; 55 municipal children's care homes; 13 municipal care groups; 21 children's care homes that are not managed by the state.

All infants' homes in Lithuania are called "care homes for infants with development disorders", even though these institutions admit not only children with special needs or severely disabled children, but healthy children as well. 3-6 months spent in the institution is sufficient to impair the development of healthy children.

<sup>62</sup> UN Convention on the Rights of the Child, 2 September 1990, Article 20, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=19848&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=19848&p_query=&p_tr2=)

<sup>63</sup> 14 March 2014 ruling of the Supreme Court of Lithuania in civil proceedings No. 3K-3-92/2014 (S)

<sup>64</sup> Regional Office for Europe of the UN High Commissioner for Human Rights, "The rights of vulnerable children under the age of three: ending their placement in institutional care", 2011, [http://www.europe.ohchr.org/Documents/Publications/Children\\_under\\_3\\_webversion.pdf](http://www.europe.ohchr.org/Documents/Publications/Children_under_3_webversion.pdf)

Even though officially Lithuania has been in the throes of child care reform since 2007, children deprived of a family environment are still not being offered enough alternatives to be cared in a family or a community, with institutionalization in reality being the go-to measure instead of the measure of last resort. The state's priorities in the child care system are reflected in the level of support that the state lavishes on institutional care; to compare, the support given to foster families is several times smaller, while adoptive families receive no support whatsoever.<sup>65</sup>

Following the launch of the reform of the child care system back in 2007, the development of the infrastructure of care institutions received the most funds and attention, i.e. in 2013-2014, a total of 51,8 million LTL (around 15 million EUR) were allocated and used in the development of the infrastructure of residential child care institutions (insulation, construction of new institutions, etc.) under EU and multilateral EEA grants. The fact that priority in funding was given to investing in the infrastructure instead of in establishing community based services for families and children left without parental care demonstrates that the authorities responsible for the reform of child care and monitoring the quality of investment hold dismissive attitudes towards the reform and do not understand it correctly.

The problem of the selection of the type of care for the child (in a family, in a communal home or in an institution) remained acute in the 2013-2014 period – that is, in choosing the type of care, preference was given to institutionalization instead of its alternatives. The fact that institutional care is often the go-to measure is also reflected in statistical data: out of 2112 children that were left without parental care in Lithuania in 2013, a whopping 1234 were institutionalized (some children were institutionalized more than once: 1272 cases of institutionalization were recorded in total); more than a third of cases of institutionalization annually involve children under 3 years of age. Data from 31 December 2013 shows there were 10 146 children under state care at the time: 3821 were in institutions, 5906 were with a family and 419 – in a group home.<sup>66</sup> The average cost of monthly care per institutionalized child in 2012 was

<sup>65</sup> National Audit Office, national audit report "Does the child care system comply with the best interests of the child?", 31 January 2014, No. VA-P-10-3-1, [http://www.vkontrole.lt/audito\\_ataskaitos.aspx?tipas=2](http://www.vkontrole.lt/audito_ataskaitos.aspx?tipas=2)

<sup>66</sup> State Child Rights Protection and Adoption Service, Activity Report 2013, 2014, No. 5-4, <http://www.vaikoteises.lt/media/file/ataskaitos/2013metuataskaita.pdf>

*The poor child rights protection policy in Lithuania leads to gross violations of children's rights: in the beginning of 2013, a five-year old girl had to be rushed to the clinics in Kaunas from the Venta Social Care Home; due to neglect, she only weighed 5 kilograms.*

2530 LTL (around 733 EUR).<sup>67</sup> The main reasons for placing the children in care were that they were being improperly cared for, neglected or suffered physical or mental abuse.

The number of institutionalized disabled children is particularly egregious – out of 15.5 thousand disabled children, around 1 thousand live in institutions: in one of five specialized care institutions for children with disabilities or in children's care homes managed by various entities.<sup>68</sup>

Even though statistical data demonstrates that the birth rate in Lithuania is on the decline, the number of institutionalized infants and small children remains almost unchanged (344 in 2011, 316 in 2012, 288 in 2013).<sup>69</sup> These numbers are evidence that the network of foster families is not being developed properly; no effective system for encouraging family care and professional care in families had been put into place that would allow to completely abandon residential care for infants and children under 3 years of age, and in cases of children with special needs. As noted by the National Audit Office, there are no professional foster carers in Lithuania that would be able to, at any time of day and on short notice, accept children for short-term care or take over the care of infants, take over a child from his carers for a “breather”, or provide any other short-term social services.<sup>70</sup>

The poor child rights protection policy in Lithuania leads to gross violations of children's rights: in the beginning of 2013, a five-year old girl had to be rushed to the clinics in Kaunas from the Venta Social Care Home; due to neglect, she only weighed 5 kilograms.<sup>71</sup>

It must be noted that while the number of planned places in state child

<sup>67</sup> National Audit Office, national audit report “Does the child care system comply with the best interests of the child?”, 31 January 2014, No. VA-P-10-3-1, [http://www.vkontrole.lt/audito\\_ataskaitos.aspx?tipas=2](http://www.vkontrole.lt/audito_ataskaitos.aspx?tipas=2)

<sup>68</sup> Children Rights Ombudsperson, Activity Report 2013, published on 31 March 2014, No. 4-4, <http://www3.lrs.lt/docs2/ATMQTAUA.PDF>

<sup>69</sup> State Child Rights Protection and Adoption Service, Activity Report 2013, 2014, No. 5-4, <http://www.vaikoteises.lt/media/file/ataskaitos/2013metuataskaita.pdf>

<sup>70</sup> National Audit Office, national audit report “Does the child care system comply with the best interests of the child?”, 31 January 2014, No. VA-P-10-3-1, [http://www.vkontrole.lt/audito\\_ataskaitos.aspx?tipas=2](http://www.vkontrole.lt/audito_ataskaitos.aspx?tipas=2)

<sup>71</sup> Rugilė Audienienė, “Children were tortured in the care of home of the girl weighing 5 kilos”, *alfa.lt*, 7 February 2013, <http://www.alfa.lt/straipsnis/15082652/5.kilogramus.sverusios.septynm>



care institutions has been reduced in 2013,<sup>72</sup> the number of placements in municipal institutions has increased.<sup>73</sup> Considering that in many cases the buildings of state child care institutions are very large, the declining number of children has created a situation whereby the residents were afforded up to 31.04 m<sup>2</sup> in living quarters, and their share of the overall area of the building was a whopping 206.98 m<sup>2</sup>.<sup>74</sup> These numbers show that the stated goal of the state to provide institutionalized children with an environment closely resembling that of a family was untruthful, since residential space was limited and only made up a small portion of the overall area of the building.

Institutionalized children feel worse about their privacy, i.e. they have less say in how their room should look like, their toys are more often touched by others without their permission, these children often do not have a place where they could safely store their stuff or do their homework, or even lock the door.<sup>75</sup> Often the younger children have no personal articles of clothing – all existing clothes are shared within the group; if visiting foster families buy clothes, toys or other items for a child, it is within the care home staff's personal discretion to determine if and how that child will be able to enjoy them.<sup>76</sup> Every other inmate is not able to eat when he wants to, or there is very little regard given to what the children want to eat. Meanwhile, children placed in foster families are not faced with these issues. While institutionalized children dream of living with their own (biological), adoptive or foster families, children in foster families are happy with them and practically have no desire to be returned to their parents or be adopted.

The UN Committee on the Rights of the Child gave its assessment of the Lithuanian child care system on 4 October 2013, with recommendations for Lithuania.<sup>77</sup> The Committee welcomed the adoption of the *Strate-*

<sup>72</sup> The Ministry of Social Security and Labour is responsible for the establishment of state children's care homes

<sup>73</sup> State Child Rights Protection and Adoption Service, Activity Report 2013, 2014, No. 5-4, <http://www.vaikoteises.lt/media/file/ataskaitos/2013metuataskaita.pdf>

<sup>74</sup> Children's care home "Putinas" in Marijampolė, summary of the assessment criteria for the action plan, 2014, <http://www.vgnp.lt/uploads/Planavimo%20dokumentai/Vertinimo%20kriteriju%20suvestine%202014%20m.pdf>

<sup>75</sup> SOS Children's Villages, "Comparative analysis of the human rights of children in institutions and in families", 30 April 2014, <http://www.sos-vaikukaimai.lt/ka-mes-darome/globėjai-seimose>

<sup>76</sup> Interview with a visiting caregiver (personal details withheld to protect the interests of the minors in her care), 11 December 2014

<sup>77</sup> UN Committee on the Rights of the Child, concluding observations on the third and fourth period reports of Lithuania, 4 October 2013, [http://www.socmin.lt/download/611/f153\\_crc\\_c\\_ltu\\_co\\_3-4.pdf](http://www.socmin.lt/download/611/f153_crc_c_ltu_co_3-4.pdf)



*gic Guidelines for Deinstitutionalization*,<sup>78</sup> but was also concerned by the large number of institutionalized children under 3 years of age, poor living conditions and limited area within institutions, as well as the lack of monitoring for children's care homes not managed by the state. The Committee recommended that Lithuania ensure that children are offered enough family or community-based care alternatives, monitor all cases of institutionalized children and establish a strict system for

monitoring care institutions, especially those that are not managed by the state.

*The assessment criteria for the Action Plan for Deinstitutionalization are a cause for concern – the aim is to ensure that institutionalized children make up only 20% of all children in care by 2020.*

While claiming that the state's aim is to institutionalize as few children without parental care as possible, the Ministry of Social Security and Labour at the same time admits that the state's ability to place children with families is often limited.<sup>79</sup>

Although the overhaul of child care was launched back in 2007, it is yet to be completed. There was a lack of political will to implement essential reforms of the child rights protection system: from the very beginning, the process embraced political interests in lieu of the best interests of the child. The conclusions of the national audit that was carried out by the National Audit Office on 31 January 2014 show that the existing child care system is ineffective and does not ensure the best interests of the child.<sup>80</sup>

In 2014, the Ministry of Social Security and Labour took more resolute action to deal with the issue of establishing alternatives to institutional care that were necessary for the reform, adopting the *Action Plan for the Transition from Institutional Care to Family and Community-Based Care for Disabled Children and Children Deprived of Parental Care 2014-2020* (the *Action Plan for Deinstitutionalization*).<sup>81</sup> The Ministry indicates that

<sup>78</sup> Order No. A1-517 of the Minister of Social Security and Labour "On the Adoption of Strategic Guidelines for the Deinstitutionalization of Residential Care for Children with Disabilities, Children Deprived of Parental Care and Adults with Disabilities", dated 16 November 2012, No. A1-517, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=437781&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=437781&p_query=&p_tr2=2)

<sup>79</sup> Ministry of Social Security and Labour, Social Report for 2013-2014, published in 2014, p. 64, <http://www.socmin.lt/lt/socialinis-pranesimas.html>

<sup>80</sup> National Audit Office, national audit report "Does the child care system comply with the best interests of the child?", 31 January 2014, No. VA-P-10-3-1, [http://www.vkontrole.lt/audito\\_ataskaitos.aspx?tipas=2](http://www.vkontrole.lt/audito_ataskaitos.aspx?tipas=2)

<sup>81</sup> Order No. A1-83 of the Ministry of Social Security and Labour "On the Adoption of the Action Plan for the Transition from Institutional Care to Family and Community-Based Care for Disabled Children and Children Deprived of Parental Care 2014-2020", dated 14 February 2014, No. A1-83, <https://www.e-tar.lt/portal/legalAct.html?documentId=c90d41f097de11e3bdd0a9c9ad8c61bf>

one of the primary aims of this document is to ensure a harmonious environment for and ability of all children (and disabled children) to be raised in their own families, and the ability of children deprived of parental care to be raised in foster families, adoptive families or group homes, as well as to receive support within the community.<sup>82</sup>

Although the text of the document may appear progressive, the assessment criteria for the *Action Plan for Deinstitutionalization* are a cause for concern – the aim is to ensure that institutionalized children make up only 20% of all children in care by 2020. Considering that the number (around 4 thousand) and percentage (39%) of children in residential care have remained pretty much the same for a number of years, the aforementioned criterion is contrary to the stated goals of the reform and is insufficient for achieving meaningful change.

Furthermore, the *Action Plan for Deinstitutionalization* states the institutionalization of children, especially those under 3 years of age, will be limited by establishing family-model (specialized) homes for children in the community – that is, in essence retaining the institutional framework.<sup>83</sup> According to the Children's Rights Ombudsperson, the overhaul of infants' homes, homes for children left without parental care and care homes for children with disabilities, as well the directions for completing this task, do not prioritize returning children to their biological family (providing real, high-quality services to families in the community that are capable of meeting their needs) or placing them in the care of another family.

During the reported period, the Ministry of Social Security and Labour presented the Parliament with draft amendments to the *Law on Fundamentals of Protection of the Rights of the Child*, the *Civil Code*, the *Code of Civil Procedure*, the *Law on Benefits for Children*, the *Law on Group Homes* and the *Law on Social Services*. They propose clarifying the concept of foster families, providing for the status of a social (professional) caregiver, changing the legal regulation of group homes. In essence, these draft proposals are seen as positive, but it should be noted that the deliberation of the changes envisaged in these documents, necessary to

<sup>82</sup> Ministry of Social Security and Labour, Social Report for 2013-2014, published in 2014., <http://www.socmin.lt/lt/socialinis-pranesimas.html>

<sup>83</sup> Children Rights Ombudsperson, Activity Report 2013, published on 31 March 2014, No. 4-4, <http://www3.lrs.lt/docs2/ATMQTAUA.PDF>

the reform of the care system in Lithuania, has been going on for a very long time (since 2012). The UN Committee on the Rights of the Child also lamented the delay in adopting the *Law on Fundamentals of Protection of the Rights of the Child*.<sup>84</sup>

The amendments to the *Civil Code* submitted by the President in October 2014 aim at tightening the regulation of the institutionalization of children (especially those under 3 years of age). The proposed draft law is particularly relevant and necessary to actually change the situation and reduce the number of institutionalized children under 3 years of age, but it will only be possible to reach its stated goals if the wide-ranging exceptions to the institutionalization of children contained in the bill are abandoned.

In order to stop the practice of institutionalization, it is necessary to invest more human and financial resources into work with families at social risk and the children being raised by them, to review the existing system for placing children in family care and providing help to foster parents, as well as to promptly legalize the alternatives to institutionalization, such as professional foster care.

## Findings and Recommendations

- *In improving process for the organization of child care, priority should be given to timely, competent and effective work with families and their children, providing comprehensive assistance to caregivers, developing alternative forms of care and educating the public about them.*
- *To develop an infrastructure of social, psychological, legal, relaxation and other required services that are differentiated according to need, are effective, affordable and accessible to all families – including equipping Children's Rights Protection Services and social workers with effective tools for diagnosing the situation of the family and providing assistance; establish a system for assessing the need for services, as well as for monitoring the provision and quality of said services.*

<sup>84</sup> UN Committee on the Rights of the Child, concluding observations on the third and fourth period reports of Lithuania, 4 October 2013, [http://www.socmin.lt/download/6111/f153\\_crc\\_c\\_ltu\\_co\\_3-4.pdf](http://www.socmin.lt/download/6111/f153_crc_c_ltu_co_3-4.pdf)

- *To create an effective system for the promotion of both care within the family and professional care. In child care reform, priority must be given to addressing the issue of children under the age of 3, i.e. de facto stopping the institutionalization of children under the age of 3.*
- *To ensure that financial resources, especially coming from EU structural funds, are firmly allocated to the reform of the care system, monitoring its effectiveness as well as the whole deinstitutionalization process.*

### Care Homes for People with Disabilities

At the initiative of the European Commission, the *Common European Guidelines on the Transition from Institutional to Community-Based Care* were developed in 2012.<sup>85</sup> Furthermore, in 2013 the European Parliament adopted the *Regulation on the European Social Fund*<sup>86</sup> as well as the *Common Provisions Regulation*,<sup>87</sup> two regulations that, for the first time in EU history, specified that the structural funds must be used for the development and expansion of community-based services, i.e. as an alternative to institutional care, promoting the transition from institutional care to community-based services.

The General European Guidelines define an institution as any place of residential care, where the residents are isolated from the broader community and are forced to live together; do not have sufficient control over their own lives and over decisions which affect them; where the requirements of the organization itself tend to take precedence over the residents' individual needs.<sup>88</sup>

Deinstitutionalization is not limited to just closing down institutions. Deinstitutionalisation (De-I) is understood to be the process of creating and developing various community-based services, prevention among

<sup>85</sup> European Expert Group on the Transition from Institutional to Community Based Care, "Common European Guidelines on the Transition from Institutional to Community-based Care", November 2012, <http://deinstitutionalisationguide.eu/wp-content/uploads/Common-European-Guidelines-on-the-Transition-from-Institutional-to-Community-based-Care-English.pdf>

<sup>86</sup> Regulation No. 1304/2013 of the European Parliament and of the Council of 17 December 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1304&from=LT>

<sup>87</sup> Regulation No. 1304/2013 of the European Parliament and of the Council of 17 December 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1304&from=LT>

<sup>88</sup> European Expert Group on the Transition from Institutional to Community Based Care, "Common European Guidelines on the Transition from Institutional to Community-based Care", November 2012, p. 24, ., [http://deinstitutionalisationguide.eu/wp-content/uploads/2013/04/Common-European-Guidelines\\_Lithuanian-version\\_EDITED.pdf](http://deinstitutionalisationguide.eu/wp-content/uploads/2013/04/Common-European-Guidelines_Lithuanian-version_EDITED.pdf)



*Photo: the Macikai social care home. In 1948-1955, up to 3000 persons were imprisoned in the Macikai concentration camp, 365 prisoners had died there, out of which 312 were Lithuanians; 70 of them were children, with 44 Lithuanian children among them. In 1955, at the order of the Ministry of Welfare of the Lithuanian SSR, the Pagryniai home for the disabled was established in the premises. A new three-storey residential building was built in 1982. In 1988, a residential building for children with disabilities, capable of accommodating 70 residents, was built. Currently, nearly 500 children and adult are living in this institution. There are 233.5 staff postings at the care home; 135.5 postings for the Social Work Service; and 50 personal health care and nursing service postings.*

*Macikai Social Care Home, <http://www.macikaigloba.lt/1-apie-mus>; Macikai Concentration Camp Site and Graveyard Project, 5 August 2011, <https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Farcheologijosdb.kpd.lt%2Ffrinkmenos%2F-Projektas%2520Macikai.doc&ei=sKn5VOiyJsPpaP3qgPgK&usq=AFQjCNGBTfByAXIG8r7kOkO-QWk3A7wh4A&bvm=bv.87611401,d.d2s&cad=rjt>*

them, in order to eliminate the need for institutionalized care.<sup>89</sup> De-I is the relocation of persons living in institutions (social care institutions, psychiatric hospitals) to live, receive medical treatment or be cared for by the community. At the same time it also means changing the traditional model for psychiatric care by transitioning from paternalistic 24-hour supervision that restricts human rights to providing individualized social, psychological or medical services close to the person's home that promote his/her independence.<sup>90</sup>

The right to live independently and be included in the community, as well as to access services within it, was established by the *UN Convention on the Rights of Persons with Disabilities*, which Lithuania ratified in 2010. The Convention clearly states that all persons with disabilities have the right to live in the community, to choose their place of residence, to get stationary and accommodation services, as well as other community-based services; the state must promote the full and effective inclusion and participation of people with disabilities in the community; and finally, community-based services and institutions must be accessible not only to the general population, but also to persons with disabilities.<sup>91</sup>

<sup>89</sup> European Expert Group on the Transition from Institutional to Community Based Care, "Common European Guidelines on the Transition from Institutional to Community-based Care", November 2012, p. 26, [http://deinstitutionalizationguide.eu/wp-content/uploads/2013/04/Common-European-Guidelines\\_Lithuanian-version\\_EDITED.pdf](http://deinstitutionalizationguide.eu/wp-content/uploads/2013/04/Common-European-Guidelines_Lithuanian-version_EDITED.pdf)

<sup>90</sup> Eglė Šumskienė, "Deinstitutionalization of mental health care in Lithuania: minimal changes in "maximalist" organizations", 2013, [http://www.zurnalai.vu.lt/files/journals/180/articles/2659/public/sveikatos\\_prieiros.pdf](http://www.zurnalai.vu.lt/files/journals/180/articles/2659/public/sveikatos_prieiros.pdf)

<sup>91</sup> UN Convention on the Rights of Persons with Disabilities, 3 May 2008, Article 19, <http://www3.lrs.lt/pls/inter3/>

In Lithuania, the coordination of deinstitutionalization, on the basis of the Action plan for 2014-2020, is left to the Ministry of Social Security and Labour.<sup>92</sup> The projected results of the De-I process in Lithuania, as provided for by the action plan, are too small and lacking in ambition – for example, it is only planned to reduce the number of institutionalized adults with disabilities by 40%; to overhaul only 5 residential social

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care institutions for disabled adults.<sup>93</sup> These expected results are not enough to ensure that the desired social inclusion rate will be achieved by the end of the 2014-2020 EU funding period for investment and structural programmes.

More than 150 million Euros from EU structural funds were used in 2007-2013 to modernize and build residential care institutions for people with disabilities in Central and Eastern Europe, including Lithuania – despite the need to carry out deinstitutionalization and develop community-based services.<sup>94</sup> In other words, the structural funds have been used improperly, i.e. instead of promoting the

availability of common services to the disabled, providing families with support services or carrying out the integration of disabled people into the community, the state used the funds to renovate the buildings of institutions.

The *Common European Guidelines* provide that the improvement of physical living conditions in the institutions and the premises does not satisfy the needs of persons with mental disorders or intellectual disabilities, since it does nothing to change the hierarchy of relations, does not promote integration into the community or the guarantee of oth-

[dokpaieska.showdoc\\_l?p\\_id=335882](#)

<sup>92</sup> Order No. AI-83 of the Ministry of Social Security and Labour “On the Adoption of the Action Plan for the Transition from Institutional Care to Family and Community-Based Care for Disabled Children and Children Deprived of Parental Care 2014-2020”, dated 14 February 2014, No. AI-83, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=466003](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=466003)

<sup>93</sup> Order No. AI-83 of the Ministry of Social Security and Labour “On the Adoption of the Action Plan for the Transition from Institutional Care to Family and Community-Based Care for Disabled Children and Children Deprived of Parental Care 2014-2020”, dated 14 February 2014, No. AI-83, Annex No. 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=466003](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=466003)

<sup>94</sup> Lithuanian Forum for the Disabled, “New requirements for the use EU structural funds provide that only community-based services are to be funded as an alternative to institutional care”, 11 December 2013, <http://www.lnf.lt/index.php/apie-lnf/apie-lnf-2/490-nauji-reikalavimai-europos-sajungos-strukturiniu-fondu-lesu-naudojimui-nurodo-finansuoti-tik-bendruomenines-paslaugas-neigaliesiems-kaip-alternatyva-institucinei-globai?-showall=&start=5>

*As noted by UN Committee on the Rights of Persons with Disabilities member Jonas Ruškus, no matter how much you try to reform large specialized care or educational institutions they are an evil in and of themselves, which, regardless of the will of the people, imprisons the people living and working here, consigning them to doomed relationships and hopelessness. Everyone – both the residents and the specialists – becomes an agent in the ensuing human rights violations.*

er human rights. On the contrary – the improvement of external features may lead to stagnation, the preservation of the existing system and systemic obstacles to the development of community-based services.<sup>95</sup>

There is a lack of political will in Lithuania to consistently pursue deinstitutionalisation: today, the dominant model of institutional care is practically the only way to help persons with mental disorders or intellectual disabilities; institutional care is awarded the lion's share of the funds allocated for social care.

It should be noted that large closed-type institutions are a great environment for human rights violations, which is why institutionalization itself violates the human rights of persons with disabilities provided for in the *UN Convention on the Rights of Persons with Disabilities*. As noted by UN Committee on the Rights of Persons with Disabilities member Jonas Ruškus, no matter how much you try to reform large specialized care or educational institutions they are an evil in and of themselves, which, regardless of the will of the people, imprisons the people living and working here, consigning them to doomed relationships and hopelessness. Everyone – both the residents and the specialists – becomes an agent in the ensuing human rights violations.<sup>96</sup> In addition, life in institutions that are isolated from society damages the personalities of the people raised or cared for within and precludes life opportunities. Regardless of the will of the people, these institutions in and of themselves demand obedience from the inmates, break their will and crush their dreams, standardize individual life rhythms and personal environments, firmly entrench the “conveyor belt” model for services, eliminate the ability to express oneself, isolate from contact with the public, give rise to the inevitability of being stuck in the institution forever.<sup>97</sup>

<sup>95</sup> Gintaras Šumskas, “Recommendations on the need to transition from institutional care to sheltered homes for persons with disabilities”, 2014, [www.giedra.eu/wp-content/uploads/2015/01/Rekomendacijos.docx](http://www.giedra.eu/wp-content/uploads/2015/01/Rekomendacijos.docx)

<sup>96</sup> Jonas Ruškus, “J. Ruškus. Both children and staff break down in care institutions”, *delfi.lt*, 10 February 2015, <http://www.delfi.lt/news/ringas/lit/j-ruskus-dideles-globos-institucijos-yra-blogis.d?id=67115346>

<sup>97</sup> Jonas Ruškus, “J. Ruškus. Both children and staff break down in care institutions”, *delfi.lt*, 10 February 2015, <http://www.delfi.lt/news/ringas/lit/j-ruskus-dideles-globos-institucijos-yra-blogis.d?id=67115346>



Back in 2006, amendments to the *Law on Social Services* established the procedure for licensing social care institutions, according to which all the social care institutions in the country had to obtain an extension of their license from the Department of Supervision of Social Services by the end of 2014 to continue their work. The requirement to license sought to ensure that social services users and their family members would know that the social care services provided are of a high quality and meet the needs of the people who use them. There are 405 institutions providing social care services in Lithuania. Of these institutions, 360 have already obtained licenses to continue providing social care services from 1 January 2015 onwards.<sup>98</sup>

However, it should be noted that nowadays the licensing requirements of 2006 no longer comply with new trends towards deinstitutionalization and providing community-based services: today, these requirements are easier for large residential social care institutions to fulfil, as they have a sufficient number of rooms and more staff. Meanwhile small institutions providing community-based services are unable to meet the licensing requirements, most often because they lack staff, and as such would be unable to get licensed. It should be noted that it is doubtful whether the requirement in relation to staff is actually reasonable, since some full-time employees are simply not necessary in small institutions – should the need arise, the required services can be procured from outside.<sup>99</sup>

Since 2010, a total of over 100 million LTL (around 29 million Euro) from both the national budget as well EU structural funds has been allocated to overhauling the infrastructure of institutions in order to have them comply with licensing requirements.<sup>100</sup> Taking into consideration the unavoidable flaws of institutional care listed above – the inevitable violation of the fundamental human rights and freedoms of the recipients of such services – the licensing process for institutional care raises serious doubts: it is obvious that, instead of going towards the development of much-needed individualized services, funds will once again be invested into reinforcing a flawed system.

<sup>98</sup> Ministry of Social Security and Labour, “Almost 90% of social care institutions operating in Lithuania are licensed”, 17 December 2014, <http://www.socmin.lt/lt/naujienos/pranesimai-spaudai/beveik-90-proc.-pbgk.html>

<sup>99</sup> Kazys Kazakevičius, “Licensing of care institutions proceeding at a snail’s pace”, *Izinius.lt*, 1 July 2014, <http://izinius.lt/izinius/lietuvoje/globos-istaigu-licencijavimas-vezlio-greiciu/182771>

<sup>100</sup> Kazys Kazakevičius, “Rush to be licensed at the last minute”, *Izinius.lt*, 13 December 2014, <http://izinius.lt/izinius/print.php?idas=193061>



## Findings and Recommendations

- *The institutional care system is very prevalent in Lithuania and, conversely, deinstitutionalisation processes are too slow.*
- *Many more human rights violations occur in large closed-type institutions. Furthermore, institutionalization itself – i.e. placement of people in large closed-type care institutions – violates the human rights of persons with disabilities, and as such it is necessary to reform institutional care and education systems, basing them on human rights.*
- *The projected results of the ongoing De-I process in Lithuania are far too insignificant, lack ambition and do not ensure that the desired rate of social inclusion will be achieved by the end of the 2014-2020 EU funding period for investment and structural programmes.*
- *It is vital to ensure that funds for EU investment programmes in the new 2014-2020 period are not allocated to the renovation or construction of institutions, and instead are focused on the development of community-based services. In order to ensure the timeliness and effectiveness of the reform coordinated by the Ministry of Social Security and Labour, the processes must be independently monitored, i.e. with the help of experts, specific regional pilot projects must be selected and developed, and tangible steps towards reform must be taken.*

### Mental Health Care Institutions

Among other key priorities listed for mental health policy, the *Mental Health Strategy*, approved by Parliament in 2007, emphasizes the need to ensure that the rights of persons with mental disorders are actually protected and that they are able to get full-fledged assistance where they live, to develop an effective mechanism for the protection of the rights of persons with mental disorders in both medical and care institutions, as well within the community.<sup>101</sup>

Unfortunately, we continue to see the paternalistic biomedical model and pharmacotherapy dominate in the field of psychiatry in Lithuania, making persons with mental disorders or disabilities dependant on drugs and reducing their ability to integrate into society. The repeated

<sup>101</sup> Resolution No. X-1070 of the Parliament "On the Adoption of the Mental Health Strategy, 3 April 2007, No. X-1070, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=295147&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=295147&p_query=&p_tr2=)

urgings of NGOs working with human rights in mental health care – to take heed of the urgings of the World Health Organization and UN human rights bodies to abandon the outdated biomedical model and, in its place, to develop the infrastructure for outpatient psychosocial services, less restrictive of a person's freedom and conducive to his or her integration – have been ignored.

The mental health and human rights experts that were invited to the working group set up by the Ministry of Health for drafting the *Action Plan for the Implementation of Mental Health Strategy and Suicide Prevention* expressed criticism regarding the latter in January 2014. The experts wanted to see the implementation of modern mental health policy and suicide prevention principles that are enshrined in the documents of the World Health Organization and the European Union, as well as in the *Mental Health Strategy* approved by the Lithuanian Parliament in 2007; all measures, including public education on mental health, a wide range of preventive and clinical interventions and comprehensive monitoring, should comply with these principles. Unfortunately, the plan prepared by the Ministry of Health lacks such strategic coherence; it can be said to be a list of loosely-related measures, the effectiveness of which is difficult to assess – the results are therefore disappointing. Despite said criticisms, the plan was approved on 28 March 2014.

Psychiatry in Europe and the rest of the world adheres to the principle that any provision of psychiatric services – especially when they are provided in closed-type establishments (which includes psychiatric hospitals and psychiatric wards in public hospitals, since these institutions often limit personal freedom) – must be supervised by several monitoring mechanisms, both internal and external. This practice became established after analysing history of the science and practice of psychiatry and coming to an understanding that even those treatment and care methods that carried with them the best of intents were quite often later on recognized as instances of human rights violations, often being likened to torture.

In 2013, the UN Special Rapporteur on Torture presented a report on torture in health care institutions.<sup>102</sup> The report included recommen-

<sup>102</sup> Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan A. Méndez, 1 February 2013, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

*The essential problem faced when trying to implement modern mental health principles in Lithuania is the lack of human rights protection mechanisms and the lack of independent human rights monitors in the mental health care system.*

dations on how to avoid harmful practices in psychiatric institutions: it is obvious that one of the most important prevention principles is to overcome the tradition of everything taking place behind closed doors and provide for permanent independent monitoring of human rights in psychiatric practice.

The essential problem faced when trying to implement modern mental health principles in Lithuania is the lack of human rights protection mechanisms and the lack of independent human rights monitors in the mental health care system.<sup>103</sup> All attempts to establish

effective human rights protection and monitoring mechanisms in the field of mental health care in Lithuania have so far been fruitless.

It should be noted that international human rights monitoring bodies have many times recommended that Lithuania commit to fundamental changes in protecting human rights in the mental health care system: Lithuania has been repeatedly visited by experts of the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment, who in all cases have highlighted the need to implement essential human rights safeguards within the Lithuanian mental health care system.

Unfortunately, Lithuanian authorities have chosen to either ignore or otherwise only react formally to these recommendations: in December 2013 the Ministry of Health formed a working group to review the *Law on Mental Health Care*. It should be noted that the new edition of the law did not take into account the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Greater opportunities for regular monitoring of mental health institutions became available in 2013, after Lithuania ratified the *Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. With reference to the provisions of the Protocol, the Parliamentary Ombudspersons Office was given the mandate at the beginning of 2014 to carry out the national prevention of torture in places where liberty is restricted. This means that the Om-

<sup>103</sup> NGOs, Letter on the shortcomings of the mental health care system in Lithuania, 7 May 2013, [http://www.perspektyvos.org/photos/2013/05/Kreipimasis\\_20130507.pdf](http://www.perspektyvos.org/photos/2013/05/Kreipimasis_20130507.pdf)

budsperson may now at any time of day enter facilities where people are kept around the clock.

The monitoring mechanism established by the Protocol was first used in the field of Lithuanian mental health care in 2014, during an inspection of the psychiatric clinic of the Šiauliai Hospital carried out by the Parliamentary Ombudspersons Office.

While it would initially appear that the beginning of independent monitoring process of psychiatric institutions, which is common in developed states with strong democracies, is a reason for celebration, the events following the publication of the report of the Parliamentary Ombudspersons Office raise questions as to whether Lithuania is ready to ensure human rights in mental health institutions.

The report of the Parliamentary Ombudspersons Office recorded human rights violations discovered in the psychiatric clinic of the Šiauliai Hospital and also provided recommendations on how these violations should be eliminated.<sup>104</sup> The Ombudsperson noted that patients in the clinic were not given information about their treatment or its effectiveness. They were also denied information on their medication and were not informed that they could refuse medical intervention; forcibly hospitalized patients were unable to appeal court decisions, since they were not invited to court hearings. The patients were also not guaranteed access to medical documents and the right to receive excerpts from them. The institution had no separate premises for meetings with family and close ones, which would have ensured privacy of their communications; there were also restrictions on walking outside the premises.<sup>105</sup>

In response to the above report of the Parliamentary Ombudspersons Office, the psychiatric clinic of the Šiauliai Hospital held a press conference where it unanimously and publicly disqualified the conclusions and recommendations of the report, claiming that human rights were not being violated in the psychiatric clinic of the Šiauliai Hospital. Participants of the conference claimed that the Ombudspersons are po-

<sup>104</sup> Parliamentary Ombudsperson Office, report "On the human rights situation in the Psychiatric Clinic of the Republican Šiauliai Hospital (a public entity)", 28 August 2014, No. 2014/1-60(18), <http://www.lrski.lt/images/dokumentai/jauli%20psichiatrijos%20klinika%20Nr.%2018.pdf>

<sup>105</sup> Parliamentary Ombudsperson Office, "Human rights violations found in the Psychiatric Clinic of the Republican Šiauliai Hospital", 2 September 2014, <http://www.lrski.lt/lt/naujienos/220-konstatuoti-zmogaus-teisiu-pazeidimai-respublikines-siauliu-ligonines-psichiatrijos-klinikoje.html>

tentially lacking the specialized knowledge, since only a specialist in possession of psychiatric knowledge would understand that communications with people, who are afflicted with mental disorders and have a skewed perception of their surroundings, have a distinctive character. The participants expressed the need to protect mental health care institutions that will be inspected in the future from such “naive conclusions”.<sup>106</sup>

This publicized position of the psychiatric clinic of the Šiauliai Hospital has yet to draw attention of or be considered by the authorities. It clearly demonstrates not only the lack of state support for the Ombudsperson supervising human rights issues, but also improper implementation of the mental health care policies in Lithuania, allowing for managers of mental health institutions to oppose the establishment of human rights protection standards in psychiatric practice.

The Lithuanian mental health care system finds itself stuck in a system vicious circle.<sup>107</sup> This links in this circle are poor indicators for public mental health, widespread intolerance of vulnerable people and groups, state policies that continue practices that propagate stigma and social exclusion, the diversion of financial and human resources to the provision of ineffective services that breach human rights; at the same time, innovative services are not being developed, with no attempts to instil a culture of appreciation for indicators and constant monitoring; new investments are only used to further reinforce a system that had not been reformed, contributing to poor mental health indicators and supporting a negligent approach towards human rights.

<sup>106</sup> Republican Šiauliai Hospital, “Human rights are not being violated in the Psychiatric Clinic”, 8 October 2014, <http://www.siauliuligonine.lt/lt/visos-nauijenos/865-psichiatrijos-klinikoje-zmogaus-teises-nepazeidziamos>

<sup>107</sup> Group of VU scientists, “Challenges to implementing the mental health policy of Lithuania”, 2013, <http://www.fsf.vu.lt/fakulteto-ivykiai/mokslo-nauijenos/962-isleista-mokslo-studija-issukiai-igyvendinant-lietuvos-psichikos-sveikatos-politika>

## Findings and Recommendations

- *Modern human rights protection and monitoring principles must be established within and adhered to by the Lithuanian mental health care system – to achieve this aim, it is necessary to consolidate efforts of civil society, the legislature and the executive branch, psychiatrists, psychologists and other professional groups, in order overcome the tendency of Lithuanian psychiatry to oppose modern mental health principles.*
- *After ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a possibility arose to entrench these principles by involving the authorities. 2014 saw the first instance of independent human rights monitoring of a closed mental health care facility initiated by the authorities.*
- *The common position that influential mental health system representatives (heads of psychiatric hospital administrations, academic psychiatry, mental health and state institutions responsible for mental health) publicly expressed in 2014 in an effort to disqualify a report of the Parliamentary Ombudsman Office and the principles of independent human rights monitoring, are a symptom of a serious ongoing systemic crisis within the Lithuanian mental health system.*

### Places of Detention

At the end of 2011, Lithuania sported the greatest number of prisoners since 2003, when the new *Criminal Code* came into force. The number decreased very slightly in 2012-2013. By the end of 2013, there were over nine thousand prisoners in Lithuania,<sup>108</sup> with 315 prisoners for every 100 thousand residents – the highest such rate in the European Union and the third highest rate (following Russia and Belarus) among all European countries.<sup>109</sup> It is interesting to note that the level of crime registered in Lithuania is among the lowest in the European Union, including overall violent crime.<sup>110</sup>

In 2013, the average length of a custodial sentence for persons in custo-

<sup>108</sup> Prison Department, Activity Report 2013, p. 3, <http://www.kalejimudepartamentas.lt/lt/kalejimu-departamentas/veikla/ataskaitos/metines.html>

<sup>109</sup> International Centre for Prison Studies, "World Prison Brief", <http://www.prisonstudies.org/world-prison-brief>

<sup>110</sup> Eurostat, "Crime and Criminal Justice, 2006-2009", 2012, p. 7, <http://ec.europa.eu/eurostat/documents/3433488/5584360/KS-SF-12-006-EN.PDF/bcad1ec8-5b81-4e82-a582-5390fec5effd?version=1.0>

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dy by the end of the year reached 76 months.<sup>111</sup> This is the largest such figure since the restoration of independence, although the level of criminal activities registered per 100,000 residents in 2013 and 2014 remained the same, i.e. approximately 2.8 thousand. Furthermore, the number of registered serious and very serious crimes in this period reached approximately 4.3 thousand, with respect to the fact that the *Criminal Code* recognized more offences as being serious or very serious. The number of the most serious violent crimes, as well as theft and robbery, decreased.

At the end of 2013, the largest detention facility in Lithuania, where almost 3000 convicts are serving prison sentences, was 12% overcrowded (i.e. 112 inmates for 100 places), with overcrowding also occurring at the Kybartai correctional facility (3.7%) and the Šiauliai remand prison (18.6%).<sup>112</sup>

48 people died in Lithuanian places of detention in 2013 – once again, the highest such figure since the restoration of independence. Out of this number, 34 died due to illness and 12 committed suicide (one of the highest figures seen in the last 10 years, 3 times higher than the relative number of suicides in public).<sup>113</sup>

Employment rates in places of detention remained very low, not having improved since 2010: at the beginning of 2014, 16.4% convicts worked in manufacturing, 12.3% did farm work, 35.4% were in education and an equal number were unemployed.<sup>114</sup> There is still a lack of transparency in organizing the work of prisoners, with cases of exploitation still

<sup>111</sup> Prison Department, “Brief on the number of prison sentences, their contents (according to the offence committed, age, length of sentence et al.) and their changes”, 28 January 2014, <http://www.kalejimudepartamentas.lt/download/4605/nuteistuju%20skaiciaus.%20sudeties%20%20suvestine%202013.pdf>

<sup>112</sup> Prison Department, Activity Report 2013, p. 5, <http://www.kalejimudepartamentas.lt/lt/kalejimu-departamentas/veikla/ataskaitos/metines.html>

<sup>113</sup> Prison Department, “Report on unlawful communications uncovered, banned items confiscated and the criminal situation in places of detention”, 28 January 2014, <http://www.kalejimudepartamentas.lt/download/3869/isaiskintu%20neteisetu%20rysiu%20ataskaita%202013.pdf>

<sup>114</sup> Prison Department, “2013 Activity Report of Social Rehabilitation Services”, 28 January 2014, <http://www.kalejimudepartamentas.lt/download/3875/socialines%20reabilitacijos%20suvestine%202013.pdf>

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coming to the fore,<sup>115</sup> and a lack of work places for prisoners wishing to work.<sup>116</sup>

The prisoner caste subculture, prevalent in Lithuanian prisons, continues to present a very serious problem.<sup>117</sup> Moreover, in recent years, even the rhetoric of prison administrations demonstrates that this subculture is acceptable and normal.<sup>118</sup>

Due to extremely poor detention conditions,<sup>119</sup> courts in some European countries now refuse to surrender defendants to Lithuania,<sup>120</sup> with the European Court of Human Rights and national courts increasingly ordering the Lithuanian state to compensate convicts for poor detention conditions.<sup>121</sup>

On 19 February 2014, the *Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* came into force in Lithuania,<sup>122</sup> under which the Parliamentary Ombudspersons Office began to carry out the national prevention of torture in

<sup>115</sup> Nerijus Povilaitis, "Prosecutors interviewed vice-minister A. Vitkauskas in a case concerning prisoner exploitation", *lrytas.lt*, 27 March 2013, <http://www.lrytas.lt/lietuovos-diena/aktualijos/kaliniu-isnaudojimo-byloje-prokurorai-apklause-finansu-viceministra-a-vitkauska.htm>

<sup>116</sup> Genovaitė Rafinavičienė, "Prisoners more eager to work than the unemployed", *lrytas.lt*, 28 May 2013, <http://www.lrytas.lt/verslas/rinkos-pulsas/kaliniai-dirbti-nori-labiau-nei-bedarbiai.htm>

<sup>117</sup> Nerijus Povilaitis, "Death of a prisoner revealed the terrifying rules of the Pravieniškės colony", *lrytas.lt*, 25 March 2013, <http://www.lrytas.lt/lietuovos-diena/kriminalai/kalinio-mirtis-atskleide-siaubingas-pravieniskiu-kolonijos-taisykles.htm>; Paulius Garkauskas, "Prison from within: once you're a 'loser' or a bitch, there's no chance of going up anymore", *delfi.lt*, 27 April 2013, <http://www.delfi.lt/news/daily/crime/kalejimas-is-vidausta-pus-duchu-arba-gaidziu-galimybepakiltinebelieka.d?id=61243913>

<sup>118</sup> Rita Gečiūnaitė, "Prison from within: castes exist on both sides of the barbed wire", *delfi.lt*, 13 April 2013, <http://www.delfi.lt/news/daily/crime/kalejimas-is-vidausta-kastos-egzistuoja-abiejose-spygliuotos-vielos-puse.d?id=61138347>

<sup>119</sup> "Panevėžys correctional facility inmates are suffocating from the heat", *lrytas.lt*, 5 August 2014, <http://www.lrytas.lt/-14072502231407004266-panev%C4%97%C5%BEio-pataisos-nam%C5%B3-kalin%C4%97s-d%C5%ABsta-nuokar%C5%A1%C4%8Dio.htm>; Artūras Jančys, "Imprisonment in free Lithuania is just like in Stalin's Gulags", *lrytas.lt*, 12 October 2014, <http://www.lrytas.lt/lietuovos-diena/aktualijos/laisvoje-lietuvoje-nelaisve-kaip-stalino-lageriuose-201410121404.htm>

<sup>120</sup> "Court of Appeal of Northern Ireland affirmed the decision to not surrender an Irishman accused of supporting terrorism to Lithuania", 23 February 2013, <http://www.delfi.lt/news/daily/crime/siaures-airijos-apelacinis-teismas-patvirtino-sprendima-neisduoti-lietuvai-parama-teroristams-kaltinamo-airio.d?id=60757973>; Milda Kuizinaite, "Lukiškės now also terrify Denmark", *lrytas.lt*, 22 August 2014, <http://www.lrytas.lt/-14086556421407957978-luki%C5%A1%C4%97s-jau-%C4%97m%C4%97-kelti-siaub%C4%85-ir-danijoje.htm>

<sup>121</sup> Dainius Sinkvičius, "Sums of money that will infuriate taxpayers: the state putting 'money in prisoner's pocket'", *delfi.lt*, 7 November 2014, <http://www.delfi.lt/archive/article.php?id=66325452>

<sup>122</sup> Optional Protocol to the UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446126](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446126)



places of detention,<sup>123</sup> now being obliged to visit them regularly.<sup>124</sup> With the number of prisoners on the rise, and detention and staff working conditions deteriorating,<sup>125</sup> violence between prisoners,<sup>126</sup> cases of prisoners resisting officers<sup>127</sup> and recorded crimes in places of detention are becoming more frequent. In May 2014, the Parliamentary Ombudspersons, in carrying out the prevention of torture, visited the Marijampolė Correctional Home and came to the conclusion that neither the convicts nor the staff were able to enjoy a safe environment.<sup>128</sup>

The daily sum allotted to the maintenance of a single convict remained roughly the same since 2010 (48 LTL (around 13,9 EUR)),<sup>129</sup> although the number of prisoners and staff workload have both increased. Out of this sum, about 80% goes to staff wages, their social insurance and other related expenses. Nevertheless, the Prison Department still seeks to lessen the costs per convict.

Lithuania has not yet built any new detention facilities, although the plans were drawn up way back in 2008. The public tender for relocating the Lukiškės prison was announced in 2012, but the process was drawn out and gave rise to suspicions of corruption and opaque public procurement practices.<sup>130</sup> On 22 July 2014 the government adopted the new

<sup>123</sup> Law Amending Article 3 of and Including Article 191 in the Law on the Parliamentary Ombudspersons, 3 December 2013, No. XII-629, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=461563](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=461563)

<sup>124</sup> "What's hidden behind the walls of Marijampolė correctional facility: violence, or lies?", *delfi.lt*, 21 May 2014, <http://www.delfi.lt/news/daily/crime/ka-slepia-marijampoles-pataisos-namu-sienos-smurta-ar-mela.d?id=64841269>

<sup>125</sup> "Prisoners dissatisfied with prison conditions are storming the courts", *delfi.lt*, 10 April 2013, <http://www.delfi.lt/news/daily/crime/kalejimo-salygomis-nepatenkinti-kaliniai-atakuoja-teismus.d?id=61114323>

<sup>126</sup> "A Romanian beat to unconsciousness was left to lie in bed half-dead for 6 hours in Pravieniškės", *delfi.lt*, 26 March 2013, <http://www.delfi.lt/archive/article.php?id=60999753>; "Two severely beaten prisoners delivered to Kaunas clinics from Pravieniškės", *delfi.lt*, 7 June 2013, <http://www.delfi.lt/news/daily/crime/i-kauno-klinikas-pateko-du-stipriai-sumusti-kaliniai-is-pravieniskiu.d?id=61573754>; "Dead prisoner suspected of being beaten found in a prison hospital", *delfi.lt*, 30 May 2013, <http://www.delfi.lt/news/daily/crime/laisves-atemimu-vietu-ligonine-je-rastas-negyvas-itariama-sumustas-kalinys.d?id=61505900>; Dainius Sinkevičius, "Stories of sex between men in Vilnius correctional facilities recounted by famous prisoners in court", *delfi.lt*, 13 February 2014, <http://www.delfi.lt/archive/article.php?id=64010552>

<sup>127</sup> Dainius Sinkevičius, "Prison from within: if they don't like the prisoner, the wardens will "devour" him", *delfi.lt*, 28 August 2013, <http://www.delfi.lt/archive/article.php?id=62697513>; "Officers: the slothfulness of the Ministry of Justice threatens the lives of prison wardens", *15min.lt*, 9 July 2014, <http://www.pareigunai.lt/c-5/p-907-teisingumo-ministerijos-tinginyse-kelia-gresme-kalejimu-priziuretoju-gyvybems-papildyta>; "Inmates of the Marijampolė correctional facility hung up a sign: officers are killers", *delfi.lt*, 14 February 2014, <http://www.delfi.lt/news/daily/crime/marijampoles-pataisos-namu-kaliniai-iskabino-uzrasa-pareigunai-zudikai.d?id=64122758>

<sup>128</sup> Parliamentary Ombudspersons Office, report "On the human rights situation in the Marijampolė correctional facility", 29 May 2014, No. 2014/1-60(15), [http://www.lrski.lt/images/dokumentai/1014003106\\_Marijampols%20pataisos%20namai%20-%20vis.pdf](http://www.lrski.lt/images/dokumentai/1014003106_Marijampols%20pataisos%20namai%20-%20vis.pdf)

<sup>129</sup> Prison Department, "Brief on the average cost of upkeep of a person in prison in 2013", 28 January 2014, <http://www.kalejimudepartamentas.lt/download/3877/vieno%20asmens%20islaikymas%20%202013.pdf>

<sup>130</sup> Arvydas Kavaliauskas, "40 million is a trifle to the Prison Department", *lrytas.lt*, 23 September 2014, <http://www.lrytas.lt/verslas/rinkos-pulsas/kalejimu-departamentui-40-milijonu-litu-mazmozis.htm>; "Imprisonment in free Lithuania is just like in Stalin's Gulags", *lrytas.lt*, 12 October 2014,

*Programme for the Modernization of Places of Detention*, which set 2022 as the final date for modernizing detention facilities.<sup>131</sup>

## Findings and Recommendations

- *The Lithuanian prison system continues to move away from European standards; existing problems are not being addressed and only deepen. This was also confirmed by the report on the 27 November – 4 December 2012 visit of the European Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published on 4 June 2014,<sup>132</sup> which pointed even more shortcomings of the Lithuanian prison system than in the 2011 report. The prison system in Lithuania is in need of cardinal and radical change, starting with the implementation of the recommendations of the European Committee against Torture.*

### Places of Administrative Detention for Children

The *UN Convention on the Rights of the Child* obliges states to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>133</sup> There is a very high risk of this happening in institutions, which restrict the liberty of children pursuant to a court or an administrative decision.<sup>134</sup>

In Lithuania, children are sent to administrative detention if they have behavioural and emotional problems, which are expressed through delinquent behaviour – failure to attend school, consumption of alcohol or drugs, offending, violence or committing a crime (but below the age of criminal responsibility).<sup>135</sup> There are seven such institutions in Lithuania – six socialization centres and a special education centre in Švėkšna for children with behavioural and emotional problems. At the end of 2014, there

[ijos/laisvoje-lietuvoje-nelaisve-kaip-stalino-lageriuose-201410121404.htm](http://ijos/laisvoje-lietuvoje-nelaisve-kaip-stalino-lageriuose-201410121404.htm)

<sup>131</sup> Resolution No. 740 of the Government “On the Adoption of the Programme for the Modernization of Places of Detention”, dated 22 July 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478875&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478875&p_tr2=2)

<sup>132</sup> Council of Europe, Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 27 November to 4 December 2012, published 4 June 2014, <http://www.cpt.coe.int/documents/ltu/2014-18-inf-eng.pdf>

<sup>133</sup> UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Article 37, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=280690&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=280690&p_query=&p_tr2=)

<sup>134</sup> UN General Assembly, “Report of the independent expert for the United Nations study on violence against children”, 29 August 2006, [http://www.unicef.org/violencestudy/reports/SG\\_violencestudy\\_en.pdf](http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf)

<sup>135</sup> Global Initiative on Psychiatry, “Analysis of factors in and causes of offending in children who are placed under medium supervision”, 2010



*Photo: Vilnius children socialisation centre, <http://www.delfi.lt/news/daily/crime/vaiku-socializacijos-centre-apgyvendinta-15-mete-narkomane-vidury-gatves-sumuse-pedago-ge.d?id=63529294>*

were 246 children living in these institutions. A large part of them come from children's care homes or families experiencing difficulties.<sup>136</sup>

Early psychosocial assistance could help children overcome the causes of delinquency and prevent them from winding up in these institutions. Although the law provides for the so-called “minimal supervision measures”, for example, special

consultations, the obligation to attend day-care centres or take part in social education, rehabilitation, integration, prevention, education or other programmes,<sup>137</sup> in practice the institutions applying them perceive them to be punitive and corrective measures, not individualized social assistance for the child; the system of measures is built by focusing on behaviour, its forms, nature and level or danger posed, not to the child's personality or needs.<sup>138</sup> In addition, the application of minimal supervision measures does not depend on the personality and individual needs of a specific child, but on whether these services are actually provided by the municipality.<sup>139</sup>

The placement of children in institutions should be a measure of last resort, used when all other measures have failed. Practice shows, however, that quite often minimum supervision measures are employed not with the aim of really helping the child rehabilitate, but just so that there would be no obstacles to the next step – the child's placement in one of the aforementioned institutions.

<sup>136</sup> Global Initiative on Psychiatry, “Analysis of factors in and causes of offending in children who are placed under medium supervision”, 2010

<sup>137</sup> Law on Minimum and Medium Supervision of the Child, 28 June 2007, No. X-1238, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=301806&p\\_query=Vaiko%20ir%20minimalios%20ir%20vidutin%C4%97s%20prie%C5%BEl%C5%ABros%20%C4%AFstatymas&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=301806&p_query=Vaiko%20ir%20minimalios%20ir%20vidutin%C4%97s%20prie%C5%BEl%C5%ABros%20%C4%AFstatymas&p_tr2=2)

<sup>138</sup> Law Institute of Lithuania, “Minimum and medium child supervision measures: premises, situation and problems with implementation”, 2013, p. 24, <http://www.teise.org/data/Monografija.-Vaiko-minimalios-prieziuros.pdf>

<sup>139</sup> Law Institute of Lithuania, “Minimum and medium child supervision measures: premises, situation and problems with implementation”, 2013, p. 32, <http://www.teise.org/data/Monografija.-Vaiko-minimalios-prieziuros.pdf>



Photo: Vėliučionys children socialisation centre, "relaxation room"

However, without a well-developed network of community-based services, children bereft of necessary and effective specialist assistance<sup>140</sup> are sent to institutions, where their problems only increase. In 2013, an audit of socialization centres conducted by the National Audit Office found that children do not actually receive specialized rehabilitation services that meet their individual needs,<sup>141</sup> with the institutions instead acting as general schools operating under a strict regime. The prevailing culture of control and punishment, as well as the "the law of the jungle", leads to numerous violations of children's rights.

In 2014, the exceptionally poor situation of children dealing with socialization problems in Lithuania drew the attention of the UN Committee against Torture. In its concluding observations, the Committee recommended a review of Lithuania "socialization centres", where minors are *de facto* being held in administrative detention, ensuring that such institutions are effectively monitored to prevent any breach of the Convention.<sup>142</sup>

In the fall of 2014, representatives from the Parliamentary Ombudspersons Office visited all of the children's socialization centres. The report published in January 2015 found numerous violations of human rights – children were locked in "relaxation rooms" to punish them for disobedience, kept there for up to 24 hours, with no proper records being kept of this measure, while the Kaunas socialization centre would use handcuffs, batons and tear gas to subdue children.<sup>143</sup> However, even when

<sup>140</sup> Global Initiative on Psychiatry, "Analysis of factors in and causes of offending in children who are placed under medium supervision", 2010

<sup>141</sup> National Audit Office, national audit report "Does the work of child socialization centres bring results?", 29 July 2013, No. VA-P-50-11-10, [http://www.vkontrole.lt/pranesimas\\_spaudai.aspx?id=17701](http://www.vkontrole.lt/pranesimas_spaudai.aspx?id=17701)

<sup>142</sup> UN Committee against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Concluding observations on the third periodic report of Lithuania, 17 June 2014, [http://tbinternet.ohchr.org/\\_layouts/treaty-bodyexternal/Download.aspx?symbolno=CAT/C/LTU/CO/3&Lang=en](http://tbinternet.ohchr.org/_layouts/treaty-bodyexternal/Download.aspx?symbolno=CAT/C/LTU/CO/3&Lang=en)

<sup>143</sup> Parliamentary Ombudspersons Office, report "On the human rights situation in the Vėliučionys Children's Socialization Centre, the Kaunas Children's Socialization Centre "Saulutė", the Kaunas Children's Socialization Centre, the Gruzdžiai Children's Socialization Centre" and the "Širvėna" Children's Socialization Centre", 28 January 2015, No. 2014/1-60(30), [http://www.lrski.lt/images/dokumentai/2015-01-28\\_Vaiku\\_SOC\\_centrai.pdf](http://www.lrski.lt/images/dokumentai/2015-01-28_Vaiku_SOC_centrai.pdf)

the ghastly living conditions in these institutions became publicized, the reaction of the authorities was sluggish at best.

At the beginning of 2015, the public was left reeling by a case of child trafficking and exploitation for the purposes of prostitution discovered in the Švėkšna Special Education Centre, which the staff and police officers were aware of for a long time but did not take adequate action to prevent these crimes from happening and to ensure the safety of the children.<sup>144</sup>

Only following an urgent consultation convened by the President did the Ministry of Education set up a special commission to investigate the incident at Švėkšna and decide the fate of the institution. However, the state exhibits a lack of strategic approach and political will to fundamentally reform the child care and psychosocial rehabilitation system, ensuring that children are safe from violence, exploitation, inhuman and degrading treatment.<sup>145</sup>

## Findings and Recommendations

- *To develop a strategy for reforming administrative detention institutions for children, providing for the ultimate closure of such institutions.*
- *To invest in prevention and the provision of services in the community, as well as into the availability of these services to poorer children or children living in remote areas.*
- *To create new services, such as psychotherapy or the individual supervision of a child by a social worker, who regularly visits the home of the child and counsels him and his family, as well as crisis centres providing short-term temporary accommodation and crisis intervention services to children and minors.*
- *If it is in the child's best interests to have his liberty restricted in order to give him access to psychosocial rehabilitation, it is recommended to create small, community-type centres, where a small number of children would live and receive services at the same time, taking into account each child's individual characteristics and needs. The restriction of a child's liberty should be used as an exclusive measure of last resort, and only for the shortest possible duration.*

<sup>144</sup> "Child prostitution in the Švėkšna Special Education Centre: the "clever" girls were selling weaker ones", *delfi.lt*, 18 January 2015, <http://www.delfi.lt/news/daily/education/vaiku-prostitucija-sveksnos-specialiojo-ugdy-mo-mokykloje-sustresnes-pardavineja-silpnesnes.d?id=66935378>

<sup>145</sup> "Closure of the Švėkšna Special Education Centre under consideration", *lzinios.lt*, 20 January 2015, <http://lzinios.lt/lzinios/Mokslas-ir-svietimas/svarstoma-likviduoti-sveksnos-specialiojo-ugdymo-centra/195177>

## Foreigners Registration Centre

The Foreigners' Registration Centre of the State Border Guard Service is an institution for the accommodation of asylum seekers and detention of foreigners.<sup>146</sup> There were 486 foreigners and stateless persons living the Foreigners' Registration Centre in 2013,<sup>147</sup> with 363 foreigners and stateless persons having been detained for longer than 48 hours.<sup>148</sup> In 2013-2014, the Foreigners' Registration Centre managed to attract the attention of quite a few state institutions – the Parliamentary Ombudspersons Office, the Equal Opportunities Ombudsperson Office and the Children's Rights Ombudsperson Office.<sup>149</sup>

2013 saw an increase in the number of reported violent incidents among foreigners in the Foreigner's Registration Centre,<sup>150</sup> as well an increase in reports of violence between foreigners and members of staff.<sup>151</sup> After investigating foreigners' complaints regarding the disproportionate use of force by officers during preventative inspections, conditions of detention and the quality of the services provided by the Centre, the Parliamentary Ombudspersons Office found that the security measures employed at the Centre were inadequate; documents regarding cases of violence were not being registered appropriately; in cases where special measures were used, the rights of persons could have been infringed as a result of the disproportionate use of special measures, inappropriately drawn up official reports and lack of medical examinations of persons subject to these measures, conducted by health care professionals following each and every instance they were used.<sup>152</sup>

Following an inspection of the residential premises of the Foreigners'

<sup>146</sup> Law on the Legal Status of Aliens, 29 April 2004, No. IX-2206, Article 79(4), [http://www3.lrs.lt/pls/inter3/dokpaies-ka.showdoc\\_l?p\\_id=486481](http://www3.lrs.lt/pls/inter3/dokpaies-ka.showdoc_l?p_id=486481)

<sup>147</sup> Migration Department, "Migration Yearbook 2013", 2014, <http://goo.gl/KYnAVb>

<sup>148</sup> Migration Department, "Migration Yearbook 2013", 2014, <http://goo.gl/KYnAVb>

<sup>149</sup> Parliamentary Ombudspersons Office, "Report on the inspection of the human rights in the Foreigners' Registration Centre", 22 May 2014, No. 2013/1-43, [http://lrski.lt/images/\\_URC\\_ataskaita\\_2014\\_05\\_22.pdf](http://lrski.lt/images/_URC_ataskaita_2014_05_22.pdf); Note of the Equal Opportunities Ombudsperson Office, 6 January 2014, No. (13-SN-260) (not publicized); Note of the Children Rights Ombudsperson Office, 10 September 2013, No. (6.1.-2013-113)-PR-184 (not publicized)

<sup>150</sup> Parliamentary Ombudspersons Office, "Report on the inspection of the human rights in the Foreigners' Registration Centre", 22 May 2014, No. 2013/1-43, [http://lrski.lt/images/\\_URC\\_ataskaita\\_2014\\_05\\_22.pdf](http://lrski.lt/images/_URC_ataskaita_2014_05_22.pdf)

<sup>151</sup> State Border Guard Office, "Border guards used electro-shock to subdue a Georgian illegal throwing a fit", 18 February 2013, <http://www.pasienis.lt/lit/Besiskerciojusi-gruzina-nelegala-pasienieciai-ramino-elektros-soku-foto> "Georgian illegals resisting border guards during an inspection were subdued by force", 18 October 2013, <http://www.pasienis.lt/lit/Patikrinimo-metu-pasienieciaims-priesinesi-gruzinai-nelegalai-buvo-sutramdyti-jega-foto>

<sup>152</sup> Parliamentary Ombudspersons Office, "Report on the inspection of the human rights in the Foreigners' Registration Centre", 22 May 2014, No. 2013/1-43, p. 16-17, [http://lrski.lt/images/\\_URC\\_ataskaita\\_2014\\_05\\_22.pdf](http://lrski.lt/images/_URC_ataskaita_2014_05_22.pdf)





*The photograph was taken following the inspection of the residential premises of the Foreigners' Registration Centre on 17 October 2013, carried out by SBGS and Foreigners' Registration Centre officers*

Registration Centre on 17 October 2013, carried out by both State Border Guard Service (SBGS) and Foreigners' Registration Centre officers, foreigners submitted complaints regarding the disproportionate use of force. SBGS officers claimed that they had to resort to physical force because the foreigners refused to cooperate – they had to twist the arms of unruly foreigners behind their backs and make them stand against the wall.

According to one Georgian national, during the inspection SBGS officers forced their way into his room at 7 o'clock in the morning and took him outside. "At first, I was taken out of the room and made to stand against the wall in the corridor with my hands behind my head, then two masked officers dragged me into a room; I received two blows to the head and was knocked down on the floor, following which one of the officers kept jumping on my back for 3-4 minutes," said the victim. It is highly doubtful that the bruises visible in the picture of the victim's back resulted just from his arms being twisted behind his back.

In January 2014, following an investigation into foreigners being fed pork regardless of what religion they practiced, the Equal Opportunities Ombudsperson's Office found that not a single piece of legislation pertaining to the feeding of foreigners contained an obligation to take foreigners' religious beliefs into account when organizing meals, and therefore, persons fed food that was prohibited by their religion were subject to discrimination based on their religious beliefs.<sup>153</sup> The Equal Opportunities Ombudsperson noted that making special diets available to part of the population of the Foreigners' Registration Centre may

<sup>153</sup> Equal Opportunities Ombudsperson Office, Note No. (13-SN-260) on the investigation into the complaint of Nadim M. Musa and other residents of the Foreigners' Registration Centre, dated 6 January 2014, [http://www.redcross.lt/files/Kontrolieriaus\\_tarnybos\\_sprendimas.pdf](http://www.redcross.lt/files/Kontrolieriaus_tarnybos_sprendimas.pdf)

lead to further inconveniences when preparing food, but also that the state's financial burden or inconvenience should not be considered as a sufficient and proportionate reason to deny the persons' fundamental right to religion, especially considering the fact that state support can come in various forms.<sup>154</sup>

To implement the recommendation of the Equal Opportunities Ombudsperson, the Ministry of the Interior established that, in cases of persons living at the Centre refusing to eat certain food products due of their religious beliefs, these food products are to be replaced with others, observing the established physiological nutritional norms.<sup>155</sup>

*Foreigners currently have two meal options – «traditional (with pork)» and «vegetarian (contains no meat)». This means that persons practicing Islam who eat meat are in all cases forced to choose vegetarian food.*

Unfortunately, the way the above order of the Ministry of the Interior was implemented is not sufficient to remedy the infringement found by the Ombudsperson – foreigners currently have two meal options – “traditional (with pork)” and “vegetarian (contains no meat).<sup>156</sup> This means that persons practicing Islam who eat meat are in all cases forced to choose vegetarian food. As a result, non-governmental organizations keep receiving complaints from foreigners regarding proper dietary arrangements not being put in place so that individuals who do not eat pork are offered alternative food products.<sup>157</sup>

In May 2014, following an assessment of the implementation of the Equal Opportunities Ombudsperson's recommendations, the Parliamentary Ombudspersons found that the Foreigners' Registration Centre menus did not state what dishes were available for persons wishing to replace an item listed or another item that they found unacceptable due to religious or other reasons, and also found that no food was being prepared and served in accordance with the established dietary menu.

<sup>154</sup> Equal Opportunities Ombudsperson Office, Note No. (13-SN-260) on the investigation into the complaint of Nadim M. Musa and other residents of the Foreigners' Registration Centre, dated 6 January 2014, [http://www.redcross.lt/files/Kontrolieriaus\\_tarnybos\\_sprendimas.pdf](http://www.redcross.lt/files/Kontrolieriaus_tarnybos_sprendimas.pdf)

<sup>155</sup> Order No. IV-42 of the Minister of the Interior “On Amending Order No. IV-340 of 4 October 2007 of the Minister of the Interior “On the Adoption of the Rules and Procedure for the Temporary Accommodation of Aliens at the Foreigners' Registration Centre”, dated 31 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=465307&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465307&p_tr2=2)

<sup>156</sup> Order No. 3K-14 of the Chief of the Foreigner's Registration Centre “On the Approval of the Survey Sheet for Accommodated Aliens”, dated 10 February 2014

<sup>157</sup> Parliamentary Ombudspersons Office, “Report on the inspection of the human rights in the Foreigners' Registration Centre”, 22 May 2014, No. 2013/1-43, p. 12, [http://lrski.lt/images/\\_URC\\_ataskaita\\_2014\\_05\\_22.pdf](http://lrski.lt/images/_URC_ataskaita_2014_05_22.pdf)



The accommodation conditions at the Foreigners' Registration Centre have long been criticized by various organizations and institutions for a number of shortcomings. In 2012, the International Organization for Migration indicated that the existing practice in Lithuania, where asylum seekers are accommodated in the same Centre where illegal migrants are kept, has been criticized by representatives of non-governmental organizations. The measures used in the Foreigners' Registration Centre to enforce order and maintain security, such as the area being surrounded with a barbed wire fence and guarded by uniformed officers, negatively affect the psychological state of asylum seekers.<sup>158</sup>

In September 2013, following a visit to the Foreigners' Registration Centre, the representatives of the Children's Rights Ombudsperson Office found that conditions were poor for both detainees and persons placed in the asylum-seekers' dormitory – they did not ensure the rights and legitimate interests of vulnerable people, human dignity and the requirements of children.<sup>159</sup>

The representatives also criticized the guarantees applicable to children during detention, such as education or leisure activities in the asylum seekers dormitory. According to them, from a child rights perspective, these measures cannot be seen as sufficient to reduce or eliminate the damage and impact caused by the detention itself as well as detention conditions.<sup>160</sup> It was decided to propose to the Government to address the issue of funding the improvement of living conditions for vulnerable people and families with minor children accommodated at the Foreigners' Registration Centre, in order to comply with the recommendations of international organizations and eliminate causes for continuing violations of children's rights resulting from conditions that do not meet child rights protection standards.<sup>161</sup>

Studies conducted in 2012-2013 on the reform of asylum policy in Lithuania revealed the shortcomings in the implementation of Lithuania's

<sup>158</sup> International Organization for Migration, "Asylum System in Europe: Situation and Problems", 2012, p. 15, [http://www.iom.lt/documents/Studija\\_TMO.pdf](http://www.iom.lt/documents/Studija_TMO.pdf)

<sup>159</sup> Note No. (6.1.-2013-113)-PR-184 of the Children's Rights Ombudsperson's Office, dated 10 September 2013 (not publicized)

<sup>160</sup> Note No. (6.1.-2013-113)-PR-184 of the Children's Rights Ombudsperson's Office, dated 10 September 2013 (not publicized)

<sup>161</sup> Note No. (6.1.-2013-113)-PR-184 of the Children's Rights Ombudsperson's Office, dated 10 September 2013 (not publicized)

obligations under the *EU asylum acquis*.<sup>162</sup> One of the recommendations given to the Government was to reconsider issue of determining the place of accommodation for asylum seekers, keeping in mind that accommodation centres must ensure adequate living standards and the fact that the Foreigners' Registration Centre is not a social institution. It is recommended to consider the possibility of accommodating asylum seekers at either the Refugees Reception Centre or another social institution capable of ensuring adequate living standards.<sup>163</sup>

## Findings and Recommendations

- *Inappropriate documentation of the use of special measures with respect to foreigners allows officers to act arbitrarily and reduces the institutional transparency of the Foreigners' Registration Centre. It is recommended to have more detailed regulation of the grounds for and terms of the application of special measures, with reference to the principles for the correct use of special measures stated by the Parliamentary Ombudspersons Office.*
- *Despite a new legal provision, which sets out the obligation to replace food that foreigners refuse to eat due to their religious beliefs with other products, in practice the state's duty to not discriminate against people because of their religious beliefs is not being realized properly. It is recommended to ensure that the right of foreigners to eat according to their religious beliefs is respected in all cases in practice, ensuring that pork products can be replaced by alternative meat products.*
- *Considering that the Foreigners' Registration Centre is not a social institution capable of receiving asylum seekers who had suffered persecution, torture or inhuman or degrading treatment, particularly children, alternative accommodation for asylum seekers should be considered and provided for, with appropriate redistribution of projected funding.*

<sup>162</sup> Lithuanian Red Cross Society, "The "Implementation of the European Union asylum acquis in Lithuania: legal and social aspects" project", 2013, <http://www.redcross.lt/lt/veikla/pabegeliai-prieglobscio-prasytojai/2-uncategorised/175-projektas-euopos-sajungos-prieglobscio-teisyno-igyvendinimas-lietuvoje-teisinis-ir-sociologinis-aspektai>

<sup>163</sup> Institute for Ethnic Studies of the Lithuanian Social Research Centre, *Studies of Ethnicity*, 2013 m., p. 115

### III. Life Imprisonment

The *Criminal Code* prescribes a sentence of life imprisonment for the most serious crimes. Within the Lithuanian legal system, life imprisonment actually does what it says on the tin, i.e. the convicted person is imprisoned until his death. Unlike with many other punishments, there is not even a theoretical possibility of parole following the consideration of the changes to the convicted person's personality or his possible rehabilitation. The *Code of Enforcement of Punishments* sets an explicit prohibition on the conditional release of convicts sentenced to life imprisonment.

*The court ruled that a life sentence without the slightest chance of review or reduction in length, even in view of significant changes in the prisoner and progress towards rehabilitation, is tantamount to inhuman and degrading treatment of the convict.*

As such, a person sentenced to life imprisonment, may only avoid finishing his life in prison on several grounds of clemency, none of which directly depend on his efforts to change or how successful they are. The person may be released from the rest of his sentence, if he becomes seriously and terminally ill;<sup>164</sup> a person can also be released on political grounds for clemency, either by a group act, when Parliament adopts an amnesty act, or an individual act, when he is granted a Presidential pardon.<sup>165</sup>

In 2013, the European Court of Human Rights delivered its judgment in the case of *Vinter and others v the United Kingdom*,<sup>166</sup> which raises reasonable doubt whether the current Lithuanian life imprisonment regime complies with international human rights standards. The court ruled that a life sentence without the slightest chance of review or reduction in length, even in view of significant changes in the prisoner and progress towards rehabilitation, is tantamount to inhuman and degrading treatment of the convict.

This does not mean that all persons sentenced to life imprisonment should be released, but the possibility to do so must exist if their level of rehabilitation reaches a point where continued detention can no longer be justified on legitimate penological grounds.

<sup>164</sup> Criminal Code, 26 September 2000, No. VIII-1968, Article 76, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=493995](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=493995)

<sup>165</sup> Criminal Code, 26 September 2000, No. VIII-1968, Articles 77 and 78, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=493995](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=493995)

<sup>166</sup> 9 July 2013 ECtHR judgment in the case of *Vinter and others v the United Kingdom*, application No. 66069/09, 130/10 and 3896/10, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122664>

At the end of 2013, ECtHR agreed to examine the application of a group of convicts sentenced to life imprisonment for violating their rights, with Lithuania being the alleged guilty party.<sup>167</sup> The application states that the life sentences given to the applicants as well as the regulation of life imprisonment in general violates the prohibition against inhuman and degrading treatments enshrined in the *European Convention on Human Rights*.

The ability to reduce the length of a sentence for life provide for in the Lithuanian legal system cannot be seen as a review of the sentence, as is required by the standards laid down by the ECtHR. The reduction of the sentence is dependent either on a severe deterioration in the convict's health, or on the absolute discretion of politicians. At the same time, the Lithuanian legal system does not allow reviewing a person's sentence specifically with regard to his rehabilitation, so the current regulation of life imprisonment does not comply with the *European Convention on Human Rights*.

## Findings and Recommendations

- *The current provisions for life imprisonment in Lithuania do not allow for a review of the necessity of further incarceration, taking into account significant changes in the personality of the convicted. This is why there is reasonable doubt that life imprisonment in its current form does not comply with the European Human Rights Convention.*
- *The law of Lithuania should allow for reviewing sentences of people convicted for life and granting parole where the convicted are able to demonstrate that their personalities had changed sufficiently and that they had reached a level of rehabilitation where they would not pose a threat to the public if released and further incarceration would serve no purpose.*

<sup>167</sup> ECtHR case of *Matiošaitis and 7 other applicants v Lithuania*, application No. 22662/13, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-139980>

## IV. Lithuania's Role in CIA's Extraordinary Rendition and Detention Programme

August 2014 marked the fifth anniversary of US media first publishing allegations of Lithuania's involvement in CIA's secret detention and extraordinary rendition programme. Parliamentary and pre-trial investigations initiated in response to these allegations were unable to reach unambiguous conclusions.



Photo: State Security Department training base in Antaviliai, <http://www.15min.lt/naujiena/aktualu/lietuva/senato-ataskaita-czv-kalejima-lietuvoje-uzdare-2006-m-kai-itariamam-teroristui-nebuvo-suteikta-medicinos-pagalba-56-472127>

On 9 December 2014, the US Senate Select Committee on Intelligence published its report on the CIA detentions and interrogations programme.<sup>168</sup>

The report details the execution of the programme, the circumstances of establishing secret detention sites abroad and states that illegal interrogation methods were used on

at least 39 detainees suspected of terrorism, harming their physical and mental health. It is thought that detention site “VIOLET”, mentioned in the report, could have been operating in Lithuania.<sup>169</sup> The document states that the programme was unable to reach its objectives, while the officers in charge supplied distorted or false information on its alleged success to the US authorities.

On 24 July 2014, the European Court of Human Rights issued rulings in two cases relating to the CIA program – *Al-Nashiri v Poland* and *Abu Zubaydah v Poland*.<sup>170</sup> In both cases the Court found violations of Articles

<sup>168</sup> US Senate Select Committee on Intelligence, “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program”, 3 December 2012, <http://www.intelligence.senate.gov/study2014.html>

<sup>169</sup> Indrė Bungardaitė, Liepa Želnienė, “Senate report: CIA closed its secret prison in Lithuania in 2006, after a suspected terrorist was not given medical aid”, 10 December 2014, <http://www.15min.lt/naujiena/aktualu/lietuva/senato-ataskaita-czv-kalejima-lietuvoje-uzdare-2006-m-kai-itariamam-teroristui-nebuvo-suteikta-medicinos-pagalba-56-472127>

<sup>170</sup> 24 July 2014 ECtHR judgment in the case of *Husayn Abu Zubaydah v Poland*, application No. 7511/13, 24 July 2014

3, 5, 6, 8 and 13 of the *European Convention on Human Rights*. The Court found a further violation of Article 2 of the Convention, guaranteeing the right to life, in the case *Al-Nashiri v Poland*, since Al-Nashiri is facing the death penalty in the US. Abu Zubaydah was awarded 130 000 EUR in compensation, Al-Nashiri – 100 000 EUR.

The European Court of Human Rights is still examining Abu Zubaydah's complaint against Lithuania. The government of Lithuania submitted its position on the case in May 2013. According to the government, Lithuania did everything that it could to clear any suspicion regarding the transportation, detention and torture of persons detained by the CIA on Lithuanian soil.<sup>171</sup>

In September 2013, HRMI together with REDRESS, a London-based organization, requested the Prosecutor General to initiate an investigation into the alleged unlawful detention of Mustafa al-Hawsawi – another victim of the CIA programme – in Lithuania.<sup>172</sup> The European Parliament also urged investigating these new allegations – in October 2013, it adopted a resolution urging Lithuania to conduct an effective investigation to establish whether Mustafa al-Hawsawi was held in Lithuania.<sup>173</sup>

Unfortunately, the pre-trial investigation was not started on the grounds that the previous investigation conducted by the Prosecutor's Office cleared all suspicions regarding the operation of the CIA programme in Lithuania; this decision was later endorsed by the Vilnius City District Court. The Vilnius Regional Court, following an examination of the appeal submitted by non-governmental organizations, on 28 January 2014 quashed the decisions of the prosecutor and the court of first instance.<sup>174</sup> This ruling is final and not subject to appeal.

The Court emphasized that, prior to reaching categorical conclusions

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ECtHR judgment in the case of *Al Nashiri v Poland*, application No. 28761/11

<sup>171</sup> Human Rights Monitoring Institute, "Lithuanian Government does not care about the fate of Abu Zubaydah", 3 July 2013, <http://www.hrmi.lt/nauijiena/857/>

<sup>172</sup> Human Rights Monitoring Institute, "Prosecutor General's Office receives a request to start an investigation concerning another victim of the CIA program", 13 September 2013, <http://www.hrmi.lt/nauijiena/874/>

<sup>173</sup> European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0418+0+DOC+XML+V0//EN>

<sup>174</sup> Human Rights Monitoring Institute, "A new development in the CIA prisons case", 20 February 2014, <http://www.hrmi.lt/nauijiena/919/>

on the absence of criminal activity, the prosecutor should have checked the information contained in the application – namely, referring to the US authorities for access to information and making use of the opportunity to interview the alleged victim and his representative. With reference to the ruling, the General Prosecutor's Office in February 2014 launched an investigation into the alleged illegal transportation of persons across Lithuanian borders.

## Findings and Recommendations

- *To ensure that the pre-trial investigation of the Prosecutor General's Office is comprehensive, effective and transparent, so that it complies with the standards emanating from the European Convention on Human Rights.*
- *To expand the scope of the pre-trial investigation by including other suspected criminal activities committed during the operation of the programme, such as conduct prohibited by international law, unlawful imprisonment and abuse of authority.*
- *To keep the public regularly and fully informed on the progress and results of the investigation.*





# PROHIBITION OF SLAVERY AND FORCED LABOUR.

## ARTICLE 4

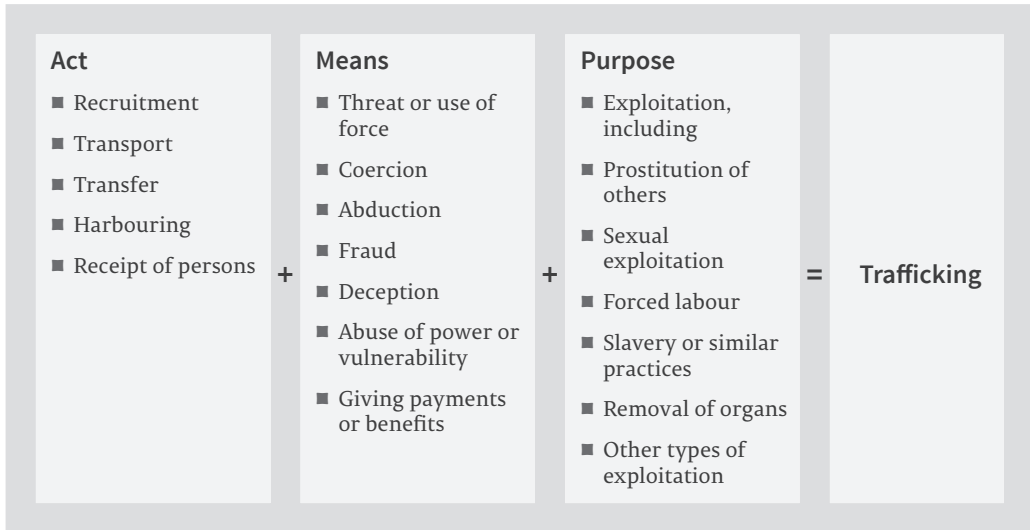
### I. Trafficking in Human Beings

**H**uman trafficking traditionally evokes the image of a large-scale, organized and brutal business, but reality demonstrates that nowadays human trafficking may occur outside of organized crime, with an increasing number of cases where individuals or families exploit or sell workers, neighbours, friends, relatives or children. In addition, trafficking is no longer limited to being an international crime – that is, a crime that crosses state borders – and may take place within the country itself.

Trafficking in human beings is a crime against human liberty and a modern form of slavery. It remains a highly latent crime due to high levels of stigmatization, fear of revenge from criminals and the insensitive attitudes of the authorities towards its victims.

In order to properly combat human trafficking, it is necessary to understand just what constitutes the crime. According to the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, “trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>175</sup>

<sup>175</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Woman and Children, supplementing the UN Convention Against Transnational Organized Crime, 15 November 2000, Article 3, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=211307&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=211307&p_tr2=2)



In essence, this offense has three necessary elements:

- Acts – this crime is committed through one or more alternative actions: selling, purchasing, otherwise transferring or acquiring, transporting or holding in captivity;
- Means – using one or more alternative ways to subvert the victim's will: physical violence, threats, otherwise depriving the victim of his/her ability to resist by exploiting his/her dependencies or vulnerabilities, through deception, by paying money or giving any other pecuniary benefit to the person in de facto control of the victim;
- Purpose – the above steps are carried out for the purposes of sexual exploitation, forced labour, servitude, removal of organs or other purposes for exploitation.

In order to find the crime of human trafficking, it is necessary to establish the existence of at least one of the aforementioned acts and at least one of the means for subverting the will of the victim, as well as the purpose of the exploitation.

The *Criminal Code* contains a series of articles criminalizing the practice of human trafficking, i.e. trafficking in human beings (Article 147); exploitation for the provision of forced labour or services (Article 147<sup>(1)</sup>); taking advantage of a person's forced labour or services (Article 147<sup>(2)</sup>); purchase or sale of a child (Article 157).

The fact that the criminal law provides detailed regulations for the various forms of human trafficking should be viewed positively; on the other hand, it raises questions as to why certain forms of human trafficking are treated as minor offenses: crimes such as the exploitation of a person for the provision of forced labour or services, or taking advantage of a person's forced labour or services, are only viewed as minor offenses, punishable by no more than 2 to 3 years in prison.

International organizations acknowledge that the trafficking of human beings is one of the most serious offenses worldwide, and also one of the most flagrant violations of human rights.<sup>176</sup> Accordingly, its punishment must be able to actually prevent and combat trafficking in human beings;<sup>177</sup> Directive 2011/36/EU obliges states to ensure that human trafficking offenses are punishable by a maximum penalty of at least five years of imprisonment.<sup>178</sup>

### Sexual Exploitation

Unfortunately, Lithuania still lacks proper legal regulation of certain aspects of human trafficking related to the sexual exploitation of children and adults; accordingly, this leads to human trafficking being classified as a much less serious offence in practice.

The *Crimes and Misdemeanours Against Morality* chapter of the *Criminal Code* also makes it criminal to gain profit from another person's prostitutions (Article 307) and to involve other persons in prostitution (Article 308). These two crimes are not grouped together with offenses against human liberty and are not deemed to be human trafficking offences, but in reality, the acts for which people are prosecuted under these articles essentially satisfy the ingredients for human trafficking.

The Article on gaining profit from another person's prostitution criminalizes the receipt of income from another person's prostitution or

<sup>176</sup> Europa. Summaries of EU legislation, "Preventing and Combating Trafficking in Human Beings", 2013, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm)

<sup>177</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Woman and Children, supplementing the UN Convention Against Transnational Organized Crime, 15 November 2000, Article 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=211307&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=211307&p_tr2=2)

<sup>178</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 4(1), <http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32011L0036&from=LT>

from the procurement of prostitution, as well as the organization or being in charge of prostitution, or the transportation of a person with his/her consent for prostitution; it is also a crime to profit from the prostitution of a minor, or to organize or be in charge of the prostitution of a minor, or to otherwise exploit minors for the purposes of prostitution.<sup>179</sup>

*In cases where his/her will is constrained by at least one of the above means – for example, by abusing the victim’s vulnerabilities or dependencies – his/her consent to be exploited does not release the perpetrator from liability for human trafficking.*

The essential difference between this offence and human trafficking is the existence of informed consent to provide sexual services. As such, when classifying the offence, the investigating authority must determine whether the person was really acting out of free will, especially in cases where the profits earned are handed over. In cases where his/her will is constrained by at least one of the above means – for example, by abusing the victim’s vulnerabilities or dependencies – his/her consent to be exploited does not release the perpetrator from liability for human trafficking. As noted by the United Nations

Office on Drugs and Crime, the consent of the victim of human trafficking to be exploited is irrelevant if any of the above human trafficking “means” were used.<sup>180</sup> This view is also supported by European Union legislation.<sup>181</sup>

It is important to note that the very fact that a third party and not the person providing sexual services is in receipt of all or most of the profits for said services gives rise to suspicion that control is involved. As such, an act may only be classified as profiting from the prostitution of another person when that person’s informed consent to share income earned can be demonstrated by solid evidence, such as payment for certain services rendered by the defendant or properly obtained (by guaranteeing the person’s safety) testimony from the person providing the sexual services.

<sup>179</sup> Criminal Code, 26 September 2000, No. VIII-1968, Article 307, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=493995](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=493995)

<sup>180</sup> UN Office on Drugs and Crime, Human Trafficking FAQs, [http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What\\_if\\_a\\_trafficked\\_person\\_consent](http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_if_a_trafficked_person_consent)

<sup>181</sup> Europa. Summaries of EU legislation, “Preventing and Combating Trafficking in Human Beings”, 2013, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm)

In addition, a child's consent is irrelevant regardless of the "means" used against him/her.<sup>182</sup> When the victim is a child (that is, a person under 18 years of age), all of the above actions, done for the purposes of exploitation, are classified as human trafficking even in the absence of any measures or means to restrict the child's will.<sup>183</sup> This means that all transfers of children to persons who exploit them for the purposes of prostitution are cases of human trafficking, not "crimes against morality."

Article 308 of the *Criminal Code* criminalizes the involvement of another person in prostitution; the involvement in prostitution of a person who is dependent on the perpetrator financially, is subordinate to him/her in office or otherwise dependent on him/her, using force or mental abuse or deception; and the recruitment of a minor, forcing or otherwise involving him/her in prostitution.

The offence provided for in this Article, has all three elements necessary for establishing the offence of trafficking: actions – transfer of a person; means/methods – exploiting the dependencies of a person, using force or mental abuse or deception; and purpose – the above actions are carried out for the purposes of sexual exploitation. Unfortunately, the punishment for what in practice amounts to human trafficking, when the actions are classified under this Article, may not even involve incarceration, since legally this is not deemed to be human trafficking.

It is clear that under the current legal regime it is possible to improperly classify certain human trafficking offences, with these crimes attracting more lenient sanctions as a result. They are not reflected in official human trafficking statistics, and their victims are not able to enjoy all of the rights and guarantees they are entitled to.

This problem is well illustrated by Lithuanian case law from 2013-2014. On 31 October 2013, the Šiauliai Regional Court passed judgment in a criminal case involving three 14-15 year old girls that were forced to provide sexual services for almost a month – the persons soliciting them were convicted of profiting (Article 307) and involvement in prostitution (Article 308), sentencing them to a mere 150 hours of commu-

<sup>182</sup> UN Office on Drugs and Crime, Human Trafficking FAQs, [http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What\\_if\\_a\\_trafficked\\_person\\_consent](http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_if_a_trafficked_person_consent)

<sup>183</sup> Europa. Summaries of EU legislation, "Preventing and Combating Trafficking in Human Beings", 2013 [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm)

nity service.<sup>184</sup> The decision was later upheld by the Court of Appeal of Lithuania.<sup>185</sup>

According to both courts, the underage girls were sufficiently mature and, understanding the essence of their actions, voluntarily engaged in prostitution, with no mental or physical abuse used against them and the criminal activity itself occurring over a relatively short period of time.<sup>186</sup> In other words, in these circumstances the courts were able to establish that the underage girls consented to prostitution and to giving away their earnings to the defendants.

It should be noted that, even in the absence of any coercive measures against the underage girls, Directive 2011/36/EU provides that an agreement for the exploitation of a child, that is, a person under 18 years of age, is recognized as human trafficking even if no coercive measures were used against them.<sup>187</sup>

The systemic human trafficking that took place in the Švėkšna Special Education Centre in 2014 is another illustrative example. It was found that underage girls living in that centre for children with behavioural or emotional disorders used to organize the sale of their weaker and younger compatriots to clients – the older girls would post advertisements and later send younger, weaker girls to the clients. For the sexual services received, men would pay the underage girls in money or give them certain items, such as cigarettes.<sup>188</sup>

Commenting on these events, the staff at the Centre identified this as child prostitution: supposedly, the girls decided to become prostitutes completely of their free will, “dashed off to clients in just their slippers”, went to the woods to provide sexual services.<sup>189</sup> Even though the Centre staff claims that the girls were acting of their own free will and with

<sup>184</sup> 31 October 2013 ruling of the Šiauliai Regional Court in criminal proceedings No. 1-25-152/2013

<sup>185</sup> 6 February 2014 ruling of the Court of Appeal of Lithuania in criminal proceedings

<sup>186</sup> 31 October 2013 ruling of the Šiauliai Regional Court in criminal proceedings Nr. 1-25-152/2013

<sup>187</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Art. 2(5), <http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32011L0036&from=LT>

<sup>188</sup> “Child Prostitution in the Švėkšna Special Education School: the “Sly” Ones Were Selling the Weaker Girls”, *delfi.lt*, 18 January 2015, <http://www.delfi.lt/news/daily/education/vaiku-prostitucija-sveksnos-specialiojo-ugdy-mo-mokykloje-sustresnes-pardavineja-silpnesnes.d?id=66935378>

<sup>189</sup> “Child Prostitution in the Švėkšna Special Education School: the “Sly” Ones Were Selling the Weaker Girls”, *delfi.lt*, 18 January 2015, <http://www.delfi.lt/news/daily/education/vaiku-prostitucija-sveksnos-specialiojo-ugdy-mo-mokykloje-sustresnes-pardavineja-silpnesnes.d?id=66935378>

consent, it is clear that there were many factors subverting free will in the circumstances: a hierarchy among the children based on bullying, threats or even violence, social and emotional vulnerability of children not living with a family. Moreover, the victims of these crimes were children with behavioural and emotional disorders living in a closed-type institution, separated from the community and more vulnerable as a result.

It must be stressed that vulnerable people – those living in institutions or in families at social risk, with mental disabilities or behavioural or emotional problems – are much more likely to fall victim to human trafficking.

As such, the children in this situation were being transferred and received, using coercive measures (frightening and intimidating the girls), by abusing their vulnerability and paying money in order to sexually exploit them. Unfortunately, these days the pre-trial investigation in this case was started under the Article of the *Criminal Code* criminalizing the involvement of children in prostitution; this way, the perpetrators will potentially be given a much more lenient punishment than they would have received if the offence was treated and classified properly.

The proper classification of the offense is also particularly important to ensuring the rights of the victim. Individuals who were wronged as a result of human trafficking are given victim status and guaranteed all related rights, including the right to compensation for non-pecuniary loss. Meanwhile, speaking of “voluntary prostitution”, a person engaged in prostitution this way will not be considered a victim in this sense. On the contrary – a person may face administrative sanctions for engaging in prostitution.<sup>190</sup>

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<sup>190</sup> Code of Administrative Offences, 13 December 1984, No. X-4449, Article 1821, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=493978](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=493978)

## Other Forms of Exploitation

It should be noted that child trafficking in instances where children are sold by their own families to beg or steal abroad is still neglected with regard to prevention, intervention and the provision of help. Even more so, the exploitation of adults for work in slave-like conditions in Lithuania and abroad – by taking away their documents, limiting their freedom of movement and otherwise subverting the will of the victim – still does not receive enough attention as an integral part to the phenomenon of human trafficking.

Individual positive examples where law enforcement authorities make an effort to both inform the public for the purposes of prevention and to contribute to the proper identification and classification of all aspects of this phenomenon are isolated and depend on the good will of individual officers or a particular institution.<sup>191</sup> Victims of trafficking sold to beg, steal or engage in forced labour tend to receive more attention from non-governmental organizations;<sup>192</sup> at state-level, there is a lack of understanding of the problem, as well as an absence of an effective prevention, intervention and support network at national level.

Unfortunately, in instances where Lithuanian law enforcement officers do react quickly and effectively to information on potential or past incidents of children forced into stealing or begging, things do not always go smoothly due to the lack of competence – or even basic humanity – on the part of the officers or the courts when assessing the victim's situation.

For example, thanks to the efforts of the NGO Caritas and the officers of the Šilutė County Police Headquarters, a minor cared for at the Šilutė care home was rescued from traffickers that intended to take him to Scotland. The teenager, who had endured threats, violence and abduction, gave his full cooperation to the officers, but his rehabilitation was made much more difficult when these same officers alleged that he was smoking marihuana during recruitment. Only the diligent efforts of the Caritas staff and lengthy proceedings in the Supreme Court of

<sup>191</sup> For example, the comprehensive legal information, advice and recommendations available on the Šiauliai police website

<sup>192</sup> The Lithuanian Caritas provides assistance to victims of sexual abuse and/or other forms human trafficking: prostitution, forced labour, exploitation in crime, fictional marriages or begging, both in Lithuania and abroad. <http://www.anti-trafficking.lt/> The Missing Persons' Families Support Centre provides assistance to families of missing persons, as well as to victims of human trafficking and their close ones. <http://www.missing.lt/index.php/lt/>



Lithuania ensured that the victim's interests were protected.<sup>193</sup>

*The latency of the offence of human trafficking is further increased by the fact that both its child and adult victims lack information on where to access help as well as what sort of help is available to them; they also distrust the authorities and the courts.*

The latency of the offence of human trafficking is further increased by the fact that both its child and adult victims lack information on where to access help as well as what sort of help is available to them; they also distrust the authorities and the courts. In return, this makes it more difficult for law enforcement to do its job and receive information on crimes in progress. In certain cases long-term recruitment/kidnapping efforts are not noticed in time.

For example, for a long time children from Tauragė were being taken to Norway, Scotland, France and the Netherlands to steal. Unfortunately, the first to react were Norwegian, not Lithuanian law enforcement authorities, with two residents of Tauragė, who used money to entice children away from poor families or families at social risk to come steal abroad, convicted in Bergen. The children were half-starved, kept in deplorable conditions, constantly threatened that if they tried to run away, they would be caught and suffer severe consequences.<sup>194</sup>

It should be noted that positive examples have also been recorded, when law enforcement authorities of different counties work swiftly to prevent crimes before the traffickers are able to leave the country with people consigned to forced labour or theft. For example, the Panevėžys County sees the greatest number convictions for human trafficking. One case from 2014 involved eight residents of Panevėžys city, Kėdainiai, Kupiškis and Vilkaviškis counties being accused of having taken or planning to take six young men to Germany, where they would be forced to steal or assist telephone fraudsters. The socially vulnerable young believed the accused when the latter promised that the former would be employed in factories in Germany, and have even been prepared to be taken away – however, the efforts of the Organized Crime Investigation Office of the Panevėžys County Police Headquarters and the Lithuanian Criminal Police Bureau led to them being found in time.

<sup>193</sup> <http://www.anti-trafficking.lt/article/vogti-i-vokietija-ar-norvegija-%E2%80%93-ne-savo-noru-balsaslt-2014-09-09>

<sup>194</sup> “Destined to Steal in Germany or Norway - and Not Out of Free Will”, *balsas.lt*, 9 September 2014 m, <http://balsas.tv3.lt/naujiena/805884/vogti-i-vokietija-ar-norvegija-ne-savo-noru>

The defendants had already taken three other youngsters to Germany, where the latter were forced to work for telephone fraudsters that used to swindle Russian-speaking people living in Germany. The criminals took the telephone fraud scheme that is famous in Lithuania and successfully applied it to Germany. After getting phone numbers belonging to Russian-speaking German residents, the Lithuanian scammers would call them about a car crash or some crime committed by a close one, demanding money. The youngsters that were brought to Germany by deception would be sent to collect money from a victim falling for the lie. It is therefore no surprise that German cities are full of posters warning residents to beware phone calls from Lithuanian phone numbers and lies from Russian-speaking swindlers.<sup>195</sup>

After the *Programme for the Prevention and Control of Trafficking in Human Beings for 2009-2012* expired in 2012, a new programme for the 2013-2016 period had not been adopted. The inter-institutional *Action Plan for the Implementation of the National Crime Prevention and Control Programme in 2013-2015* included the strengthening of the efforts to combat human trafficking as one of its activities. The inter-institutional Action plan is a continuation of the earlier specialized programmes, providing that it will be sought to increase the qualifications of anti-trafficking specialists and to offer comprehensive assistance to victims of human trafficking. In implementing these objectives, it is planned to train 20 public police officers each year, allocating 2 thousand LTL (around 579 Euro) for the task; and to finance 5 projects each year for the provision of social assistance to victims of human trafficking, with each project being allocated roughly 10 thousand LTL (around 2896 Euro). Considering how much money the state is willing to allocate to the fight against human trafficking, it is evident that this issue is not treated with priority at the political level.

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<sup>195</sup> Poster found on the premises of the Kehl City Police Headquarters, 19 October 2014

## Findings and Recommendations

- *In order to effectively combat the crime of human trafficking and its ever-increasing forms, this issue must become a real political priority for the state and allocated sufficient human and financial resources.*
- *The paragraph criminalizing profiting from a minor's prostitution and the article criminalizing involving another person should be removed from the Criminal Code; instead, these offences should be classified as trafficking in human beings. Exploitation for the purposes of forced labour or services, as well as for making use of a person's forced labour or services, should attract harsher penalties.*
- *When classifying an offence as profiting from the prostitution of another, it is imperative to determine whether free consent truly exists – especially in cases where earnings are handed over to a third party.*
- *In cases involving the exploitation of vulnerable people, such as children or persons with disabilities, their consent to the exploitation should be irrelevant.*
- *It is necessary to focus more on human trafficking cases involving children and adults recruited and sold into forced labour, theft, begging and other forms of exploitation, by both raising the competence of law enforcement personnel and educating the public.*
- *It is necessary to raise the qualifications of judges and prosecutors in the field of combating trafficking in human beings, as well as to organize training on the particulars of communication with the victim, his/her rights and guarantees in criminal proceedings.*
- *To ensure effective assistance for victims of trafficking in human beings, it is necessary to pay sufficient attention to the rehabilitation of victims and the prevention of repeated offending against them.*



## RIGHT TO LIBERTY AND SECURITY. ARTICLE 5

### I. Pre-Trial Detention

**P**re-trial detention is the strictest restrictive measure available in criminal proceedings. It is tantamount to imprisonment before trial, except it may effectively prove to be even harsher as regimes in remand prisons, where detainees are kept, are usually stricter than in correctional facilities. Furthermore, living conditions in re-

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mand prisons are quite often poorer than in the usual places of detention. Due to the severance of social ties, high levels of stress and poor material conditions, detainees in remand prisons often suffer great mental or even physical harm; the use of this measure also affects and is harmful to detainees' close ones.<sup>196</sup>

It is important to understand that while detainees are suspected of committing the crime, they have not yet been convicted and thus must not be treated as criminals. As such, even innocent people are susceptible to suffering the aforementioned ill effects.

The *Code of Criminal Procedure* provides that pre-trial detention is an exceptional restrictive measure that may only be used when less severe measures, such as house arrest or bail, would not be able to ensure that the suspect does not abscond or interfere with the pre-trial investigation by destroying evidence or tampering with witnesses.<sup>197</sup>

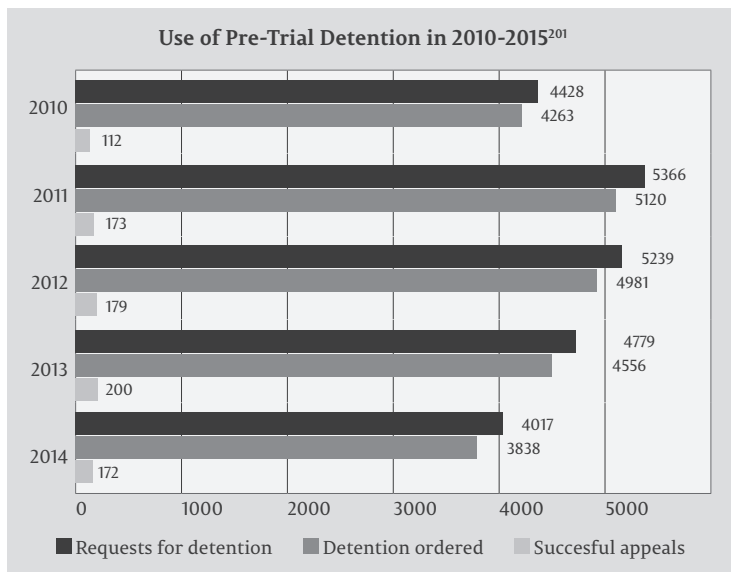
It is important to understand that pre-trial detention may only be used

<sup>196</sup> Human Rights Monitoring Institute, Pre-Trial Detention: One Man's Story, [https://www.youtube.com/watch?v=k-CReZ\\_k-27Q](https://www.youtube.com/watch?v=k-CReZ_k-27Q)

<sup>197</sup> Code of Criminal Procedure, 14 March 2002, No. IX-785, Art. 122, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=494011](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=494011)

in order to ensure that the suspect takes part in the criminal proceedings, that he does not interfere with the investigation and, in certain cases, to prevent the possible commission of further offences.<sup>198</sup> Pre-trial detention may not be used as a means to prematurely punish the suspect, or to coerce him into giving evidence. The use of pre-trial detention without strictly observing the above requirements is a violation of a person's right to liberty, which is protected by Article 5 of the European Convention on Human Rights.

Despite the harsh consequences of pre-trial detention and the fact that it should be considered an exceptional measure, statistical data shows the eagerness of Lithuanian courts to order its use. In 2013, prosecutors submitted 4779 requests for ordering or extending pre-trial detention, 4556 of which were granted in full or in part.<sup>199</sup> In 2014, these numbers were 4017 and 3838, respectively. As such, the courts grant more than 95% of all requests for pre-trial detention; meanwhile, the chance of successfully appealing the order is low – pre-trial detention orders are quashed in only about 9% of all cases.<sup>200</sup>



These numbers have remained fundamentally unchanged since records of the statistical data began in 2010, demonstrating that the all-too frequent and willing use of pre-trial detention is a systemic, deeply-rooted problem.

Some of the underlying causes of the problem were explained in a study of the attitudes of

<sup>198</sup> Code of Criminal Procedure, 14 March 2002, No. IX-785, Art. 119, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=494011](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=494011)

<sup>199</sup> National Courts Administration, information received on 7 February 2014 and 30 January 2015

<sup>200</sup> National Courts Administration, information received on 7 February 2014 and 30 January 2015

<sup>201</sup> National Courts Administration, information received on 6 June 2012, 3 June 2013, 7 February 2014 and 30 January 2015

police officers, prosecutors and judges towards detention, carried out in 2013 by HRMI.<sup>202</sup> A significant portion of the specialists participating confirmed that pre-trial detention is sometimes deliberately abused – it is sought and ordered with the full knowledge that it is not really necessary in the circumstances. Sometimes this measure is used to put suspects under pressure.

The study also revealed that public and media reactions have a huge impact on decisions pertaining to pre-trial detention. The media tends to scandalize refusals to order pre-trial detention and to cast the specialists involved in a negative light. As such, in order to avoid potential outcries, pre-trial detention is sometimes ordered as the “safe” option, since cases of unjustified detention rarely attract public attention.

## Findings and Recommendations

- *The extreme frequency and abuse of pre-trial detention in criminal proceedings is a deeply-rooted and systemic problem which leads to an excessive restriction of the liberty of suspects in criminal cases, possibly resulting in the violation of their rights and serious consequences for them and their kin.*
- *With reference to the fact that pre-trial detention is used all-too frequently despite strict regulations, it is recommended to organize training for judges and prosecutors to raise their qualifications by making them aware of the purpose of and proper grounds for pre-trial detention and other restrictive measures, as well as the importance of protecting human rights in criminal proceedings.*

## II. Parole and Probation

The *Law on Probation*<sup>203</sup> came into force on 1 July 2012 and established probation as a conditional alternative to a custodial sentence (a suspended sentence or parole), throughout which the probationer is under supervision.<sup>204</sup>

<sup>202</sup> Human Rights Monitoring Institute, „Pre-Trial Detention: Police, Prosecutors’ and Investigating Judges’ Perspectives, 2013, [http://www.hrmi.lt/uploaded/Documents/Suemimas%20-%20praktiku%20poziuris\\_LT\\_Galutinis.pdf](http://www.hrmi.lt/uploaded/Documents/Suemimas%20-%20praktiku%20poziuris_LT_Galutinis.pdf)

<sup>203</sup> Law on Probation, 22 December 2011, No. XI-1860, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415894&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415894&p_tr2=2)

<sup>204</sup> Law on Probation, 22 December 2011, No. XI-1860, Art. 2(5), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415894&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415894&p_tr2=2)

The *Law on Probation*, together with the amended and supplemented *Criminal Code*,<sup>205</sup> *Code of Criminal Proceedings*,<sup>206</sup> and *Code of the Enforcement of Punishments*,<sup>207</sup> created a new legal framework for the probation system in Lithuania. However, despite the fact that further individualization of probation became possible, probation became an even rarer sight following the entry of the above laws into force: suspended sentences made up only 8.2% of all sentences passed in 2012 and 6.9% in 2013; 36.5% of all persons leaving prison in 2012 did so on parole, with the number being 34.2% in 2013. In fact, both forms of probation were used less in 2013 than at any other point since the restoration of independence.<sup>208</sup>

*The increasing rarity of parole further pushes the number of prisoners up, increasing tensions in detention facilities and fostering frustration among inmates and their loved ones towards courts.*

The increasing rarity of parole further pushes the number of prisoners up, increasing tensions in detention facilities<sup>209</sup> and fostering frustration among inmates and their loved ones towards courts that, for reasons that the convicted do not understand, refuse to approve parole commission decisions granting conditional release.<sup>210</sup>

Short-term excursions and learning opportunities outside the place of detention are important means of achieving gradual integration. While there are good examples of these practices,<sup>211</sup> they are still very rare. Furthermore, the development of halfway houses – institutions that will house convicts nearing the end of their sentence with less restrictions placed on their liberty, preparing them for parole – has begun.<sup>212</sup> Convicts in these halfway houses will be made ready for an inde-

<sup>205</sup> Law Amending Articles 48, 64, 67, 75, 82, 87, 92 and Repealing Articles 77, 94 of the Criminal Code, 22 December 2011, No. XI-1861, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415895](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415895)

<sup>206</sup> Law Amending and Supplementing Articles 89, 90, 339, 342, 348, 357, 358, 360, 362, 364, 452 of and adding Articles 361, 2531 to the Code of Criminal Procedure, 22 December 2011, No. XI-1862, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415896&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415896&p_tr2=2)

<sup>207</sup> Law Amending Articles 18, 19, 66, 90, 91, 126, 138, 140, 152, 154, 157, 158, 159, 164, 176 and Repealing Articles 127, 160, 161, 162, 163 of the Code of the Enforcement of Punishments, 22 December 2011, No. XI-1863, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415895](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415895)

<sup>208</sup> Gintautas Sakalauskas, „Parole Post the Law on Probation: Theory and Practice“, 2013, No. 4 (82), p. 5-39

<sup>209</sup> Dalia Gudavičiūtė, „Prisoners Wishing to be Released Ahead of Time Left Disappointed and Enraged“, published in *lrytas.lt* on 16 June 2013, <http://www.lrytas.lt/lietuvas-diena/kriminalai/i-laisve-anksčiau-laiko-noreje-iseiti-kalinių-nuivilti-ir-isiute.htm>

<sup>210</sup> „Picket in Support of Prisoners Took Place Outside of Parliament“, published in *delfi.lt* on 11 October 2014, <http://www.delfi.lt/archive/article.php?id=63019256>

<sup>211</sup> Arturas Paknys, Tadas Ignatavičius, „No Guards to Accompany on Trips to Work Outside the Correctional Facility“, published in *lrytas.lt* on 3 September 2013, <http://www.lrytas.lt/lietuvas-diena/aktualijos/dirbti-uz-pataisos-namu-vartu-be-sargybos.htm>

<sup>212</sup> Rasa Stundžienė, „Convicted Women and Their Children to Become Neighbours with Residents of Panevėžys“,



pendent life outside of prison, becoming employed and reintegrated into society in other ways. Unfortunately, the development of halfway houses is impeded by prevailing stereotypes and opposition from residents.<sup>213</sup>

Convicts are rarely placed under intensive supervision (by means of electronic bracelets) – less than one in six requests to use this measure are granted, despite the fact that the system was primarily meant to reduce the number of prisoners. The fact that electronic bracelets are used very rarely – even though transgressions are few and far between – demonstrates that institutions are unreasonably wary of innovations.

The *Law Supplementing and Amending the Code of the Enforcement of Punishments* came into force on 1 January 2013,<sup>214</sup> making parole no longer available to persons convicted of crimes against the sexual self-determination and/or inviolability of minors. Not only did this amendment deny the possibility of probation to these individuals – applying the general legal principle for the enforcement of sentences, it was also extended to persons already serving their sentences. Even though in this case what was sought was to ensure that liability for serious crimes remains strict, the refusal to consider parole for this category of convicts may lead them to experience negative consequences – steeper climb towards resocialization and increased risk of repeat offending.

The *Law on Probation* provides that Probation Services may cooperate with associations, religious communities and fellowships, with other legal entities or their subsidiaries, as well as with volunteers, on a contractual basis in order to achieve the aims of probation – namely, ensuring effective resocialization and minimizing the risk of repeat offending.<sup>215</sup> These entities may offer social support to probationers, look after their resocialization and implement behaviour programmes.

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published in *lrytas.lt* on 5 June 2013, <http://www.lrytas.lt/lietuvas-diena/aktualijos/nuteistos-moterys-su-sa-vo-vaikais-taps-panevezieciu-kaimynemis-201306042059.htm>; „Something New for Lithuanian Prisoners - Halfway Houses“, published in *delfi.lt* on 11 October 2014, <http://www.delfi.lt/news/daily/lithuania/naujove-lietuvas-kaliniai-pusiaukeles-namai.d?id=66089958>; Loreta Juodzevičienė, „Prisoners With Half a Year Left Until Release Will Be Accommodated in a New Home“, published in *lrytas.lt* on 23 October 2014, <http://bustas.lrytas.lt/nekilnojamasis-turtas/likus-pusmeciu-iki-laisves-kaliniai-isikurs-naujuose-namuose.htm>

<sup>213</sup> Ričardas Vitkus, „Residents of the Šiauliai City Centre Were Successful in Refusing to Become Neighbours with Prisoners“, published in *lrytas.lt* on 5 February 2014, <http://www.lrytas.lt/lietuvas-diena/aktualijos/centre-gyvenantys-siaulieciai-apsigyne-nuo-kaliniu-kaimynystes-201402051659.htm>

<sup>214</sup> Law Amending and Supplementing Article 158 of the Code of Enforcement of Punishments, 5 June 2012, No. XI-2040, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=426467&b=>

<sup>215</sup> Law on Probation, 22 December 2011, No. XI-1860, Art 8(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415894&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415894&p_tr2=2)

However, in practice it is still rare for the probation system to make use of the services of and support offered by NGOs. The interaction of most probation services with NGOs is limited to certain episodes, when organizing various actions.<sup>216</sup> Only the Vilnius Regional Probation Service has enjoyed long-term collaborative relationships with Caritas of Vilnius Archdiocese and the Society for the Care of Prisoners of Lithuania, making use of their services to exercise certain functions for the social integration of the convicted.<sup>217</sup>

It is important for the probation system to prioritize involving volunteers in probation work. Volunteering not only allows to form closer bonds built on trust, which is an important condition to the successful integration of convicts, but also increases the competence of the volunteers themselves, allowing them to overcome stereotypes associated with convicted people. In February 2012, The Vilnius Regional Probation Service was the first to start looking for volunteers. In the first year, 26 volunteers became involved with the probation service, out of which 15 participated in further probation activities and extended their volunteering agreements to the fall of 2013.<sup>218</sup> After a presentation given to volunteers on 25 September 2013, 20 students expressed a desire to join and attended introductory training.<sup>219</sup> Fall 2014 also saw another call for a group of volunteers. By the end of 2014, most probation services had announced that they were looking for volunteers. Even though the *Law on Probation* reinforces the principle of cooperation, subsidiarity and promotion of volunteer work,<sup>220</sup> the inclusion of volunteers is still being ignored when measuring the work of probation services against the set criteria.

<sup>216</sup> Prison Department, Certificate of the Probation Office „About the Work Results of 2012 of Regional Probation Services and the Probation Office of the Prison Department Under the Ministry of Justice of the Republic of Lithuania“, 8 February 2013, No. LV-186

<sup>217</sup> Vilnius Regional Probation Service, project „Systemic Integration of Convicts in the Vilnius Region“, 22 October 2014, [http://www.kaldep.lt/lt/vapt/tarptautinis-bendradarbiavimas\\_276\\_723/projektine-veikla.html](http://www.kaldep.lt/lt/vapt/tarptautinis-bendradarbiavimas_276_723/projektine-veikla.html)

<sup>218</sup> “Courageous Volunteering in Probation”, *teisingumas.lt*, 4 April 2013, <http://www.teisingumas.lt/nj/rodytivn/aktualijos/611>

<sup>219</sup> Vilnius Regional Probation Service, “Volunteerin in Vilnius Regional Probation Service ”, 18 October 2013, <http://195.182.69.242/lt/vapt/naujienos-vrpi/archive/p70/savanoryste-vilniaus-apygardos-ypkk.html>

<sup>220</sup> Law on Probation, 22 December 2011, No. XI-1860, Art 4(2)(4), [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=415894&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=415894&p_tr2=2)

## Findings and Recommendations

- *In developing the probation system, it is recommended to:*
- *Clearly define the competences of Parole Commissions and the courts with respect to the grant of parole, with precise criteria for making such decisions in order to avoid the possibility of restricting parole without justification;*
- *Continue developing the system of individualized and gradual conditional release (featuring short-term trips, work and learning opportunities outside of prison, placement in a halfway house, with appropriate aid and support given during the preparation for the convict's eventual release), involving non-governmental organizations and volunteers as full-fledged partners;*
- *Study the effectiveness, efficiency and need for intensive supervision (using electronic devices), to educate decision makers on the practical efficiency of these devices and to promote their use.*



## RIGHT TO A FAIR TRIAL. ARTICLE 6

### I. Rights of Suspects

**I**n 2013-2014, Lithuania had to transpose two directives setting out the minimum standards for the right to interpretation, translation and information of suspects during criminal proceedings, into national law: Directive 2010/64/EU on the right to translation in criminal proceedings (Translation Directive)<sup>221</sup> and Directive 2012/13/EU on the right to information in criminal proceedings (Information Directive).<sup>222</sup>

The Translation Directive provides that, from the moment of becoming a suspect and until the conclusion of the criminal proceedings, a person has the right to translation if he cannot speak or understand the language of the proceedings (for example, if he requires a sign-language translator). Interpretation and oral summaries of documents must be provided at each procedural step and during court hearings, with written translations also available for the most important procedural documents. Translation services under this Directive are to be provided free of charge.

The Information Directive ensures that right of a person to, from the moment of becoming a suspect, receive information on the main procedural and defence rights available to him, as well as to know what he is suspected of. With some exceptions, the suspect or his counsel also have the right to access the materials of the case. Should the suspect be arrested or detained, he must be given a written Letter of Rights explaining his procedural rights, what they entail and how they may be exercised.

<sup>221</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>

<sup>222</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 of the right to information in criminal proceedings, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32012L0013>

In addition, the EU also adopted the Directive on the right of access to a lawyer in criminal proceedings (the Access to a Lawyer Directive) in 2013.<sup>223</sup> The Access to a Lawyer Directive provides that suspects have the right to access a lawyer (defence counsel) without undue delay after their arrest or before they are first questioned, whichever comes first. Among other things, the right of access to a lawyer includes the right to meet and communicate with the lawyer in private, as well as the right of the lawyer to be present and participate in the questioning of the suspect or during any other proceedings and court hearings. Lithuania must transpose this directive into national law by 27 November 2016.

The transposition of the Translation Directive and the Information Directive was carried out under the assumption that the fundamental criminal procedure law in Lithuania – namely, the *Code of Criminal Procedure* (CCP) – in essence met all of the main requirements of the two directives. As such, the aim was to amend national legislation as little as possible.<sup>224</sup> This approach, in turn, raises serious doubts regarding the proper implementation of the directives.

The contents of the CCP were left unchanged by the transposition of the Translation Directive.<sup>225</sup> The CCP does actually satisfy the basic requirements of the Translation Directive – it provides that persons who do not speak Lithuanian are entitled to interpretation and (in some cases) translation free of charge.<sup>226</sup>

However, not all of the requirements of the Translation Directive were taken into account. Unlike the directive,<sup>227</sup> the CCP does not provide for any procedure for assessing whether the translation is necessary, with the decision on whether to call a translator resting fully in the hands

<sup>223</sup> Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32013L0048>

<sup>224</sup> Table showing compliance between Directive 2010/64/EU and national legislation, 31 July 2013, No. XIIP-885, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454321](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454321); Table showing compliance between Directive 2012/13/EU and national legislation, 19 December 2013, No. XIIP-1390, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=462701](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462701)

<sup>225</sup> Law Amending the Code of Criminal Procedure, 26 November 2013, No. XII-617, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=460861&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=460861&p_tr2=2)

<sup>226</sup> Code of Criminal Procedure, 14 March 2002, No. IX-785, Articles 8 and 44, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=494011](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=494011)

<sup>227</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Article 2(4), <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>

of the investigating officer. The CCP contains a narrower duty to provide written translations of documents: whereas the CCP does not require written translations of decisions to detain a person, all decisions restricting personal liberty are considered to be essential procedural documents and therefore must be translated under the Translation Directive.<sup>228</sup>

The recommendations included in the Translation Directive – for example, to allow for translation services to be provided using communication technologies – were also ignored.<sup>229</sup> This is not provided for under the CCP, which may lead to problems in cases where translators for languages rarely spoken in Lithuania happen to live outside the country. There was also no thought given to the possibility of establishing a register of qualified translators<sup>230</sup> to ensure better quality of translations in criminal proceedings. It should be noted that criminal lawyers stress that, in practice, there are problems related to the quality of translation services.<sup>231</sup>

There were slight amendments to the CCP and other legislation in order to transpose the Information Directive: the list of rights that suspects had to be informed of was expanded, explicitly including the right to silence;<sup>232</sup> the Prosecutor General approved the form of the written Letter of Rights in Lithuanian and other languages.<sup>233</sup>

However, one of the greatest problems relating to the right to information in criminal proceedings still survives – namely, the extensive and oft-abused ability of the prosecution to interfere with the defence's

<sup>228</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings., Article 3(2), <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>

<sup>229</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Article 2(6), <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>

<sup>230</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Article 5(2), <http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX:32010L0064>

<sup>231</sup> Human Rights Monitoring Institute, round table discussion with advocates on 31 July 2014, <http://www.hrmi.lt/naujiena/971/>

<sup>232</sup> Law Amending Articles 21, 22 of and Supplementing the Annex to the Code of Criminal Procedure, 15 May 2014, No. XII-891, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471247&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471247&p_tr2=2)

<sup>233</sup> Order No. I-288 of the Prosecutor General “On the Approval of the Forms of Documents in Criminal Proceedings”, Annex “Protocol for Explaining Rights to the Suspect”, dated 29 December 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493514&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493514&p_tr2=2)

*In 2014, the Prison Department approved arrangements under which a lawyer may only meet with a detained client if there is prior notification from the pre-trial investigation institution or court confirming that he is indeed that particular suspect's defence counsel. These arrangements caused an outrage among lawyers.*

right to access the materials in the case.<sup>234</sup>

This situation runs contrary to the provisions of the Information Directive, which set out that the ability of the suspect or his counsel to access the materials in the case may only be restricted in exceptional circumstances.<sup>235</sup>

Even though the deadline for the transposition of the Access to a Lawyer directive into national law is still a ways off, the ac-

tions of the authorities are already moving further and further away from its requirement to ensure the right of access to a lawyer without undue delay. In 2014, the Prison Department approved arrangements under which a lawyer may only meet with a detained client if there is prior notification from the pre-trial investigation institution or court confirming that he is indeed that particular suspect's defence counsel.

<sup>236</sup> These arrangements caused an outrage among lawyers.<sup>237</sup>

In many cases, such arrangements could lead to difficulties for the defence, especially in circumstances where the defence counsel urgently needs to meet with his client, since counsel himself has to obtain said notification from the pre-trial investigation institution or court. Persons are often not tried in the same city they are detained in. In those circumstances, in order to meet with the defendant, his lawyer must first travel to another city to procure the necessary documents and then return for the meeting, essentially spending a full working day this way.

It is important to note that neither pre-trial investigation institutions nor the courts are under a duty to promptly and on their own initiative submit such notifications to places of detention. Therefore the ability

<sup>234</sup> Human Rights Monitoring Institute, round table discussion with advocates on 31 July 2014, <http://www.hrmi.lt/nauijiena/971/>

<sup>235</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 of the right to information in Criminal Proceedings, Article 7, <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32012L0013>

<sup>236</sup> Order No. V-361 of the Director of the Prison Department "On the Amendment of 6 May 2002 Order No. 57 of the Ministry of Justice of the Republic of Lithuania "On the Approval of Work Instructions for the Record-Keeping Services in Places of Detention", 10 September 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=481239&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=481239&p_tr2=2)

<sup>237</sup> Lithuanian Bar Association, information from the conference on 20 September 2014, <http://www.advoco.lt/lt/advokatams-padejejam/nauijenos-advokatams/pasitarime-ieskota-iseiciu-qbyc.html?backlink=%252F%252F-paieska%252Fresults%252Fp0.html>



to procure the notification may be further hampered by administrative obstacles, the work schedule of the officials concerned or the judge's workload. This also enables pre-trial investigation bodies to abuse the situation by delaying the notification, which can be a deciding factor in situations where the defence must act quickly.

## Findings and Recommendations

- *When transposing the two EU directives on the minimum standards for the procedural rights of suspects into national law, Lithuania did not sufficiently amend it to ensure their effective implementation. In addition, the requirements of the Directive on Access to a Lawyer were ignored in the period set for its transposition into national law, with national legislation passed that contravenes the standards it purports to establish.*
- *It is necessary to review the results and shortcomings of the implementation of the Translation Directive and the Information Directive, and to adopt amendments to national legislation that are necessary to achieve their effective implementation.*
- *It is necessary to change the arrangements for meetings between suspects and counsel put in place by the Prison Department, removing unreasonable restrictions to the right of defence.*

## II. Right to a Fair Trial of Vulnerable Groups (Children and Persons with Intellectual Disabilities)

The Constitution provides that a person whose constitutional rights or liberties have been infringed must be granted access to justice.<sup>238</sup> The *Law on Courts* establishes that each person possesses the right to judicial remedy against any encroachment on the rights and freedoms provided for in the Constitution, in acts of law or international agreements, and also that all are equal before the law and the courts.<sup>239</sup>

Without legal capacity, persons under 18 years of age are unable to directly defend their own rights, and as such their rights are protected

<sup>238</sup> The Constitution, 25 October 1992, Article 30(1), <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

<sup>239</sup> Law on Courts, 31 May 1994, No. I-480, Articles 4(1) and 6(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=493976](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=493976)

*Legal aid is even harder to access for residents of social care homes that suffer from mental illnesses or disabilities: social care institutions are found in remote locations, outside the community, and the mobility of their residents is restricted.*

and they themselves are represented by their parents, other legal representatives or the state. Children with mental illnesses or disabilities are even more limited with regard to participation in legal proceedings – as such, there are quite a few problems in practice when trying to ensure that children with mental illnesses or disabilities are able to enjoy the right to a fair trial in Lithuania.

According to the data from the Ministry of Social Security and Labour, there were 15,036 children with disabilities in Lithuania in 2013, with 35% of them being children with mental or behavioural disorders.<sup>240</sup>

The law provides that persons (including children) suffering from mental illness or disability are provided with free state-guaranteed primary and secondary legal aid.<sup>241</sup> However, in practice it often happens that state-guaranteed legal aid is difficult to access for persons suffering from mental illness or disability. Legal aid is even harder to access for residents of social care homes that suffer from mental illnesses or disabilities: social care institutions are found in remote locations, outside the community, and the mobility of their residents is restricted.<sup>242</sup> Furthermore, institutionalized children are often not informed about appeals procedures and the availability of legal aid.

Practice shows that the quality of state-guaranteed legal aid available to disabled or mentally ill children is questionable: lawyers often lack basic knowledge on how to interact with disabled or mentally ill children; there are even cases of prejudice towards the child.<sup>243</sup>

<sup>240</sup> Ministry of Social Security and Labour, "Indicators Showing the Social Integration of the Disabled in the Sphere of Social Security", 2013, p. 1, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.ndt.lt%2Ffiles%2FFile%2Fstatistika%2F2013%2Fsocialines%2520integracijos%2520rodikliai.docx&ei=jT6IVIXoI8fZapabgYgO&usq=AFQjCNHEK9iO2qBLLf8ZfsI07NmBXIvug&sig2=IG-6CIE0qDJMHj2Lphlcuww&bvm=bv.81456516,d.d2s>

<sup>241</sup> Edita Žiobienė, Dovilė Juodkaitė, "Agency for Fundamental Rights Research Project on the Rights of Persons with Intellectual Disabilities and Mental Health Problems in Lithuania", 2011, <http://fra.europa.eu/en/country-report/2012/country-thematic-reports-fundamental-rights-persons-intellectual-disabilities>

<sup>242</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 14, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

<sup>243</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 14, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

The child's participation in legal proceedings is itself limited in most cases: often, the child's own opinion is ignored and consideration is only given to the position of the child's representative (guardian) or lawyer, or the opinion prepared by Child Rights Protection Service specialists

*Due to negative public attitudes towards persons with mental disorders or disabilities, there is an underlying presumption among pre-trial investigation officers, probation service workers as well as police psychologists that children with intellectual disabilities or mental disorders must automatically be treated as unreliable witnesses.*

or psychologists. These specialist opinions are often prepared without regard for the proper participation of the child in such proceedings. The ability of children suffering from mental illness or disability to participate in proceedings is even more limited.<sup>244</sup>

Specialists working in other areas of the juvenile justice system – researchers, prosecutors and judges – are also lacking competence when it comes to the exercise of the rights of children with mental illnesses or disabilities.

Due to negative public attitudes towards persons with mental disorders or disabilities, there is an underlying presumption among pre-trial investigation officers, probation service workers as well as police psychologists that children with intellectual disabilities

or mental disorders must automatically be treated as unreliable witnesses. According to officers taking part in these interviews, children with mental disorders or intellectual disabilities are prone to later changing their initial statement – therefore, one way or the other, they cannot be considered to be reliable witnesses.<sup>245</sup> Unfortunately, what is completely ignored is that when children are interviewed improperly, the accuracy of their evidence suffers not due to their lack of ability, but due to the improperly conducted interview.

Due to the peculiarities of their development and cognitive abilities or the trauma they have experienced, children are considered to be special witnesses in legal proceedings. It is therefore both appropriate and necessary to conduct interviews with children in facilities adapted for that purpose – in child interview rooms. Over 40 child interview rooms have

<sup>244</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 15, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

<sup>245</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 11-12., [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

been established on the premises of non-governmental organizations, police headquarters and courts in Lithuania.<sup>246</sup> Most child interview rooms are not adapted to the needs of the child – the facilities are often cramped, uncomfortable, full of unnecessary things that draw away children's attention, distracting them. Some rooms have unsuitable audio recording equipment and microphones installed in them, and as such it sometimes happens that children are asked to repeat themselves several times.<sup>247</sup> It should be noted that the repetition of evidence carries with it a great risk of distortion – children empathize with the feelings and expectations (as they are subjectively understood) of adults, which is why, in order to gain the approval of the adult, they often change their statement when asked to repeat it – or renounce it altogether, especially when the interviewer is being emotionally cold or even hostile.

The state does not organize training for specialists on interviewing children during pre-trial investigations or trials themselves. Currently, such training is only available through NGOs, but it is not compulsory for interrogators, prosecutors or judges.<sup>248</sup>

The expert potential of Lithuanian NGOs today enables them to provide very important services to children in legal proceedings – for example, to organize and conduct interviews with children, provide psychological consultation or crisis intervention services. However, in practice, this potential is not put to use: there are no established procedures for NGO involvement, no outline of potential services or set rules for procuring them from the NGO sector. Furthermore, since NGOs notice and deal with a fair few instances of violations of children's rights, it is important to promote the ability of NGOs to represent children within the legal system.

Statistical data gathered on child victims in Lithuania can only reveal the gender and age of a child, without any data being collected on the disabilities of children.<sup>249</sup>

<sup>246</sup> Children Support Centre, "Child Interview Rooms Established in Lithuania", 2011, <http://www.vaikystebesmurto.lt/lt/kai-tu-vykandai-apklausas/vaik-apklauso-kambariai-lietuvoje>

<sup>247</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 13, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

<sup>248</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 12, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

<sup>249</sup> Mental Health Perspectives, "The Right to Fair Trial of Children With Mental Health Disorders or Disabilities in

## Findings and Recommendations

- *In order to ensure access to justice for children with mental disorders or disabilities in Lithuania, it is necessary to:*
- *Implement systemic reforms in the field of child representation, ensuring that children's choices and opinions are heard properly and that they are provided with appropriate legal representation.*
- *Collect statistical data revealing information on the participation of children with mental disorders or disabilities in legal proceedings, on their participation, interviews and consideration of their opinion.*
- *Provide training for judges, pre-trial investigation officers, lawyers and advocates on the subject of the proper exercise of the right to a fair trial of children with mental disorders or disabilities.*
- *Ensure that NGOs are able to represent children within the legal system and to otherwise involve children in legal proceedings.*

### III. State-Guaranteed Legal Aid

The state-guaranteed legal system is currently in its tenth year of practice in Lithuania. The 2005 reform sought to expand the list of persons who are eligible for state-funded legal counsel in individual cases.

The most recent edition of the *Law on State-Guaranteed Legal Aid* was adopted in 2013.<sup>250</sup> The amendment further expanded the list of persons eligible for free state-guaranteed legal aid. This right was conferred to persons deemed incapable, as well as to persons involved in legal proceedings for the return of a wrongfully removed or retained child in accordance with the Hague Convention of 25 October 1980, regardless of their wealth or income level.

At the same time, the amendments also expanded the list of subjects capable of providing legal aid in individual cases: legal aid may be provided by any advocate chosen by the person, with advocate's assistants

Administrative, Civil or Criminal Law in Lithuania: Summary of the Report on the International Study", 2014, p. 20, [http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo\\_images/MDAC\\_ataskaita\\_20140822.pdf](http://www.perspektyvos.org/xinha/plugins/ExtendedFileManager/demo_images/MDAC_ataskaita_20140822.pdf)

<sup>250</sup> Law Amending the Law on State-Guaranteed Legal Aid, 9 May 2013, No. XII-270, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=448797&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=448797&p_tr2=2)

(pupil advocates) also given the ability to provide legal aid in individual cases. The end result is that both the list of persons capable of providing legal aid as well the list of persons entitled to it have grown.

*Individuals complain that advocates do not prepare documents properly, or that they do not adequately prepare for trial, with counsel for foreign nationals often coming to hearings without ever having met their client or even being able to speak with them.*

In 2014, legal aid in individual criminal proceedings (regardless of a person's wealth or income level) was extended to minors who were victims of crimes against a person's health, liberty, sexual self-determination and inviolability, against a child or family and against morality, as well as in other criminal proceedings where the presence of an authorized representative is deemed necessary by the pre-trial investigation officer (by way of a reasoned resolution) or the court (by way of a reasoned ruling).<sup>251</sup>

The amendments also clarified the procedure for assessing the quality of the services provided by legal aid advocates: the assessment, which is carried out by the Lithuanian Bar Association, must be completed within one month. The Ministry of Justice initiated this particular amendment to the *Law on State-Guaranteed Legal Aid* because it considered the length of the examination of complaints regarding legal services, which averaged at around six months at the time, to be too long.

By the way, the Lithuanian Bar Association only brought disciplinary proceedings against two advocates providing state-guaranteed legal aid services in 2013-2014. In one case, the advocate received a reprimand; in the other, the proceedings were limited to a disciplinary hearing.<sup>252</sup>

Even though the Lithuanian Bar Association is in charge of assessing the quality of legal aid services provided by advocates, the quality of said services is still frequently cited as subpar. Notably, in practice individuals and NGOs frequently speak about the inadequate quality of the services provided by state-guaranteed legal aid lawyers: individuals complain that advocates do not prepare documents properly, or that they do not adequately prepare for trial, with counsel for foreign na-

<sup>251</sup> Law Amending Articles 12, 13, 14, 21 and 24 of Law No. VIII-1591 on State-Guaranteed Legal Aid, 25 September 2014, No. XII-1149, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=483690&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=483690&p_tr2=2)

<sup>252</sup> Lithuanian Bar Association, 2014 Report of the Court of Honour of Advocates, <http://www.advoco.lt/download/42328/advokatu%20garbes%20teismo%20ataskaita%202014.pdf>

tionals often coming to hearings without ever having met their client or even being able to speak with them.

The issue of unpaid fees to advocates providing secondary legal aid also demands attention.<sup>253</sup> The unpaid fees owed by the state to advocates for services rendered in 2013 amounted to almost 5,6 million LTL (around 1,6 million Euro).<sup>254</sup>

In order to deal with this problem, persons whose wealth and income levels exceed the statutory minimum were put under a duty to cover the fees of the state-appointed counsel in cases when the provision of an advocate in criminal proceedings is mandatory, provided they have been convicted.<sup>255</sup>

It should be noted that a duty such as this in the event of conviction raises doubts about whether the legal regulations comply with the principle of judicial protection.

The *Law on State-Guaranteed Legal Aid* does not apply to foreigners whose right to state-guaranteed legal aid is provided for in the *Law on the Legal Status of Foreigners*. The Ministry of the Interior (or an institution it authorizes) is responsible for the provision of state-guaranteed legal aid to foreigners in circumstances prescribed by the *Law on the Legal Status of Foreigners*, organizing calls for tenders and awarding contracts to legal service providers with the lowest bid. It is doubtful whether this criterion for determining the winning tender – namely, the lowest price – is sufficient and appropriate for ensuring that the foreigners receive high-quality legal aid services.

In practice it is common for foreigners trespassing on Lithuanian soil or seeking asylum to receive state-guaranteed legal aid on issues relating to their legal status from an advocate appointed by the Ministry of the Interior (or an institution it authorizes). At the same time, in criminal proceedings against that same foreigner for illegal entry into Lithuania,

<sup>253</sup> "State Owes More than 3 Million Lt to Advocates", *delfi.lt*, 14 August 2013, <http://www.delfi.lt/news/daily/law/valstybe-advokatams-skolinga-beveik-3-mln-lt.d?id=62081975>; <http://www.ve.lt/nauijenos/ekonomika/ekonomikos-nauijenos/auga-isiskolinimai-valstybes-garantuojamiems-advokatams-1109866/>

<sup>254</sup> Ministry of Justice, 2013 Report on Secondary Legal Aid, [http://www.teisinepagalba.lt/dok/20140925\\_2013%20ATP%20ataskaita.pdf](http://www.teisinepagalba.lt/dok/20140925_2013%20ATP%20ataskaita.pdf)

<sup>255</sup> Law Amending the Law on State-Guaranteed Legal Aid, 9 May 2013, No. XII-270, Article 21, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=448797&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=448797&p_tr2=2)

he is represented by another advocate, appointed by the pre-trial investigation officer or the court in accordance with the *Law on State-Guaranteed Legal Aid*. In practice this leads to the interests of such foreigners not being represented properly, since two separate advocates provide legal aid to the same person on different but often directly interconnected issues, with advocates appointed this way not coordinating with regard to the client's interests.

## Findings and Recommendations

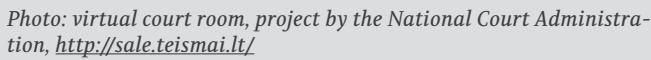
- *The amendments expanding the list of persons capable of providing secondary legal aid are to be commended.*
- *There is a lack of measures to ensure competition among advocates providing legal aid services – this would improve the quality of legal aid services.*
- *Stricter and more vigilant supervision of the quality of secondary legal aid services is necessary.*
- *While state institutions are shaping the budget and lowering the cost of administering the state-guaranteed legal aid scheme, it is necessary to deal with the issue of outstanding fees owed to advocates by the state.*
- *Measures must be taken to ensure that the legal aid process is as simple, fast and clear to both its recipient and the public at large.*

## IV. Openness of the Courts

The National Courts Administration did a lot of work in 2014 to transform the image of the Lithuanian judicial system on the internet, with substantial effort put in to ensure that information relevant to both average users and persons specifically interested in the courts and their operation is available on the web at [www.teismai.lt](http://www.teismai.lt).

At [www.teismai.lt](http://www.teismai.lt), internet users consciously seeking information on the work of the courts are able to access trial schedules, judgments (in LITEKO systems), statistics pertaining to trials, judge biographies, court composition and competences, as well as other relevant information. However, in order to continue increasing public confidence in the courts, which is low at the moment, it is important to understand that





and processing mechanisms (such as, for example, user surveys on the webpage) could aid in this endeavour. Together with efforts to monitor user behaviour (for example, with the help of Google Analytics), these mechanisms could inform both on what categories of information were chosen as well as on their presentation. One of the primary goals when employing such methods is the ability to identify the categories of information and data that are most important to users, and to ensure that these categories in particular are easy to access and available in easy-to-understand language.

It is also important to ensure that the most important categories of information on the work of the courts and judges are available in accordance with the open data principle – that is, available in computer readable form, under a free and open license for reuse.<sup>256</sup> The availability of data in accordance with the open data principle would allow for a larger group of interested persons and organizations to reuse data in a simple manner, creating new websites and tools, or empowering them to create thorough analyses of the data in question.

<sup>256</sup> For more information on open data standards - Transparency International Lithuania, “5 Principles to Make Data Open”, [http://transparency.lt/media/filer\\_public/2013/10/31/5\\_atviru\\_duomenu\\_teikimo\\_principai\\_1.pdf](http://transparency.lt/media/filer_public/2013/10/31/5_atviru_duomenu_teikimo_principai_1.pdf)

## Findings and Recommendations

- *In order to further increase the currently-low public confidence in the courts, it is important to ensure not only that information is factually available and made public on the internet, but also that the information is readily understood by the average resident of Lithuania. The installation of user behaviour analyses and feedback collection mechanisms could help achieve this.*
- *It is also important to ensure that the most important categories of information on the work of the courts or judges is available in accordance with the open data principle – this would allow individuals to freely reuse the data for commercial and non-commercial purposes.*

## RIGHT TO PRIVATE AND FAMILY LIFE. ARTICLE 8

### I. Reproductive Rights and Sexual Education

**A**lthough reproductive rights are an integral part of the human rights package, they are still not protected by law in Lithuania. Even though various draft laws have been proposed since 2002, no political agreement has yet been reached on their adoption due to a lack of political will and fierce opposition of the Roman Catholic Church.

The 2013-2014 period was controversial for reproductive rights in Lithuania. On the one hand, attempts to ban abortion by law, with exceptions provided in only very narrow circumstances, struck a significant chord with the Lithuanian public (and, in most cases, were met with resistance); on the other hand, the debate over the regulation of assisted reproduction resurfaced once more with the deliberation of two new laws on assisted reproduction and related services. None of the above legal initiatives were adopted in said period.

The draft *Law on the Protection of Life in the Pre-Natal Phase*, submitted by the Electoral Action of Poles (EAP) in 2013, was responsible for initiating the debate over the ban of abortions in Lithuania.<sup>257</sup> Even though a public opinion survey in 2010 showed that the vast majority (84%) of Lithuanian residents supported women's right to choose in relation to their own pregnancy, the EAP initiative proposed to take that right away from them.<sup>258</sup>

The draft law aims to establish that “human life begins at conception” and that all related issues must be resolved by prioritizing the “rights of the child in the pre-natal phase”.<sup>259</sup> The project would essentially re-

<sup>257</sup> Draft Law on the Protection of Life in the Pre-Natal Phase, 10 March 2013, No. XIIP-337, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444122&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444122&p_tr2=2)

<sup>258</sup> Inga Saukienė, “84 Percent of Lithuanians Would Justify Abortion”, *delfi.lt*, 9 August 2010, <http://www.delfi.lt/news/daily/health/84-proc-lietuviu-pateisintu-aborta.d?id=35265819>

<sup>259</sup> Draft Law on the Protection of Life in the Pre-Natal Phase, 10 March 2013, No. XIIP-337, Articles 1-2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444122&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444122&p_tr2=2)

place the current regime governing abortions<sup>260</sup> and *de facto* establish a general prohibition on abortion, with two exceptions: when “the pregnancy threatens the life or health of the pregnant woman” and “when there are reasonable suspicions that the pregnancy arose as a result of criminal activity.”<sup>261</sup> In all other cases, abortion, including when it is done at the woman’s behest, would be prosecuted.<sup>262</sup> For example, both the physicians and the woman herself could face arrest or imprisonment for up to two years for making “the child in the pre-natal phase” ill or causing him serious harm.<sup>263</sup>

On 14 October 2013 the Government concluded that the draft *Law on the Protection of Life in the Pre-Natal Phase* prohibiting abortion and all related legislation criminalizing abortion should not be adopted.<sup>264</sup> However, the consideration of the Law continued: the Parliament’s Committee on Health Affairs decided to, in essence, approve the bill.<sup>265</sup> Furthermore, it was proposed to amend Article 8 of the *Law on Fundamentals of Protection of the Right of the Child*, establishing the child’s right to health from the moment of conception.<sup>266</sup>

In its concluding observations to Lithuania, dated 18 July 2014, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) stressed that it was seriously concerned about the 2013 bill, which sought to ban safe and legal abortions as well as access to contraceptives.<sup>267</sup> The CEDAW Committee has often said that a ban on abortions infringes upon the right of women to health and to life, as well as Article 12 of the Convention on the Elimination of

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[lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444122&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444122&p_tr2=2)

<sup>260</sup> Order No. 50 of the Ministry of Health “On the Procedure for Surgical Abortion”, dated 28 January 1994, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=14276&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=14276&p_query=&p_tr2=)

<sup>261</sup> Draft Law on the Protection of Life in the Pre-Natal Phase, 10 March 2013, No. XIIP-337, Article 6, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444122&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444122&p_tr2=2)

<sup>262</sup> Law Amending and Supplementing Articles 135 and 142 of and Including Article 131(1) in the Criminal Code, 10 March 2013, No. XIIP-338, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444123](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444123)

<sup>263</sup> Law Amending and Supplementing Articles 135 and 142 of and Including Article 131(1) in the Criminal Code, 10 March 2013, No. XIIP-338, Article 135(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444123](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444123)

<sup>264</sup> Government resolution No. 920 titled “Conclusion on the Draft Law on the Protection of Life in the Pre-Natal Stage”, 14 October 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=457720](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=457720)

<sup>265</sup> The conclusion of the Committee of Health Affairs on the Draft Law on the Protection of Life in the Pre-Natal Stage, 11 December 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=462307](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462307)

<sup>266</sup> Law Amending Article 8 of the Law on Fundamentals of Protection of the Right of the Child, 27 June 2013, No. XIIP-606(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=452254](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=452254)

<sup>267</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the Fifth Periodic Report of Lithuania, 18 July 2014, Paragraph 36, [file:///C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20\(4\).pdf](file:///C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20(4).pdf)

all Forms of Discrimination against Women.<sup>268</sup> The Committee recommended that Lithuania refrain from adopting laws or amendments that would restrict women's right to safe and legal abortion, and instead adopt the pending laws on reproductive health and assisted reproduction.<sup>269</sup>

Despite the critical conclusions of the Government, the Parliament's Legal Department as well as its European Law Department,<sup>270</sup> there was no final decision on the draft *Law on the Protection of Life in the Pre-Natal Phase* in 2014, and as such it is likely that Parliament will continue to consider it in 2015.

As a balance to bills restricting women's rights, two parallel processes for drafting the *Law on Reproductive Health* were initiated, one of them taking place in Parliament, the other – in the Ministry of Social Security and Labour (MSSL).<sup>271</sup> The MSSL bill seeks to establish progressive regulation, providing for women's right to medical abortion as well as setting out the responsibility of the Ministry of Health to organize the sexual education of the public and to include sexual education in general education.<sup>272</sup> Meanwhile, the draft *Law on Reproductive Health* prepared by the Ministry of Health focuses on developing a youth-friendly health care service model, but it also deserves criticism for trying to establish a mandatory 72-hour waiting period before surgical abortion.

It is likely that, in the 2015 parliamentary debates over the draft *Law on Reproductive Health*, proponents of the protection of life at the pre-natal stage will most harshly oppose the availability of medical abortion,

<sup>268</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Observations on Columbia, 1999, A/54/38/Rev.1, paragraph 393, <http://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf>; Concluding Observations on Mexico, 1998, A/53/38/Rev.1, paragraph 426, <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf>; UN Committee on the Elimination of Discrimination against Women decision in the case of *L.C. v Peru*, delivered on 17 October 2011, application No. 22/2009, <http://goo.gl/F6yCds>

<sup>269</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the Fifth Periodic Report of Lithuania, 18 July 2014, Paragraph 37, [file:///C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20\(4\).pdf](file:///C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20(4).pdf)

<sup>270</sup> Conclusion No. XIIP-337 of the Legal Department "On the Draft Law on the Protection of Life in the Pre-Natal Stage of the Republic of Lithuania", dated 25 March 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=445008&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=445008&p_tr2=2); Conclusion of the European Law Department on draft laws No. XIIP-337 to XIIP-339, dated 27 March 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=445148&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=445148&p_tr2=2)

<sup>271</sup> Draft Law on Reproductive Health, 13 March 2014, No. XIIP- 1591, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=467170&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=467170&p_tr2=2); Ministry of Health, "Efforts to Improve Cooperation in the Field of Reproductive Health Will Focus on Youth", 23 May 2014, <http://www.sam.lt/go.php/lit/Stiprinant-bendradarbiavima-reproduk-cines-sveikatos-srityje--demesys-jaunimui>

<sup>272</sup> Lauryna Vireliūnaitė, "Rimantė Šalaševičiūtė: 72 Hour Reflection Period Before Abortion Will Be Made Law", *15min.lt*, 29 September 2014, <http://www.15min.lt/naujiena/aktualu/lietuva/rimante-salaseviciute-72-valandu-apmastymu-terminas-pries-aborta-bus-56-456401?cf=df>

as well the issue of sexual education.

The adoption process of the draft *Law on Assisted Reproduction*<sup>273</sup> was halted in 2011, but in 2014, the Parliamentary Health Committee proposed returning the bill for consideration in the main committee.<sup>274</sup>

The draft *Law on Assisted Reproduction*<sup>275</sup> that was considered in 2013-2014 deserves criticism for allowing assisted reproduction in only very limited circumstances: the bill only provides access to assisted reproduction to married women and women in registered partnerships, and only using the husband's or partner's reproductive cells. Since it is currently not possible to form registered partnerships in Lithuania, the proposed system would make it impossible for unmarried women to access assisted reproduction.

The bill also places great importance on the protection of embryos, that is, it states that embryo reduction (destruction of some of the embryos in the uterine cavity in the event of multiple pregnancy)<sup>276</sup> may only be mandated by a decision taken by physicians, when it poses a threat to the life of the pregnant woman. The Law prohibits surrogacy<sup>277</sup> and the importing of reproductive cells in Lithuania – for example, it would be impossible to send reproductive cells from sperm banks abroad.

Even though one in five families in Lithuania have to deal with infertility (potentially rising to one in three families in the future), efforts to adopt the *Law on Assisted Reproduction* are hampered by the negative attitudes of the Catholic Church.<sup>278</sup> On 18 July 2014, the CEDAW Committee expressed regret that assisted reproduction is not subsidized in Lithuania despite the high incidence of infertility, recommending the

<sup>273</sup> Law on Assisted Reproduction, 7 May 2011, No. XIP-2502(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=399026](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=399026)

<sup>274</sup> Minutes (No. III-P-40) of the Committee on Health Affairs meeting on the draft Law on Assisted Reproduction, 20 November 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=488344&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=488344&p_tr2=2)

<sup>275</sup> Law on Assisted Reproduction, 7 May 2011, No. XIP-2502(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=399026](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=399026)

<sup>276</sup> Law on Assisted Reproduction, 7 May 2011, No. XIP-2502(2), Article 2(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=399026](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=399026)

<sup>277</sup> Surrogacy is a form of civil agreement whereby one woman undertakes to get pregnant, carry the child and, after birth, hand him over to another person or persons, at the same time relinquishing her maternity rights with respect to the baby; Law on Assisted Reproduction, 7 May 2011, No. XIP-2502(2), Article 11, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=399026](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=399026)

<sup>278</sup> Nemira Pumprikaitė, "Dr. G. Bogdanskienė: the Law on Reproductive Health is Being Impeded by Politicians and the Church", *lrs.lt*, 24 November 2014, [http://www.lrs.lt/naujienos/lietuvoje/2/79999/gvd\\_g\\_bogdanskienė\\_pagal\\_binio\\_apvaisinimo\\_istatyma\\_prijimi\\_trukdo\\_politikai\\_ir\\_baznycia](http://www.lrs.lt/naujienos/lietuvoje/2/79999/gvd_g_bogdanskienė_pagal_binio_apvaisinimo_istatyma_prijimi_trukdo_politikai_ir_baznycia)

*The Reference Material on Preparing for Family Life and Developing Sexuality, approved by the Ministry of Education and Science in 2012, is full of information that is misleading, inaccurate or grounded in religious dogma. For example, it is claimed that any form of contraception is harmful to a person's physical and mental health; that pre-marital sexual relations lead to emotional trauma; that chastity is the foundation of sexuality; that women are often persuaded to do an abortion by their husbands or boyfriends; that women are much less traumatized if they give birth and then give the baby up for adoption; it likens pre-marital sexual relations to criminal activity (i.e. robbery); and many others.*

adoption of the *Law on Assisted Reproduction*.<sup>279</sup>

There is still no proper sexual education in Lithuania, the country lacks youth-friendly reproductive health services as well as information on said services. The *Reference Material on Preparing for Family Life and Developing Sexuality*, approved by the Ministry of Education and Science in 2012, is full of information that is misleading, inaccurate or grounded in religious dogma. For example, it is claimed that any form of contraception is harmful to a person's physical and mental health; that pre-marital sexual relations lead to emotional trauma; that chastity is the foundation of sexuality; that women are often persuaded to do an abortion by their husbands or boyfriends; that women are much less trau-

matized if they give birth and then give the baby up for adoption; it likens pre-marital sexual relations to criminal activity (i.e. robbery); and many others.<sup>280</sup> This material is integrated in ethics and religion classes in Lithuanian schools.

At the end of 2014, a new working group was formed at the order of the Ministry of Education and Science and tasked with preparing the draft *Programme for the Preparation for Family Life and Development of Sexuality*. However, the formation of said working group appears to be biased: religious organizations (the Lithuanian Bishops' Conference, the Consistorium of the Evangelical Lutheran Church of Lithuania) and organizations promoting a definition of the family that is at odds with human rights principles (the National Family and Parents Association,

<sup>279</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the Fifth Periodic Report of Lithuania, 18 July 2014, Paragraph 36, [file:///C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20\(4\).pdf](http://C:/Users/jurate/Downloads/cedaw%20concluding%20observations%20lt%20(4).pdf)

<sup>280</sup> "Preparation for Family Life: Developing Social Competences in Ethics and Religion Classrooms", Reference Material on Preparing for Family Life and Developing Sexuality, 2012, [http://www.upc.smm.lt/ugdymas/vidurinis/rekomendacijos/failai/seima/RENGIMAS\\_%C5%A0EIMAI\\_SOCIALIN%C4%96S\\_KOMPETENCIJOS\\_UGDYMAS\\_TIKYBOS\\_IR\\_ETIKOS\\_PAMOKOSE.pdf](http://www.upc.smm.lt/ugdymas/vidurinis/rekomendacijos/failai/seima/RENGIMAS_%C5%A0EIMAI_SOCIALIN%C4%96S_KOMPETENCIJOS_UGDYMAS_TIKYBOS_IR_ETIKOS_PAMOKOSE.pdf)

the Lithuanian Parents Forum) were invited to take part, but not organizations proposing science-based development for youth (the Family Planning and Sexual Health Association), human rights or women's organizations.<sup>281</sup> The above composition of the group is unable to ensure that the preparation of the programme will take into account the plurality of opinion, reflect changing public attitudes and integrate the paradigm of human rights.

## Findings and Recommendations

- *The efforts to adopt the Law on Reproductive Health and the Law on Assisted Reproduction are commendable, but the fact that progress on the bills is constantly getting stuck in place, with Parliament refusing to consider them, shows a lack of political will. Being important human rights, reproductive rights should be a priority issue.*
- *It is commendable that the Government, the European Law Department under the Ministry of Justice and the Legal Department of the Parliament were critical of the Law on the Protection of Life in the Pre-Natal Phase, seeing it as restricting women's right to private life. This and other similar bills should not be considered further.*
- *It is necessary to include youth-friendly reproductive health services in the developing legal framework, ensuring that young people receive impartial and objective education on the issues of sexuality and reproductive health. The existing Reference Material on Preparing for Family Life and Developing Sexuality does not comply with the principles set out in national and international human rights legislation, and contributes to further structural discrimination of women.*

## II. Protection of Personal Data

Since 1996, the protection of personal data in Lithuania has been comprehensively regulated by the special *Law on Legal Protection of Personal Data*,<sup>282</sup> which was adopted in order to implement EU Directive 95/46/

<sup>281</sup> Indrė Leonavičiūtė, "The Ministry of Education Guards Plans Regarding Sexual Upbringing as Though They Were a State Secret", 12 January 2015, <http://www.universitetozurnalistas.kf.vu.lt/2015/01/lytiskumo-ugdy-mo-planus-svietimo-ministerija-saugo-kaip-valstybes-paslapti/>

<sup>282</sup> Law on Legal Protection of Personal Data, 11 June 1996, No. I-1374, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=400103)





Photo: protest in Vienna against data retention, 2012 <http://www.npr.org/2012/04/30/151688976/europe-pressures-u-s-tech-on-internet-privacy-laws>

EC.<sup>283</sup> Some aspects of the legal protection of personal data are covered by special legislation, such as the *Law on Electronic Communications*.<sup>284</sup>

The regulation of the legal protection of personal data in the 2013-2014 period was marked by a fundamentally unsystematic approach. Data protection regulation initiatives were used to address isolated is-

sues within the public sector, but the fundamental problems continued to be ignored.

The new EU Regulation on the legal protection of personal data was not adopted during Lithuania's Presidency of the European Union in 2013; its adoption was postponed for an indefinite period. Lithuania also did not express a clear position on the issues surrounding the legal protection of personal data that became apparent in 2013-2014, relating to the massive surveillance of personal data and collection of other private information that was carried out by law enforcement authorities and special services, as revealed by Edward Snowden, during its Presidency or in the ensuing period.

Even though there were two important European Court of Justice judgments in 2013-2014 that were relevant to the legal protection of personal data – one relating to mass data retention<sup>285</sup> and the other relating to the right to be forgotten on the Internet<sup>286</sup> – these decisions were met with tepid reception at state level. On the contrary – the *Law on Cyber Security*, adopted at the end of 2014, provided for further exceptions to

<sup>283</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, <http://eur-lex.europa.eu/legal-content/LIT/HTML/?uri=CELEX:31995L0046&from=EN>

<sup>284</sup> Law on Electronic Communications, 15 April 2004, No. IX-2135, [http://www3.lrs.lt/pls/inter3/dokpaieska.show\\_doc\\_l?p\\_id=463812](http://www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=463812)

<sup>285</sup> ECJ judgment in joined cases C-293/12 and C-594/12 on bulk retention of data, delivered on 8 April 2014

<sup>286</sup> ECJ judgment in case C-131/12 on the right to be forgotten on the internet, delivered on 13 May 2014,

*Lithuania also did not express a clear position on the issues surrounding the legal protection of personal data that became apparent in 2013-2014, relating to the massive surveillance of personal data and collection of other private information that was carried out by law enforcement authorities and special services, as revealed by Edward Snowden, during its Presidency or in the ensuing period.*

the legal protection of personal data, thus showing that there is no intention of abandoning the bulk collection of data.

Despite complying with key EU rules, the protection of personal data in Lithuania is nominal at best. This is chiefly a result of three reasons: firstly, because low sanctions exist for infringing the right to protection of personal data, with insufficient administrative resources allocated to the defence of the right; secondly, due to the discrepancies between the protection of personal data in the public sector and the private sector; thirdly, due to

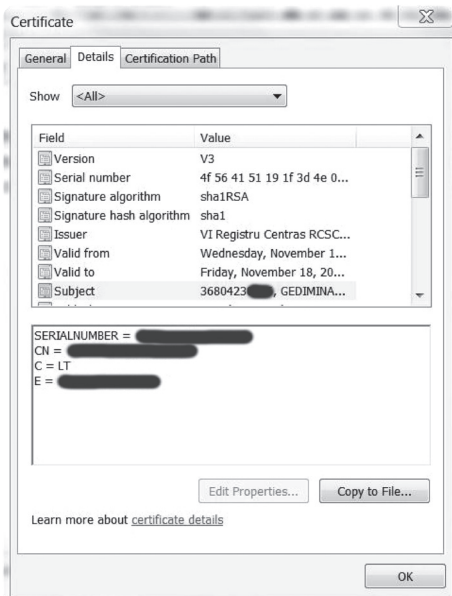
the fact that society does not sufficiently understand and accept privacy as a public virtue and constitutional right.

Sanctions for breaches of personal data protection are provided for in the *Code of Administrative Infringements* (CAI),<sup>287</sup> they were set in 1998 and have not been reviewed since. The maximum possible sanction is a fine of 2000 LTL (around 580 Euro),<sup>288</sup> which is insufficient for the defence of constitutional rights. It should be noted that civil liability for breaches of the legal protection of personal data (when the breach does not relate to the publication of private information in the media and/or defending honour and dignity) is essentially non-existent in practice. The fact that the sanctions in Lithuania are disproportionate is best demonstrated by comparing them to the sanctions proposed in the draft EU Regulation on personal data protection, which are several thousand times larger.

The State Data Protection Inspectorate (SDPI), the designated personal data protection supervisory authority, does not have sufficient administrative resources or factual power; as such, the supervision of larger data processors (financial institutions, retail networks or internet service providers) within the private sector, and even more so within the public (especially in relation to law enforcement) sector, is limited and

<sup>287</sup> Code of Administrative Infringements, 13 December 1984, No. X-4449, Articles 214(14)-214(17), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493978](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978)

<sup>288</sup> Code of Administrative Infringements, 13 December 1984, No. X-4449, Articles 214(14)-214(17), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493978](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978)



ineffective. Currently, SDPI plays a largely passive role, investigating breaches that become public or reacting to complaints. As such, it follows that the majority of personal data breaches in Lithuania remain under the hood, with persons responsible for interference with personal data evading punishment (especially in the public sector). SDPI also lacks the power to initiate legislation in the field of legal protection of personal data.

The second issue is the discrepancy between personal data protection in the private sector and in the public sector. The public sector, which is in possession of the

largest amounts of personal data and particularly sensitive personal data, is not sufficiently accountable for its protection. Furthermore, instead of strengthening the protection of personal data and demonstrating exemplary respect for privacy, various authorities create favourable legal exceptions for themselves. In Lithuania, incidents relating to the most severe breaches of personal data protection rights, or breaches that result in the most serious consequences, are in fact attributable to the public sector. Notably, they include repeat incidences of police officers potentially trading in personal data<sup>289</sup> and the personal details of minors involved in sexual abuse cases being made public through the fault of the court staff.<sup>290</sup> Despite getting a response from the media, the outcome of these incidents, together with the liability of the parties in the wrong, is up in the air.

The decision of the Supreme Administrative Court on the breaches of privacy contained in the electronic signature certificates issued by the Centre of Registers,<sup>291</sup> which was not implemented in the 2013-2014

<sup>289</sup> "Alytus Police Officers Suspected of Illegally Collecting Personal Data", *15min.lt*, 7 February 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/alytaus-policijos-pareigunai-itariami-neteisetai-rinke-asmens-duomenis-56-304478>

<sup>290</sup> Inga Smaskienė, "Scandal: the Whole School Became Privy to the Details of a Student's Sexual Abuse", *delfi.lt*, 4 June 2014, <http://www.delfi.lt/news/daily/law/skandalas-detales-apie-moksleives-patirta-seksualine-prievar-ta-nagrinejo-visa-mokykla.d?id=64964429>

<sup>291</sup> 18 December 2012 judgment of the Supreme Administrative Court on the breaches of privacy contained in the electronic signature certificates issued by the Centre of Registers

period, provides another illustration on how the public sector treats privacy. Instead of protecting the privacy of persons using electronic signatures, controversial legislation was adopted in 2013-2014 that distorted the legal framework for the protection of personal data (creating artificial conflicts between acts of law) and lead to the continuing publication of personal codes in public electronic signature certificates.

The desire of the public sector to limit the legal protection afforded to personal data, by providing special exceptions and continuing the bulk processing of personal data, can be seen in the *Law on Cyber Security*,<sup>292</sup> adopted in 2014. The exceptionally wide powers to collect electronic personal data – that is, “*information necessary for the prevention or investigation of potentially criminal breaches of the law in cyber space*” – that this law granted to law enforcement agencies are not counterbalanced by corresponding proportional safeguards to privacy and the legal protection of personal data. The regulation of the procedure and conditions for providing such information has been relegated to the level of implementing legislation. A nearly-analogous case can be seen in the mass financial data provision to tax authorities, proposed by the amendments to the *Law on Tax Administration*.<sup>293</sup> Even though the latter proposals have not been adopted, their adoption procedures are well under way and they are expected to be passed in 2015.

*Privacy is not respected, the education system or the family does not teach that it is a virtue, it is not understood to be an important constitutional right and as such people themselves often post private information on social networks or the internet. Parents are especially irresponsible in posting information about their children on social networks, setting a negative example to the younger generation. The restriction of privacy in the work place and in the living environment is tolerated for these very same reasons.*

The aforementioned practices and legislation demonstrate a unilateral intervention by the state in the privacy of individuals, without even providing for judicial supervision or the ability to protect one's privacy when it is being infringed upon. The statement of the Article 29 Data Protection Working Party underscores that national legislation should not provide for bulk re-

<sup>292</sup> Law on Cyber Security, 11 December 2014, No. XII-1428, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=492070&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=492070&p_tr2=2)

<sup>293</sup> Draft Law Amending Articles 28, 41, 55, 61, 68, 87, 89, 101, 104(1), 104(2), 110, 111, 129, 131, 154 of, Including Article 55(1) in and Repealing Articles 56, 57, 58, 59, 60 of Law No. IX-2112 on Tax Administration, 2014, Articles 3 and 4., [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=473864](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=473864)

tention of data, instead providing rules for the differentiation, limitation and exception of data and also ensuring that competent national authorities are only able to access data when it is strictly necessary.<sup>294</sup> So far, these proposals have fallen on deaf ears in Lithuania.

The private sector also retained its fair share of serious issues regarding the legal protection of personal data in 2013-2014, especially in relation to the use of personal data in marketing,<sup>295</sup> but it also manifested instances of good practice – for example, restricting the public dissemination of frequently negative information by hiding older comments in internet media.

The attitudes of the public sector towards privacy are at the same time both an expression and one of the root causes of the general devaluation of privacy in society. Privacy is not respected, the education system or the family does not teach that it is a virtue, it is not understood to be an important constitutional right and as such people themselves often post private information on social networks or the internet. Parents are especially irresponsible in posting information about their children on social networks, setting a negative example to the younger generation. The restriction of privacy in the work place and in the living environment is tolerated for these very same reasons.

Unfortunately, in a climate where privacy is rapidly depreciating in value, the state is also disinterested in its protection. As previously stated, the past two decades saw no initiatives to introduce harsher penalties for breaches of the legal protection of personal data, even in cases where it results in grievous harm or harm to minors; there were also no attempts to regulate privacy in social networks or in the work place. The legal framework is most often developed *post factum*, in reaction to widely-publicized cases, and furthermore is abstract, with the administrative practices being inconsistent. Lithuania is also slow to react to new EU practices in the field of privacy protection.

<sup>294</sup> Statement of the Article 29 Data Protection Working Party, 1 August 2014, WP 220, [http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp220\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp220_en.pdf)

<sup>295</sup> State Data Protection Inspectorate, "On Direct Marketing Conducted by Mobile Phone Operators", 28 March 2014, <https://www.ada.lt/go.php/lit/IMG/188>

## Findings and Recommendations

- *In essence, the situation in Lithuania with regard to the protection of personal data deteriorated in 2013-2014, solely due to the fact that, in the context of ever-greater invasions of personal privacy committed by the state and private entities, the regulation of and practices relating to the protection of personal data and privacy have either remained static or sprouted new exceptions – exceptions that served narrow interests. The new national legal regulations adopted in this period (for example, the Law on Cyber Security) paid little attention to the constitutional imperative to ensure that interferences with privacy are justified and proportionate. Instead, the prevailing view was that public interests – without exception – trump personal privacy, with the practice of undifferentiated bulk processing of personal data continuing in this period.*
- *Lithuania is late in updating its sanctions for breaches of personal data protection law. Since the situation regarding the adoption of the new EU Regulation on data protection legislation is unclear, national legislation must resolve the issue of sanctions as soon as possible. At the same time, more resources must be allocated to the supervision of personal data protection, with a particular focus on major personal data processors and on actually punishing the parties in breach.*
- *The practice of providing special exceptions in individual cases involving the processing of personal data is deplorable, with efforts to expand the bulk collection and retention of data being particularly worthy of scorn. Even though the ECJ and the Article 29 Data Protection Working Party have harshly criticized the practice of undifferentiated bulk data processing, there is a reluctance to abandon it in Lithuania.*

## III. Protection of the Right to Private Life in Criminal Proceedings

The Constitution sets a high bar for the protection of the right to private life from law enforcement authorities. Personal correspondence, telephone conversations or any other communications are inviolable, with the collection of information concerning a person only being possible in cases where the measure concerned is provided for by law and mandated by a reasoned court decision.<sup>296</sup>

<sup>296</sup> The Constitution, 25 October 1992, Articles 22(2) and 22(3), <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

*It is particularly important that in this case, what was mandated was the surveillance of journalists, not just any ordinary people; journalistic correspondence is afforded special protection by the European Convention on Human Rights, as its origins lie not only with the right to privacy, but also with the freedom of the press.*

The ability to collect information about a person's private life during pre-trial investigation is contained for in the *Code of Criminal Procedure* (CCP). The CCP provides that during criminal investigation law enforcement authorities may control and collect personal information passing through electronic communications networks for up to 9 months, if their actions are sanctioned by a district judge.<sup>297</sup> The judge must assess the need for the measure in question and

balance it against the importance of protecting a person's private life – that is, to assess whether the measure in question would be proportionate. As such, the court acts as the primary control mechanism for interference with privacy.

In essence, the procedure set out in the law complies with the standards prescribed by the European Convention on Human Rights (ECTHC) for the respect of the right to private life.<sup>298</sup> ECtHR judgments have made it clear that clandestine collection of data regarding a person's life may only be carried out under clear procedures, and also that it is important to have a supervision mechanism in place, such as national courts, to ensure that the measure is not abused.<sup>299</sup>

The massive scale of the wiretapping of Baltic News Service journalists at the end of 2013 clearly demonstrated that the safeguards to privacy prescribed by law were not always applied in practice.<sup>300</sup> The court's permission to wiretap 17 present and past employees of the news agency, as well as the belief that the decision was a simple one to make, revealed that judges take a very formalistic approach with regard to their duty to prevent human rights abuses.<sup>301</sup>

<sup>297</sup> Code of Criminal Procedure, 14 March 2002, No. IX-785, Article 154, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=494011](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=494011)

<sup>298</sup> The European Convention on Human Rights and Fundamental Freedoms, 4 November 1950, Article 8, [http://www.echr.coe.int/Documents/Convention\\_LIT.pdf](http://www.echr.coe.int/Documents/Convention_LIT.pdf)

<sup>299</sup> Council of Europe, *Europos Taryba*, "The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights, 2001, p. 25-28, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff47>

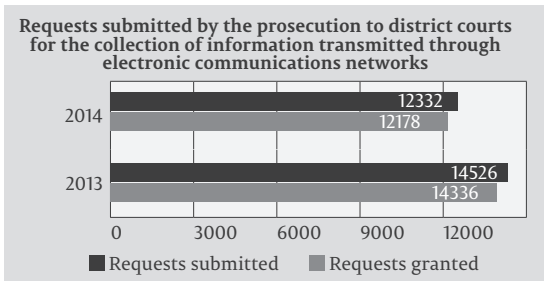
<sup>300</sup> "Mass Wiretapping of Journalists Echoes Across Europe", *delfi.lt*, 19 June 2014, <http://www.delfi.lt/news/daily/lithuania/masiskai-lituvos-zurnalistu-pasiklausymas-nuaidėjo-per-europą.d?id=65083971>

<sup>301</sup> "Judge Mandating Mass Wiretapping of Journalists: I Would Do the Same Today", *delfi.lt*, 30 June 2014, <http://www.delfi.lt/news/daily/lithuania/masiskai-zurnalistu-pokalbiu-klausytis-leidusi-teiseja-siandien-pasielgciu-lygiai-taip-pat.d?id=65151947>



It is particularly important that in this case, what was mandated was the surveillance of journalists, not just any ordinary people; journalistic correspondence is afforded special protection by the European Convention on Human Rights, as its origins lie not only with the right to privacy, but also with the freedom of the press.<sup>302</sup> After the journalists appealed the mandate to intercept their conversations to the Vilnius Regional Court, the decisions of the lower courts were deemed to be unfounded and quashed.<sup>303</sup>

Despite the fact that in this case it was found that the law enforcement authorities unlawfully interfered with privacy, it still raises doubts regarding the effectiveness of the control exercised by the courts over the protection of human rights in this field. Available statistical data shows that these doubts are well-founded.



In 2013, the prosecution submitted 14,526 requests to district courts for the collection of information transmitted through electronic communications networks. Out of these requests, 14,336 were granted in whole or in part. 12,332 requests were submitted in 2014, out of which 12,178

were granted.<sup>304</sup> Therefore nearly 99% of all law enforcement authority requests to allow the collection of information regarding personal correspondence were granted in 2013-2014.

It follows, then, that the courts of first instance often only formally exercise their control function, without sufficiently ensuring that the right to respect for private life is really protected. There are very few appeals to higher courts regarding the collection of information transmitted through electronic communications networks. This is not surprising, since people usually find out about the surveillance after some time had passed and by then no longer see the point of appealing. Still, it is interesting to note that the higher courts allow many of these ap-

<sup>302</sup> ECtHR judgment in the case of *Sanoma Uitgevers B. V. v The Netherlands*, application No. 38224/03, delivered on 14 September 2010, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100448>

<sup>303</sup> "Court Says That the Wiretapping of Journalists Was Unfounded", *delfi.lt*, 18 August 2014, <http://www.delfi.lt/news/daily/lithuania/teismas-zurnalistu-pokalbiu-klausytasi-be-pagrindo.d?id=65585038>

<sup>304</sup> Information received from the National Courts Administration on 30 January 2015



peals: 18 out of 24 appeals were allowed in 2013, with all 7 being allowed in 2014.<sup>305</sup>

## Findings and Recommendations

- *In practice, the courts only exercise token control over law enforcement authorities and do not ensure that the right to private life is effectively protected from unfounded interference with correspondence, phone calls or other communications.*
- *Since the surveillance of personal correspondence is mandated exceptionally often in spite of the strict regulation of this measure and the high standards prescribed by the ECtHR for the protection of human rights, it is recommended to organize training for judges and law enforcement officers and raise their qualifications, making them aware of human rights protection when interfering with privacy in criminal proceedings.*

## IV. Right to Gender Identity and Access to Healthcare for Transgender People

The *Civil Code* provides that unmarried adults have the right to change the designation of their sex through medical means.<sup>306</sup> The *Civil Code* also provides that the conditions and procedures for gender reassignment shall be prescribed by law,<sup>307</sup> but no piece of legislation currently in force sets out detailed conditions and procedures for changing one's sex. In its 2007 ruling in the case of *L. v Lithuania*, the European Court of Human Rights obliged Lithuania to enact subsidiary legislation to Article 2.27 of its *Civil Code* on gender reassignment of transgender.<sup>308</sup>

It has now been eleven years since the entry into force of the *Civil Code* and six years since the ECtHR judgment in the case of *L. v Lithuania* became final, but there are still no legal arrangements in Lithuania for obtaining legal gender recognition and accessing healthcare services.

<sup>305</sup> Information received from the National Courts Administration on 30 January 2015

<sup>306</sup> Civil Code, 18 July 2000, No. VIII-1864, Article 2.27(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999)

<sup>307</sup> Civil Code, 18 July 2000, No. VIII-1864, Article 2.27(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999)

<sup>308</sup> ECtHR judgment in the case of *L. v Lithuania*, application No. 27527/03, delivered on 11 September 2007, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>

*It has now been eleven years since the entry into force of the Civil Code and six years since the ECtHR judgment in the case of L. v Lithuania became final, but there are still no legal arrangements in Lithuania for obtaining legal gender recognition and accessing healthcare services.*

This means that gender reassignment surgery is not available in Lithuania for persons who have been diagnosed with gender dysphoria, while those who change their gender abroad must travel to Lithuania bearing identity documents that do not match their new sex. Amending entries in civil status documents (name, last name, gender and personal code) after undergoing full gender reassignment surgery can only be done through the courts.<sup>309</sup>

On 6 June 2013, the Government's representative to the ECtHR submitted an action plan on solving the aforementioned problems: firstly, it sought to abolish the *Civil Code* provision specifying that the conditions and procedures for gender reassignment are to be prescribed by law – instead of mandatory procedures, the relevant authorities (for example, universities and/or medical professional societies) would be given the opportunity to develop non-compulsory treatment methodologies; and secondly, it proposed a simplified procedure for amending entries in civil status documents – entries could be changed by submitting a gender reassignment certificate issued by a health care institution to a civil registry office.<sup>310</sup>

The first proposal was criticized by both representatives of transgender persons and non-governmental organizations.<sup>311</sup> Taking into account the fact that Lithuania is one of the leading countries in the European Union with respect to the discrimination of transgender persons,<sup>312</sup> it is unlikely that non-compulsory diagnosis and treatment methodologies would be developed promptly or even in a reasonable amount of time, or that they would provide for covering the costs of gender reassignment surgery and treatment. Nevertheless, the Parliament gave its ini-

<sup>309</sup> Human Rights Monitoring Institute, "Human Rights in Lithuania 2011-2012: an Overview", 2013, p. 48-49, [http://www.hrmi.lt/uploaded/Apzvalgos/Zmogaus%20teisius%20gyvendinimas%20Lietuvoje%202011-2012\\_Apzvalga\\_ZTSL.pdf](http://www.hrmi.lt/uploaded/Apzvalgos/Zmogaus%20teisius%20gyvendinimas%20Lietuvoje%202011-2012_Apzvalga_ZTSL.pdf)

<sup>310</sup> Government representative to the European Court of Human Rights, "Updated Information on the Implementation of the Judgment in *L. v Lithuania*", 18 April 2013, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2322499&SecMode=1&DocId=2022874&Usage=2>

<sup>311</sup> Human Rights Monitoring Institute, Lithuanian Gay Leagye, ILGA-Europe and Transgender Europe, "Joint Submission to the Committee of Ministers of the European Council in the case of *L. v Lithuania*", 10 December 2013, <http://www.hrmi.lt/uploaded/Documents/288D7686.pdf>

<sup>312</sup> EU Agency for Fundamental Rights, "Being Trans in the European Union: a Comparative Analysis of EU LGBT Survey Data, 2014, p. 25, [http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative_en.pdf)

tial approval to these proposed draft amendments to the *Civil Code*, and they are still being discussed in parliamentary committees.<sup>313</sup>

Even though the second proposal could be considered to be a step towards implementing the ECtHR judgment, on 8 July 2014 the Parliament returned the draft *Law on the Registration of Civil Status Documents*<sup>314</sup> to the Committee on Legal Affairs for further improvement, instructing it to remove any mention of gender reassignment registration, referring to gender reassignment itself as “nonsense”.<sup>315</sup> Finally, in October 2014 the Parliament returned the draft law to the Ministry of Justice.<sup>316</sup>

Lithuania’s inability to ensure respect for the right to private life of transgender people attracted the attention of the Council of Europe: on 25 September 2014, the Committee of Ministers decided to transfer the case of *L. v Lithuania* to the enhanced supervision procedure.<sup>317</sup> This means that, starting from 2015, the delegates of 47 Council of Europe member states will be able to make a quarterly review of the actions taken by the Lithuanian authorities to ensure that their citizens are able to effectively change identity documents and to access healthcare.

## Findings and Recommendations

- *The judgment of the European Court of Human Rights in the case of L. v Lithuania, dating back from 2007, was not implemented during the 2013-2014 period. It is still impossible for individuals to medically undergo gender reassignment surgery in Lithuania, nor are there any administrative procedures in place for changing entries in civil status documents.*

<sup>313</sup> Government representative to the European Court of Human Rights, “Updated Information on the Implementation of the Judgment in *L. v Lithuania*”, 18 April 2013, p. 2, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2322499&SecMode=1&DocId=2022874&Usage=2>

<sup>314</sup> Draft Law on the Registration of Civil Status Documents, 23 June 2014, No. XIP-2017(3), Article 27, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=475992](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=475992)

<sup>315</sup> Lithuanian Gay League, “Seimas Refuses to Consider Draft Law Allowing For Change of Gender at Law”, 10 July 2014, <http://www.lgl.lt/naujienos/seimas-nesutiko-svarstyti-istatymo-projekto-sudarancio-salygas-teisniam-lyties-keitimui/>

<sup>316</sup> “Bills on Gender Reassignment and Partnership Returned for Correction”, *Irytas.lt*, 7 October 2014, <http://www.irytas.lt/lietuvos-diena/aktualijos/grazino-taisyti-projektus-del-lyties-keitimo-partnerystes.htm>

<sup>317</sup> Committee of Ministers of the Council of Europe, “Case No. 10”, 1208th meeting, 25 September 2014, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OI/DH%282014%291208/10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

- *It is recommended to establish the procedure for gender reassignment, as well as all related health care services, by means of an act of law, which would also regulate the coverage of the costs of surgery and treatment.*
- *It is recommended to adopt all necessary legal amendments to provide for a quick, transparent and accessible procedure for legal gender recognition.*
- *When drafting proposals to amend existing legislation or to enact new legislation concerning to the regulation of gender reassignment, it is recommended that NGOs working in this field and transgender persons themselves are fully involved in this process.*

## V. Reform of Incapacity

On 26 March 2015, Parliament adopted the amendments prepared by the Ministry of Justice, essentially reforming the regulation of incapacity in Lithuania.<sup>318</sup> These legal amendments fundamentally modified the law in relation to limited capacity and provided for two new possibilities – supported decision-making and advance directives (living wills); the amendments also provided for a regular review of the status of a person's incapacity.

A strong push for reform came about as a result of the European Court of Human Rights ruling in the case of *D.D. v Lithuania* (2012), where the Court found violations of the European Convention on Human Rights (ECHR).<sup>319</sup> The Strasbourg court criticised Lithuania for the fact that the issue of the applicant's capacity was determined in her absence, that she was not invited to attend the court hearing to determine her legal guardian and that she was not informed of the hearing for her institutionalization. The Court noted that the involuntary placement of the applicant in the Kėdainiai Social Care Home amounted to a deprivation of her liberty (violation of Article 5 of ECHR), while the court proceedings regarding the change of the applicant's guardian were deemed unfair (violation of Article 6 of ECHR). Following the judgment of the ECtHR, D.D.'s legal capacity was restored by the national courts.<sup>320</sup>

<sup>318</sup> Law Amending the Civil Code, 26 March 2015, No. XII-1566, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1020888](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1020888); Law Amending the Code of Civil Procedure, 26 March 2015, No. XII-1567, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1020891&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1020891&p_tr2=2)

<sup>319</sup> 9 July 2012 judgment of the ECtHR in the case of *D.D. v Lithuania*, application No. 13469/06, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109091#\\_itemid=...001-109091](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109091#_itemid=...001-109091)

<sup>320</sup> 29 May 2012 decision of the Kaunas District Court in civil proceedings No. 2-1294-451/2012

The amendments to the legislation established additional safeguards to ensure better protection of the rights of persons with mental illnesses. The amendments that will come into force in 2016 modify the regulation of limited capacity and provide for supported decision-making and advance directives; they also provide for a regular review of the status of a person's incapacity.

The least progressive reforms were related to absolute incapacity. The *UN Convention on the Rights of Persons with Disabilities* provides that disabled people enjoy legal capacity on an equal basis with others in all aspects of life.<sup>321</sup> This means that incapacity cannot exist in principle and no one can have the absolute power to make decisions on behalf of a disabled person. However, the amendments adopted did not actually abolish absolute incapacity.

Once persons are legally declared incapable due to a mental or some other disorder, they are placed under care, with the appointed guardian being able to make all decisions in relation to his or her ward. This model, whereby full decision-making powers are vested in another subject, is particularly common in post-Soviet countries, which for a long time saw human dignity and respect for human rights as foreign concepts. Nowadays it is universally recognized that this model degrades the dignity of persons with disabilities, discriminates against them in relation to other people and gives rise to numerous other human rights violations.<sup>322</sup>

The amendments will abolish the ability – which still exists in Lithuania – to declare a person incapable in all aspects of life with a single court order, without any differentiation. However, Parliament left open the possibility of declaring a person incapable “in a particular field” – in other words, the transfer of full decision-making authority still exists, limited to “a particular field”. For example, the *Civil Code* explicitly provides that persons may be prohibited from marrying if they have been declared legally incapable in this regard.

These regulations are not in line with the provisions of the *UN Convention on the Rights of Persons with Disabilities*, which Lithuania ratified in

<sup>321</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 12(2), <http://www.un.org/disabilities/convention/conventionfull.shtml>

<sup>322</sup> „J. Ruškus. Both children and staff break down in care institutions“, *delfi.lt*, 10 February 2015, <http://www.delfi.lt/news/ringas/lit/j-ruskus-globos-institucijose-paluzta-ir-aukletiniai-ir-darbuotojai.d?id=67115346#ixzz3XBrTx-14c>

2010 and which obliges it to ensure that not a single person is ever fully deprived of his or her ability to make decisions.

“I congratulate the Ministry of Justice and Parliament on preparing and adopting amendments to the law that abandon the exceptionally discriminatory concept of legal incapacity, which turns persons in a social nobodies not of their own will, but through the will of others. On the other hand, the United Nations Committee on the Rights of Persons with Disabilities has said that intellectual, mental or other disorders are no grounds for limiting a person’s capacity in one way or the other – all are equal before the law and all people without exception have an inherent right to live in society with dignity. As such, it is lamentable that today we have not acted with courage and completely abolished incapacity at law. I believe that we will do so soon; I believe that one day human rights will cease to be just an abstract concept in Lithuania and will become the real foundation of our democratic society,” said Jonas Ruškus, member of the UN Committee on the Rights of Persons with Disabilities.

## Findings and Recommendations

- *The amendments to the law introducing additional legal safeguards to ensure better protection of the rights of persons with mental or intellectual disorders is a very positive development, namely, modifying the regulation of limited capacity, establishing supported decision-making and advance directives, as well as providing for a regular review of the status of the person’s incapacity.*
- *The least progressive reforms were related to absolute incapacity. It is recommended to completely abolish incapacity at law, since it is degrading to dignity of persons with disabilities, discriminates against them in relation to other persons and gives rise to numerous other human rights violations.*

## RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND RELIGION. ARTICLES 9 to 11

### I. Incitement to Hatred and Hate Crimes

In 2013, following the expansion of the list of hate crimes in the *Criminal Code* in 2010,<sup>323</sup> the Supreme Court of Lithuania (SCL) had to examine the very first hate crime case involving a serious dismissal of USSR aggression against Lithuania.<sup>324</sup> The leader of a left-wing political party was unable to escape prosecution for statements made during a live radio broadcast, where he claimed that the defenders of independence in 1991 were shot not by Russian troops, but by “they own”. In the opinion of SCL, interpreting the events of 13 January 1991 in a way that portrays people being killed or otherwise harmed not by Soviet aggression, but by the others defenders of independence, should not in accordance with the *Criminal Code* be seen as expressing an opinion, but rather as denying and seriously dismissing USSR aggression together with serious and very serious crimes. Notably, unlike in many other countries in Europe, such conduct is considered to be a form of hate crime.

With military conflicts flaring up in neighbouring countries in 2013–2014, criminal self-expression in Lithuania continued to acquire new forms. The conflict in eastern Ukraine that started in 2013 between the country’s new regime, on the one side, and the eastern regions refusing to recognize the new regime and the separatists backed by Russia, on the other side, led to manifestations of hate speech in Lithuania, with Russian media channels also joining in at the tail-end of 2013 with a distortive interpretation of 13 January 1991 events. Although repeat broadcasts of these shows were temporarily suspended in Lithuania<sup>325</sup> and

<sup>323</sup> Law Amending and Supplementing Article 95 of and Including Article 1702 in and Supplementing the Annex to the Criminal Code, 15 June 2015, No. XI-901, <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=375951&b=>

<sup>324</sup> 22 January 2013 ruling of the Supreme Court of Lithuania in criminal proceedings No. 2K-7-102/2013

<sup>325</sup> “Court once again allowed halting the transmission of “NTV Mir Lithuania” Russian shows”, *vz.lt*, 21 March 2014, <http://vz.lt/?PublicationId=3d83fbfe-71df-4aec-9a1e-b3366a0f6016>

Latvia<sup>326</sup> for inciting strife and presenting biased information, in those European countries further removed from the Baltics where these broadcasters were registered or held appropriate licences, sanctions for these acts were limited to warnings.<sup>327</sup>

With Russia constantly spreading biased information about the events in Ukraine, including the annexation of Crimea,<sup>328</sup> while at the same time denying the occupation of the Baltic States, it became evident that there was a lack of a real sanctions mechanism. In September 2014, in order to strengthen the protection of Lithuania's information space, the President initiated the amendment of the *Law on Provision of Information to the Public*,<sup>329</sup> proposing to fine broadcasters for up to 3% of their annual income for showing war propaganda or information that incites hatred and to expand the duties and responsibilities of the Radio and Television Commission of Lithuania.<sup>330</sup>

These days, Lithuania law enforcement authorities and courts are not always able to draw the line between permissible self-expression, criticism or humour on the one side and hate speech, insults and stigmatization on the other. Authorities may react inappropriately to artistic expression – for example, a pre-trial investigation for the desecration of national symbols was initiated against artists who had interpreted the Lithuanian anthem in their own way to highlight the issues of women's right and equality;<sup>331</sup> an exhibition refused to display a work of art portraying a woman, not a man, riding the horse on the national coat of arms.<sup>332</sup>

On the other hand, speech that obviously incites hatred or even violence goes unpunished. For example, in 2014 the Trakai Regional Court, hav-

<sup>326</sup> "Latvian regulatory authority temporarily bans the Russian TV channel Rossiya RTR", *epra.org*, 10 April 2014, [http://www.epra.org/news\\_items/latvian-regulator-issues-temporary-ban-to-russian-tv-channel-rossiya-rtr](http://www.epra.org/news_items/latvian-regulator-issues-temporary-ban-to-russian-tv-channel-rossiya-rtr)

<sup>327</sup> OFCOM broadcast bulletin No. 266, 10 November 2014, p. 43-44, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb266/obb266.pdf>

<sup>328</sup> "Russian TV broadcasts could be suspended for up to a year", *lrytas.lt*, 5 January 2015, <http://www.lrytas.lt/lietu-vos-diena/aktualijos/rusijos-televiziju-transliacijos-galetu-buti-stabdomos-iki-metu.htm>

<sup>329</sup> Draft Law Amending and Supplementing Articles 2, 19, 31, 34, 341, 48 of and including Article 511 in the Law on Provision of Information to the Public, 1 September 2014, No. XIIP-2106, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=480398&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=480398&p_tr2=2)

<sup>330</sup> Seimas, "Parliament will consider the draft amendments to the Law on Provision of Information to the Public", 16 December 2014, [http://www3.lrs.lt/pls/inter/w5\\_show?p\\_r=4445&p\\_d=153678&p\\_k=1](http://www3.lrs.lt/pls/inter/w5_show?p_r=4445&p_d=153678&p_k=1)

<sup>331</sup> Goda Raibytė, "Will the artists that have reinterpreted the anthem become criminals?", *lrytas.lt*, 10 October 2013, [http://www.lrytas.lt/lietu-vos-diena/aktualijos/2/26961/ar\\_himna\\_interpretavusios\\_menininkes\\_taps\\_kriminalinomis\\_nusikaltelemis](http://www.lrytas.lt/lietu-vos-diena/aktualijos/2/26961/ar_himna_interpretavusios_menininkes_taps_kriminalinomis_nusikaltelemis)

<sup>332</sup> Dalia Gudavičiūtė, "Mounted woman with a sword in hand on the Vytis sowed unprecedented fear", *lrytas.lt*, 16 May 2014, <http://kultura.lrytas.lt/daile/raita-moteris-su-kardu-ant-vycio-pasejo-neregeta-baime.htm?p=1>



ing heard the criminal case on the public incitement to violence against and physical assault of a group of people or individuals belonging to it on the basis of sexual orientation, failed to find the offence there. The Court was inclined to justify the comment left by the defendant, *“Come on, will these perverts march through just like that – trash. arching their asses. nonsense. The faggots are triumphant, they need to be destroyed, as soon as possible...”* as her being excited, with her excitement being provoked by the *Baltic Pride 2013*. The court ignored the fact that the march took place four days after the said comment was posted, and that the defendant’s statements were false. Her acquittal stated that “not all negative statements about a group of people or individuals belonging to it on the basis of gender, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or opinions is a criminal offence under Article 170 of the *Criminal Code*.”<sup>333</sup>

No less surprising was the decision taken by the district court of Klaipėda, which failed to see any potential incitement to hatred in the following comments posted under a picture of two young men kissing on a Facebook profile: *“Satan please allow me to bash their heads against the wall!”*, *“burn them, I’d kill them on sight”*, *“...Hitler should’ve considered burning more than just the Jews”*, *“invalids eeew burn them”*, *“Degenerates !!!!!!! to the gas chambers with the both of them”*, *“kill...”*, *“I’m gonna throw up, these people need to be castrated or burned, get treatment you asses...”*, *“throw them onto the pyre”* and others. In its ruling, the court blamed the victim of the hatred himself – an 18 year old youth – for engaging in provocative behaviour. According to the court, “in this instance a person making a picture of two men kissing available in public should and must have known that his eccentric behaviour will most certainly not contribute to the mutual understanding between persons harbouring different views in society, as well as to the promotion of tolerance. The owner of the profile, by using his freedom to express his beliefs and to promote tolerance, should have considered that this freedom cannot be divorced from a duty to respect the views and traditions of others.” Moreover, the fact that the person concerned announced his relationship in public by publishing a photo allowed the court to “discern an intention to aggravate or shock people harbouring differing views, to incite negative comments.”<sup>334</sup>

<sup>333</sup> 27 August 2014 sentence of the Trakai County District Court in criminal proceedings No. 1-293-463/2014

<sup>334</sup> 18 February 2015 ruling of the Klaipėda Regional Court in proceedings No. 1S-72-41/2015



*Photo was taken from victim's Facebook account*

These examples illustrate the lack of competence on the part of the Lithuanian courts in defending human rights and combating the criminal manifestations of hatred. Decisions such as these serve to discredit Lithuania as a democratic state that respects human rights and are at odds with both national and international legislation that prohibits the incitement to hatred and discrimination based on sexual orientation.

Law enforcement authorities also lack knowledge in this area. As demonstrated by a HRMI study in 2013, victims of hate crimes do not always receive assistance from law enforcement officials; officials' attitude towards victims is often insensitive and ignores their vulnerability. Officials still lack knowledge on the nature and motivations of hate crimes, with too much reli-

ance placed on the opinion of outside experts when making decisions.<sup>335</sup>

Hate speech in Lithuania is still mostly directed against individuals or groups on the basis of sexual orientation, race, nationality, language or origin.<sup>336</sup> When examining hate crimes, the Lithuanian courts wrongfully rely on the "opinion" argument and acquit defendants; require an explicit, specific intent to inflame people, to incite hatred or discrimination; and in their reasoning rely exclusively on the opinions of outside experts. As stated by the Supreme Court of Lithuania, the duty to determine whether saying or writing a particular text constitutes a crime rests with the court examining the case, not with specialists or other persons.<sup>337</sup> Furthermore, hate crimes are still not being properly recorded and analyzed in Lithuania.<sup>338</sup>

<sup>335</sup> Human Rights Monitoring Institute, "Protection of Hate Crime Victims' Rights: the case of Lithuania", 2013, <https://www.hrmi.lt/uploaded/Apzvalgos/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013.pdf>

<sup>336</sup> The Office of the Inspector of Journalist Ethics, "The Vilnius Regional Court ordered the Vilnius District Prosecutors' Office to renew the pre-trial investigation concerning the public comment inciting strife posted on A. Ramanauskas's Facebook profile", 29 August 2014, <http://www.lrs.lt/intl/zeit.show?theme=693&lang=1&doc=5601>

<sup>337</sup> 22 January 2013 ruling of the Supreme Court of Lithuania in criminal proceedings No. 2K-7-102/2013

<sup>338</sup> "Lithuania will pay attention to hate crimes during its presidency of the EU", *delfi.lt*, 27 January 2013, <http://www.delfi.lt/news/daily/lithuania/per-lietuvos-pirmininkavima-es-demesys-neapykantos-nusikaltimams.d?id=60525709>

## Findings and Recommendations

- *Lithuanian case law on the incitement to hatred is at odds with the case law of the European Court of Human Rights concerning the restriction of the freedom of expression. It is necessary to raise the competences of pre-trial investigation officers and judges in the field of combating hate crime, with practice-oriented human rights training.*

## II. Decriminalization of Insult and Libel

Even though many international organizations urge to cherish the freedoms of speech, self-expression and media by abolishing criminal liability for insult and libel, such liability has not yet been abolished in Lithuania.

In 2013-2014, there were attempts to decriminalize insults and libel – at the end of 2013, amendments to the *Criminal Code*<sup>339</sup> and the *Code of Administrative Offences*<sup>340</sup> were registered in the Parliament, which sought to eliminate criminal liability not only for insulting a person, but also for contempt of court as well as for insulting public servants or persons carrying out the function of public administration, with libel only being applying to cases where untrue information concerning another person – that he allegedly committed a crime – is published. The government did not approve of these amendments.<sup>341</sup>

Even though the authors of the bill proposed administrative sanctions for insulting the dignity and honour of a public servant or a person carrying out the function of public administration, what is important is that insults to any other person who is not a civil servant were left outside the remit of legal liability – the draft law did not propose amending or supplementing the rules governing the defence of personal honour and dignity by civil law, where the defence of personal dignity and honour is available only in the event of false news being spread, but not in

<sup>339</sup> Draft Law Amending the title of Chapter XXII, Amending Article 154 of and Repealing Articles 155, 232 and 290 of the Criminal Code, 23 December 2013, No. XIIP-1420, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=463171&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463171&p_tr2=2)

<sup>340</sup> Draft Law Supplementing Article 187 of the Code of Administrative Offences, 23 December 2013, No. XIIP-1421, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=463174&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463174&p_tr2=2)

<sup>341</sup> Resolution No. 494 of the Government “On Draft Law No. XIIP-1420 Amending the title of Chapter XXII, Amending Article 154 of and Repealing Articles 155, 232 and 290 of the Criminal Code and Draft Law No. XIIP-1421 Draft Law Supplementing Article 187 of the Code of Administrative Offences”, dated 4 June 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=473410&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=473410&p_tr2=2)

the event of insulting opinions or evaluations. In other words, should the draft law be adopted, there would be no liability for insulting another person (who is not an officer or a civil servant), and the insulted person would not be able to defend himself against the insulting information, which would not have to have basis in reality.

2014 saw the return of cassation appeals against court rulings and judgments in private prosecution cases.<sup>342</sup> This can more effectively ensure uniformity in the case law relating to insults and libel.

The criminal proceedings in private prosecution cases for libel and insult are unusual: there is no pre-trial investigation, unless it is necessary to determine the identity of the person disseminating the information, which is why the court, instead of examining the evidence submitted, has to gather it at its own initiative, setting aside its habitual role as arbitrator.<sup>343</sup> The status of the defendant in this category of criminal proceedings is acquired without the need for detailed examination of the evidence, usually based solely on the victim's complaint.

Criminal proceedings for libel and insults brought against journalists pose a special threat to the freedom of speech and the freedom of expression. In 2012, out of 45 cases tried in the Vilnius City District Court, seven involved charges against journalists; all were acquitted by final judgments in their respective cases.<sup>344</sup>

## Findings and Recommendations

- *The decriminalization of libel and insult must be accompanied by other systemic amendments to the law: when abolishing criminal liability for personal insult or slander, it is necessary to supplement the Code of Administrative Offences or the Civil Code with provisions allowing persons to defend themselves against the dissemination of information that is degrading to them.*

<sup>342</sup> Law Amending Articles 37, 102, 233, 240, 243, 244, 261, 273, 314, 323, 361, 362, 3621, 364, 367, 440, 441, 442 and Including Article 2421 to the Code of Criminal Proceedings, 13 March 2014, No. XII-775, <http://www3.lrs.lt/pls/inter3/old-search.preps2?a=467420&b=>

<sup>343</sup> Lithuanian Bar Association, "The ability to abuse private prosecutions stems from unclear legal regulations", 29 April 2013, <http://www.advoco.lt/lt/advokatams-padejejam/naujienos-advokatams/lietuvos-advokatura-pikt-naudziauti-y8vj.html>

<sup>344</sup> Lithuanian Bar Association, "The ability to abuse private prosecutions stems from unclear legal regulations", 29 April 2013, <http://www.advoco.lt/lt/advokatams-padejejam/naujienos-advokatams/lietuvos-advokatura-pikt-naudziauti-y8vj.html>

- *Libel and insult cases based on a private accusation preclude pre-trial investigations, which why courts must not only examine the evidence, but also collect it at its own initiative; this negatively impacts the court's role as an impartial arbiter.*
- *The possibility of lodging a cassation appeal against a court ruling or judgment in a private prosecution case, returned in 2014, should in the future more effectively ensure that the case law on libel and insult remains uniform.*

### III. Restriction of the Freedom of Expression to Protect Minors

After new criteria were added to the *Law on the Protection of Minors against the Detrimental Effect of Public Information* in 2010, information promoting a concept of marriage and the creation of a family different than provided for in the Constitution or the *Civil Code* was also deemed to be harmful to minors. The Constitution provides that marriage is concluded between a man and a woman,<sup>345</sup> while the *Civil Code* provides that marriage may only be contracted with a person of the opposite gender.<sup>346</sup> This provision, which was previously very rarely applied in practice, in 2013-2014 frequently became the basis for limiting the freedom of expression of homosexual individuals.

Due to the aforementioned provision of the *Law on the Protection of Minors against the Detrimental Effect of Public Information*,<sup>347</sup> in 2013 a public broadcaster refused to air social advertisements, which depicted openly homosexual people inviting others to participate in the *Baltic Pride 2013* in Vilnius, during the day.<sup>348</sup> A year later, some commercial televisions were reluctant to air another social advertisement for the same reason. This time, the social ad promoted a change in public attitudes towards homosexual individuals.<sup>349</sup>

<sup>345</sup> Constitution, 25 October 1992, Article 38(3), <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

<sup>346</sup> Civil Code, 18 July 2000, No. VIII-1864, Article 3.12, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999)

<sup>347</sup> Law Amending and Supplementing Articles 1, 2, 3, 4, 5, 7, 9 of the Law on the Protection of Minors against the Detrimental Effect of Public Information, 22 December 2009, No. XI-594, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=410367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410367&p_tr2=2)

<sup>348</sup> Eglė Digrytė, "Vladimiras Simonko, leader of the Lithuanian Gay League: LRT compared social ads for "Baltic Pride" to communications about tobacco and alcohol", *15min.lt*, 12 July 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/lietuvos-geju-lygos-vadovas-vladimiras-simonko-lrt-socialine-baltic-pride-reklama-prilygino-pra-nesimams-apie-alkoholi-ir-tabaka-56-353141>

<sup>349</sup> Eglė Digrytė, "Gay League video about sexual minorities fails to overcome television filters once again", *15min.lt*, 19 August 2014, <http://www.15min.lt/naujiena/aktualu/lietuva/geju-lygos-klipas-apie-seksualines-mazumas-vel-neiveike-televiziju-filtro-56-447743>

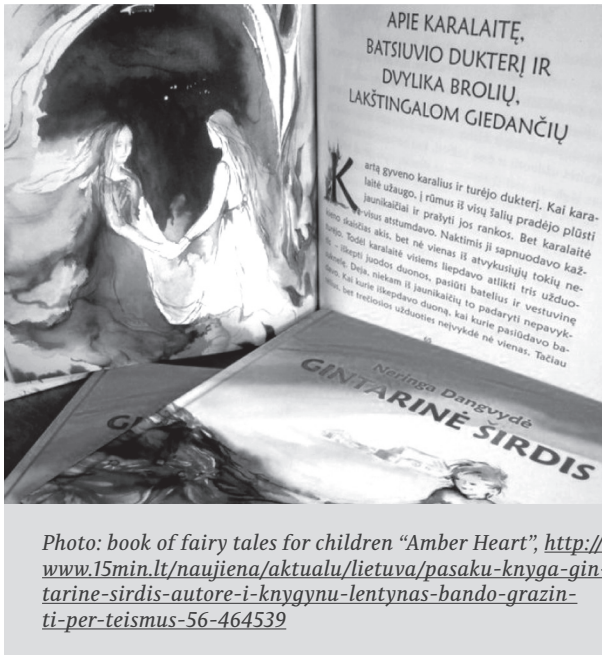


Photo: book of fairy tales for children “Amber Heart”, <http://www.15min.lt/naujienu/aktualu/lietuva/pasaku-knyga-gintarine-sirdis-autore-i-knygynu-lentynas-bando-grazinti-per-teismus-56-464539>

In both cases, the Office of the Inspector of Journalist Ethics concluded that the refusals were reasonable for the purposes of protecting minors.<sup>350</sup> This conclusion was challenged in court, but the court decided not to examine the case, acknowledging that the expert opinion was advisory.<sup>351</sup>

The book of fairy tales released at the beginning of 2014 titled “Amber Heart” was also deemed to be unsuitable to minors under the age of 14. Several tales in the book were about

same-sex couples (families) and their relationship. After discerning the presence of “homosexual propaganda”,<sup>352</sup> the distribution of the book was stopped, with the remaining copies being returned to the publishing house.<sup>353</sup> In this case as well, the Office of the Inspector of Journalist Ethics came to the conclusion that the book of fairy tales for children constituted information that was detrimental to minors.<sup>354</sup>

In its conclusion, the Inspector of Journalist Ethics stated that fairy tales, which “presented such relationships as normal and self-explanatory, were harmful to the fragile world-view of children, too invasive, direct and manipulative”, and as such were detrimental to individuals under 14 years of age.<sup>355</sup>

<sup>350</sup> The Office of the Inspector of Journalist Ethics, “Inspector of Journalist Ethics Zita Zamžickienė decided that the complaint of the Lithuanian Gay League concerning the restrictions placed on advertising for the march of sexual minorities was unfounded”, 23 September 2013, <http://www.lrs.lt/intl/zeit.show?theme=662&lang=1&doc=2130>; “Inspector of Journalist Ethics provided the findings of expert concerning the information harmful to minors that was contained in the Lithuanian Gay League (LGL) social ad video”, 25 September 2014, <http://www.lrs.lt/intl/zeit.show?theme=662&lang=1&doc=5761>

<sup>351</sup> 24 October 2014 ruling of the Vilnius Regional Administrative Court in administrative proceedings No. I-10326-643/2014

<sup>352</sup> Rūta Juknevičiūtė, “New dose of propaganda for children”, *respublika.lt*, 4 March 2014, <http://www.respublika.lt/lt/naujienu/lietuva/lietuvas-politika/nauja-propagandos-doze-vaikams.coments.1>

<sup>353</sup> Mindaugas Jackevičius, “Back to Soviet times: the state will regulate not only what we do, but also what we read”, *delfi.lt*, 8 May 2014, <http://www.delfi.lt/news/daily/education/atgal-i-sovietmeti-valstybe-reguliuos-ne-tik-ka-darom-bet-ir-ka-skaitom.d?id=64737393>

<sup>354</sup> “Decision to not distribute a fairy tale book about homosexual couples appealed to the courts”, *ve.lt*, 5 November 2014, <http://www.ve.lt/naujienu/lietuva/lietuvas-naujienu/teismui-apskustas-sprendimas-neplatinti-pasaku-knygos-apie-homoseksualias-poras-1259341/>

<sup>355</sup> “Complaint regarding the book “Heart of Amber” examined: these fairy tales could be harm children”, *15min.lt*, 4 September 2014, <http://www.15min.lt/naujienu/kultura/literatura/istirtas-skundas-del-knygos-gintarine-sirdis>



Such decisions, as well as the legal provisions on which they are based, are contrary to the provisions of the *Law on Equal Opportunities* – the prohibition of the dissemination of information on homosexual people or their families, as well as on them informing the public of their own existence, is discriminatory.

In May of 2014, the draft *Law Amending the Law on the Protection of Minors against the Detrimental Effect of Public Information* was registered in Parliament, proposing to exclude information that restricts the freedom of self-expression of homosexual persons from the list of information detrimental to minors.<sup>356</sup>

*Lithuania is characterized by very high rates of teen suicides and suicide attempts, as well as a high incidence of bullying; as such, the restriction of availability of information on sexual orientation doubtlessly contributes to the predominance of homophobic bullying in educational institutions, which in turn becomes a risk factor for suicide.*

The Law regulating the protection of minors has been criticized for years for, on the one hand, hindering the self-expression of LGBT individuals and unreasonably interfering with the right of this social group to disseminate information about itself to the public, and, on the other, aiming to change public attitudes towards same-sex couples (families).<sup>357</sup>

In 2014, Lithuanian non-governmental human rights organizations and the Lithuanian Psychological Association joined Amnesty International,<sup>358</sup> Human Rights Watch and IL-GA-Europe, who had previously condemned the law. The Lithuanian Psychological Association noted that children are harmed more not by social advertisements, but by a prohibition of information concerning homosexual individuals.<sup>359</sup>

As noted by the European Commission, “there is a lot of evidence of dis-

[is-sios-pasakos-vaikams-gali-kenkti-286-451062](http://www.sios-pasakos-vaikams-gali-kenkti-286-451062)

<sup>356</sup> Draft Law Amending Article 4 of Law No. IX-1067 on the Protection of Minors against the Detrimental Effect of Public Information, 9 May 2014, No. XIIP-1789, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=470730&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=470730&p_tr2=2)

<sup>357</sup> ARC International, Statements by States and other Stakeholders (*Lithuanian Gay League, COC Netherlands and IL-GA-Europe*), 12th UPR session, 11 October 2011, <http://arc-international.net/global-advocacy/universal-periodic-review/l/lithuania/>

<sup>358</sup> Amnesty International, “Homophobic law to enter into force in Lithuania”, 26 February 2010, <http://www.lgl.lt/en/news/about-lgl/homophobic-law-to-enter-into-force-in-lithuania/>

<sup>359</sup> Lithuanian Psychological Association, “Opinion of the Lithuanian Psychological Association on the Lithuanian Gay League’s social advertisement’s effect on minors”, 25 November 2014, <http://www.psichologusaiunga.lt/index.php?p=407&lng=lt>

crimination on the basis of sexual orientation in schools, primarily related to homophobic insults.”<sup>360</sup> Lithuania is characterized by very high rates of teen suicides and suicide attempts, as well as a high incidence of bullying; as such, the restriction of availability of information on sexual orientation doubtlessly contributes to the predominance of homophobic bullying in educational institutions, which in turn becomes a risk factor for suicide.

## Findings and Recommendations

- *The criteria set by the Law on the Protection of Minors against the Detrimental Effect of Public Information for determining which information is detrimental to minors hinders the self-expression of LGBT individuals, discriminates against them and interferes with their right to disseminate information, which is why it is necessary to amend the law and do away with the aforementioned criterion.*

## IV. Protection of Information Sources

The protection of journalistic sources is one of the most important guarantees of journalistic activities, determining the ability of the press to effectively exercise its function as a public watchdog as well as being responsible for public confidence in the media. The scandal concerning classified State Security Department information on Russia’s threats to Lithuania being leaked to journalists, rearing its ugly head at the end of 2013, made it clear that the principal condition of journalistic work – the protection of the secrecy of the source – was only protected in theory, being very vulnerable in practice.

After BNS ran a story at the end of October 2013 revealing that the State Security Department (SSD) had warned the heads of state and several committees of Parliament about possible informational provocations from Russia, a pre-trial investigation was launched on the suspicion that classified information had been unlawfully leaked to journalists.<sup>361</sup>

<sup>360</sup> SEC(2008) 2180, 2008 07 02, p. 18.

<sup>361</sup> “The Prosecutor General’s Office has already established who could have leaked the secret note of the State Security Department (SSD) to BNS journalists. But the prosecutors will not be revealing the last name of the suspect for the time being”, *lsm.lt*, 14 November 2013, <http://www.lsm.lt/naujiena/aktualu/lietuva/generaline-prokuratūra-stt-tyrime-del-valstybes-paslapties-atskleidimo-jau-aisku-kas-nutekino-informacija-ziniasklaidai-56-385058>



*The protection of journalistic sources is one of the most important guarantees of journalistic activities, determining the ability of the press to effectively exercise its function as a public watchdog as well as being responsible for public confidence in the media.*

During the pre-trial investigation, the Vilnius District Court, seeking to determine the identity of the person responsible for leaking the classified SSD note on the potential informational provocation organized by Russia against the President of Lithuania,<sup>362</sup> ordered the journalist to reveal her source<sup>363</sup> and also mandated a search of her house, as well as the seizure of the computers at the editorial office.<sup>364</sup>

After examining the complaint of the BNS journalist, the Vilnius Regional Court admitted that both the obligation to disclose the source of information and the mandate for the search were unlawfully ordered by the lower court, noting that such measures may only be used as a last resort – when all other means have been exhausted.<sup>365</sup> Despite the reasoning of the court, there were attempts to interrogate the journalist on the source of her information in another case before the Vilnius District Court. While the courts were interpreting the legality and proportionality of these measures, it became apparent almost all of the BNS journalists had been wiretapped.<sup>366</sup>

An order by the court, requiring a journalist to reveal the source of their information, is not a common Court practice.<sup>367</sup> However, the confidentiality of the source as well as the journalist's right<sup>368</sup> and professional duty to keep the source secret<sup>369</sup> may be breached by making

<sup>362</sup> Saulius Chadasevičius, "Higher court finds that the SIS search of a journalist's home and the judge's order to reveal the source were unlawful", *15min.lt*, 3 December 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/aukstesnis-teismas-stt-krata-bns-zurnalistes-namuose-ir-teisejo-gedimino-viederio-nurodymas-atskleisti-saltini-buvo-neteiseti-56-389501>

<sup>363</sup> "BNS: law enforcement pressure is unacceptable", *sc.bns.lt*, 8 November 2013, <http://www.universitetojournalistas.kf.vu.lt/2013/11/bns-teisesaugos-spaudimas-yra-nepriimtinas/>

<sup>364</sup> Dainius Sinkevičius, "Journalist hounded by the prosecutors and the SIS interviewed in D. Ulbinaitė's case", *delfi.lt*, 5 November 2014, <http://www.delfi.lt/news/daily/lithuania/d-ulbinaites-byloje-stt-ir-prokuroru-persekiotos-zurnalistes-apklausa.d?id=66309998>

<sup>365</sup> Dominykas Griežė, "Court quashes ruling ordering a BNS editor to reveal her information source", *alfa.lt*, 3 December 2013, <http://www.alfa.lt/straipsnis/15167428/teismas-panaikino-nutarti-kuria-bns-redaktore-buvo-ipareigota-atskleisti-informacijos-saltini#ixzz3SPFaxugL>

<sup>366</sup> "Officers listened in on almost all of BNS journalists' conversations", *lrytas.lt*, 18 June 2014, <http://www.lrytas.lt/lietuvas-diena/aktualijos/pareigunai-klausesi-beveik-visu-bns-zurnalistu-pokalbiu.htm>

<sup>367</sup> "LUJ president Dainius Radzevičius: demands to reveal sources of information – laziness and extreme measures", *15min.lt*, 8 April 2013., <http://www.15min.lt/naujiena/aktualu/lietuva/lzs-pirmininkas-dainius-radzevicius-reikalavimai-atskleisti-informacijos-saltinius-tinginyste-ir-krastutine-priemone-56-323036>

<sup>368</sup> Law on Provision of Information to the Public, 2 July 1996, No. I-1418, Article 8, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478453&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478453&p_tr2=2)

<sup>369</sup> Code of Ethics of Lithuanian Journalists and Publishers, 2005, Article 15, [http://www.lrs.lt/apps3/1/2386\\_FD-QUQEDY.PDF](http://www.lrs.lt/apps3/1/2386_FD-QUQEDY.PDF)

*The use of other secretive procedural measures, not just wiretapping, and its frequency is a serious human rights issue in Lithuania.*

use of other secretive procedural coercive measures – mandating a search, seizure of work or communications devices, secret surveillance, wiretapping of journalists.<sup>370</sup> If these procedural measures are used on the journalist without justification and disproportionately, it may not only lead to a violation of his privacy, but may also reveal the sources of information available to that journalist.<sup>371</sup> In this situation, the further activities of the journalist can become very vulnerable and unreliable.

The use of secretive procedural measures, not just wiretapping, and its frequency is a serious human rights problem in Lithuania. When applying these mechanisms, there must be a very strong argument for suspecting that a person has committed not just any crime, but a very serious crime. As such, considering the special legal status of journalists in society, the disproportionate and unjustified use of procedural coercive measures against a journalist who is not even a suspect at the pre-trial investigation presents a double problem.

The use of other secretive procedural measures, not just wiretapping,<sup>372</sup> and its frequency is a serious human rights issue in Lithuania. When applying these mechanisms, there must be a very strong argument for suspecting that a person has committed not just any crime, but a very serious crime.<sup>373</sup> As such, considering the special legal status of journalists in society, the disproportionate and unjustified use of procedural coercive measures against a journalist who is not even a suspect at the pre-trial investigation<sup>374</sup> presents a double problem.

The ECtHR has noted that ability of the investigating authorities to reveal information must be strictly limited to the disclosure of necessary

<sup>370</sup> Dainius Sinkevičius, “Judge that mandated mass surveillance of journalists: ‘I would do the same today’”, *delfi.lt*, 30 June 2014, <http://www.delfi.lt/news/daily/lithuania/masiskai-zurnalistu-pokalbiu-klausytis-leidusi-teise-ja-siandien-pasielgciau-lygiai-taip-pat.d?id=65151947>

<sup>371</sup> 16 October 2013 ECtHR judgment in the case of *Nagla v Latvia*, application No. 73469/10, paragraph 82, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122374#{"itemid":\["001-122374"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122374#{)

<sup>372</sup> Linas Jegelevičius, “Darius Petrošius, chairman of the Commission for Parliamentary Scrutiny of Operational Activities: ‘10 thousand people are under secret surveillance in Lithuania’”, *15min.lt*, 21 March 2013, <http://www.15min.lt/naujiena/aktualu/interviu/seimo-operatyvines-veiklos-kontroles-komisijos-pirmininkas-darius-petrosius-li-etuvoje-slapta-klausomasi-10-tukst-zmoniui-pokalbiu-599-318299>

<sup>373</sup> Ernestas Rimšelis, “Do we need to muzzle wiretapping?”, *delfi.lt*, 7 July 2014, <http://www.delfi.lt/news/ringas/lit/e-rimselis-ar-reikia-apygnasrio-telefoniniu-pokalbiu-pasiklausymui.d?id=65212375>

<sup>374</sup> Vilnius Regional Courts, “Vilnius Regional Court allowed the appeals of BNS editors”, 17 July 2014, [http://www.vat.lt/lt/vilniaus-apygardos-teismas/naujienos\\_208/archive/vilniaus-apygardos-teismas-jhcy/p30.html](http://www.vat.lt/lt/vilniaus-apygardos-teismas/naujienos_208/archive/vilniaus-apygardos-teismas-jhcy/p30.html)

data, since disclosing journalists' sources more than is necessary for the purposes of the investigation is contrary to their freedom of expression and the confidentiality of their information sources.<sup>375</sup> In cases concerning the disclosure of journalistic source, the ECtHR has constantly emphasized that the principle of proportionality must be adhered to – to ensure maximum confidentiality for the journalist's sources and to restrict any unjustified spread of the information on the source revealed.<sup>376</sup> In addition, identification of a journalist's source not only threatens that journalist's freedom of expression, but also his privacy.<sup>377</sup>

On 10 July 2014 Parliament adopted amendments, previously initiated by the President,<sup>378</sup> to the *Law on Provision of Information to the Public*<sup>379</sup> and the *Code of Criminal Procedure*<sup>380</sup>, tightening the conditions under which journalists are obliged to disclose the source of their information or when they are subjected to coercive measures (provided for in the law) in order to reveal the source of their information. From now on these procedural measures may only be mandated by a reasoned court decision when no other measures to reveal the source are applicable or all measures have been exhausted, and the court will only be able to decide the issue of whether to oblige the journalist to disclose the source of his information in a court hearing attended by the journalist himself, who will have access to the prosecutor's request.

<sup>375</sup> 18 July 2013 ECtHR judgment in the case of *Saint-Paul Luxembourg S. A. v Luxembourg*, application No. 26419/10, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{"itemid":\["001-119055"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{)

<sup>376</sup> 18 July 2013 ECtHR judgment in the case of *Saint-Paul Luxembourg S. A. v Luxembourg*, application No. 26419/10, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{"itemid":\["001-119055"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{).

<sup>377</sup> 18 July 2013 ECtHR judgment in the case of *Saint-Paul Luxembourg S. A. v Luxembourg*, application No. 26419/10, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{"itemid":\["001-119055"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119055#{)

<sup>378</sup> "President proposes amendments to protect information sources", *lrt.lt*, 14 November 2013, <http://www.ve.lt/naujienos/lietuva/lietuvos-naujienos/prezidente-teikia-pataisas-padesiancias-apsaugoti-informacijos-salti-ni-1092727/>

<sup>379</sup> Law Amending Article 8 of Law No. I-1418 on Provision of Information to the Public, 10 July 2014, No. XII-1016, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478089](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478089)

<sup>380</sup> Law Amending Articles 55, 80, 80-1, 149 of and Including Article 150-1 in the Code of Criminal Procedure, 10 July 2014, No. XII-1017, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478090&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478090&p_tr2=2)

## Findings and Recommendations

- *The protection of journalists' sources is directly linked to the status of journalists and indicates the level of media freedom in the country. Pre-trial procedures in 2013-2014 revealed the real situation of journalists in Lithuania together with their vulnerability.*
- *The use of secretive coercive measures in journalistic activities must always remain an exception and regulated in a way so as not to compromise either journalist's privacy or very important guarantees of journalistic activities. In addition, these measures should only be applied when all other means of revealing the source of information have been exhausted. Once the source of the information is disclosed, effective measures must be taken to ensure it is protected against further disclosure.*

## V. Access to Information

In 2014, the Parliamentary Ombudspersons, in response to an increase in complaints submitted, started being more active in the defence of the right of journalists to access public interest information held by state or municipal institutions.<sup>381</sup> Journalists complained that they are refused access to public meetings of municipal committees, or that municipal administrations set rules that severely limit journalists' access to the premises or filming opportunities, in the absence of any legitimate grounds for doing so.

After evaluating the situation in the municipalities and in state institutions, the Ombudsperson addressed the Ministry of Culture, recommending that a uniform procedure for the provision of information to the media be prepared, which would be consistent with the *Law on Provision of Information to the Public* and the *Law on the Right to Obtain Information from State and Municipal Institutions*, and would apply to all municipalities.

While investigating complaints about access to information, the Om-

<sup>381</sup> Seimas Ombudsmen's Office, "Seimas Ombudsmen Raimondas Šukys proposes protecting journalists' constitutional right of access to information", 11 July 2014, <http://www.lrski.lt/lt/naujienos/207-seimo-kontrolierius-raimondas-sukys-siulo-ginti-konstitucine-zurnalistu-teise-gauti-informacija.html>; "Seimas Ombudsmen are convinced: journalists must be able to exercise their duty to receive and publicize information", 30 September 2014, <http://www.lrski.lt/lt/naujienos/225-seimo-kontrolieriai-isitikine-zurnalistu-pareiga-gauti-ir-viesinti-informacija-turi-buti-uztikrinama.html>

budsperson also drew attention to the unjustified restrictions on the access to information concerning the use of public funds. One investigation found that the Panevėžys City Municipality Administration refused to furnish a copy of its peace settlement with a contractor, “Panevėžio keliai”, for the discontinued street construction works, justifying its decision by the need to keep commercial secrets.<sup>382</sup> The Ombudsperson found that the commercial provisions of the settlement cannot have higher power than the law, while the limitation of information about the use of EU or other public funds under the cover of commercial secrets is unjustified and in any case against the public interest.

*The commercial provisions of the settlement cannot have higher power than the law, while the limitation of information about the use of EU or other public funds under the cover of commercial secrets is unjustified and in any case against the public interest.*

The Ombudsperson referred to the case law of the Supreme Administrative Court of Lithuania, which in 2012 had indicated that an interpretation of the law where a public administration entity may designate any information as a commercial secret via a civil agreement would be inconsistent with the nature of the functions of public administration entities, since even the most trivial of information could then be refused, unjustifiably allowing the entity in question to abuse these instruments of civil law.<sup>383</sup>

It should be noted that the exceptions to the provision of information contained in Lithuanian law are too broad and abstractly worded, which allows for their abuse.<sup>384</sup> In addition, the general legal regime and institutional practice concerning access to information still favours the protection of information as opposed to the public's right to know, even if the information in question is clearly in the public interest.<sup>385</sup> The Obligation to disclose information in the overriding public interest is provided for in the *Council of Europe Convention on Access to Official Documents*, ratified by Lithuania in 2012.<sup>386</sup>

<sup>382</sup> “Seimas Ombudsman: Panevėžys City municipality unreasonably refused to provide information”, 9 October 2014, <http://www.lrski.lt/lt/naujienos/233-seimo-kontrolierius-panevizio-miesto-savivaldybe-nepagristai-neteike-informacijos.html>

<sup>383</sup> 8 June 2012 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A662-1612/2012

<sup>384</sup> Human Rights Monitoring Institute, “The Right of Access to Information in Lithuania: Challenges and Opportunities”, 2014, [http://www.hrmi.lt/uploaded/Documents/Teise\\_gauti\\_informacija\\_ZTSI\\_2014.pdf](http://www.hrmi.lt/uploaded/Documents/Teise_gauti_informacija_ZTSI_2014.pdf)

<sup>385</sup> Human Rights Monitoring Institute, “The Right of Access to Information in Lithuania: Challenges and Opportunities”, 2014, [http://www.hrmi.lt/uploaded/Documents/Teise\\_gauti\\_informacija\\_ZTSI\\_2014.pdf](http://www.hrmi.lt/uploaded/Documents/Teise_gauti_informacija_ZTSI_2014.pdf)

<sup>386</sup> Council of Europe, “Council of Europe Convention on Access to Official Documents”, 2009, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=421456](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=421456)

## Findings and Recommendations

- *It is necessary to carry out a detailed analysis of the legislation concerning the right to information, as well as its implementation in practice, assessing its compliance with global access to information principles, international access to information security standards and the needs of society.*
- *With reference to the results of the assessment, it is recommended to draft amendments to the law, together with accompanying recommendations to state institutions, that are under a duty to provide information to individuals.*
- *It is necessary to abolish the broad and abstract exceptions to the provision of information found in the Law on the Right to Obtain Information from State and Municipal Institutions, and to provide a list of narrow exceptions.*
- *It is recommended to enshrine the overriding public interest principle in the Law on Provision of Information to the Public, the Law on the Right to Obtain Information from State and Municipal Institutions and other legislation regulating the right to access information from state institutions.*

## VI. Freedom of Assembly

The right of persons to freedom of peaceful assembly is contained in Article 36(1) of the Constitution. Despite the fact that the right to freedom of assembly is exercised through notification of intent, its exercise fails to be realized properly in Lithuania, owing especially to disproportionate and unfounded restrictions placed on the choice of venue for assembly.

“Freedom of assembly is the right of citizens to participate in peaceful gatherings to freely express their views and opinions, guaranteeing the expression of personal civic engagement in society and the state. The fact that this right is enshrined in the Constitution means that it is considered to be one of the fundamental human rights and values in a democratic society – an inherent symptom of democratic order. Freedom of assembly is an important guarantee to the proper exercise of other constitutional rights and freedoms: the right to participate in governing one’s own country, the right to criticise the work of state institutions or officials, the human right to hold one’s own beliefs and to

freely express them, the right to search for, to receive and to disseminate information and ideas.”<sup>387</sup>

The *Law on Assembly* provides that the right to assembly is to be exercised through notification of intent,<sup>388</sup> not a request for permission. This sort of regulation means that the organizers are given the right to choose the venue, time, purpose and form of the assembly without having to ask for permission first, simply by notifying the municipality of the planned assembly. This position on the exercise of freedom of assembly through notification of intent has been recognized not only by the Constitutional Court,<sup>389</sup> but also by both the general<sup>390</sup> and specialized courts.<sup>391</sup>

Regardless of how unacceptable the ideas aired at the assembly would be, the right to freedom of speech and expression, as well as ensuring the presence of pluralism, are virtues that the state has a duty to protect and help realize through its actions. Any measures to restrict the freedom of assembly pose a threat to democracy and are incompatible with the European Convention on Human Rights, except where the Convention provides for exceptions.<sup>392</sup>

Still, despite the fact that the right to freedom of assembly is exercised through notification of intent, there were cases in 2013-2014 of municipalities abusing their powers and violating the *Law on Assembly*. The fundamental problems to the exercise of the right to freedom of peaceful assembly observed during the evaluation period pertained to the organizers’ effective freedom to choose the place for assemblies and to disproportionate and unfounded refusals by municipalities to coordinate locations and times for assemblies.

In interpreting the scope of the right to freedom of assembly, the European Court of Human Rights stressed that the freedom of assembly covers the right to choose the time, place and modalities of the assem-

<sup>387</sup> 7 January 2000 decision of the Constitutional Court in case No. 11/99

<sup>388</sup> Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)

<sup>389</sup> 7 January 2000 decision of the Constitutional Court in case No. 11/99

<sup>390</sup> 30 October 2006 ruling of the Supreme Court of Lithuania in civil case No. 3K-3-539/2006

<sup>391</sup> 20 June 2013 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A444-1968/2013

<sup>392</sup> 10 July 2012 ECtHR judgment in the case of *Berladir and others v Russia*, application No. 34202/06

bly.<sup>393</sup> The Constitutional Court, in interpreting the right to choose the place, time, purpose and method of assembly, further stated that should these rights not exist, the freedom of assembly itself would have no meaning.<sup>394</sup> The case law of the Lithuanian Supreme Administrative Court also recognizes that a municipal decision to unilaterally change the place of the assembly to somewhere other than what was indicated in the application would be unlawful.<sup>395</sup>

The various examples on record provide ample evidence that there are obstacles to enjoying the right to choose the place of an assembly in Lithuania. On 16 January 2013, instead of the venue chosen by the *Lithuanian Gay League* for its assembly, the Vilnius City Municipality designated a different place without obtaining agreement from the organizer.<sup>396</sup> When the *Lithuanian Gay League* appealed against these unilateral actions, the court annulled the municipality's decision and ordered it to come to an agreement regarding the place of the assembly.<sup>397</sup> The Supreme Administrative Court of Lithuania rejected the appeal of the municipality, drawing attention to the fact that the exercise of the right to peaceful assembly must be guaranteed without discrimination on the grounds of sexual orientation or gender identity.<sup>398</sup>

In October 2014, the Kaunas City Municipality considered whether to “evict” the organized rally against NATO from Unity Square (lt. Vienybės aikštė) to Nemunas Island.<sup>399</sup>

The *Law on Assembly* provides that on national holidays<sup>400</sup> state and municipal authorities are given priority when choosing the time and place of events.<sup>401</sup> With reference to this provision, the Vilnius City Mu-

<sup>393</sup> 27 November 2012 ECtHR judgment in the case of *Sáska v Hungary*, application No. 58050/08

<sup>394</sup> 7 January 2000 decision of the Constitutional Court in case No. 11/99

<sup>395</sup> 19 January 2012 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A63-261-12/2012

<sup>396</sup> Order No. A30-51 of the director of the Vilnius City Municipality Administration “On the procession organized by the Lithuanian Gay League”, dated 18 January 2013

<sup>397</sup> 11 April 2013 judgment of the Vilnius Regional Administrative Court in administrative proceedings No. 1-2457-208/2013

<sup>398</sup> 20 June 2013 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A444-1968/2013

<sup>399</sup> Paulius Garkauskas, “Kaunas Municipality Allows Demonstration Against NATO”, *delfi.lt*, 17 January 2014, <http://www.delfi.lt/archive/article.php?id=66141352>

<sup>400</sup> On the 16th of February - Day of the Restoration of Lithuania's Independence, 11th of March - Day of the Restoration of Lithuania's Independence and on the 6th of July - Statehood (the Crowning of King Mindaugas) Day

<sup>401</sup> Article 7(6) of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)



nicipality in 2013 refused to coordinate with the Lithuanian National Youth Union, which was planning to march down Gediminas Avenue on March 11, the place and time of this proposed assembly. However, despite the fact that the Vilnius Regional Administrative Court confirmed the lawfulness of the refusal, the organizers managed to carry out the procession in the place they had planned for originally (i.e. Gediminas Av.) – furthermore, were not prosecuted in any way for this violation of the *Law on Assembly*. This demonstrates the apathy of the Vilnius City Municipality in dealing with law violations, as well as the fact that it is not properly carrying out its duties.

Both the legislation and the case law establish that the freedom of assembly may only be restricted by law, in cases where such restrictions serve a legitimate purpose (state or public security, public order, public health or morals or the rights and freedoms of others) and are proportionate and necessary in a democratic society.<sup>402</sup>

Practices observed during 2013-2014 make clear that cases exist where municipalities unjustifiably restrict the exercise of the right to assembly by solely relying on the formal grounds specified in the *Law on Assembly*, without observing the necessary preconditions to the legitimacy of their actions.

For example, after the Supreme Administrative Court of Lithuania ordered the Vilnius City Municipality to once again coordinate with the *Lithuanian Gay League* regarding the place of the latter's proposed "For Equality" march, the municipality refused to do so not just with regard to the place of the march, but also to its time and form.<sup>403</sup> This time the municipality based its decision on the fact that marching down Gediminas Avenue would not comply with the requirements set out in the Law – namely, to keep a certain distance away from state institutions and Lithuanian court buildings.<sup>404</sup>

The 5 July 2013 judgment of the Vilnius Regional Administrative Court annulled this decision of the Vilnius City Municipality, declaring it unlawful

<sup>402</sup> 4 April 2011 ruling of the Supreme Court of Lithuania in civil proceedings No. 3K-3-144/201.

<sup>403</sup> 20 June 2013 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A444-1968/2013

<sup>404</sup> Article 4(3) of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)

due to non-compliance with the principle of proportionality.<sup>405</sup> In its judgment, the court pointed out that the planned assembly was to take place on a non-working day, when the courts and other state institutions located in Gediminas Avenue would not be open, that the planned assembly was not related to the activities of these institutions; as such, even if there are formal grounds prescribed by the law, there is no need to apply them in this particular case and doing so would indeed be disproportionate.

The Supreme Administrative Court of Lithuania left the decision of the court of first instance unchanged and obliged the Vilnius City Municipality to finally coordinate the place and time of the planned assembly in the manner chosen by the organizer.<sup>406</sup>

The Constitution provides that the right to peaceful assembly may only be restricted in circumstances prescribed by the law and only for the purposes of protecting state or public security, public order, public health or morality or the rights and liberties of others.<sup>407</sup> As such, the Constitution leaves it to the legislature to specify the circumstances in which the freedom of assembly may be restricted when the aforementioned grounds are present.

It should be noted that the new edition of the *Law on Assembly*, adopted at the end of 2012, does not provide for the power of municipalities to refuse coordinating a planned assembly or issuing an assembly certificate on the above grounds listed in the Constitution. In other words, the law abolished the power of municipalities to refuse issuing assembly certificates in cases where the organization of the assembly could possibly prejudice state or public security, public order, public health or morality or the rights and liberties of others.

The current regulations contain no provisions for a preliminary control mechanism for the exercise of the freedom of assembly. This means that authorities may only refuse to coordinate the time and place of a planned assembly in the event of non-compliance with the time and place requirements set out in the law<sup>408</sup>; when another assembly will

<sup>405</sup> 5 July 2013 judgment of the Vilnius Regional Administrative Court in administrative proceedings No. I-4265-561/2013

<sup>406</sup> 23 July 2013 ruling of the Supreme Administrative Court of Lithuania in administrative proceedings No. A858-2475/2013.

<sup>407</sup> Article 36(2) of the Constitution, ed. 25 October 1992, <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

<sup>408</sup> Article 4 of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, <http://www3.lrs.lt/pls/inter3/>

already be happening at the exact same time and place<sup>409</sup>; or when priority is given to state and municipal institutions with regard to the time and place of events happening on national holidays, and only in cases where applying the aforementioned grounds would serve a legitimate purpose and, on the facts, be proportionate<sup>410</sup>.

Only assemblies already taking place may be interrupted on the grounds specified in the Constitution.<sup>411</sup> However, it should be noted that in order to lawfully interrupt an assembly taking place, the prohibited actions must be carried out by the participants of the assembly and not by third parties. The actions of third parties (not the participants of the assembly) by themselves cannot justify a restriction of the freedom of peaceful assembly.

It should also be noted that, according to the case law, even when a factual threat to the state or the public can be demonstrated that in and of itself is not a sufficient reason to interrupt or ban the assembly. In such cases the state has a positive obligation to take all the necessary steps to control and remove the threat so that every person is able to exercise his or her right to peaceful assembly.

Still, the practices observed during the evaluation period made clear that, when applying the *Law on Assembly*, the administration of municipalities will be acting in excess of its authority should it rely on formal grounds set out in the Law and an alleged need to protect state and public security, public order, public health and morality or the rights and liberties of other to refuse to coordinate with regard to the time and place of the planned assembly, or when it designates a different meeting place.

In ensuring democratic pluralism, the state has positive obligations to secure the effective enjoyment of the right to freedom of assembly for persons holding unpopular views or belonging to minorities<...>; the vital aspect of the effective exercise of the freedom of assembly is the presumption of legality, which is denied when official authorization is

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<sup>409</sup> Article 7(5) of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)

<sup>410</sup> Article 7(6) of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)

<sup>411</sup> Articles 5 and 9 of Law Amending the Law on Assembly, 8 November 2012, No. XI-2385, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437367&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437367&p_tr2=2)

refused for the assembly, thus discouraging minorities from participating <...> and these negative effects on the freedom of assembly cannot be avoided if the remedies in respect of this freedom are only available after the planned date of the assembly.<sup>412</sup>

## Findings and Recommendations

- *The freedom to peaceful assembly includes the right to choose the time, place, purpose and form of the assembly. This freedom is inseparable from the aforementioned constituent parts or rights, which form an integral part to it, i.e. the violation or limitation of any right of freedom of assembly (or any of its constituent elements) violates the freedom itself.*
- *Each assembly of which the municipality had been properly notified must take place without any further restrictions. When relying on any of the grounds for limiting the freedom of the organizers to choose the time and place of the assembly set out in the Law on Assembly, the reliance must not be perfunctory and instead assess whether the restriction would serve a legitimate purpose and whether it would satisfy the requirement of proportionality.*
- *If the place chosen by the organizers does not contravene any of the requirements set out in the Law, the municipality may not designate a different place for the assembly on its own initiative. This means that if any of the grounds set out in the Law on Assembly are interfering with the coordination of the place of the planned assembly, the entity of public administration (municipality) should coordinate with the organizers of the assembly to agree on a new place for assembly, as opposed to designating the place of assembly on its own.*
- *If it is possible to demonstrate a threat to state or public security based on facts (as opposed to assumptions), or if any other grounds for restricting the freedom of assembly set out in the Constitution are present, only a court judgment and not an administrative act originating from an entity of public administration may prohibit an assembly from taking place. The law does not grant entities of public administration the power to restrict the exercise of the freedom of assembly on the above grounds.*

<sup>412</sup> 3 May 2007 ECtHR judgment in the case of *Bączkowski and others v Poland*; application No. 1543/06

## VII. Freedom of Religion

The insufficient knowledge and acceptance of religious diversity is an acute social problem in Lithuania. Without understanding the religious diversity present in Lithuania, the media is unable to properly carry out its role as a mediator – that is, to inform a public housing roughly 60 different faiths represented by their own religious communities.

Even though religious diversity is an everyday reality in modern society – according to the census carried out in Lithuania in 2011, the country's residents belonged to 59 religious communities<sup>413</sup> – the representation of this diversity, despite certain efforts, is still a serious challenge for the media.<sup>414</sup> It still adheres to stereotype and identifies the religious life of the Lithuanian public with the life of one particular religious community:<sup>415</sup> the public space is most often concerned with the Roman Catholic Church, when research indicates that one in five Lithuanian residents does not consider himself to be its adherent, and that religious diversity exists even within the Catholic community.<sup>416</sup>

In addition, instead of clearly presenting religious organizations and their views to the public and spreading objective information about religion to the public,<sup>417</sup> the media quite often overlooks its statutory duties when representing the religious diversity of Lithuania: when providing information on traditional religious communities, it portrays them more positively, with information on new religious movements or non-traditional religious communities being presented more negatively.<sup>418</sup>

According to the 2013 US international report on religious freedom, Lithuania guarantees the freedom of religion, with the exception of certain

<sup>413</sup> Results of the 2011 resident and home census, 25 October 2013, <http://statistics.bookdesign.lt/>

<sup>414</sup> Lithuanian Union of Journalists, "Journalists that participated in the seminar on religious diversity in Lithuania found out a lot", 2 December 2013, [http://www.lzs.lt/lt/naujienos/aktualijos\\_354/archive/p102/zurnalistai\\_dalyvavo\\_seminare\\_apie\\_religiju\\_ivairove\\_lietuvoje\\_suzinojo\\_daug\\_naujo.html](http://www.lzs.lt/lt/naujienos/aktualijos_354/archive/p102/zurnalistai_dalyvavo_seminare_apie_religiju_ivairove_lietuvoje_suzinojo_daug_naujo.html)

<sup>415</sup> New Religions Research and Information Centre, "Religious diversity in Lithuanian media", 2014, <http://www.religija.lt/straipsniai/religija-visuomene-religijos-laisve/paskelbtas-straipsniu-rinkinys-religine-ivairove-lietuvoje-ziniasklaidoje>

<sup>416</sup> Milda Ališauskienė, Donatas Glodenis, "Challenges to religious diversity in Lithuania: perspectives of religious minorities", 2013, <http://www.religija.lt/straipsniai/tyrimai-analize-nuomones/paskelbta-studija-issukiai-religine-ivairovei-lietuvoje-religiniu-mazumu-perspektyva>

<sup>417</sup> Law on Provision of Information to the Public, 2 July 1996, No. I-1418, Articles 22(d)(7) and 22(d)(8), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478453&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478453&p_tr2=2)

<sup>418</sup> Gintarė Markauskaitė, Milda Ališauskienė, "Representation of religious diversity in Lithuanian online media", 2014 m., [http://vddb.library.lt/obj/LT-eLABa-0001:1.04-2014-ISSN\\_2029-4573\\_N\\_5\\_1.PG\\_65-83](http://vddb.library.lt/obj/LT-eLABa-0001:1.04-2014-ISSN_2029-4573_N_5_1.PG_65-83)

*The relations between the dominant religious organization in Lithuania and the State has recently shown that secularism (or separation) is weakening, with a stronger connection being felt between the secular and ecclesiastical authorities.*

symptoms of anti-Semitism, and state institutions respect that freedom.<sup>419</sup> On the other hand, the study of religious minorities and their representatives in the same year revealed that the main factors driving discrimination on the basis of religion in Lithuania were the Catholic Church (52%), the media (43%) and legal regulations limiting the opportunities available to the communities of minority religions in society (32%).<sup>420</sup>

For example, in secular general education institutions, choice is limited to the study of the faith of traditional religious communities or the study of ethics;<sup>421</sup> institutions not only do not provide alternatives for studying the faiths of non-traditional religious communities, but lack broader education on religion. As such, the freedom to choose a person's religion is not fully guaranteed.

The relations between the dominant religious organization in Lithuania and the State has recently shown that secularism (or separation) is weakening, with a stronger connection being felt between the secular and ecclesiastical authorities. This also impacts on public opinion with respect to religious minorities – society is more willing to accept traditional or state-recognized religious communities, while non-traditional religious communities, despite being legally registered, are still identified with sects.<sup>422</sup>

The fondness that individual MPs feel for traditional religious communities or to one of them in particular – namely, the Roman Catholic church – was reflected in the initiatives of the legislature: the amendment to the *Law on Education* proposed compulsory religious classes;<sup>423</sup> the amendment to the *Law on State Social Allowances* sought a three-fold increase in state social allowance payments to retired clergymen of

<sup>419</sup> US Embassy in Lithuania, International Religious Freedom Report 2013 (Lithuania), 28 July 2014, [http://vilnius.usembassy.gov/lithuanian\\_index/ambasados-naujienos/2013-m.-tarptautin-ataskaita-apie-tikimo-laisv](http://vilnius.usembassy.gov/lithuanian_index/ambasados-naujienos/2013-m.-tarptautin-ataskaita-apie-tikimo-laisv)

<sup>420</sup> Milda Ališauskienė, Donatas Glodenis, "Challenges to religious diversity in Lithuania: perspectives of religious minorities", 2013, p. 57, <http://www.religija.lt/straipsniai/tyrimai-analize-nuomones/paskelbta-studija-issuki-ai-religinei-ivairovei-lietuvoje-religiniu-mazumu-perspektyva>

<sup>421</sup> Law Amending the Law on Education, 17 March 2011, No. XI-1281, Article 31, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=395105&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=395105&p_tr2=2)

<sup>422</sup> Milda Ališauskienė, Donatas Glodenis, "Challenges to religious diversity in Lithuania: perspectives of religious minorities", 2013, p. 38-41, <http://www.religija.lt/straipsniai/tyrimai-analize-nuomones/paskelbta-studija-issuki-ai-religinei-ivairovei-lietuvoje-religiniu-mazumu-perspektyva>

<sup>423</sup> Draft Law Amending Article 31(1)-(3) of the Law on Education, 4 March 2013, No. XIIP-313, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=443812&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=443812&p_tr2=2)

traditional religious communities.<sup>424</sup> In addition, the fact that over the years only traditional religious communities received funding from the national budget<sup>425</sup> shows that church and state have become entwined, establishing an even bigger hierarchy between traditional and non-traditional religious communities.

When Parliament was considering amendments to the *Law on Provision of Information to the Public* at the end of 2014, which sought to change the system of self-regulation of the media,<sup>426</sup> it was suggested that a representative from the Lithuanian Bishops' Conference be included among the founding members of the Public Information Ethics Commission,<sup>427</sup> slated to replace the existing Ethics Commission of Journalists and Publishers. After Parliament did not accept this proposal, the amendment to the *Law on Provision of Information to the Public* was not adopted immediately,<sup>428</sup> with the Opposition even managing to block the voting procedure.<sup>429</sup>

## Findings and Recommendations

- *The public and the media know too little about the religious diversity that surrounds us. This situation could be changed by implementing a discipline in formal education and training institutions that is based not on the preaching of a particular faith, but rather grounded in the history of religions, religious sociology, religious psychology and knowledge from other branches of science.*
- *Initiatives of the legislature in 2013–2014 demonstrated an increasing closeness between the Catholic Church and the State and a corresponding weakening of secularism. It is necessary to ensure a legal framework that can ensure that people of all faiths are able to equally enjoy their freedom of religion.*

<sup>424</sup> Draft Law Supplementing Article 7 of the Law on State Social Allowances, 11 June 2013, No. XIIP-688, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450550&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450550&p_tr2=2)

<sup>425</sup> Law Institute of Lithuania, "Problems with the exercise of the right to privacy, to the freedom of thought, conscience and religion and to self-expression", 2013, [http://www.teise.org/data/Teises\\_i\\_privatuma\\_uztikrinimo\\_problemos.pdf](http://www.teise.org/data/Teises_i_privatuma_uztikrinimo_problemos.pdf)

<sup>426</sup> Draft Law Amending Articles 3, 31, 41, 43, 46, 49 and 50 of and Including Article 46(1) in Law No. I-418 on Provision of Information to the Public, 27 October 2014, No. XIIP-1243(5), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=485975&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=485975&p_tr2=2)

<sup>427</sup> Proposal No. XIIP-1243(5) "On the Draft Law Amending Articles 3, 31, 41, 43, 46, 49 and 50 of and Including Article 46(1) in Law No. I-418 on Provision of Information to the Public", 6 November 2014, No. XIIP-1243(5), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=486889](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=486889)

<sup>428</sup> Stasys Gudavičius, "There will be no bishops in the ethics institution being formed", *vz.lt*, 25 November 2014, <http://vz.lt/article/2014/11/25/kuriamoje-ziniasklaidos-etikos-institucijoje-kunigu-nebus>

<sup>429</sup> Šarūnas Černiauskas, "Circus in Parliament over the inclusion of bishops in media monitoring", *delfi.lt*, 20 November 2014, <http://www.delfi.lt/verslas/media/seime-cirkas-del-vyskupu-itraukimo-i-ziniasklaidos-kontrolę.d?id=66449366>





# PROHIBITION OF DISCRIMINATION. ARTICLE 14

## I. Institutional Guarantee of Equal Opportunities

The Equal Opportunities Ombudsperson's Office, which was established in 1999 and until 2003 called the Equal Opportunities for Women and Men Ombudsperson's Office, is the part of the ombudsperson system in Lithuania that is responsible for monitoring compliance with the *Law on Equal Opportunities between Women and Men* as well as the *Law on Equal Treatment*.<sup>430</sup> With the help of the Office, the Ombudsperson examines complaints concerning discrimination and harassment, conducts independent investigations, gives consultations, submits conclusions (findings) and proposals.<sup>431</sup>

The activities of the Equal Opportunities Ombudsperson's Office (E000) drew significant criticism from the UN Committee on the Elimination of Discrimination against Women for their "limited effectiveness and lack of visibility"; the Committee also criticized the delay in appointing the Ombudsperson.<sup>432</sup> A new Ombudsperson had not been appointed by Parliament since the tail-end of 2013.

Despite the fact that more complaints were submitted to E000 in 2013 than at any other point in its history, with the Office examining 281 cases concerning violations of equal treatment provisions in total (the number being 203 in 2012 and 170 in 2011) that year,<sup>433</sup> or the fact that in 2013 it conducted the greatest number of investigations on its own ini-

<sup>430</sup> Law on Equal Treatment, 18 November 2003, No. IX-1826, Article 15, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454179](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179); Law on Equal Opportunities between Women and Men, 1 December 1998, No. VIII-947, Articles 10(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625)

<sup>431</sup> Law on Equal Opportunities between Women and Men, 1 December 1998, No. VIII-947, Article 12(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625)

<sup>432</sup> UN Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations of the fifth periodic report of Lithuania, 18 July 2014, Paragraph 12, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LTU/CEDAW\\_C\\_LTU\\_CO\\_5\\_17679\\_E.docx](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LTU/CEDAW_C_LTU_CO_5_17679_E.docx)

<sup>433</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 4, picture 4, <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

*In 2013-2014 the media was less interested in the direct work of EOOO than it was in the Parliament's unsuccessful attempts to appoint an Ombudsperson.*

tiative since its establishment,<sup>434</sup> awareness of this institution remains low among Lithuanian residents. A residents' opinion survey in 2014 found that, on a scale of 1 to 10, residents' awareness of EOOO barely scored 2.97 points.<sup>435</sup> This means that the work of this office is somewhat more well-known than that of the Parliamentary Ombudspersons Office, but a whopping 30% less known than the work of the Children's Rights Ombudsperson's Office.<sup>436</sup>

The awareness raising campaigns initiated by the EOOO and its partners during the discussed period, such as the National Equality and Diversity Awards,<sup>437</sup> as well as more active efforts to publicize the work of the Office in the media, are commendable. However, keeping in mind that those submitting complaints about breaches of equal treatment provisions are almost exclusively residents of major cities – 85% of all complaints in 2014 were submitted by the residents of Vilnius, Kaunas and Klaipėda<sup>438</sup> – it is doubtful whether the publicity measures employed by the EOOO are effective in reaching the regions and smaller cities. Notably, the UN Committee on the Elimination of Discrimination against Women recommended to “establish regional and local branches of the Ombudsperson's Office to facilitate access” to this institution.<sup>439</sup>

Unfortunately, in 2013-2014 the media was less interested in the direct work of EOOO than it was in the Parliament's unsuccessful attempts to appoint an Ombudsperson. Currently, the functions of the Equal Op-

<sup>434</sup> Equal Opportunities Ombudsperson's Office, “For the fourth year in a row, men in 2014 were more prone to submitting complaints regarding discrimination. Most complaints related to gender”, 13 January 2015, <http://www.lygybe.lt/lt/naujienos/pranesimai-ziniasklaidai/2014-m.-ketvirtus-chkd.html>

<sup>435</sup> Question “How familiar are you with the activities of these institutions? Give it a score, with 1 representing complete lack of knowledge and 10 indicating very good familiarity”. Human Rights Monitoring Institute, “How the public perceives the human rights situation in Lithuania: a representative survey of Lithuanian residents in 2014”, 3-12 October 2014, p. 8, <http://www.hrmi.lt/uploaded/Vilmorus%20apklausa%202014%20-%20SANTRAUKA.pdf>

<sup>436</sup> Human Rights Monitoring Institute, “How the public perceives the human rights situation in Lithuania: a representative survey of Lithuanian residents in 2014”, 3-12 October 2014, p. 8, <http://www.hrmi.lt/uploaded/Vilmorus%20apklausa%202014%20-%20SANTRAUKA.pdf>

<sup>437</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 4-5, <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

<sup>438</sup> Equal Opportunities Ombudsperson's Office, “For the fourth year in a row, men in 2014 were more prone to submitting complaints regarding discrimination. Most complaints related to gender”, 13 January 2015, <http://www.lygybe.lt/lt/naujienos/pranesimai-ziniasklaidai/2014-m.-ketvirtus-chkd.html>

<sup>439</sup> UN Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations of the fifth periodic report of Lithuania, 18 July 2014, paragraph 13(d), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LTU/CEDAW\\_C\\_LTU\\_CO\\_5\\_17679\\_E.docx](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LTU/CEDAW_C_LTU_CO_5_17679_E.docx)

portunities Ombudsperson are being exercised by the Children's Rights Ombudsperson.

According to the *Law on Equal Opportunities between Women and Men*, the Parliament appoints the Ombudsperson for a five-year term, with the number of terms he or she may serve being unlimited.<sup>440</sup> Said Law lists the requirements for candidacy in a laconic fashion: the candidate must be “a citizen of Lithuania who is a person of good repute, with higher education degree in law and possessing no less than five years of legal work experience, or work experience in state and municipal institutions or bodies.”<sup>441</sup>

Parliament voted on two candidates meeting the above criteria in 2013–2014, but neither of them was appointed as the Ombudsperson. At the end of 2013, Parliament rejected professor Lyra Jakulevičienė, the long-term head of the UN Development Programme; in November 2014, after the publication of the critical conclusions of the UN Committee on the Elimination of Discrimination against Women, it voted against appointing<sup>442</sup> Diana Gumbrevičiūtė-Kuzminskienė, a human rights expert and advocate actively working with equality cases.<sup>443</sup> The latter was not appointed for openly supporting same-sex partnerships.<sup>444</sup> At the time of the vote, some members of Parliament expressed concern that the “candidate was silent on and concealed her constant participation in Lithuanian gays and lesbians seminars.”<sup>445</sup>

Such statements reveal the homophobic beliefs held by the MPs and raise the question of whether the Ombudsperson's appointment process and the

<sup>440</sup> Law on Equal Opportunities between Women and Men, 1 December 1998, No. VIII-947, Article 14, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625)

<sup>441</sup> Law on Equal Opportunities between Women and Men, 1 December 1998, No. VIII-947, Article 13, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625)

<sup>442</sup> „Seimas Refuses to Appoint an Equal Opportunities Ombudsperson for the Second Time“, *lrytas.lt*, 25 November 2014, <http://www.lrytas.lt/lietuvas-diena/aktualijos/seimas-antra-karta-nepaskyre-lygiu-galimybiu-kontrolieres.htm>

<sup>443</sup> For representing the most vulnerable groups, Diana Gumbrevičiūtė-Kuzminskienė was given the title of Human Rights Advocate of the Year in the 2013 National Equality and Diversity Awards; <http://nlf.lt/naujienos/2014/02/27/nacionaliniu-lygybes-ir-ivairoves-apdovanojimu-2013-laimetojai/>

<sup>444</sup> Lithuanian Gay League, „Lithuanian parliament rejects equal opportunities ombudsperson candidate for supporting same-sex partnerships“, 26 November 2014, <http://www.lgl.lt/en/news/lgbt-guide-lt/lithuanian-parliament-rejects-equal-opportunities-ombudsperson-candidate-supports-sex-partnership/>

<sup>445</sup> „Seimas Refuses to Appoint an Equal Opportunities Ombudsperson for the Second Time“, *lrytas.lt*, 25 November 2014, <http://www.lrytas.lt/lietuvas-diena/aktualijos/seimas-antra-karta-nepaskyre-lygiu-galimybiu-kontrolieres.htm>

adopted protocol resolution<sup>446</sup> complies with the principle of equality enshrined in Article 29 of the Constitution.<sup>447</sup> This situation, where the functions of two extremely important Ombudsperson institutions have, for a long time, been exercised by the same person, is also deserving of criticism. Even though both institutions operate in the field of human rights, the activities of each features specific elements and, considering their work load, different challenges and the principle of independence, requires them to be headed by separate people. The failure to appoint an Equal Rights Ombudsperson for two years in a row decreases public confidence in this institution and sends a message that the political agenda does not prioritize the observance of the principle of equal treatment in Lithuania.

## Findings and Recommendations

- *The fact that EOOO is ever-more frequently reacting to breaches of equal treatment provisions discussed in the media and launching investigations on its own initiative, as well as the fact that it pays ever-more attention to raising consciousness and is better informing the public of its activities, are commendable.*
- *Despite achievements in 2013-2014, the implementation of the recommendations of the UN Committee on the Elimination of Discrimination against Women, relating to improving the visibility and effectiveness of the EOOO, has not yet begun.*
- *It is recommended to assess the accessibility of information on the work of EOOO in the regions and, in order to ensure that prompt and effective legal remedies are also available outside of major cities, to consider the UN Committee on the Elimination of Discrimination against Women recommendation to establish local EOOO branches.*
- *It is recommended that a candidacy be submitted and a competent Equal Opportunities Ombudsperson be appointed by Parliament as soon as possible, ensuring that his or her appointment procedure does not breach the constitutional principle of equality.*
- *It necessary to raise awareness and educate the public, especially youth, as broadly as possible on discrimination issues.*

<sup>446</sup> Minutes of an evening meeting of Parliament on 25 November 2014, No. SPP-203, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=489183](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=489183)

<sup>447</sup> The Constitution, 25 October 1992, Article 29, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=465070](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465070)

## II. Gender-based Discrimination

In 2013, the Equal Opportunities Ombudsperson's Office conducted 34 investigations into possible discrimination on the ground of gender, i.e. almost half as much as in 2012.

The majority of the investigations (68%) concerned employment relationships.<sup>448</sup> A whopping 88 investigations into possible discrimination on the ground of gender (representing 35% of all investigations) were carried out in 2014 – this was the greatest annual number of complaints in the last decade. Furthermore, last year saw an increasing number of men bringing their complaints regarding discrimination on the ground of gender.<sup>449</sup>

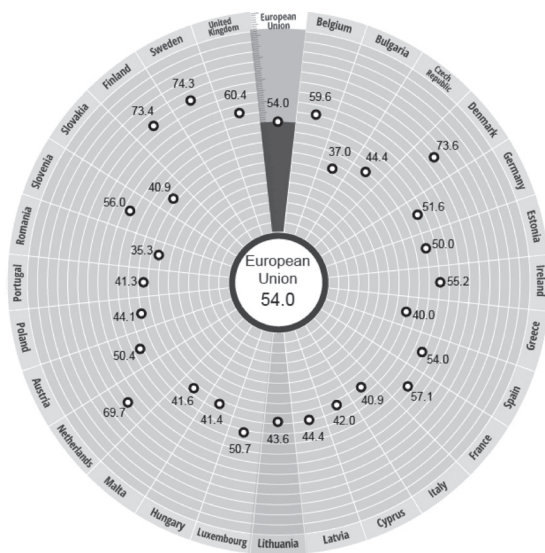


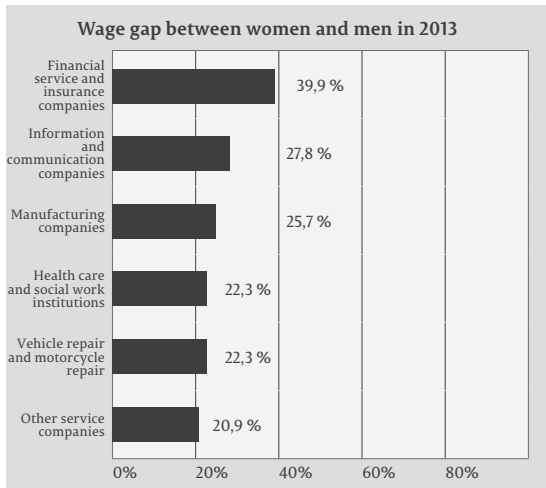
Photo: Gender equality index, European Institute for Gender Equality, 2013, <http://eige.europa.eu/content/gender-equality-index>

In 2013, the European Institute for Gender Equality presented a composed gender equality index, in which Lithuania placed 18<sup>th</sup> out of the 27 European Union Member States. The Index was prepared after assessing the indicators for both sexes in six core domains (work, money, knowledge, time, power, health) and two satellite (intersecting inequalities and violence).<sup>450</sup> The gender equality index score for Lithuania was 43.6 (with 1 representing complete and total gender inequality and 100 representing complete gender equality). The closest to gender equality was Sweden (74.3), while the country most lagging behind was Romania (35.3). The overall index score for EU was 54. It should be noted that, with reference to the financial resources criterion, used to calculate not only wages, but also other income, the index score of Lithuania was only 26.8 – among the

<sup>448</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 31-32, <http://lygybe.lt/lt/mestines-tarnybos-ataskaitos.html>

<sup>449</sup> Equal Opportunities Ombudsperson's Office, "For the fourth year in a row, men in 2014 were more prone to submitting complaints regarding discrimination. Most complaints related to gender", 13 January 2015, <http://lygybe.lt/lt/naujienos/pranesimai-ziniasklaidai/2014-m.-ketvirtus-chkd.html>

<sup>450</sup> European Institute for Gender Equality, Gender Equality Index, 2013, <http://eige.europa.eu/lt/content/gender-equality-index>



lowest in the European Union.<sup>451</sup>

According to the 2014 Global Gender Gap indexed, published by the World Economic Forum, Lithuania is 44th out of 142 states – however, with respect to the ability of women to participate in politics, Lithuania only places 65th. Northern European countries were firmly at the top of the list prepared by the World Economic Forum.<sup>452</sup>

A study in 2014 found that public opinion on the reconciliation of work and family life was changing in a positive direction – male and female respondents of all age groups expressed their disagreement with preferential treatment of men when applying for work. Residents of Lithuania tend to adopt a symmetrical family model, where both spouses are employed and collectively take care of the home and their children.<sup>453</sup>

According to Statistics Lithuania, the wage gap in the country between women and men was 12.5% in 2013 and, compared to 2012, increased by 0.5%. The greatest wage gap between women and men in 2013 was still found within financial service and insurance companies (39.9%), also in information and communication companies (27.8%) and manufacturing companies (27.7%); health care and social work institutions exhibit a gap of 22.3%, vehicle and motorcycle repair companies – a gap of 22.3%, with the gap in other service companies being 20.9%.<sup>454</sup>

Women head less than a third of all companies operating in Lithuania. A public survey shows that it is significantly easier for a man to become the head of the company than it is for a woman aiming for the same

<sup>451</sup> Eglė Digrytė, “Gender equality in Lithuania not only lags behind Scandinavians, but also behind the EU average”, *15min.lt*, 25 July 2013, <http://www.15min.lt/naujiena/aktualu/lietuva/lyciu-lygybes-srityje-lietuvai-dar-toli-ne-tik-iki-skandinavu-bet-ir-iki-es-vidurkio-56-356498>

<sup>452</sup> “Gender equality can only be expected in 2095”, *15min.lt*, 1 November 2014, <http://www.15min.lt/naujiena/aktualu/pasaulis/lyciu-lygybes-galima-tiketis-tik-2095-metais-57-463432>

<sup>453</sup> Social Innovation Fund, review of the study “Women and Men in Lithuanian Society 2014”, 2014, <http://lmlo.lt/wp-content/uploads/2014/12/Tyrimo-apvalga.pdf>

<sup>454</sup> Statistics Lithuania, “Wage Gap between Women and Men 2013”, 9 October 2013, <http://osp.stat.gov.lt/informaciniai-pranesimai?articleId=2874672>

position.<sup>455</sup> Furthermore, the majority of Lithuanians would still prefer seeing a man at the helm. 56% of the respondents indicated that they would prefer working under a male boss, with only 11% preferring a woman in that role. 33% indicated not seeing a difference between having to obey orders from a male and having to obey orders from a female boss.<sup>456</sup>

*The majority of Lithuanians would still prefer seeing a man at the helm. 56% of the respondents indicated that they would prefer working under a male boss, with only 11% preferring a woman in that role. 33% indicated not seeing a difference between having to obey orders from a male and having to obey orders from a female boss.*

A study of the academic community in 2013 showed that the situation with respect to gender equality is severe within the academic community. Men occupy all of the highest management positions, whereas women occupy lowest level administrative positions; women also occupy the lowest positions among academic and scientific research workers.<sup>457</sup>

Even though cases concerning gender-based discrimination seldom reach the Lithuanian courts, a significant victory was achieved in one case in

2014. The case concerned the dismissal of a woman from the Romanian Embassy in Lithuania after she informed her employer of her pregnancy. The Supreme Court of Lithuania confirmed that discrimination on the ground of gender had indeed occurred and returned the judgment to the Court of Appeal of Lithuania to re-examine the compensation of pecuniary and non-pecuniary loss.<sup>458</sup> The Court of Appeal of Lithuania awarded 50 thousand LTL (about 14.5 thousand Euro) to the claimant in pecuniary damages and 10 thousand LTL (about 2.9 thousand Euro) in non-pecuniary damages.<sup>459</sup>

The *Law on Equal Opportunities between Women and Men* was amended on 15 July 2014 by repealing the prohibition of gender-based harassment.<sup>460</sup> These amendments caused an uproar among non-government-

<sup>455</sup> Social Innovation Fund, review of the study "Women and Men in Lithuanian Society 2014", 2014, <http://lmlt.lt/wp-content/uploads/2014/12/Tyrimo-apvalga.pdf>

<sup>456</sup> "Lithuanians think that men make the best directors", *lrytas.lt*, 8 August 2013, <http://www.lrytas.lt/print.asp?k=news&id=13759471771373778782>

<sup>457</sup> Inga Žalėnienė, Ona Gražina Rakauskienė, Danguolė Grigolovičienė, "Gender equality in the education and science system", 2013, <http://lygybe.lt/lt/tyrimai-lygybes-srityje.html>

<sup>458</sup> 11 April 2014 ruling of the Supreme Court of Lithuania in civil proceedings No. 3K-3-199/2014

<sup>459</sup> 4 September 2014 ruling of the Court of Appeal of Lithuania in civil proceedings No. 2A-1219/2014

<sup>460</sup> Law Amending Articles 4, 5, 6-1, 7 and 22 of Law No. VIII-947 on Equal Opportunities between Women and Men, 15 July 2014, No. XII-1023, <https://www.e-tar.lt/portal/lt/legalAct/92f4cc80117511e4adf3c8c5d7681e73>



tal organizations. An amendment seeking to reinstate the prohibition of gender-based harassment in the Law was registered with Parliament on 28 July 2014.<sup>461</sup>

It should be noted that the practice of employers asking women about their family situation and future family plans when considering them for a job is still prevalent in Lithuania. These questions bear no relevance to the qualifications of the employee or to working conditions, only giving grounds for discriminating people based on their gender or based on family roles identified with their gender; as such, employers have no right to ask existing or future employees for this information.

The *Law on State pensions* discriminates against men with respect to the award of second degree state pensions. The Law provides that second-degree state pensions are available to mothers who have given birth to (or adopted) 5 or more children, raised them until they were 8 years old and have provided them up with a good upbringing.<sup>462</sup>

The Equal Rights Ombudsperson had stated that men-fathers are placed in a less favourable situation than women-mothers, since the Law eliminates them from the list of persons eligible for second-degree state pensions; this applies even when they have raised 5 or more children, brought them up well but did not satisfy one condition – they did not give birth to them, with the children being adopted by the man and a mother instead. It was found that men-fathers are discriminated against based on their gender, and as such the Equal Opportunities Ombudsperson recommended amending the *Law on State Pensions*.<sup>463</sup> A draft amendment to the law was registered in October 2014, including men as possible recipients of second-degree state pension.<sup>464</sup>

<sup>461</sup> Center for Equality Advancement, “The speaker of Parliament was asked to reinstate the prohibition of harassment based on gender”, 11 September 2014, <http://gap.lt/lietuvos-moterys-praso-seimo-pirmininkes-sugrazinti-draudima-priekabiuti-del-lyties/>

<sup>462</sup> Law on State Pensions, 22 December 1994, No. I-730, Article 4(3)(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=462678](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462678)

<sup>463</sup> Reference No. (14)-SN-13 of the Equal Opportunities “On the Provisions of the Law on State Pensions of the Republic of Lithuania and the Award of Second-Degree Pensions to Mothers”, 25 March 2014, No. (14)-SN-13, [http://www.lygybe.lt/lt/pazymos/lytis\\_202.html](http://www.lygybe.lt/lt/pazymos/lytis_202.html)

<sup>464</sup> Draft Law Amending Articles 4, 5, 6 of Law No. I-730 on State Pensions, 21 October 2014, XIIP-2420, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=485442&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=485442&p_tr2=2)



## Findings and Recommendations

- *Even though the gap between women and men in employment is gradually decreasing, women still earn lower wages for doing the same jobs and the highest management positions are dominated by men.*
- *It is recommended to set gender quotas for the management boards of state enterprises and establishments, banks and larger private companies.*
- *Prevalent stereotypes regarding the role of men and women in the family influence the ability of women to pursue careers, attain management positions, and may lead to unfavourable treatment by employers (for example, in the event of pregnancy).*
- *It is necessary to ensure that women and men receive the same wages for doing the same job, by carrying out inspections at the workplace and giving sanctions for infringements, and also to promote the dissemination of information on the availability of remedies for infringements.*
- *It is recommended to amend the Law on Equal Opportunities between Women and Men by reinstating the prohibition against harassment in the workplace, also including provisions on the preparation and implementation of compulsory equal treatment plans in both the public and the private sectors.*
- *It is recommended to amend the Law on State Pensions to include men if they otherwise satisfy the requirements of the Law, thus ensuring women and men have an equal right to receive second-degree state pensions.*

## III. Discrimination on the Ground of Disability

According to the 2013 Annual Report of the Equal Opportunities Ombudsperson's Office (E000), 2013 was a record year not only in terms of the overall number of investigations into cases of discriminations, but also in terms of the number of investigations into instances of discrimination on the ground of disability. No less than 33 investigations were launched into discrimination on the ground of disability, which made up more than 18% of all investigations conducted by the Office – coming in third when sorting the investigations based on grounds of discrimination. Up until 2013, each year the Office would, on average, conduct around 16 investigations based on this ground; as such, the number of

complaints more than doubled in 2013.<sup>465</sup>

The EOOO report indicates that most investigations into possible discrimination on the ground of disability were launched as a result of complaints concerning the actions of state or municipal authorities (48%); 25% of complaints related to the provision of goods and services; 15% related to employment; 12% to education.<sup>466</sup>

A study was conducted in 2013 in order to determine the opinions, experience and knowledge of discrimination against various groups in society held by Lithuanian residents. 7-8% of the respondents said they knew a lot about discrimination; 8% claimed they knew a lot about discrimination on the ground of disability; residents of major cities were more likely to know about discrimination on the ground of disability.<sup>467</sup>

Social stigma around people with disabilities, especially the mentally disabled, strongly influence the quality of life in society enjoyed by persons with disabilities, as well as their social integration. Public opinion studies revealed that the majority believe that people with mental disabilities should live in specially adapted homes (46%); 12% believe that they should live in hospitals; and 10% thought that persons with disabilities should live further away from cities, where their safety would be ensured. Thus, the majority supports the idea of specialized institutions isolated from the public. Only 27% of respondents felt that these people should be able to live anywhere – just like all other people.<sup>468</sup>

Persons with disabilities face discrimination in many areas of life. For example, children with intellectual disabilities have limited possibilities to exercise their right to education in Lithuania. The 2011 Order of the Minister of Education and Science established that, as of 1 September 2012 onwards, students with special needs due to an intellectual

<sup>465</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 44, <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

<sup>466</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 45, <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

<sup>467</sup> Equal Opportunities Ombudsperson's Office, „Study of the opinion of the Lithuanian public on the discrimination of various social groups“, October 2013, <http://www.lygybe.lt/download/156/prezentacija-lygybe-201310-galutinis.ppt>

<sup>468</sup> Equal Opportunities Ombudsperson's Office, „Study of the opinion of the Lithuanian public on the discrimination of various social groups“, October 2013, <http://www.lygybe.lt/download/156/prezentacija-lygybe-201310-galutinis.ppt>

impairment who have completed their individualized basic education programme would be able to continue on to either professional education or social skills training following.<sup>469</sup>

The *UN Convention on the Rights of Persons with Disabilities* provides that persons with disabilities have the right to education – in order to realize this right without discrimination and on the basis of equal opportunity, the state must ensure an inclusive education system at all levels and life long learning directed to the development of the personality, talents and creativity, as well as mental and physical abilities, of people with disabilities to their fullest potential.<sup>470</sup>

However, the aforementioned provision of the Order of the Minister of Education and Science, prohibiting students with special education needs due to an intellectual impairment (such as autistic children) from moving on to secondary education following the completion of their individualized basic education programmes, effectively prevents them from attaining secondary education, discriminating against persons due to their disability and violating their rights.

A number of problems arise due to the failure to adapt the physical environment to the needs of people with disabilities: it is still not possible to access most shops, cafés or various service providers with a wheelchair due to lack of adaption.<sup>471</sup> People with disabilities are also unable to access beaches. Even the so-called beaches for the disabled are not adapted to their needs since it is not possible to reach the sea via wooden pathways.<sup>472</sup>

Yet another problem lies with structural discrimination, which is evident from the failure to implement and monitor the *UN Convention on the Rights of Persons with Disabilities*, which Lithuania ratified in 2010.

The Convention obliges states to appoint one or more government au-

<sup>469</sup> Order No. V-1795 of the Minister of Education and Science „On the Adoption of the Schedule of Procedures for the Organization of the Education of Children with Special Education Needs“, dated 30 September 2011, part 2.4, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=408141&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=408141&p_tr2=2)

<sup>470</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006. Article 24(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

<sup>471</sup> „Didn't Know There Were Disabled People in Šiauliai“, *delfi.lt*, 11 June 2013, <http://www.delfi.lt/news/daily/lithuania/kad-siauliuose-yra-neigaliuju-nezinojo.d?id=61598125>

<sup>472</sup> Zita, „The Disabled Don't Exist on the Beach“, *kauno.diena.lt*, 16 August 2013, <http://kauno.diena.lt/naujienos/nuomones/nuomones/neigalieji-pliaze-neegezistuoja-409546#VMeAgf6UeGV>

thorities to supervise the implementation of the Convention; and to consider the possibility of creating a co-ordination mechanism within the government, which would allow for action – in relation to the implementation of the Convention – in different sectors and at different levels.<sup>473</sup>

In Lithuania, coordination functions have been assigned to the Ministry of Social Security and Labour – however, it is incapable of exercising them: there is no mechanism by means of which the Ministry could influence other public authorities in order to ensure that they implement the provisions of the Convention within their respective fields of competence.<sup>474</sup>

The Convention covers a very wide spectrum of legal regulation, which is why national coordination structures for the implementation of the Convention must operate at the highest levels of government and be authorized to set appropriate policies. The Convention also obliges states to establish independent mechanisms for the promotion, protection and monitoring of the implementation of the Convention.<sup>475</sup>

In Lithuania, the task of monitoring the implementation of the Convention had been assigned to the Council for the Affairs of the Disabled under the Ministry of Social Security and Labour and to the Equal Opportunities Ombudsperson's Office.<sup>476</sup> In accordance with the Convention, monitoring should include three separate functions<sup>477</sup> – promotion, protection and monitoring – but the Government resolution establishing the monitoring mechanism for the implementation of the Convention in Lithuania does not provide for much detail on these functions, i.e. it does not indicate which function should fall to which designated authorities. Thus, the monitoring function with regard to the Convention is not being carried out at all in Lithuania.

<sup>473</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 33(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

<sup>474</sup> Resolution No. 1739 of the Government „On the Implementation of the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol“, dated 8 December 2010, [http://www.ndt.lt/files/File/Neigaliuju\\_konvencija/nr\\_1739.pdf](http://www.ndt.lt/files/File/Neigaliuju_konvencija/nr_1739.pdf)

<sup>475</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 33(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

<sup>476</sup> Resolution No. 1739 of the Government „On the Implementation of the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol“, dated 8 December 2010, [http://www.ndt.lt/files/File/Neigaliuju\\_konvencija/nr\\_1739.pdf](http://www.ndt.lt/files/File/Neigaliuju_konvencija/nr_1739.pdf)

<sup>477</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 33(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

The Council for the Affairs of the Disabled examines the key issues relating to the social integration of persons with disabilities and submits proposals on the implementation of the social integration policy to the Ministry of Social Security and Labour. The decisions of the Council are advisory in nature.

The Council for the Affairs of the Disabled is formed on a voluntary basis, from delegates of state institutions and associations of the disabled working together as equal partners.<sup>478</sup> The Council is not an independent mechanism and as such does not comply with the principles of the Convention that relate to the status and activities of national institutions working in the field of human rights protection and promotion.<sup>479</sup> The effectiveness of its work is also debatable: vice-ministers representing seven Ministries often fail to turn up at the Council meetings, so some of these meetings do not take place due to failing to reach a quorum (i.e., at least half the members of the Council);<sup>480</sup> moreover, there is a high turnover of vice-ministers, making it difficult to ensure continuity in the Council's activities; the Council lacks the information from various authorities required for the exercise of its monitoring function. Therefore, in reality, the Council is incapable of performing the functions provided for in the Convention – to promote, protect and monitor the implementation of the Convention.

It was recommended to the Equal Opportunities Ombudsperson's Office to monitor the implementation of the Convention provisions on ensuring equal treatment,<sup>481</sup> but there was no delegation of any specific monitoring function. Even though the Lithuanian state had indicated that the monitoring function with regards to the implementation of the Convention includes the powers of the EOOO "to investigate complaints of discrimination on the basis of disability, to monitor that there are no announcements in media that are discriminatory with regard to disability, examine cases for administrative infringements, impose

<sup>478</sup> Law on the Social Integration of the Disabled, 28 November 1991, No. I-2044, Article 17, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=454193](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=454193)

<sup>479</sup> UN Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 33(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

<sup>480</sup> Resolution No. 1426 of the Government "On the Approval of the Composition of and Provisions for the Council for the Affairs of the Disabled Under the Ministry of Social Security and Labour", dated 23 December 2005, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=392271&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392271&p_query=&p_tr2=)

<sup>481</sup> Resolution No. 1739 of the Government „On the Implementation of the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol“, dated 8 December 2010, p. 4.2, [http://www.ndt.lt/files/File/Neigaliuju\\_konvencija/nr\\_1739.pdf](http://www.ndt.lt/files/File/Neigaliuju_konvencija/nr_1739.pdf)

*The Equal Opportunities Ombudsperson's Office investigates complaints and acts only with ensuring equal treatment and non-discrimination. Thus, the scope of the Office's activities does not cover the whole wide range of areas regulated by the Convention*

administrative penalties, etc.”;<sup>482</sup> this function is not exercised in the context of monitoring the Convention.

The Equal Opportunities Ombudsperson's Office investigates complaints and acts only with ensuring equal treatment and non-discrimination.<sup>483</sup> Thus, the scope of the Office's activities does not cover the whole wide range of areas regulated by the Convention – for example, the Equal Opportunities Ombudsperson cannot monitor the implementation of the provisions of the Convention relating to personal liberty and security, private life, the inviolability of the home and the family, adequate living standards and social security. It is clear that until the law is amended to provide for the legal authority of the Equal Opportunities Ombudsperson's Office to conduct monitoring, the Office will not be able to carry out these functions effectively.

It should also be mentioned that the Equal Opportunities Ombudsperson's Office had been working without a direct chief for two years in a row now: in two separate secret votes, the Parliament had refused to appoint competent candidates that fully satisfied all of the requirements to the position of Equal Opportunities Ombudsperson. The Parliament's reluctance to appoint a competent person to this position reflects the indifference that politicians feel towards human rights issues and ensuring equal treatment for vulnerable groups, including persons with disabilities.

It should be noted that, despite numerous criticisms of the inadequacy of the mechanism for implementing the Convention in Lithuania, the Ministry of Social Security and Labour is not planning to initiate any reforms or amendments until the UN Committee on the Rights of Persons with Disabilities identifies the flaws in the implementation of the Convention and provides its recommendations to Lithuania – that is, until April 2016, when the Committee will be considering the official initial report of Lithuania.<sup>484</sup>

<sup>482</sup> Ministry of Social Security and Labour, Initial Report of the Republic of Lithuania on the Implementation of the UN Convention on the Rights of Persons with Disabilities, 2012, [http://www.socmin.lt/public/uploads/1063\\_neigaliu\\_ju\\_konv\\_atask\\_2012m.pdf](http://www.socmin.lt/public/uploads/1063_neigaliu_ju_konv_atask_2012m.pdf)

<sup>483</sup> Law on Equal Treatment, 18 November 2003, No. IX-1826, Article 1, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=222522&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=222522&p_query=&p_tr2=)

<sup>484</sup> Ministry of Social Security and Labour, Initial Report of the Republic of Lithuania on the Implementation of the UN

Notably, the UN Committee on the Rights of Persons with Disabilities, after considering the reports on the implementation of the Convention of other countries, had emphasized the importance of the coordination role in the implementation of the Convention, the requirement to ensure the highest possible level of coordination, as well as the independence of and adequate funding for monitoring bodies.<sup>485</sup>

It is clear that analogous observations on the low level of coordination, as well as the fact that independent monitoring had not been ensured and is not being carried out, are also in store for Lithuania. As such, the state must quickly start taking steps to ensure that the mechanism for the implementation of the Convention complies with its provisions.

## Findings and Recommendations

- *It is necessary to create a coordination mechanism at the level of Government, in order to enable the effective implementation of the Convention in the different sectors and at different levels.*
- *The monitoring of the implementation of the Convention should be carried out by mechanism that satisfies all of the principles relating to its independence (political, structural, financial, etc.). It is also necessary to ensure that disabled persons and organizations representing them are involved in the work of monitoring mechanism.*
- *All public authorities must ensure the implementation of the Convention within their fields of competence, in order realize the principle of equality and non-discrimination with regard to persons with disabilities.*

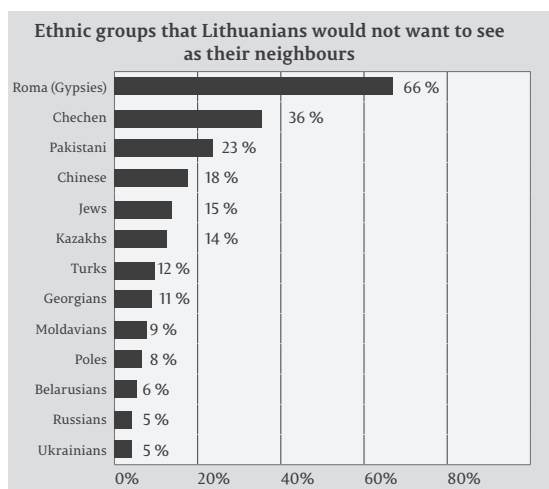
## IV. Discrimination on the Ground of Nationality and Ethnic Origin

Complaints based on race, nationality, language, origin and ethnicity accounted for 5% of all of the complaints dealt with by the Equal Opportunities Ombudsperson's Office in 2013.<sup>486</sup> The number of com-

Convention on the Rights of Persons with Disabilities, 2012, [http://www.socmin.lt/public/uploads/1063\\_neigaliu-ju\\_konv\\_atask\\_2012m.pdf](http://www.socmin.lt/public/uploads/1063_neigaliu-ju_konv_atask_2012m.pdf)

<sup>485</sup> UN Committee on the Rights of Persons with Disabilities, Concluding Observations, [http://www.mindbank.info/collection/type/crpd\\_committee\\_concluding\\_observations](http://www.mindbank.info/collection/type/crpd_committee_concluding_observations)

<sup>486</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p 57 psl., <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>



plaints to the Equal Opportunities Ombudsperson's Office based on race, nationality, language, origin and ethnicity had been on the decline since 2010, but in 2014 it increased slightly.<sup>487</sup> The majority of complaints concerned discrimination in education.<sup>488</sup>

The negative attitude of the Lithuanian public towards individuals of different nationalities, origin or ethnicity was clearly illustrated by

the results of a public opinion survey conducted in 2013. Lithuanians identified Ukrainians (5%), Russians (5%), Belarusians (6%), Poles (8%), Moldavians (9%), Georgians (11%), Turks (12%), Kazakhs (14%), Jews (15%) and the Chinese (18%)<sup>489</sup> as groups they would not want to see as their neighbours. The Pakistani (23%), Chechen (36%) and Roma (Gypsies) (66%) ethnic groups were viewed considerably less favourably.<sup>490</sup> 18% of the respondents would not have wanted to have black neighbours.<sup>491</sup>

Sociological studies show that it is the Roma that most often face discrimination based on their ethnicity.<sup>492</sup> A public attitude survey shows that Roma are still the least liked ethnic group: 48% of respondents would not want to work in one work place with Roma (Gypsies) (43.1% of respondents in 2012 and 42% in 2011).<sup>493</sup> 60.7% of respondents claimed that their opinion of the Roma (Gypsies) worsened over the last five years (63.6% claimed this in 2012).<sup>494</sup>

<sup>487</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2014, pub. 201, p. 64, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>

<sup>488</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2014, pub. 201, p. 69, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>

<sup>489</sup> Institute for Ethnic Studies, „Study of Societal Attitudes“, 2013, p. 2, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>490</sup> Institute for Ethnic Studies, „Study of Societal Attitudes“, 2013, 2013 m., p. 3, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>491</sup> Institute for Ethnic Studies, „Study of Societal Attitudes“, 2013, p. 2, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>492</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2014, pub. 2015, p. 66, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>

<sup>493</sup> Institute for Ethnic Studies, „Ethnic and Social Groups in Lithuania: Societal Attitudes and their Changes“ 2011, p. 146, [http://www.ces.lt/wp-content/uploads/2012/03/EtSt\\_Pilinikaite-Sotirovic\\_Zibas\\_2011.pdf](http://www.ces.lt/wp-content/uploads/2012/03/EtSt_Pilinikaite-Sotirovic_Zibas_2011.pdf)

<sup>494</sup> Institute for Ethnic Studies, „Study of Societal Attitudes“, 2013, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>



In 2014, the EOOO on its own initiative launched an investigation into a case of possible discrimination on the ground of ethnicity in the pre-schools of Kaunas and Jurbarkas. While preparing for *Užgavėnės* (*a festival taking place during the seventh week before Easter*), children were taught to sing the following song – as well as other similar ones – in music class:

*“The gipsy is beat vigorously,  
When he slaughters a lamb,  
Oh they beat him and [again] beat when he slaughters a lamb.  
The gipsy will be pounded, pounded,  
After tying him to the fence,  
Oh they’ll pound him and [again] they’ll pound him, after  
tying him to the fence.  
For stealing chickens,  
For strangling piglets,  
Oh lyilia, oh lyilia, for stealing chickens,  
Oh lyilia, oh lyilia, for strangling piglets.”*

The Equal Opportunities Ombudsperson’s Office noted that “considering the stereotypical attitudes clearly expressed by our society towards certain national minorities, one should not increase tension between separate national groups and form children’s preconceptions towards them”, recommending that the criteria for pre-school upbringing programmes be revised.<sup>495</sup>

The amendments to the *Law on Identity Cards and Passports*, adopted in 2014, which allow the nationality of a citizen to be entered into all passports issued after 1 January 2015 upon request, must be seen as a negative development.<sup>496</sup> While entries of nationality in passports will not be compulsory and will only be done at the request of the citizen him or herself, this provision allows for the differentiation of people according to their nationality and is bad practice with regard to the fight against discrimination or incitement of ethnic strike in the country.

On 25 November 2014, the Department of Ethnic Minorities under the

<sup>495</sup> Equal Opportunities Ombudsperson’s Office, Activity Report 2014, pub. 2015, p. 67-68, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>

<sup>496</sup> Law on Personal Identity Cards and Passports, 23 December 2014, No. XII-1519, Article 5(6), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493262&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493262&p_tr2=2)

*While entries of nationality in passports will not be compulsory and will only be done at the request of the citizen him or herself, this provision allows for the differentiation of people according to their nationality and is bad practice with regard to the fight against discrimination or incitement of ethnic strife in the country.*

Government was established by a Government resolution; it is slated to begin operation on 1 July 2015.<sup>497</sup> The Government took on board the criticisms expressed by Lithuanian non-governmental organizations and international institutions, which had repeatedly emphasized that the division of responsibility between the Ministries of Culture and Education for shaping policies with regard to ethnic minorities led to both Ministries no longer considering ethnic minority policies to be a priority issue.

The lack of attention to the protection of minority rights had negative consequences for ensuring these rights, in particular in education and employment. In addition, it is clear that only cherishing the cultural rights of ethnic minorities does not properly discharge the state's duty under the provisions of the *Council of Europe Framework Convention on the Protection of National Minorities*.<sup>498</sup> It should be noted that since 2010 Lithuania had been lacking a *Law on the Protection of National Minorities*, and because of this loophole the country has basically not determined how the general provisions of the Convention, including the writing of names, last names and street names in the languages of minorities, should be realized.<sup>499</sup>

The *Action Plan for the Integration of Roma into Lithuanian Society for 2015-2020*, prepared by the Ministry of Culture, seeks to reduce discrimination against and social exclusion of the Roma, promote the Roma participation in public life, increase the consciousness of the Roma community and also public tolerance.<sup>500</sup> It is commendable that Roma and non-governmental human rights organizations were consulted during the preparation of the action plan, providing for important measures in

<sup>497</sup> Resolution No. 1300 of the Government „On the Establishment of the Department of Ethnic Minorities, a Budgetary Institution, under the Government of the Republic of Lithuania“, dated 24 November 2014, <https://www.e-tar.lt/portal/lt/legalAct/O909fc30756a11e4805fa6cb12e2ef99>

<sup>498</sup> Prime Minister, „On the Draft Resolution of the Resolution of the Government of the Republic of Lithuania „On the Establishment of the Department of Ethnic Minorities, a Budgetary Institution, under the Government of the Republic of Lithuania“, 24 November 2014, No. 71-4193, [http://www.lrv.lt/Posed\\_medz/2014/141124/01.pdf](http://www.lrv.lt/Posed_medz/2014/141124/01.pdf)

<sup>499</sup> Ieva Rudytė, „The problem with writing personal names. Discussion with Evelina Baliko, an advocate's assistant“, *manoteises.lt*, 5 May 2014, <http://manoteises.lt/straipsnis/asmenvardziu-rasymo-problema-pokalbis-su-advokato-padejeja-evelina-baliko/>

<sup>500</sup> Order No. IV-48 of the Minister of Culture „On the Approval of the Action Plan for the Integration of Roma into Lithuanian Society for 2015-2020“, dated 29 January 2015, part 1, <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>

the field of education, employment, health and cultural rights. However, the limited power of the document in obliging other ministries and municipalities to implement the measures envisaged does deserve criticism: the action plan approved by the order of the Minister of Culture only recommends that municipalities implement the envisaged measures, and that all the implementing bodies voluntarily contribute to the funding of these measures.

In Vilnius, the problem of Roma housing is being dealt with sluggishly, thus further promoting the ethnic segregation of the Roma community. While international institutions – the European Commission, the UN Human Rights Council, the UN Committee on the Elimination of Racial Discrimination, as well as the European Commission against Racism and Intolerance – had previously submitted recommendations to Lithuania on solving the housing problem, no one has initiated the process to resolve it.

The problem demands a complex solution: the strategy documents for Roma integration should be approved by Government resolutions (rather than separate orders of ministers), setting out priority objectives to ensure inter-institutional collaboration as required. Only in these circumstances would be it possible to see steps in the right direction to solve Roma housing problems.<sup>501</sup>

The demolition of buildings built in 1970-1980 continues in the Kirtimai micro-district, with no system measures being taken to ensure the availability of housing.<sup>502</sup> On 9 April 2014, the Vilnius City District Court ordered a Roma family to demolish the buildings they inhabited, despite the fact that two minor children and an ailing man lived in the house and the family had been waiting for social housing for 10 years.<sup>503</sup> According to the Roma Community Centre, there were at least six court hearings in 2013-2014 concerning the demolition of buildings inhabited by Roma.<sup>504</sup> The demolition of residential buildings in Kirtimai usually takes place when the people are temporarily absent from them.<sup>505</sup>

<sup>501</sup> Dovilė Gailiūtė, "The Right to Housing of Ethnic Minorities", 2013, p. 351-401.

<sup>502</sup> Dovilė Gailiūtė, "The Right to Housing of Ethnic Minorities", 2013, p. 351-401.

<sup>503</sup> 9 April 2014 Ruling of the Vilnius City District Court in civil proceedings No.2-302-465/2014

<sup>504</sup> Roma Community Centre, information provided over the phone on 22 January 2015,

<sup>505</sup> UPR Info, "Lithuania: Mid-Term Implementation Assessment", 2014, p. 9, <http://www.upr-info.org/followup/assessments/session26/lithuania/MIA-Lithuania.pdf>

The Construction Supervision Department of the Ministry of the Environment designates buildings populated by Roma in Kirtimai as illegal and takes legal action for their demolition, but no alternatives with regard to housing are being offered.<sup>506</sup> Such actions by public authorities are worrying, as only the aspects of the lawful demolition are being stressed, but not the state's duty to take steps to ensure that the evicted people – especially families with children – are provided with housing, integrating them into the labour market and ensuring that their children are given a real opportunity to attend school.<sup>507</sup>

In the beginning of 2015, media reported that the Vilnius City Municipality, together with the Parliament's Commission for Prevention of Drug and Alcohol Addiction and the Ministry of Social Security and Labour, have started drafting a project aimed at relocating Roma to the newly built village.<sup>508</sup> Such initiatives, when the Roma community is relocated from one "ghetto" to another, do not contribute to the social integration of the community, do not deal with problems relating to their social exclusion, discrimination and poverty; on the contrary – they further contribute to their stigmatization and exclusion from society. There is a lack of understanding that separating groups of people, relocating them further away from society, is a typical measure for isolation, guaranteeing that exclusion is further exacerbated.

Lithuania is still missing a systemic state policy to prevent the early withdrawal of Roma children from education, by providing the support necessary for the education process to schools and ensuring the continuous cooperation with the parents of Roma children in this process. The *Law on Education* provides that Lithuanian residents have both the right and duty to learn, and requires the state to take measures to ensure equal opportunities for every child to study in accordance with primary, basic and secondary education programmes.<sup>509</sup> It also guarantees access to education for students with special educational needs;<sup>510</sup> students with

<sup>506</sup> UPR Info, "Lithuania: Mid-Term Implementation Assessment", 2014, p. 9, <http://www.upr-info.org/followup/assessments/session26/lithuania/MIA-Lithuania.pdf>

<sup>507</sup> Lithuanian Centre for Human Rights, "Demolition of buildings does not solve social problems", 18 March 2014, <http://manoteises.lt/straipsnis/namu-griovimas-nesprendzia-socialiniu-problemu/>

<sup>508</sup> Violeta Grigaliūnaitė, „Instead of their camp and drugs in Kirtimai, Vilnius gypsies will be offered a new village with horses“, *15min.lt*, 30 March 2015, <http://www.15min.lt/naujiena/aktualu/lietuva/vilniaus-romams-vietoj-tab-oro-ir-narkotiku-kirtimuose-ketinama-siulyti-nauja-kaima-ir-arklius-56-493567>

<sup>509</sup> Law on Education, 25 June 1991, No. I-1489, Chapter Three "Accessibility and Quality of Education", [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458774](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458774)

<sup>510</sup> Law on Education, 25 June 1991, No. I-1489, Chapter Three "Accessibility and Quality of Education", <http://www3.lrs.lt>

*The education indicators for Lithuanian Roma still markedly differ from the national average; while the general education indicators for Lithuanian residents are growing, the education of Lithuanian Roma only shows growth at the lowest levels – in primary and basic education.*

learning difficulties are considered to have special educational needs. However, research shows that organization of education in Lithuania does not take into account the unequal ability of children to learn: when providing common services to all children, the specific needs of different groups are not considered.<sup>511</sup>

The education indicators for Lithuanian Roma still markedly differ from the national average; while the general education indicators for Lith-

uanian residents are growing, the education of Lithuanian Roma only shows growth at the lowest levels – in primary and basic education. The problems relating to the organization of education, such as the inability to identify the social and educational needs of the Roma children and to provide targeted timely services – leads to a fairly large portion of Roma children withdrawing from education early; this way, the state perpetuates the vicious circle, whereby generation after generation has no means or ability to take care of itself and integrate into society. It follows that the education system does not guarantee social justice and equal opportunities in education.<sup>512</sup> The Ministry of Education and Science has also shown a reluctance to cooperate with non-governmental organizations that deal with issues pertaining to the Roma ethnic group.<sup>513</sup>

## Findings and Recommendations

- *The amendments to the Law on Identity Cards and Passports providing for the possibility to enter a person's nationality to his/her passport, adopted in 2014, are seen as negative. This regulation allows to discriminate individuals.*
- *The Government resolution establishing the Department of Ethnic Minorities is commendable. In order to further reinforce the protection of the rights of ethnic minorities in the country, it is necessary to adopt legislation implementing the Council of Europe Framework Convention on the Protection of National Minorities.*

[lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458774](http://pls.inter3.dokpaieska.showdoc_l?p_id=458774)

<sup>511</sup> Vita Petrušauskaitė, "Early withdrawal of Roma children from education in Vilnius: analysis of the field of education", 2014

<sup>512</sup> Vita Petrušauskaitė, "Early withdrawal of Roma children from education in Vilnius: analysis of the field of education", 2014

<sup>513</sup> UPR Info, "Lithuania: Mid-Term Implementation Assessment", 2014, p. 14, <http://www.upr-info.org/followup/assessments/session26/lithuania/MIA-Lithuania.pdf>

- *The Action Plan for the Integration of Roma into Lithuanian Society for 2015-2020 is being prepared by the Ministry of Culture. However, the power of the document to compel other ministries and municipalities to implement the envisaged measures is limited, and as such the Roma integration programme and action plan should be approved by the Government, requiring all responsible authorities to carry out the measures envisaged in the program and to allocate funds for their implementation.*
- *Issues relating to the availability of housing, especially in the Vilnius municipality, are being dealt with sluggishly. The demolition of Roma-populated buildings in Kirtimai without resolving the housing problems of their residents and in the absence of systemic solutions, only intimidates people, treads upon their dignity, violates the rights of children and adults.*
- *Lithuania is still missing systemic state policies that would prevent the early withdrawal of Roma children from education, by providing the support needed for education to schools and ensuring constant cooperation with Roma parents. The cooperation between the authorities and municipalities is vital to address the issues of Roma housing, education and other social services.*

## V. Discrimination on the Ground of Sexual Orientation and Gender Identity

Lithuania decriminalized homosexual relations after amending its *Criminal Code* in 1993, but even 20 years later, manifestations of discrimination and intolerance abound in various fields. Paradoxically, the number of complaints regarding discrimination on ground of sexual orientation that the Equal Opportunities Ombudsperson's Office received in 2013-2014 continues to be low. There were no complaints in 2013 and 3 investigations in 2014.

According to the LGBTI (lesbian, gay, bisexual, transgender and intersex) rights index, prepared by the international LGBTI organization ILGA-Europe, Lithuania in 2013 ranked 31<sup>st</sup> and in 2014 – 33<sup>rd</sup> out of 49 European states. The states were assessed with respect to their laws on equality and non-discrimination, marriage and partnership rights, hate speech, legal recognition of sex change, freedom of assembly, community and expression, as well as the ability of persons persecuted because

of their sexual orientation or gender identity to apply for asylum.<sup>514</sup>

A study of Lithuanian public opinions revealed the existence of public intolerance of sexual minorities. While 52% of respondents believe that homosexuals should be treated the same as heterosexuals in the labour markets, 42% said that they would be afraid if their child's teacher was homosexual; 37% would not wish to belong to any organization with homosexual members; 35% would not elect an openly homosexual candidate to parliament or municipal council; 26% agree with the idea that homosexual relations should be formalized not through marriage, but through partnership agreements. Half (50%) of the respondents believe that their relationship with their neighbours would not change if they found out a same sex couple was living in nearby; 30% would try to refrain from communicating with them; 4% would alerted other neighbours; 3% would take measures to have the same-sex couple evicted; another 2% said that they would warn neighbours with small children. Finding themselves in a situation where homosexual people are being talked about in insulting or disparaging terms, people would most often try to remain neutral (46%), 22% would try changing the subject, 12% would openly object to such behaviour, while 5% would enthusiastic support the conversation.<sup>515</sup> A survey of Lithuanian soldiers and cadets revealed that this social group is even less tolerant of homosexual people – as much as 71.5% of the respondents would not want to live near homosexuals and 70% would not want to work with them.<sup>516</sup>

On 27 July 2013, the second march “For Equality” took place in Lithuania, but 62% of the surveyed Lithuanian residents said they opposed them, 15.2% expressed support, while 15.8% said that they had no opinion on the matter.<sup>517</sup> Furthermore, permission for the participants to march down Gediminas Avenue was only granted after a judicial marathon lasting 7 months,<sup>518</sup> and the march itself attracted not only hostile pro-

<sup>514</sup> „In terms of protecting LGBTI rights, Lithuania is between Italy and Andorra“, *Izinios.lt*, 13 May 2014, <http://Izinios.lt/Izinios/Lietuvoje/pagal-lgbti-teisiu-apsauga-lietuva-tarp-italijos-ir-andoros/179578>

<sup>515</sup> Equal Opportunities Omubudsman's Office, „Study of the opinion of the Lithuanian public on the discrimination of various social groups“, October 2013, slide 44, <http://lygybe.lt/tyrimai-lygybes-srityje.html>

<sup>516</sup> Eglė Samoškaitė, “Study in Military Prompted by V. Tomaševskis and Gay March“, *delfi.lt*, 25 October 2013, <http://www.delfi.lt/news/daily/lithuania/kariuomeneje-atlikas-tyrimas-kuri-paskatino-v-tomasevskis-ir-geju-eitynes.d?id=63120322>

<sup>517</sup> Mindaugas Jackevičius, „71% don't know any homosexuals, 62% do not support their processions“, *delfi.lt*, 4 March 2013, <http://www.delfi.lt/news/daily/lithuania/71-proc-homoseksualu-nepazista-62-proc-ju-eitynems-nepritaia.d?id=60784743>

<sup>518</sup> Mindaugas Jackevičius, „Homosexuals won back the Gediminas Avenue“, *delfi.lt*, 30 July 2013, <http://www.delfi.lt/news/daily/lithuania/homoseksualai-atkovojo-gedimino-prospekta.d?id=61967879>





Photo: march "For Equality" 2013, [http://www.lrt.lt/naujienos/lietuvoje/2/22358/vilniuje\\_vyko\\_eitynes\\_uz\\_lygybe](http://www.lrt.lt/naujienos/lietuvoje/2/22358/vilniuje_vyko_eitynes_uz_lygybe)

testers, but also attacks against participants.<sup>519</sup> A total of 28 people were sent to police headquarters for incidents related to the procession. Two pre-trial investigations (one for public disorder and one for the possession of drugs) were started, 16 reports for administrative violations relating

to minor hooliganism were drawn up, 6 instances of persons refusing to obey law enforcement officers were recorded and one police officer was injured.<sup>520</sup>

People in Lithuania are still afraid to publicly admit their sexual orientation. An online survey of men who have sexual relations with other men conducted in 38 European countries revealed that 24% of Lithuanian respondents said that only the people closest to them know about their sexual orientation.<sup>521</sup> These results were also confirmed by a study of the Lithuanian public: 71% of respondents indicated they do not know of any homosexual people around them; 12.8% said that while they do not know it exactly, they suspect that there are gay or lesbian people around them; only one in ten residents in Lithuania claimed to know homosexual people – 11.4%.<sup>522</sup> In addition, in Lithuania, one in two men had experienced violence because of someone knowing or suspecting that they are gay. Younger men indicated having experienced violence more often.<sup>523</sup>

<sup>519</sup> Mindaugas Jackevičius, „People throwing eggs at the procession were caught on camera“, *delfi.lt*, 29 July 2013, <http://www.delfi.lt/news/daily/lithuania/uzfiksuota-kas-i-eityniu-dalyvius-svaide-kiausinius.d?id=61956473>

<sup>520</sup> „March „For Equality“ took place in Vilnius“, *lrt.lt*, 27 July 2013, [http://www.lrt.lt/naujienos/lietuvoje/2/22358/vilniuje\\_vyko\\_eitynes\\_uz\\_lygybe](http://www.lrt.lt/naujienos/lietuvoje/2/22358/vilniuje_vyko_eitynes_uz_lygybe)

<sup>521</sup> Mindaugas Jackevičius, „Lithuanian homosexuals are not lewd“, *delfi.lt*, 7 November 2013, <http://www.delfi.lt/news/daily/lithuania/lietuvos-homoseksualai-nera-istvirke.d?id=63229630>

<sup>522</sup> Mindaugas Jackevičius, „71% don't know any homosexuals, 62% do not support their processions“, *delfi.lt*, 4 March 2013, <http://www.delfi.lt/news/daily/lithuania/71-proc-homoseksualu-nepazista-62-proc-ju-eitynems-nepritaia.d?id=60784743>

<sup>523</sup> Mindaugas Jackevičius, „Lithuanian homosexuals are not lewd“, *delfi.lt*, 7 November 2013, <http://www.delfi.lt/news/daily/lithuania/lietuvos-homoseksualai-nera-istvirke.d?id=63229630>



Despite the country's international commitments and the interpretation given by the Constitutional Court of Lithuania on concept of family, more than a few draft laws were proposed in Parliament that contained provisions directly or indirectly discriminating against LGBT people. One member of Parliament registered an amendment to the *Law on Fundamentals of Child Rights Protection* that would have prohibited same-sex couples from adopting Lithuanian citizens.<sup>524</sup> A proposal to amend Article 38 of the Constitution was also submitted, associat-

A survey of Lithuanian soldiers and cadets revealed that this social group is even less tolerant of homosexual people – as much as 71.5% of the respondents would not want to live near homosexuals and 70% would not want to work with them.

ing family with marriage, fatherhood and motherhood.<sup>525</sup> There were repeat submissions of an amendment to the *Code of Administrative Offences* that proposed establishing administrative sanctions for the public denigration of a constitutional virtue – namely, the family – through speech, displayed objects, posters, slogans, audio-visual media and other acts.<sup>526</sup> Just like the previous proposals, those amendments sought to establish administrative sanctions for processions for the rights of LGBT people.

An amendment to the *Criminal Code* was also submitted, that sought to establish that criticism and discussion of sexual behaviour or sexual practices, beliefs or opinions, or attempts to persuade someone to change such behaviour, practices, beliefs and opinions did not in themselves amount to insults, stigmatization, incitement to hatred, discrimination or incitement to discrimination.<sup>527</sup> None of the above legislative proposals have been accepted.

One member of Parliament, while publicly expressing support for the law adopted by Russia which prohibited the promotion of unconventional relations, urged introducing similar penalties in Lithuania as well.<sup>528</sup> The Central Electoral Commission refused to register a steering

<sup>524</sup> Draft Law Amending Article 26 of Law No. I-1234 on Fundamentals of Child Rights Protection, 27 January 2014, XIIP-1469(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464939&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464939&p_tr2=2)

<sup>525</sup> Draft Law Amending and Supplementing Article 38 of the Constitution, 15 November 2013, XIIP-1217, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=459884&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459884&p_tr2=2)

<sup>526</sup> Draft Law Amending Article 224 and 259(1) of and Including Article 188(21) in the Code of Administrative Offences, 15 January 2014, XIIP-4490(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464145&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464145&p_tr2=2)

<sup>527</sup> Draft Law Amending Article 170 of the Criminal Code, 11 June 2013., XIIP-687, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450517&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450517&p_tr2=2)

<sup>528</sup> "P. Gražulis: Lithuania and the whole of the EU must follow Russia's example", *delfi.lt*, 2 July 2013, <http://www.delfi.lt/news/daily/lithuania/p-grazulis-lietuva-ir-visa-es-turi-sekti-rusijos-pavyzdziu.d?id=61756063>

group for collecting signatures for a referendum on limiting the dissemination of information concerning homosexuals. A Kaunas politician proposed organizing a consultative referendum on the wording that “any information relating to the promotion of homosexuality in the media could only be aired after 10pm.” The initiative was rejected because the referendum sought to limit the rights of a certain group of people.<sup>529</sup>

Other areas also exhibit abundant manifestations of intolerance and discrimination towards sexual minorities. For example, during the elections to the European Parliament, the Lithuanian Nationalist Union chose an unconventional way to advertise themselves by decorating their car with a slogan directed against LGBT people.<sup>530</sup> The distribution of “Amber Heart”, a collection of fairy tales, was also stopped because two stories talked about the love of same-sex couples.<sup>531</sup>

## Findings and Recommendations

- *Results of public surveys, proposed draft legislation, opposition to processions and other actions against LGBT people demonstrate that intolerance towards this group is still strong among the Lithuanian people. This attitude discourages people from confessing about their sexual orientation to anyone, even their close ones.*
- *Even though not one of the draft laws directly or indirectly discriminatory against sexual minorities were adopted, the very fact that they were submitted for consideration – as well as attempts to organize a referendum on limiting the availability of information relating to homosexuality – reveals that Lithuanian politicians are ignoring the country’s international obligations in the field of human rights and hope to garner voter approval through populist measures.*

<sup>529</sup> „CEC did not allow collecting signatures for a referendum on the restriction of „propagation of homosexuality“, *balsas.lt*, 5 August 2013, <http://balsas.tv3.lt/naujiena/746456/vrk-neleido-rinkti-parasu-referendumui-del-homo-seksualizmo-propagavimo-ribojimo>

<sup>530</sup> Martynas Čerkauskas, “New hobby horse for elections: gays and Conchita Wurst”, *lrytas.lt*, 14 May 2014, <http://www.lrytas.lt/lietuvos-diena/aktualijos/naujas-rinkimu-triukas-gejai-ir-conchita-wurst.htm>

<sup>531</sup> Jūratė Juškaitė, „Neringa Dangvydė, author of the prohibited book of fairy tales: „The mind boggles, but it's official - there is censorship of books in Lithuania“, *15min.lt*, 3 June 2014, <http://www.15min.lt/naujiena/aktualu/interviu/uzdraustos-pasaku-knygos-autore-neringa-dangvyde-protu-sunku-suvokti-bet-tai-faktas-lietuvoje-veikia-knygu-cenzura-599-431218>

## VI. Discrimination on the Ground of Age

Discrimination based on age is one of the most common forms of discrimination in Lithuania and the European Union.<sup>532</sup> This was confirmed by the Equal Opportunities Ombudsperson's Office in practice, with complaints concerning age discrimination being some of the most common grievances: in 2013, the Equal Opportunities Ombudsperson's Office conducted 24 investigations (9%) into discrimination based on age;<sup>533</sup> in 2014, out of the 279 investigations conducted by the Equal Opportunities Ombudsperson's Office, 30 (10.8%) concerned age discrimination.<sup>534</sup>

*Age discrimination is most keenly felt in the labour market. 10% of the participants of the survey indicated that they feel discriminated against in a given area because of their age; almost 50% of them said they feel discrimination in the labour market. This response was more common among people aged 46 or above.*

A study of Lithuanian public opinion on the discrimination of various social groups revealed that age discrimination was experienced by the greatest number of participants of the study, i.e. 8% (age discrimination was more prevalent among the older participants).<sup>535</sup>

This study also showed that age discrimination is most keenly felt in the labour market. 10% of the participants of the survey indicated that they feel discriminated against in a given area because of their age; almost 50% of them said they feel discrimination in the labour market. This response was more common among people aged 46 or above.<sup>536</sup>

In response to the question *“Have you encountered prejudice based on your age when seeking employment?”*, 7% of the survey participants responded in the affirmative. 49% of them said that the employers were looking for younger workers.<sup>537</sup>

<sup>532</sup> Equal Opportunities Ombudsperson's Office, „Age Discrimination“, 13 August 2014, <http://www.lygybe.lt/lt/amzius.html>

<sup>533</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2013, pub. 2014, p. 4, <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

<sup>534</sup> Equal Opportunities Ombudsperson's Office, Activity Report 2014, pub. 2015, p. 3, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>

<sup>535</sup> Equal Opportunities Ombudsperson's Office, „Study of the opinion of the Lithuanian public on the discrimination of various social groups“, October 2013, slide 8, [http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310\\_galutinis.ppt](http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310_galutinis.ppt)

<sup>536</sup> Equal Opportunities Ombudsperson's Office, „Study of the opinion of the Lithuanian public on the discrimination of various social groups“, October 2013, slide 17, [http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310\\_galutinis.ppt](http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310_galutinis.ppt)

<sup>537</sup> Equal Opportunities Ombudsperson's Office, „Study of the opinion of the Lithuanian public on the discrimination

The situation of older people in the labour market is rather problematic in Lithuania: only 44.8% of Lithuanian residents aged 50 or above are employed.<sup>538</sup> In terms of employing older people, Lithuania ranks 9<sup>th</sup> in the European Union.<sup>539</sup>

At present, the situation in the labour market is much more favourable to young unemployed people than to their older peers. In 2013 Lithuania has paid special attention to the integration of young people into the labour market, and thus the number of young unemployed people fell by almost a quarter in the first half of 2013 – 24.7%; unemployment among older people decreased by 2%.<sup>540</sup>

According to the Lithuanian Labour Exchange, 19.1 thousand unemployed people under 25 years of age were registered in the country by 1 July 2013, with them comprising 5.2% of the country's population aged 16-24. There were 62.9 thousand registered employed people who were older than 50 in the same period; they accounted for 13.6% of their age group within the population.<sup>541</sup>

These figures are a result of programmes promoting the involvement of young people in the labour market. Thanks to them, the number of unemployed young people in Lithuania fell from 35 thousand to 19 thousand in one year.<sup>542</sup> However, it should be noted that although it is important and necessary to prioritize the employment of youth, it is essential to ensure that increased attention and assistance to one group does not become the discrimination of other groups.

In February 2014, an amendment to the *Labour Code* was registered with Parliament, which proposed to allow terminating employment

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of various social groups", October 2013, slide 15, [http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310\\_galutinis.ppt](http://www.lygybe.lt/download/156/prezentacija%20-%20lygybe%20201310_galutinis.ppt)

<sup>538</sup> Equal Opportunities Ombudsperson's Office, "Report on the Study of the Involvement (Social Inclusion) of Older People in the Labour Market", 2014, p. 28, [http://www.lygybe.lt/download/327/vyresnio%20am%C5%BEliaus%20%C5%BEmoni%C5%B3%20tyrimas\\_ataskaita.pdf](http://www.lygybe.lt/download/327/vyresnio%20am%C5%BEliaus%20%C5%BEmoni%C5%B3%20tyrimas_ataskaita.pdf)

<sup>539</sup> Equal Opportunities Ombudsperson's Office, "Report on the Study of the Involvement (Social Inclusion) of Older People in the Labour Market", 2014, p. 29, [http://www.lygybe.lt/download/327/vyresnio%20am%C5%BEliaus%20%C5%BEmoni%C5%B3%20tyrimas\\_ataskaita.pdf](http://www.lygybe.lt/download/327/vyresnio%20am%C5%BEliaus%20%C5%BEmoni%C5%B3%20tyrimas_ataskaita.pdf)

<sup>540</sup> Birutė Žemaitytė, "Youth employment programmes - discrimination of older residents (I)", *balsas.lt*, 31 July 2013, <http://balsas.tv3.lt/naujiena/745792/jaunimo-uzimtumo-programos-vyresniu-gyventoju-diskriminacija-i/2>

<sup>541</sup> Birutė Žemaitytė, "Youth employment programmes - discrimination of older residents (I)", *balsas.lt*, 31 July 2013, <http://balsas.tv3.lt/naujiena/745792/jaunimo-uzimtumo-programos-vyresniu-gyventoju-diskriminacija-i/2>

<sup>542</sup> Birutė Žemaitytė, "Youth employment programmes - discrimination of older residents (II)", *balsas.lt*, 1 August 2013, <http://balsas.tv3.lt/naujiena/745796/jaunimo-uzimtumo-programos-vyresniu-gyventoju-diskriminacija-ii>

contracts when the employee reached the age of 65.<sup>543</sup> The amendment sought to promote the involvement of young specialists in the labour market and to reduce the emigration of youth.<sup>544</sup> According to the provisions of the *Labour Code* currently in force, age is not a legitimate ground for dismissing an employee.<sup>545</sup>

It should be noted that the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation stipulates that age discrimination is not allowed with regard to employment and occupation.<sup>546</sup> However, at the same time the Directive allows states to provide that different treatment based on age does not amount to discrimination if it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.<sup>547</sup>

Thus, in order to ensure that the planned amendments to legislation do not discriminate against people because of their age, it is necessary that the difference in treatment be justified by a legitimate aim, and to also demonstrate that the means of achieving that aim are necessary.

A 2013 study revealed that old age is thought very little of in Lithuania. This is not only done by the public at large – the elderly also think very little of old age.<sup>548</sup> The stigma of old age and discrimination against the elderly is stronger in Lithuania than in progressive European countries – in this respect, Lithuania is closer to post-communist and Mediterranean countries.<sup>549</sup>

The study also revealed that even important topics related to the elder-

<sup>543</sup> Draft Law Amending Article 129 of the Labour Code, 28 February 2014, No. XIIP-1542, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=466508&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=466508&p_tr2=2)

<sup>544</sup> Explanatory Memorandum to the draft Law Amending Article 129 of the Labour Code, 28 February 2014, No. XIIP-1542, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=466510](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=466510)

<sup>545</sup> Labour Code, 4 June 2002, No. IX-926, Article 129(3)(5), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493843](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493843)

<sup>546</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 1, <http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32000L0078&from=LT>

<sup>547</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 6, <http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32000L0078&from=LT>

<sup>548</sup> Indrė Urbaitė, “Respect for old age no more than an illusion?”, *Izinios.lt*, 23 May 2013, <http://m.lzinios.lt/mob/load-StrN.php?rlinkas=Lietuvoje&linkas=pagarba-senatvei-tik-iliuzija-&idas=156277>

<sup>549</sup> Indrė Urbaitė, “Respect for old age no more than an illusion?”, *Izinios.lt*, 23 May 2013, <http://m.lzinios.lt/mob/load-StrN.php?rlinkas=Lietuvoje&linkas=pagarba-senatvei-tik-iliuzija-&idas=156277>

ly, such as the provision of pensions, are analyzed without actually asking their opinions, ignoring it, and as such there are strong noticeable trends of trying to drive these people out of decision-making.<sup>550</sup>

There were also practices in 2013-2014 that discriminated against children due to their age. In 2013, one company posted following information on its website: “Please be advised that from 18:00 children under 12 are not allowed entry into the restaurant. Thank you for your understanding.” The Equal Opportunities Ombudsperson’s Office drew attention to the fact that this practice lead to unequal treatment of persons under 12 years of age with respect to accessing goods and services in the restaurant and that it was likely that parents accompanying them would also be prevented from procuring goods and services solely as a result of coming with children under 12 years of age (associated discrimination), which is why the company was contacted and given the suggestion to remove the announcement.<sup>551</sup>

## Findings and Recommendations

- *Age discrimination is one of the most common forms of discrimination in Lithuania, especially keenly felt in labour market.*
- *Although it is necessary to prioritize youth employment, it is no less important to ensure that greater attention and assistance to one group does not turn into discrimination of other groups.*
- *It is vital to ensure that legal regulations do not discriminate against people based on their age – in cases of different treatment based on age, it is necessary for the disparity to be justified by a legitimate aim, and to also demonstrate that the means of achieving that aim are necessary.*
- *In order to reduce the stigma of old age in Lithuania, it is vital to promote the involvement of older people in decision-making, granting them a real ability to participate in the process, and to educate the public about the prohibition of all forms of discrimination.*

<sup>550</sup> Indrė Urbaitė, “Respect for old age no more than an illusion?“, *Izinios.lt*, 23 May 2013, <http://m.lzinios.lt/mob/load-StrN.php?rlinkas=Lietuvoje&linkas=pagarba-senatvei-tik-iliuzija-&idas=156277>

<sup>551</sup> Equal Opportunities Ombudsperson’s Office, Activity Report 2013, pub. 2014, p. 25 <http://www.lygybe.lt/download/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf>

*Various laws have granted more rights to traditional religious communities than to religious communities that are seen as non-traditional – for example, the faith of traditional religious communities may be taught in public schools, the state pays social security and health insurance contributions on behalf of the clergy of traditional religion, and interference with religious rites amounts to a criminal offense only when rites of state-recognized religious associations are concerned.*

## VII. Discrimination on the Ground of Religion

Article 26 of the Constitution declares that freedom of thought, conscience and religion, shall not be restricted.<sup>552</sup> The *Law on Religious Communities and Associations* provides that all persons, regardless of their professed religion, religious beliefs or relationship with religion, are equal before the law. Direct or indirect restrictions of their rights and freedoms, as well as direct or indirect privileges, are prohibited.<sup>553</sup>

Religious communities and associations in Lithuania are divided into two core groups – traditional and other (non-traditional) religious communities and associations.<sup>554</sup> There is also a third category of “state-recognized” religious associations.<sup>555</sup> Various laws have granted more rights to traditional religious communities than to religious communities that are seen as non-traditional – for example, the faith of traditional religious communities may be taught in public schools,<sup>556</sup> the state pays social security and health insurance contributions on behalf of the clergy of traditional religion,<sup>557</sup> and interference with religious rites amounts to a criminal offense only when rites of state-recognized religious associations are concerned.<sup>558</sup> In some cases, the differentiation of religious communities may also lead to the discrimination of their members – for example, they do not have the same ability to raise their children according to their own beliefs in public schools as parents belonging to a traditional faith, despite the fact that this is provided for by the Constitution.<sup>559</sup>

<sup>552</sup> The Constitution, 25 October 1992, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=465070](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465070)

<sup>553</sup> Law on Religious Communities and Associations, 4 October 1995, No. I-1057, Article 3, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=363706](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363706)

<sup>554</sup> Law on Religious Communities and Associations, 4 October 1995, No. I-1057, Article 5 and 11, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=363706](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363706)

<sup>555</sup> Law on Religious Communities and Associations, 4 October 1995, No. I-1057, Article 6, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=363706](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363706)

<sup>556</sup> Law on Education, 25 June 1991, No. I-1489, Article 31, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458774](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458774)

<sup>557</sup> Law on State Social Insurance Pension, 18 July 1994, No. I-549, Article 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=465633](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465633); Law on Health Insurance, 21 May 1996, No. I-1343, 6 str. 4 d., [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478640](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478640)

<sup>558</sup> Law on the Approval and Entry into Force of the Criminal Code, 26 September 2000, No. VIII-1968, Article 171, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=111555&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=111555&p_tr2=2)

<sup>559</sup> The Constitution, 25 October 1992, Article 40(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=465070](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465070)



It should be noted that members of non-traditional religious communities identify the abolition of the practice of differentiating religious communities into traditional and non-traditional ones as the top priority in the fight against discrimination based on religion in Lithuania.<sup>560</sup>

One important aspect of religious freedom is the right of parents to educate their children in accordance with their religion or beliefs. At the beginning of 2013, the Electoral Action of Poles faction within Parliament proposed a draft law that infringed upon the rights of some parents by requiring compulsory religious education in school. The initial draft of the *Law on Education* that was submitted to Parliament provided that classes on the faith of traditional religious communities or associations were compulsory in schools providing primary and basic education.<sup>561</sup> The parliamentary Committee on Legal Affairs found that the proposed draft law was contrary to Article 40(1) of the Constitution, which provides that state and municipal educational institutions are secular in nature.<sup>562</sup> Religious studies in these institutions are taught at the request of the parents.

The Minister of Education and Science,<sup>563</sup> the Lithuanian School Students' Union<sup>564</sup> and even the chairman of the Lithuanian Bishops' Conference<sup>565</sup> have all criticized the draft law for being contrary to the Constitution. Given the unanimous rejection of the bill, its initiators submitted a revised draft, retaining the right of parents to select religious studies or ethics classes for their children but at the same time providing that knowledge of the fundamentals of religions is a compulsory part of ethics programmes.<sup>566</sup> The explanatory memorandum to the revised bill stated that it would be appropriate to include the com-

<sup>560</sup> Milda Ališauskienė, Donatas Glodenis, "Challenges to Religious Diversity in Lithuania: Prospects for Religious Minorities", 2013, p. 45-46, [http://religija.lt/sites/default/files/issukiai\\_relilinei\\_ivairovei-alisauskieneglodenis-a4.pdf](http://religija.lt/sites/default/files/issukiai_relilinei_ivairovei-alisauskieneglodenis-a4.pdf)

<sup>561</sup> Draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 4 March 2013, XIIP-313, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=443812&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=443812&p_tr2=2)

<sup>562</sup> Conclusion of the Committee on Legal Affairs on the draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 20 March 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=444732](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=444732)

<sup>563</sup> Mindaugas Jackevičius, "D.Pavalkis Will Not Allow Teaching Religion by Force", *delfi.lt*, 5 March 2013, <http://www.delfi.lt/news/daily/education/dpavalkis-prievarta-tikybos-mokytis-neleis.d?id=60833059>

<sup>564</sup> Lithuanian School Students' Union, LSSU position on the draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 4 March 2013, [http://www.moksleiviai.lt/files/pozicijos/pozicija\\_del\\_tikybos\\_privalomojo\\_dalyko\\_ivedimo.pdf](http://www.moksleiviai.lt/files/pozicijos/pozicija_del_tikybos_privalomojo_dalyko_ivedimo.pdf)

<sup>565</sup> "EAPL efforts to establish compulsory religious education were opposed by both the Prime Minister and the Lithuanian Bishops' Conference", *bernardinai.lt*, 13 March 2013, <http://www.bernardinai.lt/straipsnis/2013-03-13-l-l-ra-siekiui-vesti-privaloma-tikybos-mokyma-priestarauja-ir-premjerar-ir-lietuvos-vyskupu-konferencija/97173>

<sup>566</sup> Draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 23 May 2013, XIIP-313(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=449207&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=449207&p_tr2=2)



pulsory teaching of the fundamentals of religion in ethics classes – in other words, to give children whose parents had chosen a non-confessional moral education programme for them the chance to at least become familiar with the fundamentals of religion and faith.<sup>567</sup>

Lithuanian Electoral Action of Poles claimed that the proposed programme would “teach not only about Christian religions, which are dominant in Lithuania, but also the fundamentals of other religions, especially the monotheistic faiths, Judaism and Islam”,<sup>568</sup> at the same time implying that the primary objective of the programme did not change even after the draft was revised.

Based on the contents of explanatory memorandum, the inclusion of the topic of the “fundamentals of religion” in the ethics programme basically attempts to circumvent the parents’ decision on the religious education for their children, as well as the constitutional provision stating that state and municipal educational institutions are secular in nature. It should be noted that the Parliament’s Legal Department found that the revised law could potentially contravene the Constitution,<sup>569</sup> but the Committee on Legal Affairs did not support this assessment.<sup>570</sup> The revised bill will be put to the vote in Parliament in 2015.

During the reported period, the Equal Opportunities Ombudsperson’s Office investigated a complaint by the residents of the Foreigners Registration Centre concerning the meals given at the Centre, which ignored the religious beliefs of its residents (Muslims were given pork despite the fact that Islam prohibits eating this kind of meat). During the investigation, it was found that, out of the 157 foreigners residing in the Centre at 1 December 2013, 55 (or 35%) were Muslim. Considering that a large group of people found its ability to eat according to their religious beliefs restricted, it was decided that these people were discriminated against for their religious beliefs.<sup>571</sup> The Equal Opportuni-

<sup>567</sup> Explanatory Memorandum to the draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 23 May 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=449209](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=449209)

<sup>568</sup> “Having received criticism over compulsory religious education, poles will now propose teaching about religion”, *delfi.lt*, 21 March 2013, <http://www.delfi.lt/news/daily/education/sukritikuoti-del-privalomomokyti-mo-lenkai-siulysiu-mokyti-religijos.d?id=60959681>

<sup>569</sup> Conclusion of the Legal Department on the draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 29 May 2013,

<sup>570</sup> Conclusion of the Committee on Legal Affairs on the draft Law Amending Articles 31(1), 31(2) and 31(3) of the Law on Education, 29 May 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=449604](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=449604)

<sup>571</sup> Equal Opportunities Ombudsperson’s Office, Activity Report 2013, pub. 2014, p. 38–43, <http://www.lygybe.lt/download>

ties Ombudsperson proposed to the Ministry of the Interior to revise the provisions in the *Conditions and Procedure for Temporarily Placing Foreigners in the Foreigners' Registration Centre* in order to ensure that meals organized at the Centre took into account the religious beliefs of its residents.

At the beginning of 2014, the Ministry of the Interior laid down a provision stipulating that, should persons placed in the Centre refuse to eat certain food products because of their religious beliefs, that product shall be replaced by a different one, without going against the approved physiological nutritional standards.<sup>572</sup> Currently foreigners are allowed to choose from these meals – “traditional (includes pork)” or “vegetarian (contains no meat)”. This means that persons of the Islamic faith who do eat meat are in all cases forced to choose the vegetarian option, which is why this solution is not a proper implementation of the principle of non-discrimination on the ground of religion.

## Findings and Recommendations

- *The problems associated with the differentiation of religious communities, with distinguishing between “traditional” and “non-traditional” ones, are still poorly understood by the public, which is why it is necessary to educate the public about religion, religious freedom and religious minorities.*
- *The distinction between “traditional” and “non-traditional” religious communities found in the law allows for discriminating against religious associations and individuals on the basis of religion, and as such it is worth considering the abolition of the distinction.*
- *It is vital to remove manifestly unreasonable instances of unequal treatment of religious communities found in the law, and to provide equal protection to the religious rites of all religious communities under Article 171 of the Criminal Code.*

[load/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf](https://www.e-tar.lt/portal/lt/legalAct/8e67fc008a6b11e3adad91663975b89fload/303/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%20veiklos%202013%20m.%20ataskaita.pdf)

<sup>572</sup> Order No. IV-42 of the Minister of the Interior “On the Amendment of Order No. IV-340 of the Minister of the Interior “On the Approval of the Plan for the Conditions and Procedure for the Temporary Placement of Foreigners in the Foreigners' Registration Centre”, dated 4 October 2007”, dated 31 January 2014, <https://www.e-tar.lt/portal/lt/legalAct/8e67fc008a6b11e3adad91663975b89f>

- *It is necessary to reject the revised draft Law on Education as infringing upon the right of parents to educate their children according to their religious beliefs, including the right to have no religion.*
- *To ensure the residents of the Foreigners' Registration Centre are allowed to eat in accordance with their religious beliefs, without restricting their options solely to „traditional (contains pork)“ and „vegetarian (contains no meat)“ meals.*



# RIGHTS OF STIGMATIZED GROUPS

## I. Rights of Asylum Seekers and Refugees

All individuals who have been granted asylum in Lithuania are entitled to State support for integration. This support encompasses all measures to enable foreigners who have been granted asylum to support themselves and participate in public life in the same way that all other members of society can.<sup>573</sup> The integration of refugees is described as a process of adaptation of a person to a foreign environment, a process, which starts in the Refugees Reception Centre and continues in municipalities. During that time, persons are provided with educational, medical, social and other services in accordance with their needs, so that they may integrate into the local community and labour market.<sup>574</sup>

*Individuals who have been granted asylum in Lithuania feel as though they are inferior, useless and unwanted outsiders – human beings whose human rights are limited, who have been imprisoned or bound both psychologically and geographically. It is clear that such experiences dampen any initiatives to build social capital and leave little chance to integrate successfully.*

It is difficult for refugees to integrate successfully into Lithuanian society. Individuals who have been granted asylum in Lithuania feel as though they are inferior, useless and unwanted outsiders – human beings whose human rights are limited, who have been imprisoned or bound both psychologically and geographically.<sup>575</sup> It is clear that such experiences dampen any initiatives to build social capital and leave

<sup>573</sup> Order No. A1-238 of the Minister of Social Security and Labour “On the Approval of the Description of the Procedure of Rendering Lithuania State Support for the Integration of Foreigners Granted Asylum in the Republic of Lithuania”, dated 21 October 2004, point 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=348692&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348692&p_query=&p_tr2=)

<sup>574</sup> Order No. A1-238 of the Minister of Social Security and Labour “On the Approval of the Description of the Procedure of Rendering Lithuania State Support for the Integration of Foreigners Granted Asylum in the Republic of Lithuania”, dated 21 October 2004, point 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=348692&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348692&p_query=&p_tr2=)

<sup>575</sup> Jolanta Aleknevičienė, “Life (or survival) in Lithuania: experiences of foreigners seeking asylum and those that have been granted asylum”, 2013, p. 103, [http://www.ces.lt/wp-content/uploads/2013/05/EtSt\\_Aleknevi%C4%8Di-en%C4%97\\_2013\\_1.pdf](http://www.ces.lt/wp-content/uploads/2013/05/EtSt_Aleknevi%C4%8Di-en%C4%97_2013_1.pdf)

little chance to integrate successfully.<sup>576</sup>

The report of the Office of the UN High Commissioner for Refugees identified the most common problems faced by people who have been granted asylum: their stay and ill-treatment in detention during the asylum procedure; the restrictions and limitations on everyday life due to the low financial allowances provided during their stay in the Refugees Reception Centre; difficulties in finding employment; difficulties in finding housing when the period of integration support in Refugees Reception Centre had ended.<sup>577</sup>

Foreigners living in the Refugees Reception Centre receive a monthly allowance for meals and minor expenses. Married people and children under the age of 18 receive an allowance of 51 Euro for food, while singles and unaccompanied minors are given 61.2 Euros each month for that purpose. The allowance for minor expenses is the same for all persons that have been granted asylum – 10.2 Euro.<sup>578</sup> The Ministry of Social Security and Labour is the institution responsible for the successful integration of refugees in Lithuania. The Ministry carries out the process of integration according to the *Description of the Procedure of Rendering Lithuania State Support for the Integration of Foreigners Granted Asylum in the Republic of Lithuania*, approved by the Minister of Social Security and Labour.<sup>579</sup>

The first challenge faced by many refugees is their reception upon arrival and the time spent in detention. The refugees described this experience as re-traumatizing and exacerbating their memories of persecution and war. Asylum seekers complain of how officers treat them both during arrest and later on, once they have been placed in the Foreigners Registration Centre. As a result, the time spent by refugees in the Refugees Reception Centre in Rukla is used not so much to prepare

<sup>576</sup> Jolanta Aleknevičienė, “Life (or survival) in Lithuania: experiences of foreigners seeking asylum and those that have been granted asylum”, 2013, p. 103, [http://www.ces.lt/wp-content/uploads/2013/05/EtSt\\_Aleknevi%C4%8Di-en%C4%97\\_2013\\_1.pdf](http://www.ces.lt/wp-content/uploads/2013/05/EtSt_Aleknevi%C4%8Di-en%C4%97_2013_1.pdf)

<sup>577</sup> UNHCR, “Integration of refugees in Lithuania. Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity based participatory approach”, 2014, p. 34, [http://www.unhcr-northern-europe.org/uploads/tx\\_news/UNHCR\\_Integration\\_of\\_refugees\\_in\\_Lithuania.pdf](http://www.unhcr-northern-europe.org/uploads/tx_news/UNHCR_Integration_of_refugees_in_Lithuania.pdf)

<sup>578</sup> Ministry of Social Security and Labour, “Provision of support to foreigners that have been granted asylum”, 6 January 2015, <http://www.socmin.lt/lt/socialine-integracija/uzsienieciu-gavusiu-prieglobsti-511m.html>

<sup>579</sup> Order No. AI-238 of the Minister of Social Security and Labour “On the Approval of the Description of the Procedure of Rendering Lithuania State Support for the Integration of Foreigners Granted Asylum in the Republic of Lithuania”, dated 21 October 2004, p. 2, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=348692&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348692&p_query=&p_tr2=)



*Photo: one of the unlawfully detained refugees from Afghanistan imprisoned in Lukiškės, <http://www.15min.lt/naujienu/aktualu/uzsienietislt/afghanas-qaisas-naseri-mano-brolis-atsisake-dirbti-su-talibanu-todel-paskutini-karta-maciau-tik-jo-kuno-dalis-620-362349>*

them for a new start in Lithuania, but to let them recover from the trauma sustained.<sup>580</sup>

An incident involving two asylum seekers from Afghanistan being detained and imprisoned in 2013 provides an illustrative example of such practices. State Border Guard Service officers arrested these Afghan nationals – who at the time of detention claimed to be 14 and

17 years old – after they crossed the Lithuanian border.<sup>581</sup>

Even though both national and international law provides that asylum seekers are exempt from criminal liability for illegal entry and that unaccompanied minors must be afforded special protection, Lithuania chose not to follow these rules: in addition to asylum procedures, a pre-trial investigation was launched against both asylum seekers for illegal entry – both were detained and imprisoned in the Lukiškės remand prison, where they were kept together with adult men despite the fact that both claimed to be minors.

Both asylum seekers spent more than three months in the Lukiškės remand prison before finally being convicted of illegal entry and fined.<sup>582</sup> However, following an examination of this criminal case at the request of the convicted, a court in September 2013 found that the two Afghan nationals were convicted unlawfully.<sup>583</sup> This in turn implies that the detention of these minors in the Lukiškės remand prison was also unlaw-

<sup>580</sup> UNHCR, “Integration of refugees in Lithuania. Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity based participatory approach”, 2014, p. 35

<sup>581</sup> “Afghans in Lukiškės: hunger and forced pornography”, *lrytas.lt*, 19 April 2014, <http://tv.lrytas.lt/?id=13978330261397620827>

<sup>582</sup> 19 July 2013 penal order of the Ignalina County District Court in criminal proceedings No. 1-85-664/2013; 1 August 2013 penal order of the Ignalina County District Court in criminal proceedings No. 1-97-242/2013

<sup>583</sup> 18 September 2013 decision of the Ignalina County District Court in criminal proceedings No.1-108-242/2013; 19 September 2013 decision of the Ignalina County District Court in criminal proceedings

*The term “illegal” should not be used to describe individuals since it implies that the person him or herself is illegal – that is, outside the law. However, in democratic states even people breaking the law do not become outlaws – it does not matter if their transgression involves them parking illegally, stealing or crossing the border without authorization, as none of these actions merit revoking any person’s inborn freedoms and rights; the latter may only be temporarily restricted for committing a crime, and only on legitimate grounds, when it is proportionate and necessary, without forgetting that people who make mistakes are still human beings.*

ful – as such, the ensuing harm resulted from unlawful actions taken by the state and ought to be compensated.

Having examined the case concerning the compensation for the wrongful arrest and conviction of the youths, the Vilnius District Court on 18 April 2014 acknowledged that the Lithuanian state had committed errors. As a result of these errors, the state will have to compensate the youths for the harm suffered, which the court of first instance placed at 21,900 LTL (around 6,300 Euro).<sup>584</sup> That being said, this compensation case is currently pending before the Supreme Court of Lithuania.

It should be noted that the negative attitudes of Lithuanian authorities and officials towards individuals coming to Lithuania can be gleaned not only from the personal accounts of refugees who had to deal with them, but also from the official statements of Lithuanian state institutions.

When publishing reports of its activities on its website, in 2013-2014 the State Border Guard Service employed rhetoric that was disrespectful and offensive to human dignity. Contrary to the accepted fundamental standards for respecting human dignity and human rights, the State Border Guard Service enjoys referring to undocumented immigrants as “illegals” in its press releases.<sup>585</sup>

<sup>584</sup> 18 April 2014 decision of the Vilnius City District Court in civil proceedings No. 2-2376-465/2014

<sup>585</sup> “Border guards used electro-shock to subdue a Georgian illegal throwing a fit”, 18 February 2013, <http://www.pasienis.lt/lit/Besiskerciojusi-gruzina-nelegala-pasienieciai-ramino-elektros-soku-foto/1>; “Border guards arrested a group of 22 illegals in Ignalina county”, 11 June 2013, <http://www.pasienis.lt/lit/Ignalinos-rajone-pasienieciai-sulaike-22-nelegalu-grupe/1>; “A large force of border guards hunted for a group of illegals that had taken root in Ignalina county”, 12 August 2013, <http://www.pasienis.lt/lit/Gausios-pasienieciu-pajegos-gauje-Ignalinos-rajone-pasklidusia-nelegalu-grupe/1>; “Border guards arrested 15 illegals from Vietnam and Afghanistan in Ignalina county”, 27 August 2013, <http://www.pasienis.lt/lit/Ignalinos-rajone-pasienieciai-sulaike-15-nelegalu-is-Vietnamo-ir-Afganistano/1>; “Four illegals, thought to be Indian nationals, arrested at the border with Belarus”, 7 October 2013, <http://www.pasienis.lt/lit/Pasienyje-su-Baltarusija-sulaikyti-keturi-itariama-nelegalai-is-Indijos-foto/1>; “Georgian illegals resisting border guards during an inspection were subdued by force”, 18 October 2013, <http://www.pasienis.lt/lit/Patikrinimo-metu-pasienieciaims-priesinesi-gruzinai-nelegalai-buvo-sutramdyti-je-ga-foto/1>; “SBGS officers arrested five illegals from India in Švenčionys county”, 13 December 2013, <http://www.pasienis.lt/lit/Svencioniu-rajone-VSAT-pareigunai-sulaike-penkis-nelegalus-is-Indijos-foto/2>; “A Georgian man coming from Belarus was tracked down by Samo, the bane of all illegals”, 16 December 2014, <http://www.pasienis.lt>



The term “illegal” should not be used to describe individuals since it implies that the person him or herself is illegal – that is, outside the law. However, in democratic states even people breaking the law do not become outlaws – it does not matter if their transgression involves them parking illegally, stealing or crossing the border without authorization, as none of these actions merit revoking any person’s inborn freedoms and rights; the latter may only be temporarily restricted for committing a crime, and only on legitimate grounds, when it is proportionate and necessary, without forgetting that people who make mistakes are still human beings. As such, the rhetoric used by the authorities, degrading as it is to human dignity, has no place in a democratic state that protects human rights and freedoms.

The second challenge unanimously conveyed by the refugees is the isolation experienced during their stay in the Refugees Reception Centre. The environment in Rukla not only does not facilitate rehabilitation from trauma, it also prevents refugees from taking full advantage of the available support for integration. This process is further complicated by poverty. As is known, poverty is the paradigm cause for and precondition to human rights abuses, which is why the very limited financial support available for refugees, insufficient to cover food, other basic necessities or travel expenses, further exacerbates the isolation of refugees from society and allows for their other rights to be abused.<sup>586</sup>

The laws amendments adopted at the end of 2014, providing for the possibility of skipping the integration stage at the Refugee Reception Centre and starting refugee integration straight in municipalities, are seen as a positive development.<sup>587</sup>

It is clear that practice does not meet the objective of state support for the integration period – that is, to give refugees the same opportunity to support themselves and participate in public life that is available to all the other members of society. This support should be sufficient for living adequately and ensure decent living conditions.

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[lt/lt-Baltarusijos-atejusi-gruzina-suseke-nelegalu-siaubas-Samo/1](http://lit/lt-Baltarusijos-atejusi-gruzina-suseke-nelegalu-siaubas-Samo/1)

<sup>586</sup> UNHCR, “Integration of refugees in Lithuania. Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity based participatory approach”, 2014, p. 35

<sup>587</sup> Order No. AI-609 of the Minister of Social Security and Labour “On Amending Order No. AI-238, dated 21 October 2004, “On the Approval of the Description of the Procedure of Rendering Lithuania State Support for the Integration of Foreigners Granted Asylum in the Republic of Lithuania”, dated 5 December 2014, point 2(1), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=490594&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=490594&p_tr2=2)

The initiative of the Ministry of the Interior (MOI) to abolish the Migration Department will have a particularly negative effect on Lithuania's asylum system and the proper guarantee of asylum seekers' rights. At the start of 2015 the MOI proposed transferring the competences of the Migration Department to the Police Department and the State Border Guard Service (SBGS). Following the reform, asylum procedures would be entrusted to the SBGS.<sup>588</sup>

This initiative to transfer the asylum application examination and decision-making processes to the State Border Guard Service in an effort to speed up asylum procedures raises serious concerns regarding the proper implementation of asylum seekers' rights in Lithuania.

The State Border Guard Service is responsible for protecting Lithuanian borders and strengthening national security; it is not the right institution for examining claims for asylum made by foreigners arriving to Lithuania (most often without proper documentation). Asylum applications should be examined by an independent central authority, not an institution responsible for the protection of national borders.

Furthermore, experiences from previous year demonstrate that state border protection authorities are on the whole reluctant to initiate asylum procedures – for example, the Foreigners Registration Centre does not always follow its duty to accept asylum applications of persons held at the Centre and forward them to the Migration Department. Unable to lodge asylum applications with the Foreigners Registration Centre, people instead send them directly to the Migration Department. This can be seen from official figures: in 2011, the Migration Department received 98 asylum applications directly from asylum seekers residing at the Foreigners Registration Centre, with the number being 210 in 2012 and 91 in 2013.<sup>589</sup> It is thus likely that transferring all asylum procedures – including making the decisions on whether to grant or refuse asylum – to the SBGS will leave refugee rights more open to abuse.

<sup>588</sup> "Government approves of the abolition of the Migration Department", *15min.lt*, 25 March 2015, <http://www.15min.lt/naujiena/aktualu/lietuva/vyriausybe-prite-migracijos-departamento-naikinimui-56-492924>

<sup>589</sup> Migration Department, *On the provision of information*, 19 November 2013, No. (15/6-1) 10K-41385

## Findings and Recommendations

- *One of the most significant factors in the successful integration of individuals who have been granted asylum in Lithuania is the appropriate reception of asylum seekers, which is why it is necessary to ensure they are treated with respect when detained, throughout the asylum process and during their stay at the Foreigners Registration Centre.*
- *It is important not to “isolate” individuals, who are otherwise capable of integrating more rapidly, at the Refugees Reception Centre in Rukla during their integration period; instead, they must be allowed to integrate in municipalities in line with their individual needs.*
- *The support given by the state for integration – the objective of which is, according to acts of law, to provide people that have been granted asylum with the same opportunity for supporting themselves and participating in public life that is available to all the other members of society – should be sufficient to ensure decent living conditions.*
- *It is recommended that the State Border Guard Service refrains from using the term “illegal” to ensure basic respect for every person within the territory of Lithuania and for human rights.*
- *The initiative to abolish the Migration Department, transferring its asylum application examination function to the State Border Guard Service, is seen as a negative development.*

## II. Rights of Migrants

Public opinion surveys show that Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state.<sup>590</sup> Many are prone to thinking that immigrants subsist on taxpayer money and are a possible cause of social unrest. About half of all respondents believe that immigrants do not contribute to the cultural life of the country. The majority of respondents express negative attitudes towards immigrants from Africa and the Middle East, particularly from Syria and Lebanon.<sup>591</sup>

<sup>590</sup> Institute for Ethnic Studies of the Lithuanian Social Research Centre, results of the Study of Societal Attitudes, 2013, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>591</sup> Institute for Ethnic Studies of the Lithuanian Social Research Centre, results of the Study of Societal Attitudes, 2013, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

The great paradox lies in the fact that these stereotypical attitudes are not based on any practical evidence – the majority of respondents indicated that they have had no personal interactions with any group of immigrants from third countries. Residents get most of their information and experiences concerning various immigrant groups from the media – TV, radio, newspapers and the internet (secondary sources of information).

There also have been some positive developments: in 2013 survey, almost half of the respondents agreed that the state should pay more attention to the integration of immigrants; in addition, the number of people thinking that immigrants were beneficial for the Lithuanian economy grew by more than a tenth.

The amendment to the *Law on the Legal Status of Foreigners* entered into force on 1 November 2014, tightening the requirements for temporary residence permits to stay in Lithuania: they set a fairly high bar in terms of required foreign investments, the length of time a company had to have been in operation, the number of jobs it brought and the company's equity capital.

The amended legislation provides that temporary residence permits on the basis of legitimate activity in Lithuania shall only be available to foreigners who have been carrying out the stated activity in Lithuania for the previous 6 months or more; at least three full-time job contracts at the company they had established, are concluded with either Lithuanian nationals or foreigners permanently residing in Lithuania; the company's equity value is not less than 100 thousand LTL (28,000 Euro), of which at least 50 thousand LTL (14,000 Euro) is comprised of that foreigner's investments or other assets; the foreigner is either the head of this company, a member of its collegial management or supervisory body who has authority to enter into agreements on its behalf, or a shareholder in a public company or a limited liability company that owns shares with a nominal value comprising at least 1/3 of the company's authorized capital.<sup>592</sup>

These strict new requirements and criteria make it exceptionally difficult

<sup>592</sup> Law Repealing Articles 2, 4, 19, 21, 26, 32, 33, 34, 35, 36, 40, 43, 44, 441, 45, 46, 492, 50, 51, 57, 58, 62, 64, 71, 94, 101, 104, 128, 141, 1411 of Law No. IX-2206 on the Legal Status of Foreigners, 26 June 2014, No. XII-965, <https://www.e-tar.lt/portal/legalAct.html?documentId=62104290083111e4b836947d492f2f50>

for foreigners to come to and legally operate in Lithuania. Furthermore, foreigners who have already established themselves in Lithuania and have been acting in accordance with the old provisions now find it difficult to remain here and continue their work. Foreigners who fail to meet at least one of the above requirements (for example, they do not employ three Lithuanian nationals) are ineligible for a temporary residence permit on the basis of carrying out a legitimate activity. There is a real risk that these new regime will make it more difficult for small and medium-sized foreign investors to businesses in Lithuania and the resultant unattractive business environment will negatively affect the country's prospects for economic growth due to missed investments and taxes which will not be paid to the national budget.<sup>593</sup>

*Public opinion surveys show that Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state. Many are prone to thinking that immigrants subsist on taxpayer money and are a possible cause of social unrest. About half of all respondents believe that immigrants do not contribute to the cultural life of the country.*

Once the amendment enters into force, owners of companies established in Lithuania that only have the minimum authorized capital will no longer be eligible for a temporary residence permits in Lithuania, while foreign owners of small and/or individual enterprises (sole proprietorships) will experience difficulties in trying to extend their temporary permits.<sup>594</sup>

The discriminatory provisions of this Law are also worthy of note. In an effort to strictly control migration flows, the drafters of the Law provided that foreigners must employ Lithuanian nationals or foreigners who permanently reside in Lithuania. However, it should be noted that most foreigners come to Lithuania for the purposes of family reunification, with family reunification being one basis for obtaining a temporary residence permit. These very same permits are also given to the vast majority of people who have been granted asylum in Lithuania. As such, they are all part of a group that is being discriminated against, since due to the prescribed employee legal status criteria it will not be beneficial for foreign entrepreneurs to employ them.<sup>595</sup>

<sup>593</sup> 12 December 2014 interview with Karolis Žibas, research fellow at the Institute for Ethnic Studies of the Lithuanian Social Research Centre; 15 December 2014 interview with Ihab Zaher, employee at the Consultation and Information Centre PLUS;

<sup>594</sup> Svetlana Naumčik, "Immigration reform scares off foreign investors, but pleases Lithuanian employers", *delfi.lt*, 26 August 2014, <http://www.delfi.lt/verslas/verslas/s-naumcik-imigracijos-reforma-atbaido-uzsienio-investuotojus-taciau-dziugina-lietuvos-darbdavius.d?id=65626902#ixzz3ObD23Tmm>

<sup>595</sup> 15 December 2014 interview with Ihab Zaher, employee at the Consultation and Information Centre PLUS

Foreigners with permission to temporarily reside in Lithuania face restrictions when trying to obtain social benefits and health services. They are entitled to most services if they are lawfully employed in Lithuania and make social insurance contributions, but migrants are not always able to take advantage of the guarantees they are entitled to since a person has to reside in Lithuania in order to access many of the services.<sup>596</sup> However, when migrants have temporary permits, they must leave after the latter expire and are thus physically precluded from using services they are entitled to. For example, unemployment benefits would not be paid to even those third country nationals who have been employed for the requisite amount of time, since after losing their job they would be forced to leave Lithuania and would be unable to make periodic visits to the Labour Exchange. Migrants are unable to receive support for pregnant women, work incapacity pensions, vocational rehabilitation allowances for the disabled, old age pensions, family benefits, unemployment benefits, minimum income guarantees or long-term care allowances.<sup>597</sup>

## Findings and Recommendations

- *Following the tightening of the requirements for issuing temporary residence permits on 1 November 2014, it has become difficult for foreigners to come to Lithuania, to live here legally and to carry out legitimate activities. These new arrangements may result in an unattractive business environment in Lithuania, which is why it is necessary to assess the impact of these stricter regulations on the country's prospects for economic growth.*
- *Foreigners who have permission to temporarily reside in Lithuania are unable to make use of important social guarantees, which is why it is necessary to improve social security laws in order to implement the equal opportunity principle and provide those migrants who have a permit to temporarily reside in Lithuania with all of the social security guarantees they are entitled to for paying their social insurance contributions.*

<sup>596</sup> International Organization for Migration, "European Migration Network. Social and health care services for migrants: policies and practices in Lithuania", 2013, <http://www.mipas.lt/lt/tyrimai/308/socialines-ir-sveikatos-prieziuros-paslaugos-migrantams-politika-ir-praktika-lietuvoje>

<sup>597</sup> International Organization for Migration, "European Migration Network. Social and health care services for migrants: policies and practices in Lithuania", 2013, <http://www.mipas.lt/lt/tyrimai/308/socialines-ir-sveikatos-prieziuros-paslaugos-migrantams-politika-ir-praktika-lietuvoje>

- *Without any real reason and based on stereotypically negative information, Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state. This is detrimental to society and also to the immigrants who are beneficial to the society. It is recommended that the Migrant Integration Strategy include complex measures promoting respect for diversity in society, as well as competently and systematically providing information on immigrants and their impact on Lithuania.*

### III. Rights of Persons Addicted to Psychotropic Agents

Pharmacotherapy using medical opioids<sup>598</sup> to treat opioid addiction was first introduced in 1964, with Lithuania adopting it in 1995. In Lithuania, this sort of treatment is referred to as substitution maintenance therapy. The main purpose of such therapy is to improve and normalize the mental and physical condition, social adaptation and integration into society of people suffering from opioid dependence, as well as reduce the harm associated with drug use. This treatment usually offered by centres for addictive disorders as well as some mental health centres.

Opioids are the most widespread of narcotic drugs; they can be natural (such as morphine and codeine, which are obtained from poppies), synthetic (some painkillers) and semi-synthetic (for example, heroin).

According to the State Mental Health Centre, there were 4619 persons registered in Lithuania with mental or behavioural disorders because of opioid abuse in 2013,<sup>599</sup> of which only 539 were undergoing substitution maintenance therapy.<sup>600</sup>

According to the National Audit Office, compared to other European countries, the availability of substitution treatment in Lithuania is limited, since only specialized treatment centres are able to offer it – that is, centres for addictive disorders and primary mental health care cen-

<sup>598</sup> Opioids are the most widespread of narcotic drugs; they can be natural (such as morphine and codeine, which are obtained from poppies), synthetic (some painkillers) and semi-synthetic (for example, heroin)

<sup>599</sup> State Mental Health Centre, End-of-year distribution of mental and behavioural disorders when using drugs (F11-F19) according to drug group, 30 October 2014, [http://www.vpsc.lt/index.php?option=com\\_content&view=article&id=36%3AAlgotumo-narkomanija-dinamika-lietuvos-respublikoje-1999-2009-m-100-000-gyv&-catid=11%3Aaprilausomybs-lig-statistika&Itemid=22&lang=lt](http://www.vpsc.lt/index.php?option=com_content&view=article&id=36%3AAlgotumo-narkomanija-dinamika-lietuvos-respublikoje-1999-2009-m-100-000-gyv&-catid=11%3Aaprilausomybs-lig-statistika&Itemid=22&lang=lt)

<sup>600</sup> Drug, Tobacco and Alcohol Control Department, Annual Report 2014, published in 2014, p. 59, [http://www.ntaxd.lt/files/informacine\\_medzega/0-NTAKD\\_medziaga/1-MP/2014\\_LT.pdf](http://www.ntaxd.lt/files/informacine_medzega/0-NTAKD_medziaga/1-MP/2014_LT.pdf)

tres.<sup>601</sup> Furthermore, not all centres for addictive disorders and primary mental health care centres offer substitution treatment – for example, in 2014 these services were offered by 4 out of 5 centres for addictive disorders and 15 out of 89 primary mental health care centres.

In Lithuania, the use of substitution therapy kept spreading up until 2010-2011. The activities of the UN Office on Drugs and Crime had a hand in this development – in 2006, substitution therapy was offered in 6 municipalities, whereas this number rose to 13 by 2010.<sup>602</sup> Following the withdrawal of support from the UN Drug and Crime Office in 2011, the spread of the availability of this therapy stopped. Nowadays, only 12 out of 60 municipalities offer substitution therapy; in addition, the centres offering these services are not distributed evenly, which is why some individuals have no access to them at all.

*The Law on the Rights of Patients and Compensation of the Damage to Their Health* provides that persons have a right to access to health care.<sup>603</sup> This means that persons must be ensured access to these services with respect to their location, and that the continuity of their treatment must be guaranteed in the event of their incarceration.

Even though Lithuania was one of the first post-Soviet countries to employ harm reduction programmes with respect to drugs (also known as low-threshold treatment), very little attention is paid to this problem today: there were only 10 needle and syringe exchange offices operating in the country in 2014 (12 in 2010); most offices offer only a very limited range of services, are open for just a few hours a day, often run out of tools or even money for wages due to the fact that they have no regular funding. The visits to those offices and the range of available services have been steadily declining since 2010, when the UN Office on Drugs and Crime withdrew its support from Lithuania. With reference to the World Health Organization's recommendations, HIV prevention is only effective when these services reach at least 60% of the injecting drug users. This actual figure in Lithuania is almost three times lower.

<sup>601</sup> National Audit Office, "Report on the study of the consumption of methadone in Lithuania in 2009-2010", 30 November 2011, No. VA-P-10-10-19, <https://vkontrole.lt/failas.aspx?id=2476>

<sup>602</sup> Project of the UN Office on Drugs and Crime titled "Prevention of HIV/AIDS among the users of injecting drugs and their care in Estonian, Latvian and Lithuanian places of detention, [http://www.unodc.org/documents/baltic-states/GrantDocuments/Seminar\\_20080619.pdf](http://www.unodc.org/documents/baltic-states/GrantDocuments/Seminar_20080619.pdf)

<sup>603</sup> *Law on the Rights of Patients and Compensation of the Damage to Their Health*, 3 October 1996, No. I-1562, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=477161](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=477161)



Rapid HIV screening tests used in low-threshold offices to test for HIV in persons that are at the highest risk of infection are funded solely through contributions from a foreign donor; furthermore, the funds are procured and testing is organized solely through the efforts of NGOs. Only three or four municipalities regularly allocates funding to these services. Since 2013, the state has allocated 146 thousand LTL (around 42 thousand Euro) each year to low-threshold services, which is realistically enough to ensure the minimal maintenance of two offices at most. Furthermore, the reality of the situation is that only a small proportion of these funds are actually made use of due to unfavourable conditions of the tendering process. This way, the state is deliberately risking an HIV/AIDS epidemic and playing with national security, despite the fact that back in 2002 Parliament had adopted resolution titled “On the Prevention of Drug Addiction in Lithuania”, declaring drug addiction and AIDS to be factors that threaten national security.<sup>604</sup>

One of the main challenges in the fight against HIV is the transmission of HIV related to the use of injection drugs: the prevalence of HIV infection in Lithuania is now approaching 0.01% of the population. Syringe and needle exchange programmes, addiction therapy using medical opioids and HIV testing are in practice the most important and necessary means to effectively prevent HIV in injecting drug users. These measures are included in the World Health Organization package of the most important interventions based on science and must be used together to effectively reduce the spread of HIV.<sup>605</sup> This package is approved by all major international organizations that are active in the field of HIV prevention: UNAIDS, the UN Office on Drugs and Crime, the UN General Assembly, the UN Commission on Narcotic Drugs, the European Economic and Social Committee (EU) as well as the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The consumption of psychotropic agents in Lithuanian prisons presents a two-fold problem. On the one hand, it is in places of detention that a lot of people get their first taste of drugs, where high levels of stress and lack of positive mental stimulation facilitate addiction. On

<sup>604</sup> Resolution of the Seimas “On the Prevention of Drug Addiction in Lithuania”, 24 January 2002, <https://www.e-tar.lt/portal/lt/legalAct/TAR.259607F3B43A>

<sup>605</sup> World Health Organization, UN Office on Drugs and Crime, UNAIDS, “Technical guide for countries to set targets for universal access to HIV prevention, treatment and care injecting drug users”, 2012, p. 10-21, [http://www.who.int/hiv/pub/idu/targets\\_universal\\_access/en/](http://www.who.int/hiv/pub/idu/targets_universal_access/en/)

the other hand, prisons focus on finding and controlling drugs, with limited success, but completely fail to understand the need for and benefits of addiction therapy, together with the potential harm to the person (and to society, once said person is free) caused by refusing or terminating treatment. In 2009, records show that there were 740 persons in places of detention with mental or behavioural disorders caused by opioid abuse.<sup>606</sup> Therapy using medicinal opioid agents that persons receive outside of places of detention is not continued upon imprisonment – that is, the continuity of treatment is not ensured. The abrupt termination of treatment causes serious harm to a person's health. This practice is incompatible with the aforementioned provision of the *Law on the Rights of Patients and Compensation of the Damage to Their Health*, which states that free state health care encompasses the health care of individuals detained by the courts or law enforcement authorities, of persons held in pre-trial detention and of convicted persons; as well as the health care of persons with a dependence on alcohol or drugs.<sup>607</sup> Attention is also drawn to the *Code of the Enforcement of Punishments*, which states that imprisoned convicts suffering from addiction to alcohol, narcotics or psychotropic substances may, upon submitting a written request, be treated for these addictions while serving their prison sentence.<sup>608</sup>

In 2010, implementing the UN Office on Drugs and Crime Office project, therapy using medical opioids was, for the first time ever in Lithuania, continued for people in police custody of Vilnius City Commissariat. As such, today persons who have begun their substitution therapy prior to their arrest can only continue it while they are still in police custody. Persons who are addicted to opioids and imprisoned in places of detention managed by the Prison Department are not given access to substitution therapy, without ensuring the continuity of any prior substitution treatment and providing the same level of health care as is available to people outside of prison. The availability of substitution therapy in all the places of detention would reduce the risks associated with the consumption and proliferation of drugs, as well as the trans-

<sup>606</sup> Drug Control Department, Annual Report, published in 2010, p.112-114, [http://www.ntakd.lt/files/informacine\\_medzega/0-NTAKD\\_medziaga/1-MP/2012\\_LT.pdf](http://www.ntakd.lt/files/informacine_medzega/0-NTAKD_medziaga/1-MP/2012_LT.pdf)

<sup>607</sup> Law on the Health System, 19 July 1994, No. I-55247, Article 47, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454090](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454090)

<sup>608</sup> Law on the Enforcement of Punishments, 27 June 2002, No. IX-994, Article 175, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=494004](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494004)

mission of dangerous infectious diseases in prison.<sup>609</sup> Furthermore, after serving their prison sentence, persons will return to society, which is why terminating treatment or not offering it on time results in a variety of threats to both the individuals concerned and to society at large – from health problems to criminal recidivism.

## Findings and Recommendations

- *The state and municipalities should increase the level of regular funding of offices offering low-threshold services to injecting drug users, ensuring that these services reach at least 60% of all injecting drug users and enabling as many people as possible to access therapy using medical opioids.*
- *Lithuania does not ensure that people serving time in places of detention managed by the Prison Department have equal access to health care as people outside of prison. We recommend ensuring that pharmacotherapy using medical opioids is available to persons in places of detention.*

## IV. Rights of HIV-positive Individuals

The prevalence of HIV infection in Lithuania is now approaching 0.01% of the population,<sup>610</sup> with the exception of two groups at risk where HIV prevalence has well exceeded the epidemic threshold of 5%<sup>611</sup> – people using injecting drugs and people in prison.<sup>612</sup> HIV prevalence among injecting drug users in Vilnius stands at 9.7%.<sup>613</sup> Since 2012, each year sees more and more new cases of HIV infection crop up in Lithuania.

The main tool for monitoring and assessing the epidemiological status of HIV is HIV testing, which should be easily accessible (in primary health care institutions), free (compensated by the state) and anonymous.

<sup>609</sup> National Audit Office, “Report on the study of the consumption of methadone in Lithuania in 2009-2010”, 30 November 2011, No. VA-P-10-10-19, <https://vkontrole.lt/failas.aspx?id=2476>

<sup>610</sup> Centre for Communicable Diseases and AIDS, Overview of the Prevalence of Communicable Diseases in Lithuania 2013, published in 2014, p. 17, [http://www.ulac.lt/uploads/downloads/leidiniai/sergamumas\\_2013.pdf](http://www.ulac.lt/uploads/downloads/leidiniai/sergamumas_2013.pdf)

<sup>611</sup> United Nations Office on Drugs and Crime, Evaluation of the Access to HIV/AIDS Treatment and Care in Lithuania, April 2010, p. 9, [http://www.unodc.org/documents/balticstates/Library/Other/Report\\_ART\\_Lithuania\\_EN.pdf](http://www.unodc.org/documents/balticstates/Library/Other/Report_ART_Lithuania_EN.pdf)

<sup>612</sup> Centre for Communicable Diseases and AIDS, Overview of the epidemiological situation of the prevalence of STDs and HIV in Lithuania, 2013, <http://www.ulac.lt/uploads/downloads/LPI%20situacijos%20analize%202014%2008%2025%20final%20%282%29.pdf>

<sup>613</sup> Drug, Tobacco and Alcohol Control Department, Annual Report 2014, published in 2014, p. 70, [http://www.ntakd.lt/files/informacine\\_medzega/0-NTAKD\\_medziaga/1-MP/2014\\_LT.pdf](http://www.ntakd.lt/files/informacine_medzega/0-NTAKD_medziaga/1-MP/2014_LT.pdf)

*The prevalence of HIV infection in Lithuania is now approaching 0.01% of the population, with the exception of two groups at risk where HIV prevalence has well exceeded the epidemic threshold of 5% – people using injecting drugs and people in prison. HIV prevalence among injecting drug users in Vilnius stands at 9.7%.*

Nowadays state-funded HIV tests are only available for detained or convicted individuals, blood donors and pregnant women. However, these social groups – with the exception of detained or convicted individuals – do not bear the highest risk of HIV infection.<sup>614</sup>

Users of injecting drugs and people in prison bear the greatest of risk of HIV infection. The fact that there are no easily accessible state-funded HIV tests available to these risk groups potentially violates the right to access health care, which is guaranteed by the *Law on the Rights of Patients and Compensation of the Damage to Their Health*.

Lithuania is now the only country in the EU that does not offer state-funded and conveniently accessible tests to individuals belonging to groups with a high risk of HIV infection.<sup>615</sup> UN and EU institutions have on many occasions expressed concern over the fragmented nature of efforts to prevent HIV among injecting drug users, the low scope of HIV testing and poor selection of risk groups, as well as the waste of public funds on inefficient measures; these institutions have also submitted specific recommendations for tackling the situation.<sup>616</sup> The World Health Organization has repeatedly stressed that ensuring that people are able to find out their HIV status should be the very first strategic direction taken by the health care sector.<sup>617</sup>

<sup>614</sup> European Centre for Disease Prevention and Control, "ECDC Guidance: HIV testing: increasing uptake and effectiveness in the European Union", 2010 m, [http://ecdc.europa.eu/en/publications/Publications/101129\\_GUI\\_HIV\\_testing.pdf](http://ecdc.europa.eu/en/publications/Publications/101129_GUI_HIV_testing.pdf); European Monitoring Centre for Drugs and Drug Addiction, "Guidelines for testing HIV, viral hepatitis and other infections in injecting drug users", 2010, [http://www.emcdda.europa.eu/attachements.cfm/att\\_118462\\_EN\\_TD3009243ENC\\_web.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_118462_EN_TD3009243ENC_web.pdf)

<sup>615</sup> Coalition "I Can Live", Eurasian Harm Reduction Network, "Alternative Report to the UN Committee on Economic, Social and Cultural Rights", March 2014, [http://galiugyventi.lt/wp-content/uploads/2014/04/Alternative-report\\_Lithuania\\_2014.pdf](http://galiugyventi.lt/wp-content/uploads/2014/04/Alternative-report_Lithuania_2014.pdf)

<sup>616</sup> European Monitoring Centre for Drugs and Drug Addiction, European Centre for Disease Prevention and Control, "Meeting report: Detecting and responding to outbreaks of HIV among people who inject drugs: best practices in HIV prevention and control", 29-30 March 2012, <http://ecdc.europa.eu/en/publications/publications/mer-idu-outbreaks.pdf>; European Monitoring Centre for Drugs and Drug Addiction, European Centre for Disease Prevention and Control, "Meeting report: Reitox Academy for Baltic Countries: Monitoring trends in and responses to drug-related infectious diseases among people who inject drugs", 21-22 November 2013, [http://www.drugsandalcohol.ie/21728/3/Report\\_Reitox\\_Academy\\_Tallinn\\_21-22\\_November\\_2013\\_final.pdf](http://www.drugsandalcohol.ie/21728/3/Report_Reitox_Academy_Tallinn_21-22_November_2013_final.pdf); World Health Organization, UN Office on Drugs and Crime, "Evaluation of the access to HIV/AIDS treatment and care in Lithuania", 2010, [http://www.unodc.org/balticstates/lt/news/2010/11q/ARV\\_Evaluation\\_LT.html](http://www.unodc.org/balticstates/lt/news/2010/11q/ARV_Evaluation_LT.html)

<sup>617</sup> World Health Organization, "HIV/AIDS Programme: Highlights 2008-2009", 2010, p. 5, [http://whqlibdoc.who.int/publications/2010/9789241599450\\_eng.pdf](http://whqlibdoc.who.int/publications/2010/9789241599450_eng.pdf)

## Findings and Recommendations

- *All persons, especially persons most at risk of HIV infection, should be allowed to access state-funded (free) HIV tests at places that are convenient and easily accessible to them.*



# RIGHT TO FREE ELECTIONS. ARTICLE 3 OF PROTOCOL NO. 1

## I. Interference with the Passive Electoral Right

In 2004, the Constitutional Court ruled that a person who had committed a gross violation of the Constitution or breached his oath, or committed a crime by which he grossly violated the Constitution or breached his oath, and as a result was dismissed from office following impeachment proceedings should be permanently disqualified from holding an office for which it is necessary to take an oath in accordance with the Constitution.<sup>618</sup>

In the same year, following impeachment proceedings initiated by the Parliament for violating the Constitution and breaking his oath, Rolandas Paksas was removed from office as President.<sup>619</sup> In accordance with the aforementioned Constitutional Court ruling, he was permanently disqualified from standing for election to the office of President or to the Parliament.

In 2011, the European Court of Human Rights ruled that, by permanently and absolutely disqualifying Rolandas Paksas from standing for election to the Parliament, Lithuania violated his right to free elections.<sup>620</sup>

Since the ECtHR did not take the time to consider the prohibition to be elected to other offices, not just becoming a member of the Parliament, Rolandas Paskas submitted an application to the United Nations Human Rights Committee. On 25 April 2014 the Committee found that an abso-

<sup>618</sup> 25 May 2004 decision of the Constitutional Court in case No. 24/04, <http://lrkt.freshmedia.lt/lt/teismo-aktai/paieska/135/ta265/content>

<sup>619</sup> "President R. Paksas Removed From Office", published in *delfi.lt* on 6 April 2004, <http://www.delfi.lt/news/daily/lithuania/prezidentas-rpaksas-vra-nusalintas-nuo-pareigu.d?id=4072061>

<sup>620</sup> 6 January 2011 ECtHR judgment in the case of *Paksas v Lithuania*, application No. 34932/04, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102617>.

*This proposal wholly distorts the message of the ECtHR and Committee decisions, since neither of them established any new circumstances regarding the impeachment or otherwise questioned the legitimacy of the proceedings. Since the facts as established in the conclusion of the Constitutional Court on 31 March 2004 still persist, it would be unlawful to annul the impeachment.*

lute and permanent disqualification on being a candidate in presidential elections, or on being a Prime Minister or minister, “lacked the necessary foreseeability and objectivity” and thus violated the International Covenant on Civil and Political Rights.<sup>621</sup>

Even though both the ECtHR and the Committee recommended that Lithuania revise its legal regulations and set a more proportional period for the restriction of the passive electoral right, this was not achieved in 2013-2014. Quite the opposite – certain proposals in this context resemble attempts to bypass the Constitution and change certain facts established during the im-

peachment proceedings.

For example, in May 2014 the interim investigation commission of the Parliament “On the Restoration of Rolandas Paksas’s Civil and Political Rights”<sup>622</sup> proposed that, in order to implement the decisions of the ECtHR and the Committee, the impeachment of Rolandas Paksas should be annulled by a vote in the Parliament.<sup>623</sup> Although this is currently not provided for in the Statute of the Parliament, the commission proposed to amend it accordingly.<sup>624</sup> The Parliament has yet to consider the commission’s findings.<sup>625</sup>

This proposal wholly distorts the message of the ECtHR and Committee decisions, since neither of them established any new circumstances regarding the impeachment or otherwise questioned the legitimacy of

<sup>621</sup> The Committee found that Lithuania violated Article 25(b) and (c). 25 March 2014 judgment of the UN Human Rights Committee in the case of *Paksas v Lithuania*, application No. 2155/2012, <http://www1.umn.edu/humanrts/undocs/2155-2012.html>

<sup>622</sup> Resolution No. 2014-05485 of the Parliament “On the Establishment of an Interim Investigation Commission On the Restoration of President Rolandas Paksas’s Civil and Political Rights”, dated 13 May 2010, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=364093&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=364093&p_query=&p_tr2=)

<sup>623</sup> Liepa Žalnienė, “The Commission for the Restoration of Rolandas Paksas’s Rights Proposes Rewriting History and Annuling the Impeachment”, published in *15min.lt* on 24 September 2014, <http://www.15min.lt/naujiena/aktualu/lietuva/rolando-pakso-politiniu-teisiu-atstatymo-komisija-apkalta-buvo-lauzta-is-pirsto-ja-reikia-atsaukti-56-455325>

<sup>624</sup> Liepa Žalnienė, “The Commission for the Restoration of Rolandas Paksas’s Rights Proposes Rewriting History and Annuling the Impeachment”, published in *15min.lt* on 24 September 2014, <http://www.15min.lt/naujiena/aktualu/lietuva/rolando-pakso-politiniu-teisiu-atstatymo-komisija-apkalta-buvo-lauzta-is-pirsto-ja-reikia-atsaukti-56-455325>

<sup>625</sup> Telephone conversation with the head of the Office of the Commissions of the Parliament, dated 19 February 2015



the proceedings. Since the facts as established in the conclusion of the Constitutional Court on 31 March 2004 still persist,<sup>626</sup> it would be unlawful to annul the impeachment. It should be noted that decisions are implemented not solely for the relief of the victim – their implementation is meant to prevent future violations of the Convention and the Covenant as well.<sup>627</sup> The Constitutional Court has stated several times that the only lawful way to ensure this is to amend the Constitution accordingly.<sup>628</sup>

## Findings and Recommendations

- *The decisions of the European Court of Human Rights and the United Nations Human Rights Committee in the twin cases of Paksas v Lithuania were not implemented in 2014.*
- *With reference to the reasoning of the Constitutional Court and the recommendations of the above international courts, it is recommended that a political debate be launched on amending the Constitution to introduce a time limit to the prohibition to run for office requiring an oath to the state and/or a procedure to assess whether a person is ready to swear the oath.*

## II. Ensuring the Right to Political Participation of Persons with Disabilities

Article 29 of the United Nations Convention on the Rights of Persons with Disabilities places all ratifying parties – including Lithuania – under an obligation to guarantee political rights to persons with disabilities and the opportunity to enjoy them equally with others.<sup>629</sup> Said Article goes into further detail, claiming that State Parties must ensure that voting procedures, facilities and materials are appropriate, accessible

<sup>626</sup> Conclusion No. 14/04 of the Constitutional Court, dated 31 March 2004, <http://lrkt.freshmedia.lt/lt/teismo-aktai/paieska/135/ta259/content>

<sup>627</sup> Human Rights Monitoring Institute, “Opinion on the Implementation of the ECtHR Judgment in the Case of Paksas v Lithuania (2011) and the UN Human Rights Committee Judgment in the Case of Paksas v Lithuania (2014)”, 30 June 2014, [http://www.hrmi.lt/uploaded/Documents/2014-06-30%20\(1S-IX-11-2\)%20Isvada%20del%20sprendimu%20bylose%20Paksas%20pries%20Lietuva%20igyvendinimo.pdf](http://www.hrmi.lt/uploaded/Documents/2014-06-30%20(1S-IX-11-2)%20Isvada%20del%20sprendimu%20bylose%20Paksas%20pries%20Lietuva%20igyvendinimo.pdf)

<sup>628</sup> 10 January 2011 declaration of the Constitutional Court “On the Implementation of the 6 January 2011 Judgment of the European Court of Human Rights”, [http://www.lrkt.lt/Pranesimai/txt\\_2011/L20110110c.htm](http://www.lrkt.lt/Pranesimai/txt_2011/L20110110c.htm); decision No. 8/2012 of the Constitutional Court, dated 5 September 2012, <http://lrkt.freshmedia.lt/lt/teismo-aktai/paieska/135/ta125/content>

<sup>629</sup> United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol, 13 December 2006, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=335882](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335882)

and easy to use so that persons with disabilities are able to express their will as electors; also, to enable them to stand for elections and to effectively hold office.

In 2014, the European Union Fundamental Rights Agency conducted a study to ascertain the ability of persons with disabilities to participate in politics, their impact on the formation of policy and decision making – processes which are exceptionally important in a democratic society. The study revealed that the disabled are active or less active participants in politics in most countries in Western Europe; by contrast, Lithuania does not even collect any data on the political participation of the disabled.<sup>630</sup>

According to the data received from the Central Electoral Commission (CEC) in 2013, only 27% of all polling stations were equipped to accommodate people with disabilities.<sup>631</sup> CEC is responsible for exercising control over the electoral districts of cities and counties,<sup>632</sup> whereas the municipalities are under a duty to ensure that the facilities are fit for elections,<sup>633</sup> taking into account the special needs of people with reduced mobility and/or poor eyesight as well as the elderly. If the facilities are not adapted for disabled or elderly people, the polling station must be moved to another location.

Electoral laws provide for alternative ways for citizens to participate and vote in the general elections.<sup>634</sup> They include a possibility to vote by mail using a special ballot;<sup>635</sup> a possibility to vote from home;<sup>636</sup> and a

<sup>630</sup> European Union Agency for Fundamental Rights, "Right to Political Participation of Persons with Disabilities" November 2010, <http://fra.europa.eu/en/publication/2010/right-political-participation-persons-mental-health-problems-and-persons>

<sup>631</sup> Response No. 2-517 (I.5) of the Central Electoral Commission to the Lithuanian Forum of the Disabled, dated 10 July 2013

<sup>632</sup> Law on the Central Electoral Commission, 3 July 2002, No. 68-2774, Art. 3, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=460793](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=460793)

<sup>633</sup> Law on Elections to the Parliament, 9 July 1992, No. I-2721, Art. 60(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389912](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389912),

<sup>634</sup> Law on Elections to the European Parliament, 20 November 2003, No. IX-1837, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389913](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389913); Law on Elections to Municipal Councils, 7 July 1994, No. I-532, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389911](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389911); Law on Elections to the Parliament, 9 July 1992, No. I-2721, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389912](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389912); Law on Presidential Elections, 12 June 2008 No. I-28, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=338462](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=338462); Law on Referendum, 4 June 2002, No. IX-929, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=267136](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267136)

<sup>635</sup> This voting method is available to individuals that, due to reasons of health or age, reside in health care (except for outpatient care services), social welfare or care institutions and are thus unable to come to the polling station

<sup>636</sup> This voting method is available to the disabled, voters on leave due to sickness, voters aged 70 or above who, due to reasons of health, are unable to go vote in the post office or, on the day of the election, to the electoral district,

possibility to vote early.<sup>637</sup>

Unfortunately, these alternatives are not really implemented in practice. For example, in order to vote from home, the person must notify the member of the electoral commission bringing his or her voter certificate of his intention to vote from home. Not all voters are aware of this possibility and members of the electoral commission are under no duty to offer it as an alternative.

People with disabilities face the exact same obstacles when trying to vote early as they do when participating in the general elections – namely, the lack of accessibility. It should be noted that issues with accessibility also prevent the elderly and parents with small children from effectively exercising their electoral right. Making the premises accessible, at least in early voting stations, is one of the best alternatives, ensuring that persons with reduced mobility are excluded as little as possible. The other alternative is to vote online. Amendments and supplements to existing electoral laws were drafted in 2014, proposing to legalize online voting for all levels of elections and referenda.<sup>638</sup> The most recent public opinion poll shows the idea is popular with almost two thirds (65%) of all Lithuanian residents.<sup>639</sup> The draft laws will be put before the legislature in 2015 – unfortunately, the 2015 municipal elections will still be held in premises that have not been adapted to the needs of disabled people.

In 2013-2014, the exercise of political rights of people with disabilities was further hampered by their inability to access information. Blind and partially sighted people do not have access to special voting ballots written in Braille, and as such they are unable to vote by themselves.

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and only if they had submitted the application required by the Central Electoral Commission to be allowed to vote at home

<sup>637</sup> This voting method is available to voters that are unable to come to the electoral district to vote on the day of the election

<sup>638</sup> Draft Law Amending Articles 28, 29, 33, 34, 35, 58, 59, 62, 64, 66, 69, 70, 82 of and Adding Articles 66(1), 81(1) to Law No. I-2721 on the Elections to the Parliament, 2014, No. XIIP-1839, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471406](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471406); draft Law Amending Articles 32, 55, 59, 61, 63, 77 of and Adding Articles 64(1), 76(1) to Law No. I-532 on Elections to Municipal Councils, 2014, No. XIIP-1838, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471404](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471404); draft Law Amending Articles 28, 33, 34, 35, 58, 62, 64, 66, 69, 70, 83 of and Adding Articles 66(1), 82(1) to Law No. IX-1837 on Elections to the European Parliament, 2014, No. XIIP-1837, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471402](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471402); draft Law Amending Articles 26, 31, 32, 33, 52, 54, 56, 58, 59, 72 of and Adding Articles 56(1), 71(1) to Law No. I-28 on Presidential Elections, 2014, No. XIIP-1835, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=471398](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=471398)

<sup>639</sup> “Finally: Rulers Propose to Legalize Online Voting”, published in *delfi.lt* on 22 May 2014, <http://www.delfi.lt/news/daily/lithuania/galu-gale-valdantieji-siulo-iteisinti-balsavima-internetu.d?id=64850393>

Their close friends or family must escort them to the polling station and fill in the ballot for them. Information in electoral districts is presented in exceptionally fine print and hung in places difficult to see (party lists in voting booths use fine print and are hung up high). Blind and partially sighted people are also unable to access the information on the election itself, or on the candidates or political parties taking part – not enough publications on elections are available in Braille.

Information regarding the elections is also in short supply with deaf people, since they cannot hear the majority of what is relayed through television or the radio. According to the information supplied by CEC in 2013, only 10-12% of all campaign broadcasts or information on the elections and the candidates are translated into sign language.<sup>640</sup>

Due to the complexity of the language employed, party and individual candidate campaign manifestos are not suited for people with intellectual (developmental) disabilities. The elderly, immigrants and people with poor literacy may also find them difficult to understand. In Scandinavian countries, political parties and political players ensure that their campaign manifestoes are presented in easy-to-understand language. By promoting access to information, it is sought to give all citizens – including the disabled – an equal opportunity to read and understand the information and in this way become involved in public life.

It should be noted that not even the CEC website is suited the needs of persons with disabilities – the link to the “*For people with disabilities*” is broken; it was dead during the 2014 Presidential elections and the elections to the European Parliament.

In its study, the EU Agency for Fundamental Rights identified the exclusion of people with a particular disability from participating in the elections in any way – and thus from expressing their will as citizens – as one of the main obstacles to political participation. Article 34 of the Constitution provides that citizens who, on the day of the election, have reached 18 years of age, have the electoral right, except for the citizens who have been recognized incapable.<sup>641</sup> It is still possible to have a person with mental disorders and intellectual disabilities to be declared

<sup>640</sup> Response No. 2-517 (1.5) of the Central Electoral Commission to the Lithuanian Forum of the Disabled, dated 10 July 2013

<sup>641</sup> The Constitution, 25 October 1992, Articles 22(2) and 22(3), <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

incapable under Lithuanian law. People that have been recognized as incapable are not allowed to make independent decisions and are deprived of their rights and liberties, including their rights of civic participation.

A Register of Legally Incapable Persons and Persons with Limited Legal Capacity, responsible for the registration of persons that have been recognized as incapable by a court, has been in operation in Lithuania since 2011. CEC addresses the Register when drawing up voters lists (electoral registers), promptly striking out persons recognized as incapable. At the moment, there are over 6 thousand people in Lithuania that have been found incapable.

It should be noted that the concluding observations of the United Nations Committee on the Rights of Persons with Disabilities have many times included a recommendation for the State in question to amend its laws to ensure that all persons with disabilities, regardless of the nature of their disorder, legal status or place of residence, are given the right to vote and participate in public life on par with other citizens.

## Findings and Recommendations

- *People with disabilities still face legal, administrative and even physical obstacles when trying to participate in the elections.*
- *CEC must properly exercise its control functions with regard to the accessibility of polling stations designated by the municipality.*
- *It is necessary to ensure the availability of election leaflets in Braille in order to allow blind and partially sighted people to vote independently.*
- *It is necessary to ensure that pre-election broadcasts are translated into sign language.*
- *It is recommended to legalize universal online voting and to more effectively implement alternative voting methods that facilitate the exercise of the right to political participation of persons with disabilities.*
- *It is recommended to encourage all political parties and candidates to present their manifestoes using language that is easy to understand.*

- *It is imperative to regularly collect data to assess the electoral participation of persons with disabilities.*
- *It is necessary to remove legal obstacles and abolish incapacity at law, repealing provisions found in the Constitution and acts of law that prevent people that have been recognized as incapable from participating in elections.*

### III. Restriction of Foreigners' Right to Political Participation

Directive 94/80/EC of the European Union establishes that any person who is an EU citizen and not a national of the Member State of residence, but who in any event satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, shall have the right to vote and to stand as a candidate in municipal elections in the Member State of residence.<sup>642</sup>

The *Law on Elections to Municipal Councils* was amended at the end of 2012, setting out that only permanent residents of that particular municipality may be elected to a municipal council, namely: Lithuanian nationals whose declared place of residence is found within the territory of this municipality; nationals of other EU Member States whose declared place of residence is found within the territory of this municipality; or other persons with the right to permanently reside in Lithuania whose declared place of residence is found within the territory of this municipality.<sup>643</sup> Foreigners with temporary residence permits (non-EU nationals) are still excluded from running for office or voting in municipal council elections.<sup>644</sup> A possibility to run for mayor is limited exclusively to Lithuanian nationals.<sup>645</sup>

A possibility of foreigners to participate in the activities of political parties was introduced in 2014. Admittedly, this new (and very limited) op-

<sup>642</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, Art. 3, <http://eur-lex.europa.eu/legal-content/LIT/TXT/?uri=CELEX:31994L0080>

<sup>643</sup> Law on Elections to Municipal Councils, 7 July 1994, No. I-532, Articles 2(2) and 2(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493985](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493985)

<sup>644</sup> Karolis Žibas, "Political Participation and Electoral Rights of Third Country Nationals Residing in Lithuania", March 2014, <http://www.mipas.lt/lt/projektine-veikla/304/lietuvoje-gyvenanciu-treciuju-saliu-pilieciu-politinis-dalyvavimas-ir-rinkimu-teises>

<sup>645</sup> Law on Elections to Municipal Councils, 7 July 1994, No. I-532, Article 2(2), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493985](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493985)

portunity is only available to European Union nationals, not nationals of third countries.

Up until the end of 2014, the *Law on Political Parties* established that only Lithuanian nationals could become founding members of or join political parties.<sup>646</sup> After the amendments to the *Law on Political Participation* came into force on 1 January 2015, this was revised so that EU nationals who are not members of political parties abroad and who have resided in Lithuania for the last five years without interruption can now also join local political parties.<sup>647</sup> EU nationals are still not allowed to become founding members of political parties. It is regrettable that even these modest amendments, providing limited opportunities for foreigners to become involved with political parties in Lithuania, were difficult to pass.

When the Ministry of Justice presented its proposed amendments to the *Law on Political Parties* in July 2013, providing for a possibility of EE nationals to form and become members of political parties<sup>648</sup>, Parliament opposed the idea and refused to consider the draft law further. Conservative political forces stressed the threats the amendments posed to Lithuania's sovereignty, statehood, preservation of its national identity and territorial integrity.<sup>649</sup> Following this, a few more modest versions of the amendments were submitted to the Parliament – these only sought to allow EU nationals to become members of political parties, still denying them the possibility to become founding members.<sup>650</sup> The final version reflects a political compromise, being least favourable to EU nationals – they are further required to not be “members of political parties or political organizations abroad” and to have resided in Lithuania for five years without interruption. There is no such requirement for Lithuanian nationals to abstain from membership in political parties or organizations abroad.

<sup>646</sup> Law on Political Parties, 15 April 2004, No. 54-1831, Article 5, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478862](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478862)

<sup>647</sup> Law Amending the Preamble and Articles 2, 3, 5, 8 of Law No. I-606 on Political Parties, 6 November 2014, No. XII-1292, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=487540](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=487540)

<sup>648</sup> Law Amending the Preamble and Articles 2,3,5 and 8 of the Law on Political Parties, 22 July 2013, No. XIIP-875, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453884](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453884)

<sup>649</sup> Karolis Žibas, “Political Participation and Electoral Rights of Third Country Nationals Residing in Lithuania”, March 2014, <http://www.mipas.lt/lt/projektine-veikla/304/lietuvoje-gyvenanciu-treciuju-saliu-pilieciu-politinis-dalyvavimas-ir-rinkimu-teises>

<sup>650</sup> Draft Law Amending the Preamble and Articles 2, 3, 5, 8 of Law No. I-606 on Political Parties, 23 June 2014, XIIP-875(3), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=475969](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=475969); draft Law Amending the Preamble and Articles 2, 3, 5, 8 of Law No. I-606 on Political Parties, 16 October 2014, No. XIIP-875(4), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=484936](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=484936)

## Findings and Recommendations

- *The amendments to the Law on Political Parties that allow EU citizens to become members of Lithuanian political parties, adopted in November 2014, are viewed positively.*
- *It is recommended to continue the political dialogue and expand the rights of EU nationals to become involved with Lithuanian political parties, allowing them to form their own parties, as well as granting comparable rights regarding membership in political parties to EU nationals in Lithuania, regardless if their residence is permanent or temporary; it is also recommended to expand the possibility of non-EU nationals to become involved with political parties.*
- *A possibility of foreigners with a temporary residence permit (non-EU citizens) to participate in municipal council elections remains limited: they are still prevented from voting or running for office. It is recommended to amend the Law on the Elections to Municipal Councils in order to ensure equal opportunities for all foreigners residing in Lithuania to vote in municipal elections and run for office.*











HUMAN RIGHTS MONITORING INSTITUTE  
Didžioji str. 5, LT-01128 Vilnius  
[hrmi@hrmi.lt](mailto:hrmi@hrmi.lt)  
[www.hrmi.lt](http://www.hrmi.lt)

ISSN 1822-4598