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RIGHTS OF THE CHILD IN LITHUANIA

NGO Report for the UN Committee on the Rights of the Child
On the 3rd and 4th periodic reports by the Government of Lithuania

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Alternative report for the UN Committee on the Rights of the Child on the 3rd and 4th periodic reports by the Government of Lithuania has been prepared by the following independent human rights NGOs:

Human Rights Monitoring Institute

Global Initiative on Psychiatry

SOS Children's Villages Lithuania

Children Support Center

Lithuanian Students' Parliament

Child Line

Eurasian Harm Reduction Network

Lithuanian Welfare Society for Persons with Mental Disability "Viltis"

Coalition "I Can Live"

Family Planning and Sexual Health Association

Center for Attachment Parenting

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INTRODUCTION

Since 1990, when independence of Lithuania was re-established, the country has undergone several stages of complicated transition, with a combination of achievements and failures during the process of reforming child protection system and related services, such as health, education and social services, including services for children and families at risk. On the one hand, numerous innovations have been introduced in the field of family support and child protection services during the last 20 years, the first decade of transition (1990-2000) having been a most exciting and promising one. On the other hand, numerous attempts to implement the CRC, to follow its basic principles and to de-institutionalize the system of services for both children and adults have so far failed on systemic level. Consequently, Lithuania is still characterized by a high level of reliance on the system of residential institutions and high numbers of persons cared for within this system, including children under three years of age.

In this alternative report a group of independent NGOs, working in the field of human rights and rights of children, present concerns over variety of issues which hinder effective implementation of the Convention. Some „common denominators“ can be found, explaining stagnation and regress in the field of child rights and human rights in general, which have been observed during last decade, and especially since the onset of crisis in 2008. First of all, human rights and child rights failed to appear on political agenda of the Parliament and the Government, except in a few notorious cases that red-flagged the anti-human rights tendencies. Apparently, Lithuania does not have a national human rights institution yet, despite numerous recommendations by UN Treaty bodies. The working group, which was finally established after almost decade of lobbying, became a battlefield and produced a concept of NHRI that fails to follow the Paris principles. Furthermore, the last 4 years, since adoption by Seimas (Parliament) of the Family policy concept, have been marked by retrogressive tendencies in the area of human right, especially with regard to approaches to children and families representing vulnerable groups.

Challenges and obstacles

The Government avoided taking active steps in reforming residential care, and the process stagnated. The system of centralized residential institutions (including infant homes, special boarding schools, and special social care homes for persons with mental disabilities) managed to mobilize itself and to demonstrate strong and effective resistance. Thus 2000-2012 was marked in Lithuania by a lack of political will to continue basic reforms in the field of childcare and related services, despite impressive economic growth until 2008 and EU accession in 2004.

Many of values promoted by the UN and the EU, including tolerance and openness towards vulnerable groups and modern approaches in promoting and protecting all human rights of these groups, including children, appeared to be not popular among public at large, with survivalist attitudes dominating over ideas of social inclusion and de-institutionalization.¹ Ironically, both economic growth and EU accession have in fact contributed to increased investments in institutional care, both from the state budget and from EU Structural Funds.² Consequently, more than 20 years after the changes had started; the most visible effect of transformation appears to be the substantial improvement of physical conditions in residential institutions and formal standards of physical care of the residents (both children and adults).

Despite the announcement of the reform of childcare system in 2007 by the Ministry of Social Security and Labour³, the vague goals of this reform reflect the lack of political will to end the institutional placement of children, or even ignorance of the international standards. For example, one of the goals is that by the end of the reform the number of children in each institution will not exceed 60 children, which clearly indicates that this has little to do with commitment to basic change.

The strong tradition of institutional care as a “good enough” solution for protection of vulnerable groups of population relies on attitudes of many stakeholders, including politicians, professional groups and the general public. As long as discourse on how to support children from disadvantaged families is based on the tradition of blaming “bad” parents, institutional care will remain attractive idea among many stakeholders as an allegedly “lesser evil” to compare with what is perceived by many stakeholders as parental irresponsibility.

Another serious obstacle for the development of modern approaches and effective services for families and children at risk was the adoption (in 2008) of a controversial Family Policy Concept⁴, which is based on strong moralistic tendencies, focuses on a narrow definition of family (based primarily on the fact of marriage) and seems to be in conflict with the basic principles of the CRC and other international human rights treaties. Despite the best intentions to address in such a way demographic and social problems, this policy relies on temptation to solve problems related to crisis of family institute with the help of wishful thinking and tendencies to classify families as being good or not good enough. The recent ruling of the Constitutional Court of Lithuania in September 2011⁵ indicates that the Family Policy Plan violates the Constitution has provoked intensive public debate⁶ on important issues of the family policy and will hopefully pave way to positive changes of policies and services in the area of family support and child protection in Lithuania.

Still, retrogressive tendencies, with regard to child protection and family policies, remain strong. In June 2012, attempt was made to amend Constitution, so that family definition is narrowed in the Constitution according to the Family policy concept (as a response to the ruling of Constitutional Court that this concept is anti-Constitutional). Even if this attempt failed, it is highly possible that there will be other attempts in this direction.

Another example of the direction child protection policies may be taking in Lithuania was the decision of the policy-makers to amend the laws on the procedure of leaving the baby in “baby boxes” in 2009, which was followed by opening of eight “baby boxes” in seven largest cities during next two years. The enthusiastic proliferation of “baby boxes” in Lithuania, supported by broad coalition of politicians and other stakeholders without serious consideration of controversial issues related to the phenomenon⁷, might be qualified as one more example of lack of comprehensive understanding of protection of child rights and of the need to develop effective child protection and family support policies and services.

There are other numerous examples of socio-political environment, unfriendly to human rights/child rights principles. For example, international programmes and projects which support ideas of tolerance, gender equity, sexual education of children and adolescents, confidential services for adolescents, harm reduction programmes for youth affected by drug abuse, child friendly approaches in juvenile justice, are under constant attack by politicians who see these projects as dangerous to health and development of children and traditional national values of Lithuania. It is a popular trend to emphasize that national values/traditions, even if they are based on intolerance to vulnerable groups or tradition of violence (e.g., wide-spread corporal punishment of children), should be priority over obligations to follow international treaties. Although Lithuania is often criticized by international organizations in this respect mainly for its homophobic tendencies, it is important to understand that the scope of retrogressive tendencies is much broader. In fact, the unfavourable context threatens to serious extent the rights of children and adolescents to health and development and paves the way to discrimination of children and families belonging to various vulnerable groups.

Moreover, in June 2012 a draft of a new *Law on child protection* has been prepared, which is based on narrow concept of child protection and treats a child as an object, rather as owner and subject of human rights. This draft law is to replace the current *Law on Fundamentals of Child Rights Protection* and instead of improving the current regulation (e.g., in banning all forms of violence against the child, including corporal punishment) it narrows the scope of protection and is focused only on protection of children from families at risk. It also includes many controversial issues, such

as article on the duties of the child, introduction of a curfew for children under 18 from 10pm until 6 am, leaves broad indications for placement of children into residential institutions.

To conclude, the main obstacles for effective implementation of the CRC is lack of political will on the level of the Parliament and Government to develop and implement policies and services based on modern human rights principles and the existing scientific evidence. Committee should recommend to the Government of Lithuania to return to the path of decisions and investments based on universal human rights, to strengthen independent monitoring mechanisms, to invest in modern approaches based on basic CRC principles and to rely on non-governmental organizations that have a rich experience of advocacy and provision of modern services for families at risk. Lithuanian government should be reminded that retrogressive policies in the field of childhood and family policies are very short-sighted and will not bring expected outcomes.

CHILD MALTREATMENT

Prevalence of positive children satisfaction is one of the lowest among 38 countries⁸. This data correlates with the indicators of violence against children in close relations – in 2009, the Children Rights Ombudsperson received the highest number of complaints regarding violence against children when compared with the previous years (in 2009 – 195 complaints, in 2008 – 142, in 2007 – 91). Among the cases reported, the most frequent was violence in the closest – family – environment (89 complaints).⁹ According to the information gathered by the Child Rights Protection Services under the Ministry of Labour and Social Welfare, in 2009, a total of 1203 reports of children victims of physical abuse were received by municipal child protection services.¹⁰ The Department of Statistics (Statistics Lithuania) informs that 3222 children suffered from criminal acts in 2009.

Even though the numbers seem to be growing, the statistical data, provided by the Ministries does not fully reflect on the actual scale of child abuse in the country. One of the reasons of inadequately small official numbers is the lack of institutional competence to recognize child abuse and evaluate risk for the child. Information on the so called social risk families is registered in the national data base on recipients of social support. In 2009 more than 10 000 families raising almost 24 000 children were registered as social risk families. Purpose of these lists raise questions since the families stay enlisted as being of „social risk“ for years or even decades without any improvement. The only change taking place – periodic removal of children who were seriously injured or developed critical health condition. Families do not receive counselling and support, and thousands of *lesser* abuse cases, including the widespread corporal punishment, go unnoticed every year.

Corporal punishment

Children fleeing homes is also closely linked with violence: four out of five runaway children flee domestic violence.¹¹ Often disappeared children become victims of human trafficking or are recruited into criminal gangs and taken abroad.¹² In 2009, information appeared about the girls from Pagėgiai orphanage, who became assistants to the organized criminals from Tauragė town, carrying out their illegal activities abroad.¹³

Although already back in 2006 the Committee issued recommendations to Lithuania to fill legal gaps and protect children from corporal punishment¹⁴, in 2010, the Parliament has rejected the amendments to the *Law on Fundamentals of Child Rights Protection*,¹⁵ imposing prohibition of all forms of violence against children. The draft law defined violence against a child – a person under the age of 18 – as all forms of physical, sexual, psychological and emotional abuse, humiliation and exploitation, lack of care or neglect, posing threat to life, actual or potential harm to health, survival, development and dignity of the child, including corporal punishment.

Some of the MPs openly expressed their approval of corporal punishment, labelling it as an effective parenting technique or even the traditional cultural heritage.¹⁶ Research reveals that in Lithuania 11 % of adults believe corporal punishment can be used whenever the parent thinks it will be effective, 55 % of adults believe that corporal punishment is justified in some situations.¹⁷ Without the adoption of the law, explicitly prohibiting corporal punishment, the impunity of the perpetrators prevails, and the children who are subjected to violence or become witnesses of domestic violence, feel helpless and unprotected.

Sexual abuse

In the light of the so called “paedophilia scandal” in Garliava, the public became particularly interested in the issue of sexual abuse of children in domestic environment. The media reported a number of cases of molestation, exploitation for prostitution or sexual assault of minors in the domestic environment.¹⁸ Often, it was the lack of competence and cooperation among the state institutions that allowed continuation of abuse. In 2009, while awaiting the judgement by the court of appeals in the case of sexual assault on disabled minor, it has been found that the child was being repeatedly sexually abused by father.¹⁹ In another case, the police have refused, on the grounds of difficulties in gathering evidence, to open an investigation into the complaint filed by a mother regarding her sexually assaulted daughter. Thus the actions of the perpetrator – the father of the girl – have not been stopped; she was further suffering sexual, physical and psychological abuse, and was being forced to have sexual intercourse with strangers for financial gain.²⁰

Garliava: Case analysis

(Source: Public Statement by the Human Rights Monitoring Institute, 2012 May 11)

Fact sheet:

2004: Mother of the child L.S. (age: 17) gives birth to the child fathered by D.K. (age: 31)

2006 April: Mother leaves house of her boyfriend with the child

2006 May: Father retrieves the child from the kindergarten and refuses returning the child to her mother

2006 August: Mother turns to court to establish place of residence of the child

2008 March: Court establishes place of residence and custody of the child with the father; mother has unsupervised visitation rights

2008 November: Father of the child turns to police with allegations of molestation of the child by the alleged boyfriend of mother of the child

2008 December: Court denied mother’s visitation rights and banned any contacts with the child; alleged boyfriend A.U. indicted with alleged molestation

2009 March: Father of the child claims that A.U. with two other men (judge J.F. and unidentified another) has been molesting and raping not only his child but also child of L.S. sister V.N.

2009 May: Father of the child disseminates to media and public institutions DVDs with the interview of the child telling of the molestation she had allegedly experienced

2009 October: Judge J.F. who has been claimed by father of the child a paedophile and sister of the child’s mother V.N. are shot dead at their homes. Father of the child is claimed the main suspect; he immediately takes cover. Mother of the child goes into state protection.

2009 October: Custody of the child is given to the sister of the child’s father; she is appointed a temporary guardian.

2009 November: Mother of the child turns to court to retrieve the custody of the child.

2010 April: Body of the child’s father is found; multiple expertises establish cause of death an accident.

2010 May: Court assigns custody of the child with the mother; sister of the child’s father – the temporary guardian – protests the ruling.

2010 June: Main suspect in the molestation case, A.U., dies in accident.

2011 December: Court issues a ruling that child is to be returned to her mother’s custody

immediately (until December 30, 2011); sister of the child's father – the temporary guardian – refuses to comply with the ruling.

2012 January - May: The President declares that the temporary guardian “is complying with the court's ruling”; politicians and public officials, including the MPs, continuously visit the child.

2012 March: Bailiff attempts to enforce court's ruling and transfer the child to her mother; attempt fails due to resistance from temporary guardian, her family and protesters.

2012 May: Bailiff repeatedly attempts transfer of the child, successfully. Police forces were involved, the temporary guardian organized massive resistance, including the 24/hrs direct broadcast of the house and the child.

The *Garliava case* deserves a closer look being an illustration of the human rights mentality of Lithuanian government and society as a whole. Many different assessments claim the events in Garliava touch upon very important concerns about public life. This painful history has revealed a number of systematic failures – both in the mechanisms defending specific human rights and in the overall policy-making. What was revealed was the incapacity of the children's rights protection system, the growing alienation between the courts and the public, dependence of the law enforcement on politicians, and many other our nation's weaknesses and limitations on its way to maturity. All of this is directly related to the politics surrounding human rights – more precisely, its absence, since allowing ourselves to so easily ignore the principles and the norms of human rights – the very foundation of a democratic state, we have shown just how false our freedom is and how carefully we've been holding on to the coercive ideology of the Soviet mentality.

The reminder of the Soviet times to many comes at an annoyance, and yet we do continue the Soviet legacy. In Soviet times, children were considered to be the blossom of society, and yet it was exactly the era when the residential institutions system was built, including infant homes, boarding schools for athletes and for disabled, 24/7 *kindergartens*, and many others. The main purpose of these institutions was to ease the economic burden of raising children, both healthy and not, without having to sacrifice the parents productivity at work. A system was created where human dignity, privacy, family life, difference of opinion, and freedom of speech were considered to be irrelevant. Furthermore, these civil and political rights were thought to be dangerous, and were therefore, prohibited, since self-conscious people with independent thinking would not live in violence, and especially raise their children in such an environment. But this should come as no surprise, that while the economic considerations – the child is fed and clothed – for many seemed sufficient, the child's emotions – remained incomprehensible phenomena, since at the time no one cared for the emotions, opinions, and freedoms of an adult.

Today we live in a free country, and we have officially ratified most human rights conventions, yet most of our inner convictions remained the same. Children continue to be treated like pets – they are to be fed and clothed. Essentially, however, they are considered to be their parents' (and in some cases, even the state's) property, where the manipulation of children remains a natural measure of solving personal and social problems. The child rights protection agency workers' lack of competence and motivation have been brought repeatedly to the public's attention for many years now, however, the issue is ignored by decision- and policy-makers. The Ombudsman for Children Rights was blamed recently by the public and politicians for the ineffective and incompetent work of the Child Rights Protection Service. Even if we can forgive the ignorance of the public, whose education continues to be neglected, the actions of politicians and public officials who spread misleading statements are unjustifiable. What remains to be considered is whether our aim is to use all methods possible to re-establish violence and demagoguery-based procedures, where manipulation of citizens and their deception, via silent agreement, is considered to be inevitable.

Human Rights Monitoring Institute – an NGO – has no power to make decisions in this situation, however, while we can exercise the freedom of speech, in evaluating the recent events, the actions

and opinions expressed by law enforcement, politicians, and civil society groups, we declare the following unquestionable human rights violations in this one case of the child in Garliava:

- The failure to enforce the judgment and the continuous use of emotional abuse against child, which was publicly observed in media (the child-mother relation disruption, intimidation of the child of a danger to her health and/or life, continuous exposure of the child to the media and strangers, including politicians) - in this way the temporary guardian and her close surrounding gravely infringed rights of the child (UN Convention on the Rights of the Child art. 6, art. 9, art. 19).
- By failing to cease temporary guardianship (Director of Kaunas City Municipal Administration) or supporting this failure (Ministry of Social Security and Labour and the minister personally) authorities gravely violated rights of child, in this way reaffirming and supporting violence against the child. It should be noted that temporary guardian has duty to prepare a child for the life with a mother and to guarantee fluent transfer of the child; besides, temporary guardianship could be annulled at any time, including situations when temporary guardian is not fulfilling his/her obligations or violates rights of the child.
- Officers of the Child Rights Protection Services did not perform their duty - they neither monitored, nor documented obvious psychological abuse against the child, which were continuously aired in media.
- When turning for help to foreign experts (for example, Danish Association of Social Workers), the authorities knowingly mislead them on the assessment of the situation. It should be noted that real difficulties were avoidance of authorities to execute the judgment and immediately terminate emotional abuse of the child.
- Minister of the Interior Affairs and police under his subordination were responsible for ensuring execution of the judgment, therefore, the prolonged standoff of theirs should be qualified as refusal to execute the judgment.
- Government (including the President, the Prime Minister, the Speaker of the Seimas, members of the Seimas, the Minister of Social Security and Labour, Kaunas City Municipality) executed pressure upon law enforcement, Ombudsman for Children Rights and other public officials who tried to execute the judgment or are involved in the execution of judgment; openly questioned the court's decisions and expressed support for persons preventing the judgment from execution (returning the child to her mother). This should be treated as wilful violation of child rights, violation of child and mother's right to respect private and family life, violation of the principle of rule of law, including principle of equality before law and principle of justice, as well as, independence of courts and constitutional power separation principles' violations.

The child was finally returned to her mother, however highest officials debated whether it was an act of violence to enter the house of temporary guardian using necessary force, despite full incompliance of the guardian family with the legitimate requirements of the bailiff, law enforcement and child protection officers. A few internal investigations were initiated and the so called Public Commission declared that State has executed an act of violence by executing the court decision and returning the child to mother.

Victim support

In recent years, the cooperation of professionals has improved. Still the coordination of multi-disciplinary professionals' work in child abuse cases stays as a continuous problem. There is no official mechanism for multi-disciplinary procedures that would ensure mandatory reaction under suspicion of child abuse by all professionals encountering children. The mechanism should involve uniform instructions for reaction, provision of assistance for abuse victims and involvement in other procedures related to child abuse. The Penal Code states that child abuse should be reported to the Police or Child rights protection services. Other legal documents regulate actions of legal system professionals and other state institutions, but they do not involve cooperation with other institutions

and do not provide an overall mechanism on all levels. Only non-governmental organizations incidentally develop guidelines for multi-disciplinary cooperation in child abuse cases, but such guidelines stay on recommendation level, and are unable to enter state child rights policy. As a result we have uncoordinated and unmatched actions, repeated evaluations and legal procedures, low effectiveness of procedures, child privacy violations, insufficient support for the child and insufficient family and related persons supervision.

All abused children and their families should be granted a chance to receive free of charge integrated help: psychological, psychiatric, medical, social and legal. Generally, psychological help is available in Pedagogical psychological services, schools and mental health centres (the latter provide psychiatric help as well). However, the number of staff is insufficient and availability of the long-term psychological help and psychotherapy is very limited. Only NGOs located in the biggest cities offer the complex help. However, these NGOs are dependable upon the yearly award of partial support by the Ministry of Social Affairs and Labour provided through the project tender. This results in instability of services provided and mental health professionals hired. The continuous long-term financing is necessary in order to provide stable permanent and effective victim support. Furthermore, the legal system professionals are not obliged to direct abused children and families for help, thus many of them have no idea what help they are entitled for and how can they get it. Therefore, a binding requirement to inform abuse victims of support services and direct cooperation in ensuring those would facilitate multi-disciplinary cooperation and grant timely help for abuse victims and families.

ALTERNATIVE CARE

In 2009-2010, there was an increase in the number of reports on physical, emotional and sexual abuse among and against children in institutional care, and the children leaving the institutions were facing difficulties of social integration, some of them were being recruited to criminal gangs.

With an unjustifiable delay, the reorganization of the residential care system was underway. The *Plan on Reorganization of Child Care Facilities Network*, approved on 11 October 2007 by the order of Labour and Social Welfare Minister, foresaw that beginning with 2010 the number of places in each of the facilities will not exceed 60 persons, and the work in the institutions will be organized in accordance with the principles of foster families.²¹ It is anticipated that by 2015 the number of children in each foster family will not exceed 8.

According to the 2009 data of the Statistics Department, only a small minority of children live in small family-type foster homes, while the vast majority still live in large residential care institutions.²² According to the Social Welfare and Labour Ministry, in 2010, 25 public care institutions were larger than 60 places.²³

There is a considerable shortage of psychological help services in residential care institutions. Despite the obvious necessity of such services, some of them have cancelled psychological support services. For example, a few years ago, children's home in Valkininkai "Spengla" became known publicly because of its problematic situation,²⁴ but in fact they have had consciously refused services of a psychologist.²⁵

During the period under review, frequent reports appeared that children from residential care homes are being recruited to criminal gangs or become victims of human trafficking, and that they suffer physical and emotional abuse and sexual exploitation. Investigation in 2010 revealed that three persons have been sexually abusing orphans since 2006.²⁶ Police officers claim knowing of the cases when care home employees fail to report to the police of the existence of prostitution networks in the institutions as they fear losing their jobs or damaging the institution's image.²⁷

The situation of children left without parental care is further aggravated by the prolonged adoption procedures. In 2010, the majority of children listed for adoption were older than 10 years. Usually Lithuanian families do not wish to adopt children of this age. It is necessary to solve more efficiently the issue of restriction of parental authority and optimize the procedure for international adoption, in order to ensure the right of the child to a family.²⁸

It is necessary to reform large state care institutions without further delay. Regretfully, the deinstitutionalisation strategy in Lithuania mainly aims at reorganization and renovation of institutions, instead of building of professional family-type alternative care system and investing into preventive/supportive work with families at risk who continue to produce everlasting supplement of children for institutions. It must be noted that in 2011 average sum of money allocated from the State to one child's maintenance in state, municipal or non-governmental children's social care homes was LTL 2000 (EUR 579), social care homes for children with disabilities received approximately LTL 2300 (EUR 666) month/child, whereas the guardianship benefit (for the child under guardianship in guardian family) consisted only LTL 520 (EUR 150) month/child.

Moreover, on in autumn of 2011 the Ombudsman for Children's Rights performed an assessment No 15/05/16-2011/KI-13 "On the Problems of Situation of Children under the Age 3-4 in Orphanages for Babies with Special Needs and Other Care Institutions". The assessment highlighted many problems and challenges and encouraged State and municipal authorities to solve them without further delay. However, 9 months after the assessment's publication there are yet no evident efforts and actions from the competent authorities with regards to this.

Every year more than a 1000 children are placed into institutions. Majority of children are younger than 10 years (52 % of children living in institutions). It is extremely concerning that 33 % of children deprived of parental care who are placed into institutional guardianship are of 0-3 years of age and are accommodated in specialized big orphanages that have status of medical institutions. As a result, a lot of children living there have medical diagnosis that prevents their timely adoption and guardianship.

What is more, the number of cases (per year) of placements into family guardianship has been decreasing over the last few years: 2007 – 1216; 2008 – 1216; 2009 – 1054; 2010 – 915; 2011 – 908.²⁹ According to the information of State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour³⁰, at the end of 2011 there were 4339 children whose relatives were appointed as their guardians. This number constitutes 68.8% of all children under family guardianship. Statistical data of 2009 and 2010 also shows that the number of children under guardianship in relatives' family remains the same year by year (approximately 68% of all children under family guardianship). All in all, it is obvious that in Lithuania most of the cases of family guardianship consist of guardianship in relatives' family, but not in families of people without consanguinity. Therefore, in order to have more alternative care options and prevent children's placement in institutions, competent State authorities must devise and implement effective measures for alternative care options and encourage family guardianship in families, other than relatives.

With regards to the preparatory training for prospective guardians it should be noted that at the moment there are different requirements for close relatives and other people willing to become child's guardians in Lithuania. According to the Lithuanian legal regulation every prospective guardian must meet the same legal requirements (older than 21, legally capable, not suffering from chronic alcoholism, drug addiction, mental or other diseases included in the list approved by Government, etc.), but a course of preparatory training is not obligatory for close relatives (siblings, grandparents).³¹ Meanwhile others must undergo a 30 hours preparatory training. Guardianship in the close family environment is of primary importance for the child, but on the other hand there should be more attention paid to the close relatives' preparation to become guardians in order to ensure the quality of care.

Besides the family guardianship and institutional care Lithuanian legislation determines another form of alternative care – *social family guardianship*.³² Although the aim of social family is to care for a child in a family environment, there are no requirements for the social family's members to undergo a course of preparatory training; social family's suitability to care for the child is decided by the local child protection authority. The social families are monitored by the municipality child rights protection service and Social Services Department under the Ministry of Social Security and Labour – this mechanism of monitoring is similar to the children's social care homes. Media has reported cases of maltreatment (starvation, physical and sexual abuse) of children in these social families that function more like informal institutional care than that of foster family.³³

Due to considerable number of people emigrating from Lithuania (in 2010 – 83 157 emigrants; 2011 – 53 863³⁴) there are many children who stay in Lithuania without parents (usually in families of relatives). Cases of temporal placements into guardianship at parents' request (per year) are growing as well: 2006 – 352 cases; 2007 – 990; 2008 – 1874; 2009 – 1432; 2010 – 1641; 2011 – 1733³⁵. The procedure of such placement is regulated by the Order of the Minister of Social Security and Labour³⁶ and is oversimplified. First of all, a child is temporarily placed into guardianship at parents' request by the Order the Director of the Municipality Administration of the child's habitual place of residence. Although such placement is possible in cases where both parents (single parent) plan to temporarily depart from Lithuania, in practice there are cases where a child is placed into guardianship at parents' request when only one of the parents depart abroad (especially in cases when parents are divorced and child's place of residence is established with the leaving parent). Alarming tendency is that more and more placements last for longer than one year³⁷. Even more, competent institutions do not investigate how many children are left behind without formal procedures. Media reports of the cases when children who were secretly left for care of neighbours or acquaintances were abused³⁸, however it is obvious that there are more cases that are never discovered/investigated. Competent institutions are well aware of these problems, however they take no action in initiating dialogue with emigrants in order to raise their awareness of the children's needs, including child's right to live with his/her parents and risk of parent-child relationship breakdown.

Another concerning tendency in Lithuania is that in 2011 72 % out of total number of children deprived of parental care were taken from their families because of lack of care, neglect and abuse, endangering child's health and/or life. This number shows that the support network for families at risk is inconsistent and ineffective; State does not invest in professional work with families, which continue to exist in vicious circle of financial support based on the number of children. Ironically this financial assistance is called social support whereas in practice social workers mostly perform perfunctory visits to ensure all children are alive and none needs urgent transfer to state care home and/or hospital. Consequently, the lack of prevention of family malfunction produces direct impact on the number of institutionalized children.

Another very painful yet unexplored issue is that of children leaving institutional care. No effective measures have been taken to reduce social isolation of children leaving residential care and help them to integrate into society. The biggest challenges are faced by orphans turned adults – they lack social and professional skills, and there is no procedure set for providing such adults with social housing.³⁹ They receive symbolic financial support that is not sufficient for anything but a start of independent life, and there are no relevant services for care leavers.

Leaving care and after care services are only provided in some regions by some NGO's. However, these fragmented efforts are not sufficient. State must look into this issue in depth: collect statistical data on numbers of such children, their education, employment and housing, and produce set of measures that would ensure their social protection and daily support, including monitoring and assistance.

CHILDREN IN CRIMINAL PROCEEDINGS

In 2010, the issue of questioning of children in criminal proceedings was intensely discussed. In recent years important achievements were made to improve the conditions of children participation in legal procedures: trainings for legal system professionals and multi-disciplinary teams were organized continuously by the state and NGOs, cooperation between legal system professionals and psychologists improved, in 2008-2010 new interview rooms were created (41 in courts, 5 in police headquarters and 2 in NGOs).

Unfortunately, equipped interview rooms are rarely used. In 2009, 20 interviews were conducted in the interview rooms for children in Kaunas, 8 – in Klaipėda, and 9 – in Šiauliai. In NGO Children Support Centre, in 2009 31 child forensic interview was made, in 2010 – 60 and in 2011 – 30 interviews. Since around 3000 children annually become crime victims and, about the same number of them are crime witnesses in Lithuania,⁴⁰ such extent of the use of the rooms is of little value. There is no full official statistic data, how many children victims or witnesses of crime participate in forensic interviews. Moreover, no official data is available about important practical issues of forensic interviewing of children (how many times the child is interviewed during the investigation of the case, where the child is interviewed, who interviews the child, who represents the child, etc.). NGO Children Support Centre initiated research about practical situation of children interviewing in Lithuania.

Legal experts state that Lithuania has enough laws to protect children in the legal process; usually the problems arise with implementation. Hereinafter existing gaps in the system:

Lack of Specialized Professionals

There are no specialized judges, prosecutors and police officers, dealing with child abuse cases. Pre-trial judges, who, according to the law, are responsible for forensic interviews of victims, are rotated every 2 years. Prosecutors may receive fragmentary specialization in some prosecutors' offices, and still only on related to cases with juvenile victims and abusers. Criminal investigations are implemented by criminal police officers dealing with all kinds of violent crimes with young and adult victims. Clear specialization would allow for effective trainings and thus more effective cooperation.

Lack of Competence

Judges and prosecutors participate in various trainings organized by legal training centres. However, they are not provided specific knowledge in the field of child development, child and family psychology, crisis and traumas psychology. This problem is closely connected with the mentioned above – lack of specialization. The emphasis should be on continuous practical trainings and multi-disciplinary meetings, only thus can the long-term effect be achieved.

Faulty Practice of Forensic Child Interviewing

Forensic child interview is one of the core procedures in legal process, related to crime against children cases. The important change in the Penal Procedures Code came into force on January 1, 2009: article 186 states that juveniles usually are interviewed once; the judge can forbid participation of the suspect in child's interview, if his/her participation can affect the child; child can be interviewed in separate environment from other process participants, except psychologist or child rights protection professional, the record of the interview should be made then, etc. Experts have established that because of the poor organisation of the interviews during criminal proceedings, victims suffer secondary trauma, and the reliability of their testimonies might decrease. It is therefore necessary not only to install new interview rooms for children, but also to ensure that they are being interviewed by qualified and competent specialists. However provisions of this article are not sufficient for establishment of good practice in forensic child interviewing. In 2002, 2008 and 2009 General prosecutor issued orders regulating legal procedures related with children – victims and witnesses. Unfortunately, these regulations are not implemented properly. Children still do participate in multiple legal procedures; standard practice is repeated and unprofessional interviews

with the child; incompetent evaluation of child evidence remains the case. In summer of 2010 a discussion started at the Ministries level on the procedure and standards of child interviews. In 2011 the decision to employ 5 forensic psychologist into the Court system was made. Still, the finances were not allocated and psychologists didn't start their job yet.

Undefined Role of Psychologists in the Legal Process

The role of psychologist in legal process is not clearly defined by law. This creates grounds for interpretation on actions and responsibilities of a psychologist that often lead to destructive consequences. Another serious related problem is the lack of qualified forensic psychologists with specialized knowledge and skills necessary to assist children during the legal procedures, who would be able to carry out the interviews.

In the *National Programme on Prevention of Violence Against and Support for Children 2008-2010*⁴¹ no funds were allocated to finance the services of such specialists. In Klaipėda city, a psychologist, after conducting two interviews with child victims, wrote a resignation letter because she was not able to do such a complex job without an adequate pay.⁴² Job description of psychologists in pedagogical psychological services and mental health centers do not provide an obligation to assist and/or represent children in legal procedures and provide assistance for the legal system professionals. Therefore they often refuse to take part. As a result, legal system professionals willing to execute their functions adequately and cooperate with psychologists face a problem of finding a willing professional. Currently this assistance is provided on incidental basis by several NGOs in three cities only. A functional mechanism should be established immediately by building a pool of specialized mental health professionals and enabling identification of a psychologist bearing clearly established obligations for cooperation within the legal system.

The latest practice shows that psychologists mostly are invited to the interviews in the sexual abuse cases – thus the other cases with vulnerable victims and witnesses, who suffered other crimes, are denied assistance of psychologist and/or child protection officer. In November 2011 General Prosecutor's order on Recommendations on Interviewing Child Witnesses and Victims of Crime revoked obligation to ensure participation of psychologist or child rights protection officer in every forensic interview of child victim or witness of crime. Child's social and psychological maturity and the need of support to interview child should be evaluated before making the decision about participation of psychologist or child rights protection officer.

Moreover, special needs of child victims or witnesses are not attended to at all. In cases where children with disabilities or language barrier are concerned, no special measures are applied.

When the necessity arises to interview children in criminal investigation, the child rights protection officers do not attend the interviews and do not represent the interests of the children after their working hours.

CHILDREN WITH DISABILITIES

Media continued to stigmatize mentally disabled; public opinion polls indicate a long lasting and extremely negative attitude towards mentally disabled and persons suffering from mental illness.

Disabled children do not receive adequate support; a tendency remains to isolate them or attempt to “cure” them rather than integrate into society. In Lithuania, there are still cases recorded when a disabled child is not welcome in an ordinary school because the school cannot be bothered to look for a teaching assistant for the child.⁴³

Limited accessibility of the environment prevents disabled children from obtaining professional education, adapted to their needs.⁴⁴ Currently, only Vytautas Magnus University and the Music and

Theatre Academy provide the appropriate conditions for students with disabilities; the rest of the higher education institutions are adjusted only partially. Inaccessible environment limits academic mobility of the students. In 2008-2009, only 4 students with disability participated in the Erasmus/Socrates programme, and not a single disabled student has come to study in Lithuania.⁴⁵

Human Rights Violations in Mental Health Care Facilities

In 2009-2010, no particular steps were taken towards the implementation of the *Mental Health Strategy*.⁴⁶ In 2009, there were 25 institutions for mentally disabled in Lithuania; operating on the basis of social exclusion, they housed over five thousand children and adults. These numbers are unacceptably high, bearing in mind that European states had been urged for decades to replace institutional care with community services.⁴⁷

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

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

Right to Development

Lithuania, as most other countries of Central and Eastern Europe, especially those who have been a part of Soviet Union, have inherited a huge disproportion in the infrastructure of services. Health care services, addressing infectious and somatic non-infectious diseases, have been extensively developed (with tendency on overuse of medical services, to hide existing social problems). However, services addressing mental health problems and serving children with developmental disabilities, especially – a range of modern psychosocial interventions – have never been developed in this part of the world, as these problems were delegated to segregated residential institutions. After 23 years of change, in Lithuania this huge gap remains not adequately addressed, and the health care system remains heavily investing in biomedical model and failing to invest in public health approach and in psychosocial interventions for children and families at risk.

While looking deeper for the roots of the failure to effectively transform health and social services for children and families at risk, this systemic challenge needs special attention. This is an urgent need to restore balance between the biomedical and psychosocial dimensions of the dominant paradigm.

Starting from infancy, infant homes have the legal status of medical facilities and remain under the authority of the Ministry of Health. The official title of the infant homes (there are five infant homes) in Lithuania is “Home for infants with disturbed development” which reflects still prevailing views of the problems of children placed in infant homes. The very fact of maintaining this title is an obvious example of continuation of a self-fulfilling prophecy based on the belief that children who are separated from families at risk have disabilities or medical conditions. Most of the children under three years of age who are placed in infant homes do not have disabilities or developmental disorders as such; they are institutionalized because they have been deprived of parental care. However, the majority of these children are diagnosed in infant homes as having some kind of developmental disorder, to justify the mission of the infant home as a medical facility. This kind of excessive medicalization may be behind the fact that international adoptions still prevails over

domestic adoption in Lithuania. Domestic foster parenting and domestic adoption may be hindered by the message sent to potential foster families and adoptive families in Lithuania that children in infant homes have developmental disorders or serious medical conditions.

To demonstrate how the tradition of medicalization continues in the assessment of children who are referred for the stay in infant homes, the following analysis of diagnostic decisions made in these facilities is presented, based on the study performed by the Institute of Social Research in Lithuania. Upon the accommodation in infant homes diagnoses were made for infants and children under the age of three years of age. Only one disease was diagnosed in 25% of children, two diseases in 32%, three diseases in 18%, four diseases in 11% and five diseases in 10%. After a certain period of living in infant homes the situation tends to change: only one disease is diagnosed in every second child, two diseases in 26% of children, and three diseases in 12% of children, four diseases in 7% of children and five diseases in 6% of children. Upon the accommodation more than half of infants and children under the age of three were ill with the diseases of perinatal period (57%), mixed specific developmental disorders were diagnosed to every fifth child, endocrine, nutritional and metabolic diseases were diagnosed in 19% of children, congenital diseases of formation of the blood circulation system were diagnosed in 18% of children, anaemia was diagnosed in 13% of children.

In 2011 the Ombudsman for Child Rights launched an inquiry into the situation of infant homes as medical institutions, raising the issue of high costs of care of children in these institutions and the status of protection of their rights. Also, in July 2011, the President of Lithuania initiated a round-table conference on the issues of services for vulnerable groups of the population. This conference was very much needed to open public debate on serious gaps in the provision of services, including services for children at risk and children with disabilities. The alarming fact of huge investments, including EU funds, still feeding ineffective residential institutions for children and adults, has been raised. However, it is not clear at this stage whether these are the first signs of real change – or whether it will result in yet another unsuccessful attempt to overcome the legacy of the system which is so skilfully resisting change despite huge evidence of its ineffectiveness and harm. There is no doubt that urgent political decisions are needed to re-start the process of de-institutionalization in general and in particular, to stop placement of young children in institutional care in Lithuania. So far, Lithuania remains an example of huge opportunities which have been missed. After promising initiatives in 2011, nothing in this direction has been done so far in 2012.

Regarding children with disabilities, there is a hope that the ratification of the CRPD will serve as a catalyst to continue with the transformation and reasonable de-medicalization of services for children with disabilities. Several ministries need to be equally importantly involved and committed to substantial progress. The role of the Ministry of Health seems to be crucial, as most of challenges and obstacles are at present in the healthcare sector, including the fact that the infant homes for children under three years of age are a part of healthcare system. The principles and Action Plan of the WHO European Declaration on the Health of Children and Young Adults with Intellectual Disabilities and their Families, endorsed in 2010 by representatives of the health ministries of all European countries, offer a clear opportunity for change – but no steps have been undertaken in the year following the endorsement of the Declaration by the Lithuanian Ministry of Health.

Ironically, after 50 years of ideologically driven dominance of the biomedical component and neglect of psychosocial interventions in the then Soviet Union, Lithuania (maybe not as exception, but as a rule for the whole region of Central and Eastern Europe) experienced one more wave of reductionist biomedical approaches in managing complex societal problems such as the prevention of destructive and self-destructive behaviour and other public mental health problems. Governments were reluctant to move to modern public health approach and to invest in modern psychosocial technologies, while the reimbursement of new biomedical technologies (such as the new generation of antidepressant and other psychotropic medications, or new technologies in genetics and perinatology) was quickly accepted as a first priority. Just to mention as an example, developmental

paediatrics does not exist as a subfield of paediatrics, and there is no such course for medical students in universities training future medical doctors.

As monitored by NGOs since 2007, investments in biomedical technologies (medications) in the field of mental health care from obligatory health insurance fund (both for adults and children) exceeded investment in psychosocial interventions more than 200 times. This huge disproportion was recognized and highlighted as a serious concern in the State Mental Health Strategy, approved by the Seimas (Lithuanian Parliament) in 2007. However, during the later years no measures have been undertaken to address this systemic problem, and the development of psychosocial interventions for children and adults remains a low priority for the Ministry of Health and for the government. This tendency has been especially threatening for modern development of child mental health services and developmental paediatrics which are based in practice mainly on a broad spectrum of effective psychosocial interventions. To draw attention to this huge disproportion within the priorities in healthcare policies and services is of special importance for the issue of promoting healthy parent-child relations from infancy, and thus preventing the institutionalization of children. While paediatrics – including the fields of perinatology, obstetrics and medical genetics – has been developing in line with intensive implementation of modern biomedical technologies, these developments have not been adequately supported by parallel development of modern psychosocial technologies and training of healthcare professionals in basics of management of problems in the field of human relations.

SPECIAL ISSUE: SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

The teenagers in Lithuania lack evidence-based sexual and reproductive health and rights information. There are no youth-friendly services (YFS) in Lithuania, so there is a necessity to establish accessible, acceptable and available services for young people, that should meet the different needs of all young people whether they are male or female, whatever their age, ethnic or religious affiliation, sexual orientation, lifestyle or beliefs.

Health care providers lack of non-judgemental attitude to teenager clients; condoms and emergency contraception are very expensive and hardly accessible for adolescents; STIs tests and treatment aren't compensated; confidentiality is not always guaranteed – there cases when teenagers over 16 years need parental consent to get reproductive health services.

There is still a widespread belief that sexual education leads to sexual intercourse and promiscuity. In 2007 Ministry of Education and Science approved the program „Preparation for Family Life”. The program was created by conservative groups and does not correspond with the international human rights standards. It is necessary to create an alternative sex education program for schools.

SPECIAL ISSUE: ILLEGAL DRUG USE, DRUG DEPENDENCE, THE RIGHT TO HEALTH

Drug prevention projects executed in Lithuania are focused mainly on universal prevention in local communities and schools, aiming at protecting young people against drug use. Significant gaps remain in provision of health, psychological and social support to children who use drugs and who often face lack of information about existing services. As consequence, children who use illegal drugs face moral condemnation, stigma and legal barriers – such as need for parental consent preventing the children from enjoyment of right to health in accordance with Article 24 of the Convention on the Rights of the Child.⁴⁹ The Committee has been consistent in its view that drug use among children should not be treated as a criminal issue and that children who use drugs should be provided with appropriate health and social assistance.⁵⁰

According to the European School Survey Project on Alcohol and Other Drugs, the use of illegal narcotic substances in Lithuania is high when compared to other countries of Europe⁵¹ with slight increase in illegal drug use between 2007 and 2011.⁵² At the same time, there is lack of information on how many children that either contact the health care facilities or come in contact with law enforcement obtain social, psychological and health services due to drug use. While the State supports various drug prevention programs among children, little is done in order to organize appropriate care for children that already use illegal drugs. It is important to organize the drug treatment and care programs and adopt them to the needs of children who already use illegal drugs. Lithuania has adopted number of legal document in order to organize the care among children who use illegal drugs.⁵³ However, there is a lack of unified guidelines what help should be provided and what is the role of different institutions when it comes to children who already have a problem drug use. The existing legal acts also set barriers in provision of care to children who use illegal drugs – the specialist cannot provide consultation to children without the consent from the parents, absence of which restricts the specialists to work with children. Moreover, there are number of issues in the implementation of support to the children who use illegal drugs⁵⁴:

- While the schools are seen as a key point for establishing contact with the child, and the teachers, psychologist and social worker at school are responsible for the consultation and provision of initial care, most of the social workers and psychologist lack information on different substances, their use and their effect, which restricts their ability to assess the state of psychological and psychical state of the child;
- In turn the children are poorly informed about where they can obtain help, they are reluctant to open up to the professionals working at schools , who as research done in schools show often have morally condemning attitude and hence stigmatizing approach towards children who use drugs, lack the capacity to communicate with children and young people;
- Children are reluctant to seek help from professionals working at school, as they are afraid of lack of confidentiality⁵⁵, often are ashamed of their drug use due to the stereotypes build by drug prevention campaigns which often stigmatize and discriminate against those who already use drugs and find the steps in seeking help as a sign of weakness. In case the professionals working at schools are willing to establish contact with the child, most of them won't be able to come for second consultation, as he/she will have to bring the parental consent during the second visit;
- Due to lack of guidelines that would allow the communication between professionals working at schools and in the drug treatment centers and facilities, professionals working in schools do not communicate and lack professional development on the issues of drug use and drug addiction, often do not know where to refer the child with the drug problems, meaning that the children do not get effective consolations.⁵⁶

SPECIAL ISSUE: BIRTH AT HOME

Right to private and family life engulfs also right to choose place and conditions of child-birth, including giving child-birth at home. Lithuania does not forbid the child-birth at home per se, however it forbids health professionals to participate in the process and/or provide help to mother and child. The present legal regulation under the discretion of the Lithuanian Ministry of Healthcare *expressis verbis* prohibits obstetricians and ob-gyn physicians to provide obstetric services, and specifically to conduct childbirth outside maternity facilities. Consequently, women, chosen to give birth at home, and their babies do not have access to qualified care.

According to the European Court of Human Rights, human rights cannot be theoretical and illusory; all rights must be practical and effective. Therefore the State must ensure real and efficient

implementation of right to choose place and conditions of the child-birth, including adequate legal regulation and accessibility to health professionals during child-birth in home environment.

DRAFT LAW ON CHILD PROTECTION

Ministry of Social Security and Labour has prepared and published on their website a Draft Law on Child Protection, which is to replace the current Law on Fundamentals of Child Rights Protection⁵⁷. The new Law is based on narrow concept of child protection and treats a child as an object, rather as owner and subject of human rights. Instead of improving the current regulation (e.g., in banning all forms of violence against the child, including corporal punishment), it narrows the scope of protection and introduces many controversial issues.

Child as an Autonomous Subject of Rights

The title of the draft law, as well as its provisions as a whole, suggest that the Lithuanian State renounces the rights-based approach to child protection. The child is perceived not as an autonomous subject that derives its rights from his or her inherent human dignity, but as an “object,” whose protection rests solely at the discretion of the state. Such an approach contradicts the child rights imperative that has been repeatedly emphasized by the Committee (see the General Comments No5 and No13).⁵⁸

Moreover, this approach presumably would contradict the Constitution of the Republic of Lithuania as well (articles 18 and 29). Adoption of the draft Law would substantially undermine the status of the child as an autonomous legal entity in respect to adults and therefore such regulation could violate the constitutional principle of equality of all persons. Although children require extra protection due to their initial dependent condition, legal and other protection measures must complement rather than replace the protection guaranteed to them by the child’s intrinsic rights.

The draft Law raises concerns regarding its compatibility with the current legal system: it is unclear on what grounds the regulations of the draft Law differentiate between public institutions responsible for “protection of child” and “protection of the rights of the child” and how this will affect the integrity of the child rights protection system (e.g., “Child Protection Department within Municipal Administration”, and “State Child Rights Protection and Adoption Service”, “Ombudsman for Children Rights”).

Purpose of the Law

The purpose of the law is “to establish the measures of child protection system, which would help to ensure a safe and suitable environment for the child’s full and harmonious development, when these conditions cannot be provided by the child’s parents or legal guardians”.⁵⁹

This statement implies that protection of the Law does not encompass every child in the jurisdiction of the Republic of Lithuania, but only the vulnerable ones from the social risk families. While children in social risk do in fact need an extra level of state protection, however, under the Convention, Lithuania is obliged to ensure effective legal protection of child rights for all children under the jurisdiction of the Republic of Lithuania. Article 2 of the Convention clearly states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind [...]”. Thus, the states must refrain from imposing such legal regulation, which would leave a great number of children in its jurisdiction without any legal protection.

It should be noted that such an unreasonable narrowing of the scope of the law and its application could potentially conflict with the above stated constitutional principle of equality of all persons.

Therefore, it is strongly recommended to edit the provisions of the draft law so that it would be clear from its purpose and the rest of the provisions that the law guarantees the protection of children's rights equally for all children under the jurisdiction of the Republic of Lithuania.

Protection from Violence

In their 2010 Annual Report, the Child Rights Protection and Adoption Services stated that: "Domestic violence which is often considered to be an acceptable parenting measure, is characterized by physical and humiliating punishment. Domestic violence remains the most widespread yet the least visible part of the problem."⁶⁰ The law is meant to prohibit the use of corporal punishment of a child – specifically Article 45 Paragraph 1 provides that "a child must be educated, trained, and disciplined without violence and with respect for his or her inherent dignity. Physical punishment, physical or mental torture or other cruel treatment of a child is prohibited, as is humiliation of the child's inherent honour and dignity."

The Committee has urged the member states, including Lithuania, to explicitly prohibit by law, the use of corporal punishment against children, and as such the proposed provision of the law is a welcomed step in the positive direction. However, it should be noted that the provision prohibiting corporal punishment is not established in Section II of the law which sets the fundamental rights and freedoms of a child, but instead in Section VII, which addresses the child's social environment.

As such, this regulation is problematic and runs counter to one of the fundamental principles of the Convention. Under the Article 19 of the Convention, to grow and develop free from all forms of violence, including corporal punishment, *is an inherent right of every child*. In the General Comment No. 13 on the "Child's right to be free from all forms of violence" the Committee unequivocally stated that under the Article 19 of the Convention, the member states have an imperative obligation to institute the necessary laws to prohibit all kinds and forms of violence against children, and to set up official punitive or other measures in cases of offense.⁶¹ Attention should be drawn to the fact that violence against children is constantly changing and diversifying; there are new forms of violence, such as violence which spreads via information technologies. Thus, it is necessary that the law clearly establish that *all* kinds and forms of violence against children are equally prohibited.

With this in mind, it is recommended that Section II of the Law, which lays down the child's basic rights and freedoms, specifically, Article 8, paragraph 3, which states that – "it is prohibited to torture, injure, and to use cruel treatment toward a child, and degrade his or her honour and dignity," is amended, to include the prohibition of *any* violence against children. It is suggested that Article 17, Paragraph 1, Part 2, should be edited as follows: "when faced with a situation of a child refusing his or her duties or otherwise shying away from his or her responsibilities, the child's legal guardians, by law, are entitled to apply disciplinary measures according to their own discretion, *but excluding any use of violence against the child.*"

Since by the Convention, Lithuania is bound to ban all types of violence against children, and to provide punitive and other measures for any use of such violence, it is in the interest of certainty and foreseeability of the law, i.e. the person's ability to envisage the consequences of their potential actions, that the law establish a clear definition of violence.

Article 19, Paragraph 1 of the Convention, obliges member states to take "*all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*"

The previous draft law of 2009 amending the *Law on the Child Rights Protection of the Republic of Lithuania*, specifically Article 2 defined violence as any form of sexual, physical, psychological or emotional abuse, verbal harassment and humiliation, parental neglect or lack of regulations causing

life-threatening, real or potential harm to the child's health, survival, development or dignity, as well as corporal punishment.⁶²

Such a definition is clearly consistent with the Convention, Article 19, Paragraph 1 and the definition of violence provided by the Committee in its General Comment No. 13. Since the 2009 draft law amending the *Law on the Child Rights Protection of the Republic of Lithuania* was never adopted, the definition of violence must be established in the current law. Further, the law must clearly prohibit all kinds and forms of violence and establish specific liability and punitive and other measures for any such violation of the law.

It should be noted that the *Law on Protection from Violence in Close Environment of the Republic of Lithuania*⁶³ establishes a clear definition of violence as an intentionally committed harm, either actively or passively inflicted, which has physical, mental, sexual, economic or other impact on the victim, and due to which the victim experiences physical, material or moral consequences, thus in order to maintain the integrity and clarity of the legal system, the definition of violence must also be laid down in this law.

The Statutory Regulation of Duties of Child

Section II, Article 16 of the draft of the Law “Children's Rights, Freedoms, and Duties,” establishes the duties of the child. Such statutory regulation of the child’s responsibilities is flawed and contrary to the principles of prudence and justice. Duties of the child are derived *directly* from the obligations and responsibilities of the child's legal guardians as set out in Article 18 Paragraphs 2 and 4 of the draft law, i.e. legal guardians of the child, by law, are required to raise the child with a sense of duty and responsibility. Therefore, it is strongly recommended that statutory regulation of the duties of the child is abandoned.

RECOMMENDATIONS

- In the context of **legal protection** Lithuanian Government should:
 - Reject the draft *Law on Child Protection* as conceptually flawed;
 - Adopt amendments to the current *Law on the Fundamentals of the Child Rights Protection* or prepare a new law that would follow basic principles of the CRC, including treating the child as a subject and owner, and not an object of his/her rights, and establishing the full protection from all forms of violence, including corporal punishment.

- In the context of **alternative care** Lithuanian Government should:
 - Develop a system of alternative social services (aimed at family support and prevention of maltreatment);
 - Close down large foster care institutions without further delay;
 - Encourage the establishment of foster families or other types of family based care, effectively using available regionally and culturally close good-practice examples, e.g. the Nordic countries;
 - Ensure compliance with international standards of alternative care from the moment of removal of the child from biological family until the child leaves care and is established as an independent individual. The child must participate in this process directly;
 - Implement a common child protection policy in children’s homes in order to prevent maltreatment of children, have an accessible mechanism for registering and examining complaints, and introduce the children with their rights and active role in the field of children protection;

- Improve the legal framework and produce other necessary measures in order to provide targeted services for care-leavers and preferential social housing as well;
 - Improve quality of the child protection services, including but not limiting to reassessment of qualification standards, remuneration system and results monitoring.
- In the context of **victim support** Lithuanian Government should:
 - Establish official mechanism for multi-disciplinary procedures that would ensure mandatory reaction under suspicion of child abuse by all professionals encountering children. The mechanism should involve uniform instructions for reaction, provision of assistance for abuse victims and involvement in other procedures related to child abuse;
 - Grant all abused children and their families a chance to receive free of charge integrated help: psychological, psychiatric, medical, social and legal. The continuous long-term financing is necessary in order to provide stable permanent and effective victim support;
 - Issue a binding requirement for legal system professionals to inform abuse victims of support services and directly cooperate in multi-disciplinary cooperation granting timely help for abuse victims and families;
 - In the context of **children in criminal proceedings** Lithuanian Government should:
 - Establish a clear official mechanism of child forensic interviews, which foresees the child friendly interview procedure, qualification of participating specialists and cooperation of professionals;
 - Build a pool of specialized mental health professionals and enable identification of a psychologist bearing clearly established obligations for cooperation within the legal system.
 - In the context of **right to health and development** Lithuanian Government should:
 - Address mental health and emotional well-being of children as a priority in healthcare policy;
 - develop, without any further delay, child mental health services, as recommended by WHO and approved by Seimas in Mental Health Strategy (2007), including mental health promotion, prevention of mental health disorders in primary health care, schools, communities and child-friendly outpatient and inpatient child mental health services;
 - Strengthen efforts aimed at suicide prevention among children and youth;
 - Address the issue of institutionalization of young children, as a serious concern, and develop alternative services to fully eliminate institutional placement of children under age 0-3, including through investing in modern principles of developmental pediatrics in health care system;
 - The NGO group would like note that the problem of bullying is being seriously addressed on the national level, public institutions and NGOs successfully cooperate. Since 2008 evidence based programs for prevention of violence and bullying in schools, teaching emotional literacy in schools and kindergartens are implemented systematically in the country (e.g. *Second Step program, Olweus Bullying Prevention Program, Zippy's Friends* and other trainings for school communities, parents and pupils). It is critically important to continue implementation of violence and bullying prevention, and introduce mental health promotion programs in schools and kindergartens on the national scale.
 - In the context of **reproductive health** Lithuanian Government should:
 - Establish youth-friendly services (YFS) for provision of evidence-based sexual and reproductive health and rights information. Services must be accessible, acceptable and available for young people, and should meet the different needs of all young people whether they are male or female, whatever their age, ethnic or religious affiliation, sexual orientation, lifestyle or beliefs.
 - In the context of **drug use**, to ensure that the appropriate counselling on drug related issues and drug related care is provided to children in schools, the following recommendations should be implemented:

- The detailed guidelines should be developed for specialists working in schools on how to work with children who already use illegal substances. It is crucial that guidelines foresee the system of cooperation between professionals working in schools, primary health centers and specialized drug addiction treatment facilities.
 - The possibility for professional development of specialists responsible for provision of care in schools should be ensured and should include provision of information in the substances their effects and treatment methods. The professionals should be well informed of the evidence and internationally endorsed drug treatment and care methods. In order the primary moralistic approach is avoided and stigmatization of children who use illegal drugs is prevented the professions should be acquired with the principles of harm reduction, rather than strictly abstinence based approach to drugs.
 - It is crucial to make the relative changes in the legislation, including removal of the requirement for parental consent.
- As a general recommendation, the NGO group wishes to emphasize the necessity for Lithuanian government to sign the **Optional Protocol** on a complaints mechanism for violation of children's rights.

Vilnius, 13 August 2012

¹ Monitoring of human rights in closed institutions <http://www.hrmi.lt/en/publication/8/>

² Information of Ministry of Economy on decision to allocate EU funds to renovation of residential institutions <http://psichikosveikata.wordpress.com/2011/04/07/apie-tikruosius-prioritetus>

³ http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=377321

⁴ State family policy concept http://www3.lrs.lt/pls/inter/w5_show?p_r=5477&p_k=1

⁵ Ruling of Constitutional Court on State family policy concept <http://www.lrkt.lt/dokumentai/2011/n110928.htm>

⁶ <http://www.lithuaniantribune.com/2011/10/09/constitutional-court-%E2%80%93-family-concept-contradicts-the-constitution/>

⁷ <http://www.delfi.lt/news/ringas/lit/pragauskas-gyvybes-langeliai.d?id=26212631>

⁸ Health Behaviour in School-aged Children: International Report from the 2009/2010 Survey

⁹ The 2010 annual report of Child Rights Ombudsperson, P.12-13, <http://www3.lrs.lt/docs2/TTVQIDQD.PDF>

¹⁰ Information from Department for Statistics, "Lithuanian children" part 6.3

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¹¹ Ivona Jaroslavevienė. "The extent of violence against children is not decreasing" (in Lithuanian), *Alfa.lt*, 2009-07-26,

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¹⁴ Concluding observations of the UN Child Rights Committee, 2006-03-17, CRC/C/LTU/CO/2, para. 7,

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¹⁷ Nobody's Children Foundation, Children Support Centre, 2010

¹⁸ "Father has been raping his minor daughter in a car" (in Lithuanian), *Diena.lt*, 2010-12-16,

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¹⁹ Daiva Sitnikienė, "Whilst awaiting court's verdict, the rapist continued to abuse his daughter" (in Lithuanian), *Kurjeris.lt*,

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²¹ The order of the Social Welfare and Labour Minister, "Plan on Reorganization of Child Care Facilities Network", No. A1-

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²² Information of Department for Statistics. The number of children in residential care institutions (since 2004)

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²³ Electronic communication with Senior Officer Rūta Pabiedinskienė at the Department of Children and Youth, Ministry of Social Welfare and Labour, 2011-02-24

²⁴ Saulius Chadasevičius. "Spengla" foster care institution – a factory of cruelty and violence" (in *Lithuanian*), *Delfi.lt*, 2006-02-24, <http://www.delfi.lt/news/daily/education/article.php?id=8867345>

²⁵ Electronic communication between expert Violeta Davoliūtė and social tutors of foster care home „Spengla”

²⁶ Dalia Gudavičiūtė. "Desired catch of paedophiles – orphans" (in *Lithuanian*), *Lrytas.lt*, 2010-10-23, http://m.lrytas.lt/?data=20101023&id=akt23_a1101023&view=2

²⁷ Inga Saukienė. "Teenagers as young as 15 engage into prostitution for new phone or luxurious clothing" (in *Lithuanian*), *Delfi.lt*, <http://www.delfi.lt/news/daily/crime/15-meciai-prostitucija-uzsiima-del-nauju-mobilaus-ar-prabangiu-drabuziu.d?id=39749545>

²⁸ Ministry of Social Welfare and Labour "Social Report 2009-2010", <http://www.socmin.lt/index.php?-714663978>

²⁹ <http://www.stat.gov.lt/lt/pages/view/?id=1878>

³⁰ <http://www.vaikoteises.lt/media/file/2011patigalutine.pdf>, p. 73

³¹ Order No BV-16 of the Director of the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of 22/06/2011 Regarding the Approval of Recommendations for Searching, Training, Selecting, Consulting Guardians and Adoptive Parents and Providing Them with Assistance Services

³² The form of guardianship where a family registers itself as a legal person (so called social family) and has under its guardianship or curatorship 6 or more children (the total number of children in a social family including the parents' natural children may not exceed 12) in a family environment.

³³ <http://kauno.diena.lt/naujienos/miestas/is-katalikisku-namu-skubiai-atimti-globotiniai-363679#axzz23VZS2Ltu>;

<http://www.delfi.lt/news/daily/lithuania/del-globeju-gobsumo-seimynose-badauja-vaikai.d?id=4359593>; Vaitkus, R. Vaikus mušusi globėja išgirdo nusprendį. Lietuvos rytas. 2004 m. kovo 2 d.;

³⁴

<http://db1.stat.gov.lt/statbank/selectvarval/saveselections.asp?MainTable=M3020102&PLanguage=0&TableStyle=&Buttons=&PXSId=6282&IQY=&TC=&ST=ST&rvar0=&rvar1=&rvar2=&rvar3=&rvar4=&rvar5=&rvar6=&rvar7=&rvar8=&rvar9=&rvar10=&rvar11=&rvar12=&rvar13=&rvar14=>

[7] <http://www.vaikoteises.lt/media/file/2011patigalutine.pdf>

³⁵ <http://www.stat.gov.lt/lt/pages/view/?id=1878>

³⁶ Regulations of Temporary Child Guardianship (Curatorship) approved by the Order No A1-145 of the Minister of Social Security and Labour of 28/05/2007

³⁷ <http://www.vaikoteises.lt/media/file/2011patigalutine.pdf>, p. 68

³⁸ For more than a year illegal guardian has continuously abused a 5-year-old, until starved and beaten child was rescued by firemen team. Neighbours witnessed the abuse on multiple occasions, but failed to react. <http://m.lrytas.lt/-12708217421269551998-%C4%AF-u%C5%BEsien%C4%AF-i%C5%A1vykusios-radvili%C5%A1kiet%C4%97s-penkiamet%C4%AF-s%C5%ABn%C5%B3-glob%C4%97ja-marino-badu-ir-mu%C5%A1%C4%97.htm>

³⁹ *Supra* note 2, P.43-44

⁴⁰ Electronic communication with Senior Officer Rūta Pabiedinskienė at the Department of Children and Youth, Ministry of Social Welfare and Labour, 2011-02-24

⁴¹ The Government Act „On the Enactment of the National Programme on Prevention of Violence Against and Support of Children 2008-2010“, No. 392, Žin. 2008, No. 51-1892

⁴² "Parliamentarians have doubts regarding the use of children interviewing rooms in police stations" (in *Lithuanian*), *Alfa.lt*, 2010-05-26,

http://www.alfa.lt/straipsnis/10360130/?Parlamentarams.kilo.abejoniu.del.vaiku.kambariu.policijoje.naudojimo=2010-05-26_14-48

⁴³ "Integration of the disabled children is obstructed by the lack of political will" (in *Lithuanian*), *Delfi.lt*, 2009-06-05, <http://www.delfi.lt/news/daily/education/article.php?id=22505236>

⁴⁴ Vilnius Jeruzalė Labour market educational centre, "The adjustment of the environment to the disabled: problems and opportunities" (in *Lithuanian*), 2009-10-09,

http://www.vjdrmc.lt/index.php?option=com_content&task=view&id=88&Itemid=29

⁴⁵ „Survey: students with disability in Lithuanian higher education institutions" (in *Lithuanian*), 2009-05-04,

http://www.ndt.lt/enews/page-29-id-ndt-news-tyrimas_studentai_su_negalia_lietuvos_aukstosiose_mokyklose_2009.html

⁴⁶ The resolution of the Seimas of the Republic of Lithuania "On the approval of the Psychic Health Strategy", No. X-1070, Žin. 2007, No. 42-1572

⁴⁷ Global Initiative in Psychiatry. An open letter regarding the implementation of the Psychic Health Strategy in Lithuania" (in *Lithuanian*), 2010-04-02, http://www.gip-vilnius.lt/index.php?option=com_content&view=article&id=137:2010-04-02-globali-iniciatyva-psichiatrijoje-iandien-atviru-laiku-kreipiasi-aukiausias-valdios-institucijas-dl-psichikos-sveikatos-strategijos-lietuvoje-gyvendinimo&catid=35:naujienos

⁴⁸ Gintaras Šiuparys. "In the boarding house for the disabled – as in executioner's lie" (in *Lithuanian*), *Lrytas.lt*, 2010-03-04, http://m.lrytas.lt/?data=20100304&id=akt04_a1100304&p=1&sk_id=&view=2

⁴⁹ Appropriate measures to protect children who use drugs as in Article 24 of the Convention on the Rights of the Child: 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his

or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (b) To ensure the provision of necessary medical assistance and health care to all children, (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health; (f) To develop preventive health care.

⁵⁰ For example: Committee on the Rights of the Child: Concluding Observations: Armenia (UN Doc No CRC/C/15/ADD.225, 2004) para 63; Indonesia (UN Doc No CRC/C/15/ADD.223, 2004) para 74; Norway (UN Doc No CRC/C/15/Add.263, 2005) para 44; Denmark (UN Doc No CRC/C/DNK/CO/3, 2005) para 55; Russian Federation (UN Doc No CRC/C/RUS/CO/3, 2005) para 77; Maldives (UN Doc No CRC/C/MDV/CO/3, 2007) para 88; Marshall Islands (UN Doc No CRC/C/MHL/CO/2, 2007) para 55; Afghanistan (UN Doc No CRC/C/AFG/CO/1, 2011) para 52(d). The Committee's most explicit statement in this regard came in February 2011 in relation to Ukraine. The Committee raised concerns that 'legal and attitudinal barriers' may impede access to services for children and that 'new regulations relating to personal possession of drugs may bring more at risk adolescents into contact with the criminal justice system'. It recommended the amendment of laws that 'criminalize children for possession or use of drugs'. Committee on the Rights of the Child, Concluding Observations: Ukraine, (UN Doc No CRC/C/UKR/CO/4, 2011), paras 59 & 60.

⁵¹ <http://www.emcdda.europa.eu/publications/country-overviews/lt#gps>

⁵² Björn Hibell, Ulf Guttormsson, Salme Ahlström, Olga Balakireva, Thoroddur Bjarnason, Anna Kokkevi, Ludwig Kraus (2012) The 2011 ESPAD Report. Substance Use Among Students in 36 European Countries.

http://www.espad.org/Uploads/ESPAD_reports/2011/The_2011_ESPAD_Report_FULL_2012_06-08.pdf.

⁵³ Decree of the Government of the Republic of Lithuania No. 437 on organizations of the provision of health services to children who use drugs; Decree of the Minister of Health of the Republic of Lithuania and the Minister of Education of Science of the Republic of Lithuania on the procedure of health care provision in schools (No. v-1035/isak-2680 December 30, 2005), adopted set of rules that guide the provision of support to children in schools, including Description of the provision of the psychological support (Psichologinės pagalbos teikimo tvarkos aprašas, approved by the Ministry of Education and Science, Decree No. 1215, July 5, 2011), and approved general job description for the psychologists working in schools (Decree No. ISAK – 1548 from July 22).

⁵⁴ The implementation issues presented below are based on the pilot research done in 2011 by the NGO Coalition „I Can Live“ and Lithuanian Student Parliament, in order to determine key problems faced by children who use drugs in secondary schools. In total 21 interviews conducted in 7 schools, hence should be interpreted as a pilot studies indicating the tendencies, rather than comprehensive study.

⁵⁵ Consistent with for example Committee on Economic Social and Cultural Rights, Concluding Observations: Mauritius (UN Doc No E/C.12/MUS/CO/4, 2010), para 27(c).

⁵⁶ As the research results show the professionals working in schools do not even know that the drug addiction is diagnosed by psychiatrist who can be found in any primary psychiatric center.

⁵⁷ <http://www.socmin.lt/index.php?-1990247364>

⁵⁸ General Comment of the CRC No5 *General measures of implementation for the Convention on the Rights of the Child* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement> ; General Comment of the CRC No 13 *The right of the child to freedom from all forms of violence*

http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf

⁵⁹ Underlined by the authors of the report.

⁶⁰ Annual Activity Report 2010 of the National Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of the Republic of Lithuania, <<http://www.ivaikinimas.lt/ataskaitos>>

⁶¹ General Comment of the CRC No5 *General measures of implementation for the Convention on the Rights of the Child* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement> ; General Comment of the CRC No 13 *The right of the child to freedom from all forms of violence*

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⁶² Bill on the Rights of the Child Protection in the Republic of Lithuania 2, 10, 49, 56 and 57 Amendments of the Law Project. XIP - 393 (3) // Reg. 07/17/2009

<http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349278&p_query=&p_tr2=>

⁶³ The Republic of Lithuania Protection from Violence in One's Immediate Environment Act. XI-1425// The State News, 06/14/2011, No.723475

<http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400334&p_query=&p_tr2=2 >