

**JOINT UPR SUBMISSION OF  
HUMAN RIGHTS MONITORING INSTITUTE, CENTER FOR EQUALITY ADVANCEMENT,  
EQUAL RIGHTS AND SOCIAL DEVELOPMENT CENTER  
LITHUANIA – OCTOBER 2011**

**Scope of International Obligations**

1. According to Article 138 of the Constitution of the Republic of Lithuania international treaties ratified by the Parliament constitute an integral part of the legal system of the Republic of Lithuania.<sup>1</sup> The Constitutional Court of the Republic of Lithuania in its decision of 17 October 1995 stated that international treaties ratified by the Parliament have the effect of a statutory law.<sup>2</sup>
2. Lithuania acceded to the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, providing for the right to individual complaint, on 12 March 1991. The Convention and the First Optional Protocol came into force for Lithuania on 20 February 1992. Lithuania acceded to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty on 8 September 2000. The Second Optional Protocol entered into force for Lithuania on 27 June 2002.
3. Lithuania acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 20 November 1991. The Covenant came into force for Lithuania on 20 February 1992. Lithuania had not signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
4. Under the Constitution, both the ICCPR and the ICESCR are constituent parts of the Lithuanian legal system; however their status within the system remains ambiguous. In practical terms, it is unclear whether in case of conflict of norms the Covenants will prevail over or yield to the statutory law adopted the Parliament. On the one hand, these international treaties are not ratified by the Parliament, and, therefore, in the absence of direct legislative authority to the contrary and in accordance with the 1995 statement by the Constitutional court, they should succumb to the statute adopted the Parliament. On the other hand, the 1991 version of the Law on International Treaties in force at the time of accession to the Covenants, although not included in the current Law on International Treaties adopted in 1999, provided that all international treaties have the force of law on the territory of Lithuania. This ambiguity has not been subjected to legal argument and resolution in national courts.
5. Lithuania ratified the Convention on the Elimination of All Forms of Discrimination against Women on 10 September 1995 and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 29 June 2004. The Protocol came into force on 5 August 2004.
6. Lithuania ratified the Convention on the Rights of the Child on 3 July 1995. On 12 November 2002 Lithuania ratified Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict (in force since 31 December 2002), and on 10 June 2004 – Optional Protocol to

<sup>1</sup> Constitution of the Republic of Lithuania, adopted on 25 October 1992, last amended on 25 April 2006, available at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=275302](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=275302)

<sup>2</sup> Ruling of the Constitutional Court of the Republic of Lithuania, 17 October 1995, available at <http://www.lrkt.lt/dokumentai/1995/n5a1017a.htm>

the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (in force since 13 July 2004).

7. In 1996, Lithuania acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Lithuania had not signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Lithuania ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on 10 November 1998. Lithuania did not accede to Article 14 of the Convention recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by Lithuania of any of the rights set forth in the ICERD.

9. Lithuania ratified the Convention on the Rights of Persons with Disabilities on 27 March 2010. The Convention came into force for Lithuania on 10 June 2010. Upon ratification Lithuania made a declaration stating that “The Republic of Lithuania declares that the concept of “sexual and reproductive health” used in Article 25(a) of the Convention shall not be interpreted to establish new human rights and create relevant international commitments of the Republic of Lithuania. The legal content of this concept does not include support, encouragement or promotion of pregnancy termination, sterilization and medical procedures of persons with disabilities, able to cause discrimination on the grounds of genetic features.” On 27 May 2010 Lithuania also ratified Optional Protocol to the Convention on the Rights of Persons with Disabilities.

10. Lithuania had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention against Apartheid in Sports, the International Convention on the Suppression and Punishment of the Crime of Apartheid.

11. Lithuania became a member state of the Council of Europe in May 1993. On 25 April 1995 Lithuania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and it entered into force upon ratification on 5 May 1995. Lithuania also ratified Protocols 1, 2, 3, 4, 5, 6, 7, 8, 11, 13 and 14 to the ECHR. Lithuania acceded to Protocols 9 and 14bis to the ECHR but did not ratify them. Lithuania had not signed Protocols 10 and 12 to the ECHR.

12. In September 1998, Lithuania ratified European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with its Protocols No 1 and No 2. Lithuania made no reservations or declarations regarding the Convention and its Protocols.

13. In March 2000 Lithuania ratified Framework Convention for the Protection of National Minorities. An Additional Protocol came into force for Lithuania on 1 July 2000.

14. In May 2001 Lithuania ratified European Social Charter. Upon ratification Lithuania declared to consider itself bound by the provisions of the following Articles: Article 1-11, Article 12(1), 12(3) and 12(4), Article 13(1), 13(2) and 13(3), Articles 14-17, Article 18(1) and 18(4), Article 19(1), 19(3), 19(5), 19(7), 19(9), 19(10), 19(11), Article 20-22, Article 24-29 and Article 31(1) and 31(2). The Charter came into force Lithuania on 8 June 2001. Lithuania did not sign an Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

15. Lithuania had not signed the European Charter for Regional or Minority Languages, the European Convention on the Exercise of Children’s Rights, and the European Convention on Nationality. Lithuania

acceded to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, but had not ratified it so far.

### **Institutional and Human Rights Structure**

16. Despite the trend of deterioration of the human rights situation since accession to the European Union in 2004, Lithuania has yet to develop an efficient institutional framework for the protection and promotion of human rights.

17. Even though there exists no human rights institution in Lithuania that would monitor the implementation of international commitments on the national level, serve as focal point for international human rights bodies, analyze human rights situation, examine legislation, identify problems related to the protection of human rights, propose solutions, coordinate cooperation among national, regional and international institutions and perform other analytical, educational and organizational work, the government and lawmakers fail to understand the necessity of the establishment of the National Human Rights Institution.

18. Political branches of government understand the protection of human rights in a quite narrow sense: this protection is usually associated with the operation of the legal system, law enforcement institutions, and the courts in reinstating infringed rights. Party and government programmes fail to address serious problems such as the need for strengthening of the system of institutional protection of human rights so that it would cover not only the retroactive work of law enforcement institutions and courts with the infringements of human rights but also the proactive analytical and other expert work which is instrumental in developing a rational and effective national human rights policies.

19. A number of independent institutions exist in Lithuania to protect human rights - the Parliamentary Controllers' Office, the Equal Opportunity Ombudsperson Office, the Children's Ombudsperson, and the Inspector for Journalists' Ethics. None of the institutions has a sufficiently broad human rights *mandate* and does not fulfil other requirements, including those relating to *status* such as independence and pluralism, and those relating to *functions* of national institutions, to be accredited as the National Human Rights Institution. They are excluded from the benefits of international cooperation with recognised NHRIs.

20. The complaint-handling mandate is not a substitute for a true monitoring mandate; however institutions are concerned primarily with the handling of complaints alleging violations of human rights or abuse of power by administrative authorities.

21. The areas of human rights research, analysis, education and documentation suffer from the lack of a systematic approach to them. The composition of the institutions' staff reflects their functions. They are not in a position to carry out multidisciplinary activities.

22. No institution in Lithuania is systematically concerned with relations to international human rights systems, either in terms of encouraging ratification of treaties, making observations known or in following up on recommendations adopted.

23. Lithuania similarly lacks an institution charged with producing an overall report on the human rights situation in the country.

24. Existing institutions have weak, in any, links to civil society by means of consultative appointment processes, formalised guarantees of pluralist representation in the boards, or institutionalised cooperation. This contributes to a lack of transparency and accountability to society, in general.

25. As a minimum, Lithuania is in need of an institution that:

- monitors the human rights situation;
- is responsible for coordination of advisory services, information and data sharing;
- is a resource institution for all the others institutions, e.g. by establishing a research and documentation centre;
- serves as a focal point for cooperation with international organisations and other NHRIs.
- provides an annual report on the human rights situation.

26. Momentum for the optimization of the current institutional human rights infrastructure developed in 2008 in the aftermath of the international conference on *The Feasibility of Establishing a National Human Rights Institution in Lithuania* has faded out – attempts to introduce the issue into government’s agenda in 2009-2010 did not succeed.

### **Cooperation with International Human Rights Mechanisms**

27. The Republic of Lithuania is obliged under a number international instruments to periodically submit reports on the progress made in implementation of its obligations. Lithuania is frequently late in submitting reports. For instance, the *fourth and fifth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination* were due by 9 January 2008 but were submitted to the Committee on the Elimination of Racial Discrimination on 31 May 2010; *Second periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was submitted to the Committee against Torture on 27 July 2006, although it was due in 2001.

28. Commonly, concluding observations by international human rights bodies adopted in aftermath of report consideration are not disseminated beyond certain State institutions, and public awareness, including media and relevant NGO community, about them is quite low.

### **Administration of Justice and the Rule of Law**

29. Since Lithuania regained its independence in 1991, pre-trial investigation phase of criminal justice system is one of the least touched by reforms; police and pre-trial investigation officers and supervisors lack legal education and motivation. It is not uncommon that among those who possess legal degree, knowledge on the right to liberty is inadequate. In result, pre-trial investigations in criminal cases are often conducted unprofessionally, and treatment of suspects contradicts international human rights standards. Particular problem is *disproportionate use of arrests and detentions on remand at the pre-trial phase of criminal proceedings*.

30. Pursuant to the *Code of Criminal Procedure (CCP)* of Lithuania, the proportionality principle must be adhered to in the application of coercive measures during pre-trial investigation. However, in practice pre-trial investigation officers abuse this principle. Quite often a person suspected of a minor crime is arrested for 48 hours, as allowed by law, and then simply released after this period expires since there are no grounds for going to court for the authorisation of detention on remand. The appeal procedure against the arrest is ineffective. In accordance with the CCP, a complaint against the arrest is made to a prosecutor supervising this pre-trial investigation, while the decision of the prosecutor can be appealed against to a higher prosecutor. Only at the third level, does an opportunity exist to lodge a complaint with a judge. The prosecutor and the judge must take a decision within five days of the date of the receipt of the complaint and the material required for decision. In the meantime, the duration of arrest must not exceed 48 hours. Predictably, there are very few complaints lodged against the legality of arrests.

31. Ineffectiveness of appeal procedure was also brought to Lithuania’s attention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

CPT recommended Lithuania reviewing current legal regulations, which do not provide for clear mechanisms to immediately ensure the right to defense of arrested persons.<sup>3</sup>

32. The application for detention on remand also occurs too often. CC provides for seven non-custodial means to ensure the effectiveness of investigation.<sup>4</sup> Arrest of a suspect may be exercised only in exceptional cases had all the prescribed conditions been fulfilled and provided no other remand means would work to ensure the presence and cooperation of a suspect during investigation.<sup>5</sup> Yet the practice reflects the opposite – detention on remand is the standard measure.

33. Detention on remand is to be deemed *ultima ratio*, i.e. to be used only as a last resort in the case, when all the facts and circumstances have been evaluated, all the pros and cons are considered, and where the use of milder coercive measures, e.g. house arrest, bail, periodic registration at the police station or departure prohibition, would prevent the smooth process of the pre-trial investigation.

34. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that the Lithuanian authorities review the system of detention on remand with a view to substantially reducing its application and duration, and thus decreasing overcrowding in remand prisons.

35. The quality of justice directly depends on the quality of individuals chosen to be judges and later promoted. The importance of the quality of judges requires that applicable criteria and procedure for *initial selection and promotion of judges* is defined and applied in a clear, rational, objective and merit-based way.

36. In Lithuania, criteria for selection and promotion are overly general and discretionary, lacking emphasis on personal qualities, such as integrity, confidence, stability, analytical/cognitive skills, decision-making ability, spoken and written powers of expression, social skills, personal values of candidates. Priorities given to certain candidates are difficult to rationalise, e.g. the value of court clerks as initial candidates for judgeships is higher than that of experienced lawyers. The consecutive steps in the procedure of selection or promotion are often formal and repetitive.

37. The *right to bring cases before the Constitutional Court* of Lithuania can only be exercised by Lithuanian Government, Parliament, courts and President in certain cases.

38. In Lithuania, even when an individual raises the question of the constitutionality of a legal act during hearings in ordinary courts, and court agrees on the necessity of a constitutional review, an individual has no standing before the Constitutional Court and cannot present his/her arguments, although a decision by the Constitutional Court determines the final outcome of a case.

39. Discussions regarding a possibility of introduction of the constitutional complaint are ongoing for several years. In 2007, Parliament approved the general concept of an individual constitutional complaint, which *inter alia* states that “presently in Lithuania persons are guaranteed the right to apply to the European Court of Human Rights and make use of international judicial means of protection of human rights, however, there is no institute of individual constitutional complaint, which would allow to decide the legal issue on the national and constitutional level.”<sup>6</sup>

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<sup>3</sup> Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 21 to 30 April 2008, 25 June 2009

<sup>4</sup> Code of Criminal Procedure of the Republic of Lithuania, No IX-785, last amended on 23 December 2010, Article 120, available in Lithuanian at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=390600](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=390600)>

<sup>5</sup> *Ibid.*, Article 122(7)

<sup>6</sup> Parliament Resolution No X-1264, 4 July 2007, “On approving the Conception of Consolidation of the Institute of Individual Constitutional Complaint”

40. The introduction of the individual constitutional complaint was planned for 2009 but has been postponed indefinitely.

41. Beginning 2000, in Lithuania functions *State-Guaranteed Legal Aid system*. The *Law on State-Guaranteed Legal Aid* provides for two types of legal aid: primary – consultation and drafting of certain requests, and secondary- preparation of court cases and legal representation.

42. All nationals of Lithuania, nationals of other Member States of the EU, other individuals residing lawfully in Lithuania and other Member States of the EU, and other persons specified in international treaties are eligible for primary legal aid.<sup>7</sup>

43. Eligibility criteria for secondary legal aid are unclear, which makes it difficult for an ordinary person to understand if he/she is eligible to receive this level of legal assistance.

44. Frequently, potential beneficiaries are lacking information about the State-guaranteed legal aid, in particular individuals with disabilities (visual disability, hearing disability, physical disability), individuals who do not understand or speak Lithuanian language (State-guaranteed legal aid website operates only in Lithuanian), and detained persons.

### **Right to Respect for Private and Family Life**

45. Personal data has become a commodity in Lithuania. In recent years, there was a marked increase in the number of personal data thefts. Personal data were stolen by obtaining passwords and login codes for e- Banking systems in order to hack into bank accounts, by deception and use of malware. There were reported cases of people, whose personal data were obtained by fraudsters, and who then had debts and were entered into the lists of faulted customers.

46. The unjustified requirement to provide excess personal data, in particular *personal identification number*, continues to be practiced in shopping centres, hotels, and other public and private places.

47. Every Lithuanian national has his/her own personal identification number. Personal identification number (PIN) is a unique sequence of eleven decimal figures intended for the identification of a person, accumulation of data about him/her, ensuring of the interoperability of state Registers and information systems.<sup>8</sup>

48. PIN number denotes certain information about a person, including such sensitive data as his or her birth date and gender. Article 8(2) of the *Law Residents' Register* provides that the first digit of the PIN shows a person's gender. A PIN starting with the digit 3 denotes that the person is male (5 – for those born in year 2000 and later), whereas a number starting with digit 4 means that the person is female (6 – for those born in year 2000 and later).

49. In the case *L. v Lithuania*, the European Court of Human Rights has established that a person who has partially changed his/her gender and has the physical look of the other sex than that reflected by the personal identification number, has to suffer significant inconveniences and restrictions, and experiences humiliations and emotional tensions in everyday life.

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<sup>7</sup> Law on State-Guaranteed Legal Aid, No VIII-1591, last amended on 16 April 2009, Article 11(1), available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=350869](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350869)>

<sup>8</sup> Law on Residents' Register, No I-2237, 15 July 2008, Article 4, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=364575](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=364575)>

50. The Law permits using personal identification number when processing personal data only with the consent of the data subject. Public disclosure of personal identification number or collecting and processing it for direct marketing purposes is prohibited.<sup>9</sup>

51. In practice, PIN is widely used as a sole identification tool and search criterion when a person connects to certain databases. Although a person should be permitted to access his/her data only, the practice showed that anyone's data can be accessed provided his/her PIN is known. PIN can be guessed if person's gender and date of birth is known and *identity theft* in cyberspace is not criminalized.

52. The invasion of people's privacy continued through barely controlled *instlation of video surveillance cameras* in streets of the cities and closed premises such as shopping centres, workplaces, schools, and detention cells. Surveillance equipment was also installed in police patrol cars.

53. The State Data Protection Inspectorat has issued instructions warning that surveillance in areas must be noted with special notice plates indicating who, and for what purpose is conducting the surveillance. Data managers were obliged to prepare such notices; however, there are actually very few seen in public places.

54. The main argument of those supporting introduction of video surveillance systems lies in its effectiveness in improving the prevention of legal violations and the detection of criminal offences, however, this argument is not based on impartial facts. The necessity to conduct cost-effectiveness analysis of video surveillance systems has been already discussed for several years, but further expansion of these systems is still motivated by public statements about their benefits.

55. The application of special software allowing surveillance and monitoring of employees' computers is becoming increasingly popular among private business enterprises, however there is no legal framework regulating *electronic surveillance at the workplace*.

56. The *Law on Reproduction Rights* is pending since late 1990s, even though Lithuania acceded to international treaties on protection of reproduction health and undertook commitments to implement requirements of Cairo Conference of 1994.

57. For a number of years, the controversy over *spelling of personal and family names* has been ongoing in Lithuania. Pursuant to the provisions adopted by the Supreme Council as early as in 1991, stating that names and family names must be written in Lithuanian characters in the passports of Lithuanian nationals, individuals who marry and want to have their spouse's family name or to append it to their own family name, cannot do this because the spouse's family name is entered not in the original but in Lithuanian characters. For example, the Lithuanian alphabet has no letter *w*, so it is represented by *v* in documents. Attempts to solve this issue by providing a possibility to enter names and family names in documents not only in Lithuanian but in other Latin alphabets repeatedly fail without clear rational arguments against this solution.

### **Freedom of Peaceful Assembly**

58. The *Law on Assembly* provides for the notification procedure in order to exercise *the right to assemble peacefully*: "*the head of the executive body of the municipal council or a representative authorised by him shall be informed by organizers of meetings about a meeting which is being organised by submitting a written notification, which is signed at least by two persons in order to coordinate the place, date and*

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<sup>9</sup> *Ibid.*, Article 7

*conditions of a meeting*".<sup>10</sup> In practice, the procedure resembles the system of permissions as often relevant bodies do not treat organizers as partners but rather put forward unilateral conditions and requirements, which are difficult, if possible, to meet, do not convincingly argue refusals to issue a certificate for a peaceful assembly, recall issued certificates.

59. Beginning in 2009, a number of NGO's and trade unions informed municipal governments about their wish to organise public protests to express dissatisfaction with the government's plan to tackle the economic and financial crisis and other reform proposals but met with unjustified restrictions.

60. At the beginning of March 2009, Human Rights Monitoring Institute (HRMI) and Centre for Equality Advancement (CEA) informed Vilnius municipality about an intention on March 11 to run a peaceful rally "Against Racism and Xenophobia – for Tolerance". The march through the streets of Vilnius was planned for peaceful citizens of Lithuania who wish to express their support for constitutional values - freedom, democracy and tolerance. The letter said that HRMI and CEA organise the event to commemorate the national Day of Regaining Independence (on March 11, 1990) and support free, democratic and respectful of human rights Lithuanian State.

61. After two sittings of the events coordination commission, attended by representatives of HRMI and CEA, on March 10 Vilnius municipality refused to issue a certificate for the event on the ground that it may violate public order and safety, public health and morality, and freedoms and rights of others. The municipality issued a certificate for a march organized on the same day by pro-fascist youth organisation.

62. HRMI and CEA have challenged this decision in court. The challenge has been based on the fact that decision by the Vilnius municipal administration was taken violation of norms of the *Law on Assembly*, specifically in was passed in less than 48 hours before the planned event. It has also been submitted that formal arguments for rejection of request – that planned rally may violate public order and safety, public health and morality, and freedoms and rights of others - were not supported by any specific evidence for such assumptions. Both trial and appeal level courts have rejected HRMI and CEA claim. The case is pending before the Supreme Court of Lithuania.

63. The Parliament Controller recommended eliminating bureaucratic attitudes and changing the *Law on Assembly* to ensure responsibility of municipal officials for the unjustified obstructions and rejections of the right to organize peaceful assemblies. No changes in Law occurred.

### **Human Rights and Counter-Terrorism**

64. In August 2009, the US-media outlet *ABC News* alleged for the first time that Lithuania had been integrated into the CIA-run Extraordinary Rendition and Secret Detention Program. It has been reported that former Central Intelligence Agency officials directly involved in or briefed on the Program told *ABC News* that Lithuanian officials provided the CIA with a building on the outskirts of Vilnius, where as many as eight suspects were held for more than a year, until late 2005 when they were moved following public disclosures about the program. Flight logs, reportedly obtained by *ABC News*, confirmed that CIA-related planes made repeated flights into Lithuania during that period. Lithuania completed both the Parliamentary Inquiry and the legal investigation into these allegations within 18 months following the broadcast of the news report.

65. The prompt reaction by the Lithuanian government should certainly be seen as a positive step. The international standard for the duty to investigate allegations of serious violations of human rights mandates, *inter alia*, that the relevant authorities must act of their own motion once the matter has come to

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<sup>10</sup> Law on Meetings, No I-317, 3 July 2008, Article 9, unofficial translation available at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=324123](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324123)>

their attention –and act promptly. A requirement of promptness and expedition, however, cannot be met in haste, and expedition should be reasonable, so that it does not affect the quality of investigation, regardless of whether it is conducted by parliament or a law enforcement agency.

66. On 5 November 2009, the Lithuanian parliament instructed the Committee on National Security and Defense to conduct a parliamentary inquiry and present findings to the Parliament seven weeks later. The mandate of the Inquiry Committee included three questions:

1. *Were CIA detainees subject to transportation and confinement on the territory of Lithuania?*
2. *Did secret CIA detention centers operate on the territory of Lithuania?*
3. *Did state institutions of Lithuania consider the issues relating to the activities of the CIA with respect to the operation of detention centers on the territory of Lithuania, and the transportation and confinement of detainees on the territory of Lithuania?*

67. The terms of reference did not include the question of whether detainees, who may have been held in alleged secret prisons, were tortured and ill-treated under interrogation. The formulation of the Inquiry Committee's mandate in this way meant that the central human rights element in the Lithuanian investigation had been lost.

68. The Parliamentary Inquiry Committee failed to establish whether CIA detainees were transported through the territory of Lithuania or were brought into/out of the territory of Lithuania. However, it concluded that conditions for such transportation did exist, and conditions were created for holding detainees in Lithuania.<sup>11</sup>

69. Following on the recommendation by the Parliamentary Inquiry Committee, in January 2010 the Prosecutor-General opened a criminal investigation on suspicion of abuse of office by the former leaders of the State Security Department – two former directors and one deputy director. Although formally narrow in scope, opening of investigation came with assurances soon after from the investigating prosecutor that should his investigation reveal information of other criminal acts, the scope of the investigation would be expanded. The investigation was terminated in January 2011.

70. It was repeatedly requested that, as a minimum, the investigation should include within its scope the crimes of Illegal Boarder Crossing, Unlawful Transportation of Foreigners Without Residence Permit, Illegal Deprivation of Liberty, and Prohibited Treatment of Humans as defined by the Lithuanian Criminal Code.

71. In September 2010, the UK-based NGO Reprieve wrote to the Prosecutor General alleging that Zayn al-Abidin Muhammad Husayn – also known as Abu Zubaydah – had been held in secret detention in Lithuania sometime between 2004 and 2006. The letter claimed that Reprieve had received information from an unspecified source; it indicated how the prosecutor could proceed in investigating these allegations.

72. The decision of the investigating prosecutor to terminate criminal investigation indicates, however, that, in the end, the scope of pre-trial investigation has been defined by the Parliament. It states that the object (scope) of investigation was defined in accordance with the Conclusions of the Inquiry Committee: 1) CIA-related aircrafts landings; 2) Construction and use of facilities called Project Nr. 1 and Project Nr 2; and 3) provision of information by the State Security Department to the State's political leadership.

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<sup>11</sup> Resolution on the Findings of the Parliamentary Investigation Committee on National Security and Defence Concerning the Alleged Transportation and Confinement of Persons Detained by the Central Intelligence Agency of the United States of America in the Territory of the Republic of Lithuania, 19 January 2010, available at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=364097&p\\_query=&p\\_tr2=>](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=364097&p_query=&p_tr2=>)

73. In the six-page long decision, the investigating prosecutor attempts to moderate findings and conclusions of the Parliamentary Inquiry Committee. By invoking national security and secrecy provisions, he does not convincingly support his assumptions or indicate any specific lines of investigation, in general. In response to the Reprieve's submission, the investigating prosecutor has stated that Reprieve did not provide the source of information about alleged transportation and detention of Abu Zubaydah.

74. *Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances*"<sup>12</sup> (hereinafter- Joint Study) conducted by UN Human Rights Council confirmed that Lithuania was incorporated into the Secret Detention Programme in 2004: "Two flights from Afghanistan to Vilnius could be identified. The first, from Bagram, took place on 20 September 2004, the same date that ten detainees previously held in secret detention, in a variety of countries, were flown to Guantanamo, and the second, from Kabul, took place on 28 July 2005. The "dummy" flight plans filed in respect of flights into Vilnius customarily used airports of destination in different countries altogether, excluding any mention of a Lithuanian airport as an alternate or back-up landing point."

75. Experts of Joint Study emphasized that ....*all European governments are obliged under the European Convention of Human Rights to investigate effectively allegations of torture or cruel, inhuman or degrading treatment or punishment.*<sup>13</sup>...*A thorough investigation should be capable of leading to the identification and punishment of those responsible for any ill treatment; it "must be 'effective' in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities"*.<sup>14</sup> Furthermore, according to the European Court, authorities must always make a serious attempt to find out what happened<sup>15</sup> and "should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions."<sup>16</sup>

76. Both the Parliamentary Inquiry and even more so the prosecutorial investigation were cursory and ineffective. The duty to investigate alleged serious violations of human rights in Lithuania remains unsatisfied.

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<sup>12</sup> Joint Study, 26 January 2010, available at <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.doc>>

<sup>13</sup> See for example, *Assenov et al v. Bulgaria* (1999) 28 E.H.R.R. 652

<sup>14</sup> *Aksoy v. Turkey*, Judgement of December 1996, para 95; *Kaya v. Turkey*, Judgment of 19 February 1998, para 106

<sup>15</sup> *Timurtas v. Turkey* (2001) 33 E.H.R.R. 6 ECHR, para.88

<sup>16</sup> *Assenov v. Bulgaria*, Judgement of 28 October 1998, para. 104