

COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR LA LITUANIE

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Lituanie.

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de la Lituanie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui, sauf indication contraire expresse, ne tient compte que de développements jusqu'au 25 mars 2011, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

OBSERVATIONS PROVIDED BY THE AUTHORITIES OF LITHUANIA AS REGARDS THE ECRI REPORT ON LITHUANIA

(Fourth monitoring cycle):

1. Comments regarding Summary (page 8, paragraph 2)

With due regards to the provisions of Article 22 part 4 of *the Law on Cash Social Assistance for Low-Income Families and Single Residents* the municipality administrations are granted the right from their budgetary resources to allocate cash social assistance to families and single residents in other cases not provided by this law (for instance, to allocate a single allowance, to compensate housing costs that are not foreseen in the law provisions, and etc.). Thus, the statement „persons granted subsidiary protection do not have a right to social assistance, except during their one year stay at the reception centre” should be supplemented by the following phrase: **„or cases when municipalities allocate cash social assistance from the municipal budgetary resources”**.

2. Comments regarding Summary (page 8, last paragraph).

Article 12, part 2 of *the Law on Equal Treatment* stipulates that „Associations or other legal persons which have, in accordance with the legal act regulating their activities, the defence and representation in court of persons discriminated against on a particular ground as one of their activities may, on behalf of the person discriminated against, represent him in judicial or administrative procedures in the manner prescribed by laws”.¹ Therefore, the Ministry of Social Security and Labour

¹ *The Republic of Lithuania Law on Equal Treatment.*
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500)

considers that it is not expedient to make any changes in the Law on Equal Treatment. Article 56, part 1 of the Civil Code of the Republic of Lithuania regulates representation in court, which should be supplemented by the provision, ensuring the right for associations to represent persons discriminated on a particular ground in court.

Moreover, the Ministry of Social Security and Labour considers that it is not expedient to make any changes in the Law on Equal Treatment and foresee an obligation to suppress public financing of organizations that promote racism. Separate regulations for financing NGOs (regarding separate provisions for financing organizations) exist in national legislation.

3. Comments regarding part 9.

Constitutional conditions for candidacy to the Presidency of the Republic of Lithuania were inaccurately described as requiring that, to be eligible for presidential election, a person must be "*Lithuanian by origin*". Article 78 of *the Constitution of the Republic of Lithuania* stipulates that "a Lithuanian citizen by origin" may be elected President of the Republic². This criterion does not define the requirement based on the grounds of ethnicity, but the one of citizenship acquired in a specific manner (i.e. other than by means of naturalization). The same criterion has been enshrined in *the Law on Presidential Elections*³. It does not coincide with the notion " a person of Lithuanian origin" used in *the Law on Citizenship*⁴, the interpretation of which is presented in the ECRI Fourth Report to substantiate the assessment that the requirements for the candidacy to the Presidency of the Republic of Lithuania are discriminatory on the grounds of race (ethnicity). Therefore, it is doubtful whether the recommendation presented in part 9 (making reference to the European Court of Human Rights Grand Chamber judgement of 22 December 2009 in the case of Sejdić and Finci v. Bosnia Herzegovina) and the recommendation in part 10 are relevant to and applicable in respect of Lithuania. In this regard, it should also be taken into account that the provisions of the ECHR, which are legally binding on Lithuania, do not encompass the person's right to stand for presidential elections (see the European Court of Human Rights decision of 21 October 1998 in the case of Baškauskaitė v. Lithuania).

4. Comments regarding part 15.

The Ministry of Culture is in charge for the preparation of *the Draft Law on National Minorities*. In 2010, the interdepartmental group with representatives of national minorities prepared *the Draft Legal Regulation Concept of the Law on National Minorities* (henceforth, referred to as the Draft Concept). The Draft Concept maintains provisions ensuring that the scope of rights and freedoms of persons belonging to national minorities is not narrowed with regard to those, granted under the 1989 *Law on National Minorities*. It is noteworthy, that the Draft Concept

² *The Constitution of the Republic of Lithuania*.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=275302

³ *The Republic of Lithuania Law on Presidential Elections*.

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389873&p_query=&p_tr2=;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389873&p_query=&p_tr2=)

⁴ *The Republic of Lithuania Law on Citizenship*.

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=395555&p_query=&p_tr2=;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=395555&p_query=&p_tr2=)

lays down the provisions that would in principal be in line with the EU National Minority Framework Convention for the Protection of National Minorities.

5. Comments regarding part 33.

Lithuanian authorities do not support this recommendation as such ground (citizenship) is not established in *the Constitution of the Republic of Lithuania* and also in the EU appropriate Directives on which basis the Law on Equal Treatment was amended in 2008 (also see *comments regarding part 55*).

6. Comments regarding part 55.

The Law on Equal Treatment was adopted having regard to two Council Directives – the EU Racial Equality Directive (2000/43/EB) and the EU Employment Directive (2000/78/EB), as foreseen by the Amsterdam Treaty, and in particular Article 13 thereof.

The EU Racial Equality Directive (2000/43/EB) implements the principal for equal treatment between persons irrespective their racial or ethnic origin. This Council Directive is designated to establish basic principals, aiming at combating discrimination on the grounds of racial or ethnic origin. The EU Employment Directive (2000/78/EB) is a Council Directive establishing a general framework for equal treatment in employment and occupation. The purpose of this Council Directive is to establish basic principals, aiming at combating discrimination on the grounds of religion, beliefs, convictions and view, disability, age or sexual orientation in the field of occupation and vocational training. It is noteworthy, that there are indications in both Council Directives made, noting that the Council Directive **does not include equality on the grounds of citizenship, and it does not breach the provisions and conditions** applied with regard to third country nationals and stateless persons, crossing the EU Member state territory and accommodating therein, as well as other cases related with the legal treatment of third country nationals and stateless persons.

Moreover, the currently valid *Law on Equal Treatment* does not foresee a possibility for the Equal Opportunities Ombudsman to initiate civil and administrative proceedings when the Law on Equal Treatment has allegedly been breached. The judicial practice as regards different cases of discrimination is now under the process of formation.

The authorities receive few civil, labour and administrative cases with regard to discrimination. The Equal Opportunity Ombudsman executes the right to initiate investigations ex officio, and the number of such investigations has been generally increasing. Furthermore, the Equal Opportunity Ombudsman has a right to transfer the material to pre-trial investigation authorities when there are enough grounds for allegations of criminal offence.

It is significant to note, that in recent years, there is a common practice in Lithuania at the request of interested parties or under the initiative of the court to involve the Office of Equal Opportunity Ombudsman into civil proceedings as a mandated institution for presenting its conclusions. In this regard, a divergence of different practice prevails in EU Member states.

7. Comments regarding part 57.

Council Directives do not foresee any special provisions to determine the implementation of „ effective, proportional and deterrent sanctions“; therefore, this issue is left to the full discretion of each EU Member state. *The Law on Equal Treatment for Women and Men of the Republic of Lithuania* foresees a possibility for a person who considers himself wronged by failure to apply equal treatment to him shall to appeal to the Equal Opportunities Ombudsman. The Office of Equal Opportunities Ombudsman, having examined a complaint, can apply one of the decisions laid down in Article 24. Article 24 (3) foresees a possibility to investigate cases of administrative violations and offer an administrative penalty. The provisions of Article 4(16) and 187 (5) of the Code of Administrative Violations of Law of the Republic of Lithuania allow for an administrative penalty of up to 4000 Litas. Taking into consideration the fact, that in Lithuania there are few cases of discrimination in court, the imposed sanctions are treated to be sufficient.

Pursuant to the Equal Opportunities Ombudsman Report for the years 2005-2010, the application of administrative penalty is not considered to be an effective measure in combating discrimination, as it does not fully resolve the conflict. With regard to complaint investigation procedure, the Office of Equal Opportunities Ombudsman takes the priority to peaceful settlement of the conflict, whereas administrative penalty is imposed for deliberate, malicious and repeated violations of law (Article 3, Council Directive 2000/78/EB).

8. Comments regarding part 65.

In the year 2011, the funding for national minority programmes, coordinated by the Ministry of Culture, the Division of National Minority Affairs, was increased by more than 60 percent (1029 thousand Litas).

9. Comments regarding part 69.

The statement that „social research shows that members of national/ethnic minorities experience discrimination twice as much as ethnic Lithuanians“ needs to be clarified. It is important to note, that from all the complaints submitted to the Equal Opportunity Ombudsman Office with regard to discrimination based on ethnicity, approximately 10 percent of national minority respondents had experienced discrimination in the areas of employment, education and healthcare.

10. Comments regarding part 82.

Article 50 part 2 (1) of *the Law on Provision of Information to the Public* stipulates that executing the functions enshrined therein and possessing information about the violations not indicated in the complaint, the Inspector has a right to open investigations ex officio or to transfer the collected data to the competent authorities for further investigation.

In practice, having received information about any alleged cases of incitement to hatred, the mandated authority generally addresses the Office of the Inspector of Journalists' Ethics asking its experts to monitor and determine whether the public information presented on Internet incite hatred on grounds of gender, sexual orientation, race, nationality, language, origin, social status, religion or beliefs (Article 50 part 1(8) of *the Law on Provision of Information to the Public*).

11. Comments regarding part 98.

Seeking to promote and ensure better consultation with Roma representatives as well as to involve them into decision-making, the Department of National Minorities and Lithuanians Living Abroad under the authority of the Republic of Lithuania (henceforth, the DNMLLA) consulted the Roma NGO representatives as regards the preparation of *the Programme for the Integration of Roma into the Lithuanian Society for 2008 – 2010* (henceforth, *the Roma Integration Programme*). The leader of the Roma NGO „The Fire of Gypsies“ as well as head of the public institution „The Roma Community Centre“ were members of the interdepartmental working group that worked on the preparation of the document. It is significant to note, that a lot of proposals introduced by Roma were taken into consideration. The DNMLLA organized several meetings with Roma representatives in Vilnius and Kaunas, introducing the targeted measures of *the Roma Integration Programme into the Lithuanian Society for the year 2008-2010*.

Lithuanian authorities are concerned to ensuring and maintaining further consultations with Roma NGO and public institutions working with Roma in drafting new documents concerning the integration of Roma into the society of Lithuania.

12. Comments regarding parts 122 and 123.

There is no requirement of previous work experience for the unemployed persons to be registered in Labour Exchange. With regard to *the Law on Support for Employment and Description of Conditions and Procedure for Registration and Accounting of Job Seeking Persons in Local Labour Exchange Offices* every unemployed person might be registered in Labour Exchange irrespective of having or not work experience. The previous work experience is asked as additional information, which subsequently helps Labour Exchange personnel to search for a suitable job.

13. Comments regarding part 143.

For the sake of clarity, an explanation regarding the meaning of the recommendation presented in part 143 to extend the scope of applicants to lodge claims for the restitution of private property is needed. In particular, it is worth making clear whether this recommendation is fully in line with the case-law of the European Court of Human Rights regarding the scope of entitlement to the restitution of property rights breached before the entry into force of the ECHR (in which case specific case-law on which this recommendation is based should be indicated), or whether it is recommended to ensure a higher level of the protection of property rights than guaranteed by the ECHR.

14. Comments regarding part 147.

During their study visit to Lithuania, ECRI experts had a possibility to meet with stakeholders of many public authorities, including the Ministry of Culture, the Ministry of Science and Education, the Ministry of Social Security and Labour, the Ministry of the Interior, representatives of the Council of National Minorities (including the chairman). Representatives from the Ministry of Foreign Affairs participated in the final meeting. These institutions constitute the basis of the Commission for National Minorities Affairs.

15. Comments regarding parts 151, 152, 153.

Secondary schools with the Russian language of instruction are provided with the textbooks in Russian for the teaching of the following subjects: the 8th grade - mathematics, physics, chemistry and geography, the 9th grade - mathematics, biology, physics, chemistry; the 10th grade - mathematics, physics and chemistry. In the year 2011, new 8th grade history textbooks and a 10th grade mathematics textbook are to be published.⁵ It is significant to note, that all textbooks for the teaching Russian and Polish as a native language for 1-12 grade pupils have been written and published in Lithuania.

Adopting *A General Secondary Education Native Language Programme*, next generation textbooks for the teaching Polish and Russian as a native language will be prepared and published.

16. Comments regarding part 164.

It is noteworthy, that in all cases the applicant's asylum request submitted at the border crossing points of the Republic of Lithuania is being accepted. In accordance with the currently valid legal regulations, during the first 24 hours an applicant's personal file is being formed, which together with the request and other required documents is being forwarded to the Migration department under the authority of the Ministry of the Interior of the Republic of Lithuania (henceforth, the Migration department). Subsequently, the Migration department within 48 hours processes the applicant's asylum request and takes the final decision concerning granting or refusing temporal territorial asylum to the applicant. (In case the applicant's asylum request is considered to be evidently unfounded, it should be examined within 48 hours. This period can be extended no longer than seven days).

In accordance with the provisions enshrined in the Law of the Republic of Lithuania „On the Legal Status of Aliens“, the asylum seeker may file an appeal against the decision. Having submitted a request for asylum, the applicants are not being detained and their freedom is not restrained. They are temporarily accommodated at the premises designated for asylum seekers that are hosted in the subdivisions of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter, referred to as the SBGS).

It is significant to note, that aliens seeking asylum are provided with full information on access to the asylum procedure, including the possibility to file a complaint concerning the decision, in a language they understand (i.e. an interpreter's service is guaranteed). The final decision to grant the asylum is being presented in writing in the state language; however, each asylum applicant is being acquainted with the decision in a language he/she understands.

On June 2, 2010, the SBGS, the Regional Office for the Baltic and Nordic Countries of the United Nations High Commissioner for Refugees (hereinafter referred to as the UNHCR) and Lithuanian Red Cross Society (hereinafter referred to as the LRCS) signed the *Memorandum of Understanding* regarding a mutual co-operation in the issues related to asylum applicants (persons falling within the scope of the UNHCR mandate). Pursuing the provisions enshrined in *the Memorandum of Understanding*, the SBGS state officials, having received the asylum applicant's

⁵ There has been one 8th grade two-part history textbook published in Lithuania and a 10 th grade mathematics textbook is currently under publication.

request at border crossing points, undertake obligation to inform the LRCS, whose representatives, pursuing the tripartite memorandum, execute asylum procedure monitoring, from the submission of asylum applications and formation of the primary information for asylum applicants' case. Subsequently, all measures are taken to ensure that the procedure for granting asylum should not be violated.

17. Comments regarding part 176.

Under the Draft Law on Cash Social Assistance for Low-Income Families and Single Residents, persons temporarily residing in the country who have subsidiary protection will be eligible for **cash** social assistance.

18. Comments regarding part 179.

Although the Refugee Day Centre in Pabradė provides social, psychological and legal assistance, the staff working in the SBGS Foreigners Registration Centre also provides social, psychological and medical assistance (a social worker, a psychologist, a family doctor, a pediatrician and three nurses are employed there). Each asylum applicant is guaranteed a state legal assistance. In the SBGS Foreigners Registration Centre separate facilities are provided for male and female applicants, as well as women with children and family members.

19. Comments regarding parts 189 - 190.

According to the SBGS, in practice unaccompanied minors are not treated as detained persons in the SBGS Foreigners Registration Centre.

In accordance to Article 32 of *the Law on Legal Status of Aliens*,⁶ unaccompanied minor aliens, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, are accommodated in the Refugee Reception Centre in Rukla.⁷ Since these are aliens under the age 18, the Lithuanian authorities take care of them taking into account their best interests. In the Refugee Reception Centre, unaccompanied minor aliens must be taken into temporary guardianship/custody for the period of the child's stay in the Republic of Lithuania. The temporary guardian/custodian of an unaccompanied minor alien shall represent the interests of the unaccompanied minor alien.

Moreover, unaccompanied minor aliens has the right to be provided with 1) free accommodation and receive state support; 2) to study at general education and vocational schools 3) to be provided with free basic medical aid; 4) to be provided with free social services; 5) to receive State-guaranteed legal aid unless the laws of the Republic of Lithuania provide otherwise; 6) to contact the representatives of non-governmental or international organisations of the Republic of Lithuania.

⁶ The Republic of Lithuania Law on the Legal Status of Aliens.

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=356478;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=356478)

⁷ The Refugee Reception Centre is a budgetary agency providing social services, intended for accommodating aliens who have been granted asylum in the Republic of Lithuania and unaccompanied minor aliens as well as for implementing social integration of the aliens who have been granted asylum. The Refugee Reception Centre shall be set up, re-organised and liquidated by the Minister of Social Security and Labour.

Therefore, the statement that „ECRI has been informed by other sources that detention of unaccompanied minors seeking asylum is frequent practice in Lithuania” needs to be supported by relevant data and sources.

20. Comments regarding part 198.

In the Fourth Report, ECRI recommends that the Lithuanian authorities set up an independent mechanism, separate from police structures, for investigating allegations of police misconduct, including racist or racially discriminatory behavior and endow it with the characteristics described below. Alternatively, ECRI recommends that the Lithuanian authorities reinforce one of the existing institutions which are independent from the police and which supervise its work. The General Prosecutor's Office of the Republic of Lithuania holds an opinion that in accordance with the currently valid national legislation (*the Criminal Code of the Republic of Lithuania, the Law on Prosecution of the Republic of Lithuania, and others*) prosecutors organize, manage, conduct and control pre-trial investigations in criminal cases.

Following the recommendations concerning the distribution of investigations of criminal offenses to pre-trial investigation bodies, which was adopted by General prosecutor of the Republic of Lithuania, the prosecutors themselves are recommended to conduct a pre-trial investigation concerning the criminal offenses that contain a particular public value, as well as the ones, committed by pre-trial police officials (taking into account that the police is a principal universal pre-trial investigation institution in our country), in case such a pre-trial investigation has not been delegated to another authority with a higher subordination level, or to a central institution of pre-trial investigations, or the Special Investigation Service of the Republic of Lithuania. Pursuant to the latter provisions, there exists an established practice, which entails that if there is a pre-trial investigation concerning the criminal offences (misconduct) committed by the state officials, they are not being investigated by the pre-trial investigation officers. Subsequently, such an investigation is being conducted by the prosecutors or by the Special Investigation Service of the Republic of Lithuania – a specialized institution for pre-trial investigations that deals with allegations of police misconduct.

Concerning the complaints regarding the investigations of police officials' misconduct that used to take place during their service or being off duty, and when there is a lack of evident proof of criminal offense, the Police department under the authority of the Ministry of the Interior is in charge to conduct and organize an inner service verification of these police officials.