



ŽMOGAUS TEISIŲ STEBĖJIMO INSTITUTAS  
HUMAN RIGHTS MONITORING INSTITUTE

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## **Human Rights in Lithuania 2011-2012 Overview**

### **Summary**

*Right to life. Prohibition of torture, inhuman or degrading treatment. Prohibition of slavery*

In 2012 the European Court of Human Rights (ECtHR) found that Lithuania had violated Article 2 of the European Convention on Human Rights (the Convention), which guarantees person's right to life, for the second time. The applicant applied to the Court after his son, who was serving his sentence at Pravieniškės correctional house, was beaten to death, however, the circumstances surrounding his death were not investigated and no one was prosecuted for the crime. The degrading conditions in Lithuanian penitentiary institutions and inaction by the state towards solving this problem lead to the state being found guilty of violating Article 3 of the Convention, prohibiting torture and inhuman or degrading treatment.

The ECtHR has also found that Lithuania had violated Article 3 of the Convention in a case on domestic violence, where Lithuania could not ensure the effective protection a domestic violence victim's rights – after the applicant had suffered violence from her partner and approached the law enforcement, the pre-trial investigation was stalled until the period of prescription had expired. Thus leaving the victim of domestic violence unprotected from further acts of violence, and the offender unprosecuted. Even though in 2011 the Law on Protection against Domestic Violence came into force, the system of domestic violence victims' protection and prosecution of offenders still does not function properly.

The petition of Abu Zubaydah, the victim CIA secret rendition and extraordinary rendition operations, against Lithuania is pending before the ECtHR. The Applicant seeks to be found a victim of secret detention and torture in Lithuanian jurisdiction, and seeks that investigations into CIA activities regarding alleged torture carried out by Lithuanian institutions be found ineffective and falling short of the standards arising under Article 3 of the Convention.

In 2011-2012 the numbers of human trafficking, one of the forms of modern day slavery, continued to rise. The human trafficking victims' rights remain feebly protected during pre-trial investigation and court proceedings, and the traffickers often avoid conviction or receive mild sentences. Cases occur where pre-trial investigations are dropped due to ambiguous testimony by the victim, without regard for the fact that this is often conditioned by vulnerable position of the victim.

### *Right to liberty and security of person. Right to a fair trial*

In 2011-2012 stories which garnered a lot of public attention brought and old human rights problem into view – law enforcement officers’ abuse of arrests and pre-trial detention. HRMI carried out analysis of the practice of pre-trial detention revealed that detention is used as a means to pressure the suspect and the courts are very willing to grant this measure when asked to do so by the prosecutors – 95% of applications for pre-trial detention are granted, and the courts’ decisions are not always in line with the provisions of the Code of Criminal Procedure and the standards arising under Article 5 of the Convention, which guarantees the right to liberty and security.

Public opinion polls showed that in 2011-2012 the right to a fair trial remains the most violated civil right; the society maintains a low level of trust towards judicial authorities. During the overviewed period Lithuania had lost ten cases in the ECtHR regarding the violation of Article 6 of the Convention, which guarantees the right to a fair trial. Six of these were due to the excessive length of the proceedings.

State guaranteed legal aid is not available to all of those who have a right to receive it; the information on the possibility to receive free or partly free legal aid is not being disseminated. Moreover, there is no mechanism to ensure the quality and effectiveness of the services provided by state funded lawyers. The legal aid is often guaranteed only formally.

### *Right to respect for private and family life*

In 2011-2012 information was revealed regarding mass surveillance by phone-tapping – this practice, commonplace in Lithuania, was confirmed by the European Commission, by publicizing that in 2008 Lithuanian law enforcement approached communication operators requesting data 85.3 thousand times.

The small fines on data use infringements continue to fail to prevent the spread of unlawful direct marketing. Furthermore, the 2011 research on the use of personal identification code reminded the deep-rooted Lithuanian problems, when indication of the full personal identification code is demanded. A spreading mania of using video surveillance was also observed, which includes both the public and the private sectors; however, the gaps in Lithuanian law prevent the effective protection against violations of privacy in this area.

Case-law reveals that instances occur where mass media publicizes information which is false and harms persons’ honour and dignity; the images of both adults and juveniles are also being used unlawfully.

The Constitutional Court’s ruling, where it is found that the provisions of the State Family Policy Concept are unconstitutional and that family can be found not only on the base of marriage, has divided both the society and the politicians in to two camps. One presented proposals to amend the Constitution, by providing that a family may only be based on marriage, the other presented proposals for the legalization of partnership.

Lithuania still has no Law on Gender Reassignment which is essential to implement ECtHR’s ruling in the case of L. against Lithuania. During the overviewed period no consensus was reached on the legalization of artificial insemination nor on the spelling of foreign names and last names in Lithuanian documents.

### *Freedom of expression. Freedom of assembly. Freedom of religion*

As the Lithuanian presidency of the EU council draws closer Lithuania was dictated stricter positions on the freedom of expression and freedom of the press by the European institutions, which urged Lithuania to decriminalize defamation and insult and libel. The OSCE was critical of the case where the Chair of Lithuanian Journalist Union was prosecuted for disseminating information publicized by Wikileaks on the possible corruption in one of Lithuanian media outlets.

The numbers of instances where the boundaries of freedom of expression are outstepped by inciting hate are not decreasing. And the developing case-law is still inconsistent. Furthermore, expression of an opinion is often not considered hate speech, thus cases arise where persons so inciting hate are acquitted. In 2013 a ruling was given in an unprecedented case, where a person was convicted for the denial of Soviet crimes.

During the overviewed period the number of grounds to limit freedom of expression increased in the Law on the Protection of Minors against Detrimental Effect of Public Information, which was especially strictly criticized by international organizations due to fostering homophobia and violating homosexuals' right to freedom of expression.

Freedom of assembly in 2011-2012 was also not guaranteed properly. Municipality administrations officials' actions and decisions in refusing to negotiate the place and time of assembly, the gaps in regulation of municipality decision makers' rights and obligations, as well as unclear provisions of the law on the organization of assemblies were the essential reasons leading to the change of Law on Assembly. The delay of the procedure to adopt the Law on Assembly essentially determined the problems regarding the implementation of this legal act and the freedom of assembly itself in 2011-2012. The list of former deficiencies in applying the law was supplemented with several more: cancelation of certificates, inappropriate procedure of negotiating the place and time of the assembly, inability to ensure several assemblies at the same time and harder issue of certificates to those whose ideas or culture of protest is inconvenient to the ruling political power.

In the area of freedom of religion the discrimination of the so-called untraditional religion communities increased. Even though the fundamental principle of equality before law is enshrined in the Law on Religious Communities and Associations, since this law's coming into force a divide settled between traditional and other religious communities' rights. The rights of persons belonging to traditional religious communities acquired a certain privileged standing in respect of the rights of persons belonging to untraditional communities or associations.

### *Right to political participation*

In 2011 ECtHR found in the case of Paksas v. Lithuania that a permanent ban from taking up the position of a member of parliament violates the right to free elections enshrined in Article 3 of Protocol 1 to the Convention. The Constitutional Court, reacting to the decision by the ECtHR, disseminated a message in which it stressed that because of the ECtHR decision an inconsistency between the Convention and the Constitution of the Republic of Lithuania emerged. The only way to remove the inconsistency was stated to be amendment of the Constitution.

During the 2012 Parliamentary election a multitude of violations were established, which lead to the annulment of results in two electoral districts. There are alarming reports of mass vote-buying in penitentiary institutions. Despite the fact that vote-buying cases in the first round of

the election received a lot of media attention and reaction from the public, the same kind of violations were already found during the early vote in the second round of election. A total of around 500 reports of violations were received during the election period and 27 pre-trial investigations were initiated.

During the overview period the problems regarding initiation of referendums and citizen-led adoption law initiatives, which were discussed in previous overviews, remained. Regulation which limits the citizens' initiatives of participation in the democratic process remains: in order to submit a draft law 50 thousand citizens' signatures in 2 months are needed; in order to initiate a referendum 300 thousand citizens' signature in 3 months' time are needed. Online voting, a measure, which could increase the participation in democratic processes, is still absent, despite that three quarters of the Lithuanian population support it.

### *Discrimination*

Discrimination of various social groups - women, people with disabilities, ethnic minorities, homosexuals, seniors – remains one of the sorest problems of Lithuania in 2011-2012. Gaps between men and women salaries and social insurance pensions remain, flexible working conditions and availability of child care institutions is still not ensured, thus preventing women from successfully integrating in to the labour market.

Women face discrimination at work – in 2012 Vilnius regional court found that the dismissal of a pregnant employee from the position of interpreter at the Romanian embassy amounted to a discrimination on the basis of gender. Constant discrimination is also faced by people suffering from various disabilities because of the physical, information and social environment which is not adapted to their needs. Homophobia is still widespread in Lithuania; homosexuals are not only discriminated against but are also the most common object of hate incitement, especially on the internet.

The right to respect for private and family life is not guaranteed for homosexual persons, as no regulation on partnership is still available; the efforts to restrict the freedom of expression of homosexual persons by initiating various laws still continues.

During the overviewed period the situation Roma ethnic minority remains especially problematic: the Roma in Lithuania are still marginalized, continue to live under life-threatening conditions and constantly face discrimination; no real integration of the Roma is being carried out, and the society is not sufficiently tolerant of the ethnic minority as well.

### *Rights of vulnerable groups*

In 2011-2012 the efforts of Lithuanian state institutions to improve the protection of child's rights were fragmentary, contradictory initiatives were commonplace, which were based not on the need to protect fundamental child's rights, but rather seeking to implement the unconstitutional discriminatory family policy concept. Politicians' indifference and passiveness in the area of child's rights protection during this period was also criticized by the media. The child's rights protection system needs essential changes by ensuring that national legal acts meet the requirements of international child's rights protection standards and adopting an effective protection from of all forms of violence against the child, as well as reforming child care and child's rights protection institutions' system.

Where the guarantees and protection of the rights of people with disabilities are concerned, in 2011-2012 effective implementation of the UN Convention on the Rights of Persons with Disabilities, which was ratified in 2010, remains a relevant question. During the two years of this Convention's entering into force no significant progress was achieved in guaranteeing the rights of the group which makes up almost 10 per cent of the society. It should be noted that persons with disabilities, especially with mental disabilities, are the most discriminated social group in Lithuania. People with disabilities face various violations of their rights every day – civil rights, right to accessible surrounding and information, right to education, work, social welfare, as well as systemic violations of the rights of people with mental disabilities in closed institutions.

Constant violations are also faced by HIV positive persons, one of the most vulnerable and stigmatized societal groups, which lack effective guarantees of the right to treatment and healthcare. HIV positive face discrimination in various areas, society is not being appropriately educated on the issue of HIV. The rights of asylum seekers, another vulnerable group, are also not ensured – the flawed Lithuanian asylum system gives rise to systemic violations of asylum seekers' rights, starting with unlawful detention, even of juvenile asylum seekers, unsuitable living conditions, lack of legal and other aid, and ending with an ineffective decision making system, which falls short of the standards set by international law.