

HUMAN RIGHTS MONITORING INSTITUTE



HUMAN RIGHTS IN LITHUANIA
2007–2008
OVERVIEW

Vilnius
2009



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Foreword

The Resolution of the international conference on *The Feasibility of Establishing a National Human Rights Institution* in Lithuania held in Vilnius in March 2008 reminded everyone that the contemporary statehood of Lithuania is based on human rights, and that the safeguarding of human rights is a prerequisite for democracy. The Resolution stated that the importance of human rights implementation is not given enough focus in the formulation of the political agenda in Lithuania, and consequently problems related to human rights, including infringements of those human rights – right to freedom of expression, right to respect for private life, right to fair trial and prohibition of discrimination – which are essential for the effective functioning of democracy, do not appear to decrease.

These conclusions were further confirmed by the analysis of the programmes of the political parties for the Seimas elections of the Republic of Lithuania in 2008. The analysis showed that Lithuanian political parties understand the protection of human rights in an extremely narrow sense: this protection is usually associated with the operation of the legal system, law enforcement institu-

tions, and the courts in reinstating infringed rights. Less frequently the safeguarding of human rights is associated with the functioning of the public service. Traditional social and economic rights and solidarity rights (such as the right to work, the right to education, the right to health care and the right to a clean environment) are not perceived as human rights whatever. The programmes paid almost no attention to human rights which are related to the changing political, social, economic and technological environment – globalisation, integration into the Western political and cultural area, development of new technologies and transgression of privacy, growth of ethnic, racial and other changes in the population of Lithuania or the equal opportunities policy of the European Union.

Political parties made redundant and excessive promises in order to earn the populist vote. For example they promised to introduce popular elections of judges, to guarantee a good quality of lawyers' services, to support "good, harmonious, traditional and responsible families", to develop a mechanism for the protection of Lithuanian residents' rights in foreign jurisdictions, to "eliminate judicial political proceedings against political opponents in contravention of the constitutional right to criticise state officials", prohibition of "homosexuals" parades, etc. All of these promises were ones which they could not fulfil.

In the meantime, party programmes failed to focus on serious problems such as the 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 expert work that would be instrumental in developing a rational and effective national human rights policy. The participants of the said international conference stated that there exists no human rights institution in Lithuania that could monitor the implementation of international commitments on the national level, analyse the 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 organisational work.

Such work is inevitable in order to improve the quality of democracy, to reduce the growing feeling of insecurity among people, the perception of the lack of freedom and justice, the mistrust in state institutions, to prevent economically harmful emigration and encourage emigrants to return, to create an environment for sustainable development of the Lithuanian economy and to improve the reliability of Lithuania as a trustworthy and equal state in the eyes of the international community.

In general, the evaluation of the reporting period shows that the trend of deterioration of the human rights situation has persisted since the accession of Lithuania to the European Union. This Overview only highlights a number of problem areas and provides examples of serious infringements of human rights, however, the list of issues and infringements could be expanded further. Quite a number of complaints concerning infringements of human rights in police activities were received in 2007–2008. Serious problems in guaranteeing the rights of crime victims remain. In 2008, the European Court of Human Rights has recognised for the first time that Lithuania infringed the right to life. The tendency to ignore the judgements of the European Court of Human Rights is increasing further. At the time of the Overview drafting, Lithuania had failed to enforce a number of decisions of this international court, including those passed as early as 2004–2005.

With the deterioration of the human rights situation, people's trust in the state institutions which should protect these rights also decreases. A public survey conducted at the end of 2008 showed that four of five respondents believing that their rights had been infringed did not take any action in this regard; almost 80% of them explained that this failure was due to

their lack of belief that they would receive effective assistance. There were fewer such respondents in the comparable survey of 2006. It is also alarming that of the respondents who took some action concerning their infringed rights (the percentage of such persons decreased from 26% in 2006 to 21% in 2008) as many as 40% went not to court, prosecutor's office, police, or even Parliament or mass media but "elsewhere".

The year 2008 saw scientifically justified evidence of a direct relation between the alarming scope of emigration and the unsatisfactory situation of human rights in Lithuania. A survey conducted by sociologists of Vytautas Magnus University in Ireland, England, Spain and Norway showed that the reason the majority of emigrants do not return to Lithuania is not better economic opportunities in these countries, but better security, more freedom and different, more respectful, relations among people.

Among areas where Lithuania should try harder to improve the business environment and to attract more foreign investment, the experts indicate the consolidation of the rule of law, a more transparent judiciary, enhancement of property protection, improvement of public administration and other areas affected by the effective implementation of human rights.

Despite the obvious necessity to highlight the human dimension on the political agenda, it is dominated – irrespective of prosperity or recession – by the position distinctive of immature democracies that the successful economic development of a country will itself solve the issues of such “secondary” areas as the safeguarding of human rights. The difference between a mature democratic state and other states lies first in the development of an environment where human dignity, freedom and security are respected. Such an environment provides favourable opportunities for creative self-realisation which in turn leads to the successful economic and social development of a country.

The Human Rights Monitoring Institute (HRMI) hopes that the Overview of *the Human Rights Situation in Lithuania in 2007–2008* will contribute to a public discussion about the importance of human rights to the further development of the country. The Overview has been drafted on the basis of HRMI research, documents of state institutions, Lithuanian and international NGOs, intergovernmental organisations, information from media monitoring and consultations with experts. We are grateful to those who contributed to the preparation of the Overview, namely, Petras Ragauskas, Miglė Poškutė, Otilija Gabrėnaitė, Deividas Velkas, Liudvika Meškauskaitė, Inga Abramavičiūtė, Vida Beresnevičiūtė, Vita

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We would appreciate our readers’ feedback and comments.

Dainius Pūras
Chair of the Board

Henrikas Mickevičius
Executive Director

SUMMARY

The *Overview* covers the situation of fundamental political and civil rights in Lithuania during the period of 2007–2008. It reviews the implementation of the right to political participation, the right to freedom of expression, the right to respect for private life and the right to a fair trial as well as various manifestations of racism, anti-semitism, xenophobia and other forms of intolerance and discrimination. The situation of a few socially vulnerable groups such as women, children, and prisoners, the disabled and medical patients in the context of human rights is analysed separately.

During 2007–2008, the following factors had a negative impact on the implementation of Lithuanians **right to political participation**: voter bribing, fictitious participation in municipal elections, excessive restriction of the rights of citizens to initiate referenda and legislation, failure to implement the right to *actio popularis*, unreasonably limited opportunities for residents to participate in the process of national and municipal legislation and in the adoption of administrative regulations.

There are numerous problems in the area of the **freedom of expression**: in 2007–2008, lack of transparency in the

media continued to be an issue. Although commissioned journalism flourished, no measures were taken to put it on a more legal footing. The prohibition of political advertising on TV and radio programmes raises doubts as to its compliance with international standards of free speech. There were attempts to restrict the work of journalists by referring to criminal law, attempts to control the content of publications and broadcasts, the rules for the accreditation of journalists were tightened. During the reporting period, the number of cases of hate incitement online continued to increase, but the emerging legal practice in dealing with this phenomenon raises concerns.

Very few positive shifts in the area of **private life protection** were observed in 2007–2008: privacy was even further restricted. The rapid development of new technologies led to the growth of personal data use in a variety of areas, however, the low level of society's awareness and knowledge in this field provided opportunities for ongoing careless treatment of personal data and an increase in personal data thefts. Politicians, state officials and judges demonstrated insufficient understanding of personal data protection. The introduction of people surveillance systems in city streets, private grounds, closed premises and places of employment spread too. There were also problems with privacy protection in the

media: the balance between the right to freedom of expression and the right to respect for private life was further outweighed in favour of the first. The courts and public institutions continued to demonstrate outdated, insensitive attitudes towards the value of a person's privacy. During the reporting period, attempts were again made to solve the protracted dispute concerning the spelling of names and family names of people who are not Lithuanian.

A public poll conducted at the end of 2008 showed that the **right to fair trial** is seen as the most vulnerable (65% respondents) human right among a number of civil and political rights. The right to fair trial was also named the most vulnerable right in equivalent surveys of 2004 and 2006. However, in 2007–2008 the public saw no fundamental reforms related to the operation of courts, pre-trial investigation institutions and court bailiffs. Instead the political agenda was dominated by inessential issues such as the dismissal of the Chief Justice of the Supreme Court of Lithuania. The practice of unreasonably restricting people's freedom and ignoring severe infringements of justice prevailed; the Constitutional Court remained inaccessible to citizens, while few people were aware of the state-guaranteed legal aid system, and those who are aware of it do not tend to use it. On the whole, the feeling of legal security has decreased further.

The spread of **discrimination, racism, anti-Semitism and other forms of intolerance** has accelerated. Outbursts of attacks against foreign citizens, in particular, black people, were recorded in 2007 and 2008, comments inciting hatred proliferated rapidly on the Internet. A procession of young pro-Nazi people held on the 11th of March 2008 attracted a lot of attention. While it was condemned by top-level state officials for its loudly declared racist slogans, this was done half-heartedly. These years were also marked by an increased intolerance towards sexual minorities on the part of politicians and the public: Vilnius Council refused to issue permits for events related to the Lithuanian gay community several times, while the attendees at an international conference of sexual minorities were showered with smoke grenades in Vilnius. The long-delayed solution to the issues of Roma social exclusion and cases of potential exploitation of foreign workers also raise concerns.

The situation of **women's rights** has, in principle, deteriorated. During 2007–2008, the principle of equal treatment for men and women remained unimplemented due to different hourly pay, persisting vertical and horizontal labour market segmentation and women's poverty. Issues of domestic violence and human trafficking remain significant. The newly formulated *State Family Policy*

contributed in a large way to the entrenchment of the discrimination of women and children. The extension of paid parental leave for up to two years without foreseeing a ‘paternal quota’ facilitated further discrimination against women in the labour market.

Deep-seated problems remain in the area of **children’s rights**. They include: the high level of child poverty as a social group; children of economic emigrants left without proper care or guarantee of rights; and the growth of violence among peers, at school and in families. The resolution of the said issues is aggravated by the insufficient availability of psychological help or state-guaranteed legal aid. A lack of cooperation between the different institutions of children’s rights is also noted.

The **disabled**, in particular, **persons with mental disability** are still among the most socially vulnerable groups; they faced serious discrimination, are negatively regarded by society, and are portrayed in a one sided negative manner by the media. This resulted in a difficult status for the disabled in the labour market, especially given current unemployment trends; risk of abuse of their rights and limited exercising of equal opportunities. The political solutions adopted in the mental health field in 2007–2008, that is, the approved *State Mental Health*

Strategy and the plan for its implementation approved later, did not yield the expected results. Public buildings and locations remain unmodified or inadequately adapted for disabled wheelchair users, almost half of whom live in housing which has not been adapted for their needs. The newly adopted procedure for providing technical equipment for the disabled only complicated its acquisition. The years 2007–2008 saw the adoption of landmark rulings of the Supreme Court questioning current judicial practice in cases of legal incapacitation.

The situation of **prisoners’ rights** stayed almost the same, however, it received wider public coverage. In 2007–2008, there were reports that a criminal underworld was flourishing in prisons and it was characterised by inequality and violence among the prisoners. Overcrowding in the prisons, unemployment, addiction to drugs or psychotropic substances, the frequent turnover of prison staff, insufficient training of prison employees as well as a shortage of employees were among the main obstacles for the reintegration of prisoners. Very few people served their sentence in an environment which would be more favourable to reintegration, i.e. an open imprisonment facility.

The policy of **patients’ rights** runs parallel with health sector reform.

With ineffective health care reform, most of the patients' rights are left uncertain and are not implemented. The protracted and corrupt health care reform results in an ineffective arrangement for health care provision, fails to reduce queues in health care facilities and the practice of informal payments continues. The issues of access to health services and prescription drugs, poor quality service and patient safety persist, while the right to information is not protected. There are also legal loopholes with regard to compensation for malpractice.

Right to Political Participation

During 2007–2008, the following factors had a negative impact on the implementation of Lithuanians right to political participation: voter bribing, fictitious participation in municipal elections, excessive restriction of the rights of citizens to initiate referenda and legislation, failure to implement the right to *actio popularis*, unreasonably limited opportunities for residents to participate in the process of national and municipal legislation and in the adoption of administrative regulations.

Issues Related to the Right to Elect and be Elected

The issue of electorate bribing persisted during the municipal elections of 2007 and the parliamentary elections in 2008. Indirect attempts to influence the electorate at times other than election campaigns were also recorded. Opportunities to influence the electorate will remain if the promoted online voting right is enforced. The ruling of the Constitutional Court declaring the prohibition of running for municipal council elections individually (as opposed to running on a political parties lists) unconstitutional but refusing to postpone upcoming elections, organized on the basis of unconstitutional provisions, raised

public doubts as to its fairness. The issue of fictitious participation in municipal elections remained.

When the Constitutional Court recognised the infringements of both voting confidentiality and personal (direct) voting requirements in the parliamentary elections of 2004¹, it was decided to relocate the early voting procedure from post offices to the premises of city councils. However, the elections of municipal councils which took place at the beginning of 2007 showed that these changes did not prevent abuses, while the bribing of voters continued². Bribery problems were also observed during the parliamentary elections of 2008³.

Following restriction of gift distribution and fund raising events during election campaigns, it was found that this practice continued at other times. Attempts by politicians to influence voters' decisions took the form of free trips to gather mushrooms or the distribution of record books containing photographs of party members in schools⁴. Pursuant to the new version of the *Law on Elections to the Seimas* that came into effect on 30 April 2008, distribution of gifts and other indirect bribing of electorate were prohibited from the date of the announcement of the forthcoming election date and were not limited to one month before Election Day. Despite

this, infringements of the new law have already been recorded⁵.

Given current tendencies, the implementation of online voting could provide favourable conditions for the buying of electors' votes, violating voting confidentiality and personal voting principles, in particular, when voting in the family or at work. The *Voting Means Reform* approved by Seimas resolution⁶ may not only damage trust in the transparency and fairness of elections but also provide opportunities for corrupt politicians to influence voters' decisions and gain power.

On 9 February 2007, the Constitutional Court stated that the exclusive right of political parties to propose lists of candidates for municipal councils, unjustifiably restricts the right of unaffiliated individuals to be elected and therefore contradicts the *Constitution*⁷. In spite of this, citizens who initiated the legal process were not permitted to participate in the upcoming municipal elections. The justification for this decision – retaining the stability of the system of local self-government – for a number of observers was not convincing⁸.

Despite the emphasis of the Constitutional Court on the necessity to revise the said *Law on the Elections to Municipal Councils* so as to allow

enough time before the next municipal elections, the corresponding draft law was not adopted, even though a new version of the law was registered in the Seimas as early as on 3 April 2008.

The draft law clearly attempts to restrict possibilities for independent candidates as much as possible. The draft foresees the participation of individual candidates in municipal elections, however, they will have to collect a minimum 1% of voters' signatures in the municipality where they want to become candidates. This means that in Vilnius, Kaunas and Klaipėda they will have to collect a minimum of 1,000 signatures. The independent candidate will only be elected if he/she gets a minimum 4% of the votes. This is the threshold applicable to the list of party candidates⁹. Barriers such as these may make the right to be elected individually non-practical.

The earlier mentioned problem concerning fictitious participation in municipal election¹⁰ continues. Members of the Seimas and State officials participate in municipal elections but once they are elected and have to make a choice whether to accept the will of voters or to remain in current positions. Often, other candidates enter municipal councils instead of those trusted by the voters¹¹.

Unreasonable Restrictions of the Right to Referendum and Legislative Initiative

Constant failures of citizens' initiatives of referendum raise doubts about the reasonableness and fairness of its conditions.

In accordance with the *Constitution of the Republic of Lithuania*, a referendum may be declared in two cases: when it is requested by a minimum of 300,000 voters (this accounts for 12% of the total electorate) or by decision of the Seimas.

Practice demonstrates that the requirements imposed on citizens' initiatives for referenda are unreasonably restrictive. During the sixteen years of the Constitution's existence, none of the fourteen attempts by voters to initiate a referendum has succeeded. All of them were unsuccessful because initiators failed during the prescribed period to collect the required number of signatures.

In the meantime, certain principal decisions adopted by the Seimas without referendum were met with reservations or disapprovingly by the society. Examples of such decisions include the choice for NATO membership, approval of the Constitution of the European Union, and the adoption of the *Law on Nuclear Plant*. In the latter case, reasonable arguments

were voiced about the vital importance of the decision to build a new nuclear plant for the whole Lithuanian population, including future generations, therefore, the faith of this law should have been decided through the popular referendum¹².

The right to initiate legislation is used by the political parties to either exert political pressure on the governing majority (in all the cases of ‘party’ initiatives, they were organised by the opposition) or for the purposes of political communication.

That individuals and civic groups find it difficult to exercise this right is demonstrated by the fact that, since 2000 when the right of citizens to initiate legislation was recognized, six out of eight initiatives were organised by the parliamentary political parties¹³, and one by the Social Liberals party which was not a parliamentary party at that time. Only one of the seven initiatives to enact legislation yielded results¹⁴. In Spring 2008, a group of civic activists attempted to initiate a legislation related to the energy policy but did not manage to collect the required number of signatures during the prescribed time.

Limited Opportunities to Participate in Legislative Processes

The possibilities of citizens to take part in the law-making process is

particularly restricted at the governmental and municipal levels and relatively restricted in the Seimas.

The law-making in the Executive branch is essentially closed to citizens. The routine practice is that the Ministries and other executive institutions adopt a legal act and inform, if at all, about it the public, instead of providing an information about the intentions and drafting process in advance.

Law on the Elections to Municipal Councils provides for certain rights of the residents to participate in decision-making on issues within the prescribed powers on the municipal councils.

It has been previously emphasized that the implementation of the majority of these rights, including the right to get acquainted with the draft decisions of municipal councils, are not carried out with due diligence¹⁵. The situation has remained unchanged except for the obligation of the councils, enacted in 2006, to publicise registered draft decisions; however, this requirement is fulfilled in a random manner: either none or incomplete draft decisions are announced.

Municipal councils may consider and adopt decisions even if they have not

been included in advance on the meeting agenda, which must be made public before the meeting. Therefore, the drafts of such decisions can 'legally' avoid publicity.

Drafts municipal administration acts are not made public at all.

In accordance with the *Law on Public Administration*¹⁶, the institutions of public administration must consult relevant public and private organisations (representatives of associations, labour unions, NGOs) and experts on administrative regulations related to public interest. In practice, this requirement is often ignored, in particular, at municipal level, as evidenced by the quite low number of information notices inviting interested organisations and groups for consultations. Instead, frequently public institutions invite directly loyal social partners to the consulting process. This procedure gives an impression of legality but, in fact, makes a mockery of the consultation process.

Failure to Implement Actio Popularis

The *Constitution* affirms the right of citizens to appeal against the decisions of public institutions and officials. Systemic interpretation of the *Constitution* leads to the conclusion that this includes the right to complain against

decisions which in his or her opinion runs against the public interest.

In accordance with the effective legislation, individuals may only file a complaint against the actions of public institutions or officials to the supervising institution or official. The right to appeal to court is restricted. Although the *Law on Administrative Proceedings*¹⁷ foresees that 'in cases provided for in the law, individuals may appeal to court with a request to defend public interest...', not a single piece of legislation adopted by the Seimas grants this right either to individuals or NGOs¹⁸. At the moment, only the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* ratified by the Seimas and having the status of law in the Republic of Lithuania grants this right.

In order to effectively implement the constitutional right to appeal against the decisions of public institutions or officials, it would be advisable to foresee *actio popularis*, i.e. an opportunity to have access to justice defending public interest.

The draft law related to this matter, which is registered in the Seimas, would not change the existing situation since it only reiterates that in the prescribed cases individuals or their

associations may defend public interest, however, it fails to specify the actual instances. Moreover, the protection of public interest is associated with the applicant's interests. That would make *actio popularis* right declarative.

It is unfortunate that the current coalition government did not include the necessity for introduction of *actio popularis* in its programme for 2008–2012, although it was a stated goal of the senior coalition partner, the Homeland Union – Lithuanian Christian Democrats, in its election programme¹⁹.

¹ See 5 November 2004 Opinion of the Constitutional Court *On the Enquiry of the President of the Republic of Lithuania whether the Law on Elections to the Seimas was not Infringed during the Election to the Seimas of the Republic of Lithuania of 2004*, case No. 42/04, <http://www.lrkt.lt/dokumentai/2004/i041105.htm>. Constitutional Court: “The requirements of voting confidentiality and personal (direct) voting were ignored. [...] Direct and indirect purchasing of electors' votes became wide-spread in election practice. This distorts genuine will of voters and provides conditions for unfair competition in elections as well as reduces trust in the representatives of the Nation.”

² Džina Donauskaitė. Threats of Commercial Censorship in Lithuanian TV Channels, *Atgimimas Weekly, Delfi.lt*, 5 March 2007, <http://www.delfi.lt/archive/article.php?id=12389413>.

³ Public Prosecutor's Office reports that the total of 29 complaints and statements on possible infringements of the laws on elections were received from individuals during the first round of the elections to the Seimas. According to these complaints, 14 pre-trial investigations were initiated. The examination of the remaining 15 complaints did not detect any violations. // Bribery is the Vice of Elections, *Respublika Daily, Ve.lt*, 24 November 2008, <http://www.ve.lt/?data=2008-10-01&rub=1221561268&id=1224838346>.

⁴ Saulius Tvirbutas. Politicians also Fund Electorate's Leisure, *Kauno diena Daily, Delfi.lt*, 2 October 2007, <http://www.delfi.lt/archive/article.php?id=14575906>.

⁵ See, for example, October 2008 Decision No. 152, *On the Actions of Bernardas Šatkovskis, member of Union of Farmers*, of the Central Electoral Commission, <http://www.vrk.lt/dynamic/files/924/sprendimas10-02nr.152satkovskis.pdf>.

⁶ See 16 November 2006 Resolution of the Seimas of the Republic of Lithuania No. X-912, *On the Approval of Concept of Online Voting in Elections and Referenda*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=287235&p_query=&p_tr2=.

⁷ In 2008, a similar complaint concerning the monopoly of political parties to raise candidate lists in elections to the Seimas, given the opportunity to raise candidates in single-constituency voting districts, was recognised as unfounded. See 1 October 2008 ruling *On the Compliance of Paragraph 1 Article 37 of the Law on Elections to the Seimas of the Republic of Lithuania (15 April 2008 version) with the Constitution of the Republic of Lithuania* of the Constitutional Court, Case No. 26/08, <http://www.lrkt.lt/dokumentai/2008/n081001.htm>.

⁸ See 9 February 2007 ruling *On the compliance of Paragraph 1 Article 34 of the Law on Elections to the Municipal Councils of the Republic of Lithuania* (21 December 2006 version) with the Constitution of the Republic of Lithuania of the Constitutional Court, case No. 06/07 <http://www.lrkt.lt/dokumentai/2007/n070209.htm>.

⁹ Non-partisans Lose their Gateway to the Municipal Elections. 7 April 2008, www.alfa.lt, <http://www.alfa.lt/straipsnis/c67435>.

¹⁰ See Implementation of Human Rights in Lithuania: Overview, HRMI, 2005, p. 9, <http://www.hrmi.lt/project.php?strid=1191&id=2054>.

¹¹ See The Mandates of Municipal Councils were not Taken by Every Fourth Elected, *BNS, Bernardinai.lt*, 16 April 2007, <http://www.bernardinai.lt/index.php?url=articles/61232>. “More than one out of four politicians elected to the municipal councils did not participate in the first meetings of newly elected municipal councils on 25 February. They refused to take the mandates before the first meetings, therefore, other members of political parties took their seats in the councils”.

Zenonas Vaigauskas, Chairman of the *Central Electoral Committee (CEC)*, told *Kauno diena Daily* that about 400 elected individuals passed over their mandates to party fellows in all 60 municipal councils.

¹² Simona Viltrakytė. Civic NGOs: the law contradicts the Constitution, *Lrt.lt*, 10 December 2007, <http://www.lrt.lt/news.php?strid=5042&id=4200672>.

¹³ Party of Social Democrats is the author of three initiatives, Liberal and Centre Union authored two initiatives, while the Social Liberals – one initiative.

¹⁴ One of the initiatives of the Party of Social Democrats was successful: the *Law Amending Articles 13 and 14 of the Law on Value-Added Tax* was approved by the Seimas on 7 December 2000.

¹⁵ See Implementation of Human Rights in Lithuania: Overview, HRMI, 2003, p. 10, <http://www.hrmi.lt/project.php?strid=1191&id=1504>.

¹⁶ Law on Public Administration, (Official Gazette, 2006, No. 77-2975, Article 7).

¹⁷ Law on Administrative Proceedings, (Official Gazette, 2000, No. 85-2566, Prg. 1 Art. 56).

¹⁸ See 23 January 2004 Ruling of the Supreme Administrative Court of Lithuania in administrative case *Žvėrynas Community vs. Vilnius City Council and Administration*. Case No. A-03-11-04.

¹⁹ See Election programme of Homeland Union – Lithuanian Christian Democrats, p. 48, http://www.tsajunga.lt/index.php/rinkimu_programa/359.

Right to Freedom of Expression

In 2007–2008, lack of transparency in the media continued to be an issue. Although commissioned journalism flourished, none of the measures necessary for legal regulation were put into practice. In the meantime, the prohibition of political advertising on TV and radio programmes raises doubts concerning its compliance with international standards of free speech. There were attempts to restrict the work of journalists by referring to criminal prosecution, attempts to control the content of publications and broadcasts, the rules for the accreditation of journalists were tightened. During the reporting period, the number of cases of hate incitement online continued to increase, but the emerging legal practice in dealing with this phenomenon raises concerns.

Lack of Transparency

Sociological research carried out in 2007 revealed that business people believed the Lithuanian media to be corrupt. 79% of respondents agreed with this statement, 49% of business people, who had contacts with weekly magazines claimed that publishers implied that articles favourable to their company would be written in exchange for advertisements in

that media. The majority of respondents believed that publications and programmes showing a certain individual or company in a bad light can ruin that person or company¹.

In May 2007, the amendments to the *Law on Declaration of the Assets* were submitted to the Seimas. Pursuant to these proposed amendments, declaration of assets would be mandatory for employees and owners of media companies. Under these amendments, the list of persons who must declare their property would include among others, proprietors and managers of media organisations, their family members, journalists employed by the media or receiving income from the media under copyright contracts, and their family members. This initiative was supported by the Lithuanian Journalist Union which also proposed the introduction of a mandatory declaration of public and private interests of media workers²; however, at the time of drafting this Overview the law has not yet been adopted.

In July 2007, the Lithuanian Journalist Union addressed journalists and publishers urging them to report attempts to bribe them or other corrupt practices suggested to them. The Lithuanian Journalist Union claims that in cases of the prosecution of media workers for taking or receiving bribes, such workers should

be treated as public officials³. This parallel is based on the fact that the report of a journalist about an offer of a bribe to him or her cannot be considered an attempt at bribery unless the journalist has the same status as that of a public official.

The Government programme drafted in December 2008 emphasizes its objective to equate a journalist's liability for bribery to be the same as that of public officials⁴, however, the adequacy of such a step raises doubts. There are reasons to believe that measures of such as these are ineffective and do not address the actual reasons for corrupted practices in media and do not reach the most important actors of such practices⁵.

Pursuant to the *Law on the Provision of Information to the Public*, the publishers and distributors of public information as well as journalists must make known any support received, if this support exceeds the minimum monthly salary, by indicating the size and contributor of the support. Nevertheless, in practice no announcements of support received by a journalist were recorded

Insufficient Legal Regulation of Commissioned Journalism

In 2007–2008, suspicions were raised by the public concerning the abuse by

certain politicians of administrative resources available to them and their influence on the content of information about them. Contractual relationships between the ministries and the media outlets often led to biased articles in the press or on Radio and Television programmes in favour of particular Government ministries and especially Ministers. The public is finding it increasingly hard to differentiate information in an impartial manner from the publicity campaigns of certain politicians.

A new version of the *Rules on Information about Minister's Activities Provided to the Public*⁶ was adopted in 2008. Although the rules prohibit both the use of political advertising for releasing information to the public on a Minister's activities, and the use of state budget funds, which are allocated for the provision of information of Minister's activities, for the managing of the personal political image of the Minister, the legal implementation of the regulation remains insufficient.

There exists no legal definition of commissioned media, so, in practice, it usually refers to information prepared by state institutions or contracted agencies on their activities and made public via the media for a fee; neither broader guidelines for dissemination of commissioned media products nor detailed regulations exist, *Rules on Information about*

Minister's Activities Provided to the Public does not apply to other public and municipal institutions, agencies, and officials.

The lack of legal regulation leads to inconsistent legal practice in assessing similar or even the same factual circumstances. For example, in September 2008 the Supreme Administrative Court annulled the decision of the Chief Official Ethics Commission, in which the Commission decided that certain media articles about the Ministry of Agriculture, paid for from the State budget, amounted to self-promotion of the Minister. Thus, the Minister abused her post for personal non-monetary gain. The court maintained that the right of a Minister as a politician to publish favourable information about their own activities and the institution they heads cannot be restricted⁷.

Political advertising – one of the most frequent types of commissioned journalism – requires special attention. It is no accident that it gets more expensive before elections⁸. A variety of surveys show that the electors are not that much more responsive to the programme speeches of the candidates than they are to the information in the media about the candidates. In Lithuania, political (politicians') advertising is poorly regulated; there is no system of control or responsibility for infringements.

The Law on Funding of Political Parties and Political Campaigns, and Control of Funding determines general guidelines for the publication of political advertising via the media, and prescribes that political advertising in the media must be disseminated for the same fees and conditions to all participants in the political campaign. Nonetheless, the municipal elections of 2007 and the parliamentary elections of 2008 showed that the principle of equal fees for political advertising can be easily circumvented. Its implementation is obstructed by the so-called 'agency' discount system when a different fee for political advertising is applied to a participant of a political campaign who goes to a media services or planning agency than for an individual who deals directly with the media.

The Law Amending Articles 2 and 18 of the Law on Funding of Political Parties and Political Campaigns, and Control of Funding adopted on 10 June 2008⁹ prohibited political promotion clips on Television and Radio programmes, and prohibited the circulation of political advertising in the media at no cost.

In the view of jurisprudence of the European Court of Human Rights (ECHR), such legal regulation is doubtful. On 11 December 2008, the European Court of Human Rights, after hearing the complaint of the

Norwegian commercial television broadcasting company *V Vest AS* (Ltd.) and the Norwegian political party *Pensjonistpartiet*, stated that prohibition by law of political advertisement in broadcasting and the punishment of a broadcaster for breaking this law contradicts the right to freedom of expression under the *European Convention on Human Rights*¹⁰.

Norwegian authorities explained to the ECHR that the prohibition of showing political advertisements was necessary to preserve the quality of political debate in a democratic society. According to them, if political promotion is allowed, larger and more influential political parties with better financial opportunities would have a greater opportunity to influence public opinion. And this, they held, would substantially reduce the opportunities of minor political parties to express their ideas. The explanation of Norwegian representatives in the ECHR essentially coincides with the arguments concerning the restriction of political advertising in Lithuania.

But the arguments of the Norwegian state on the necessity to restrict the right of expression did not convince the Court. The ECHR stressed that in the case in question the said measures yielded opposite results since Norwegian television channels provided more information to the public about

the activities of better-known, larger political parties, leaving much less time for the ideas of minor parties to be aired.

The restriction of political promotion and dissemination in the traditional media will undoubtedly divert the flow of political advertisements to the internet. So far no special requirements are applied to political promotion online.

Restrictions of Journalist Activities

It has been noted before that public figures and state officials in Lithuania frequently initiate criminal prosecution against critical journalists and opponents whom they want to silence¹¹. This practice continued in 2007–2008. There were quite a few court rulings finding journalists guilty and responsible for violations of dignity and reputation. In certain criminal cases private charges turned into public charges motivated by the fact that the criminal trial was of public importance.¹²

The liability for the violated dignity and reputation of a person, and – more broadly – for his/her right to respect for private life may be civil or criminal. This depends on the solution chosen. The initiation of criminal cases against journalists constitute one of the most severe restrictions of

the freedom of speech, therefore, public figures should normally refrain from criminal prosecution of journalists and defend their dignity and reputation through civil litigation.

Attempts by state institutions to control the content of information provided by the media were observed during the reporting period. For example, in 2007 it was established that a cooperation agreement was concluded between the local weekly *Elektrėnų Kronika* and the police department of the town of Elektrenai. In accordance with this agreement, the editorial board would coordinate the content of information related to police operations with an officer in charge before publishing it¹³. The observance of this agreement would have meant unlawful restriction of the editorial independence of the weekly publication.

The right to accreditation is one of a journalist's rights. Since it is directly related to the ability to receive information more promptly, this right ensures expedient collection of information and its channelling to the public. The absence or loss of accreditation is one of the circumstances restricting the activities of a journalist.

The issues concerning journalist accreditation and its loss occurred at the beginning of the term of the new Seimas in 2008. At the end of 2008,

a journalist of a commercial TV station was deprived of his accreditation because he was allegedly too noisy when doing a live news report while new ministers were taking their oath of office in the Seimas¹⁴.

In November 2008, the board of the newly-elected Seimas adopted new procedures and drafted a list of places (premises) where journalists could not enter with video cameras, photo cameras and audio recording equipment, arrange interviews, film or take pictures¹⁵. Members of the professional community of journalists maintain that this prohibition does not comply with the provisions of the *Constitution* and unlawfully restricts the journalist's right to receive and disseminate information and ideas.

The lack of social benefits is one of the most vulnerable parts of a journalist's status. Despite the tendency to replace copyright agreements with employment contracts and the first signed collective agreement between journalists and publishers¹⁶, Lithuanian journalists usually work on the basis of copyright agreements without any social benefits.

Transgression of Limits of Freedom of Expression: online comments

With the increase in electronic media, an increase in offensive, hate inciting comments in internet news portals in

2007–2008 was observed, consequently, the control and the responsibility for such comments must be strengthened.

At the moment, no state institution is responsible for the monitoring of such online comments. Pursuant to the *Law on the Provision of Information to the Public*, the Ethics Commission for Journalists and Publishers (ECJP) is to supervise the compliance with legal provisions prohibiting the incitement of hate on grounds of nationality, race, religion, social status or gender in the dissemination of public information, however, in practice, this function is fulfilled only in the investigation of complaints received in relation to comments or articles published online. Furthermore, since the Commission's opinions are based on the personal perceptions of Commission members and are not well reasoned, it is of little practical importance: courts commonly disregard these opinions¹⁷.

The gap in monitoring is partially bridged by NGOs and public-spirited individuals who lodge complaints on the incitement of hate to the ECLJP or prosecutor's office, however, these efforts are not sufficient to ensure the prosecution of persons who infringe the law by expressing hate publicly on the Internet.

Statistics show that the number of pre-trial investigations initiated in relation to the incitement of hate and the number of criminal cases referred to courts has been growing recently¹⁸. However, pre-trial investigation officers suspecting persons of the incitement of hate online face difficulties. The essential problem is the emerging court practice requesting proof of direct intent on the part of the person inciting hate.

On 22 December 2008, Vilnius Regional Court rejected an appeal of the Prosecutor's office concerning the acquittal by the local court of a person who had advocated violence against the Roma, in one of the news portals¹⁹. The court stressed that not every negative statement about a person or group of persons belonging to that group in terms of gender, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or attitudes constitutes a criminal offence under the meaning of Article 170 of the *Criminal Code*. It requested proof of direct intent to incite hate. To reach this standard of proof in cases of hateful online comments is quite difficult. In addition, the court judgement stated that democratic society should tolerate opinions that are unpleasant²⁰.

The recent growth of numbers of comments inciting hate in the public

domain shows that the society lacks knowledge about freedom of expression and its limits. The majority of individuals punished do not believe that they had committed a criminal offence by expressing their opinion. The content of opinions expressed also shows that the level of society's intolerance towards certain minorities remains high. This calls for effective and consistent education and promotion of tolerance. The introduction of a legal requirement for immediate removal of hate inciting comments from electronic media outlets should be also considered.

¹ Research *Towards More Transparent Mass Media* conducted by Transparency International – Lithuanian Chapter, http://www.transparency.lt/new/images//media_skaidrumas_www.pdf.

² People Responsible for Mass Media Content Should Declare Their Assets, *Balsas.lt*, 18 May 2007, <http://www.balsas.lt/naujiena/104885/uz-ziniasklaidos-turini-atsakingi-asmenys-turetu-deklaruoti-turta/rubrika:naujienos-lietuva>.

³ D. Radzevičius. Journalists and Media Managers are Urged to Voice the Attempts to Bribe Them, *lzs.lt*, 11 July 2007, http://www.lzs.lt/about.php?id=2198&type=news&page_menu=1.

⁴ M. Širvinskas. Will Journalists Become Half-Officials?, *Lietuvos žinios*, *Balsas.lt*, 15 December 2008, <http://www.balsas.lt/naujiena/228692/zurnalistai-taps-pusiau-valdininkais/rubrika:naujienos-lietuva-politika>.

⁵ *This dependency is expressed in much higher sums and remains beyond sight. The conductors will remain unnoticed*, – forecasts Lawyer Liudvika Meškauskaitė. Ibidem.

⁶ 17 April 2008 Resolution No. 353, *On the Rules on Information about Minister's Activities Provided to the Public*, of the Government of the Republic of Lithuania (Official Gazette, 2008, No. 48-1780).

⁷ 8 September 2008 Ruling of the Supreme Administrative Court of Lithuania in administrative case *K. D. P. v Chief Official Ethics Commission*, No. A-261-2146/2008.

⁸ The Prices for Political Advertising Go up Steeply Before Elections, *BNS*, *Balsas.lt*, 8 September 2008, <http://www.balsas.lt/naujiena/212291/politine-reklama-smarkiai-pabrangstapries-rinkimus/rubrika:naujienos-lietuva-politika>.

⁹ *Law Amending Articles 2 and 18 of the Law on Funding of Political Parties and Political Campaigns* (Official Gazette, 2008, No. 71-2720).

¹⁰ 11 December 2008 Judgement in case *TV Vest AS & Rogaland Pensjonistparti v. Norway* (Application No. 21132/05), www.echr.coe.int.

¹¹ See, Implementation of Human Rights in Lithuania: Overview, 2006, p. 15–16.

¹² Article 409 of *Criminal Procedure Code*.

¹³ Police Took on Press Censorship, *Lietuvos žinios* Daily, *Balsas.lt*, 3 April 2007, <http://www.balsas.lt/naujiena/73475/policija-emesi-cenzuruoti-spauda/rubrika:naujienos-lietuva>.

¹⁴ R. Lukaitytė, E. Samoškaitė. Journalist to be Kicked out of the Seimas for too Noisy Work, *Delfi.lt*, 10 December 2008, <http://tv.delfi.lt/en/video-rated/rxuSrW9I/?p=60&p=60>.

¹⁵ Journalists are Preparing an Appeal to Court on the Restriction of Work, *BNS, ve.lt*, 12 December 2008, <http://www.ve.lt/?rub=1065924810&data=2008-12-12&id=1229089385>.

¹⁷ Representatives of Journalists and Publishers Signed the First Collective Agreement, *LŽS, Straipsniai.lt*, 20 November 2006, <http://www.straipsniai.lt/ziniasklaida/puslapis/11637>.

¹⁹ D. Sinkevičius. Prosecutors Failed to Prove that a Comment Urged to Obliterate Roma, *Delfi.lt*, 22 December 2008, <http://www.delfi.lt/news/economy/Media/article.php?id=19748268>.

²⁰ See below Discrimination, Racism, Anti-Semitism and Other Forms of Intolerance.

²¹ D. Sinkevičius. Prosecutors Failed to Prove that a Comment Urged to Obliterate Roma, *Delfi.lt*, 22 December 2008, <http://www.delfi.lt/news/economy/Media/article.php?id=19748268>.

²² See more details below in Discrimination, Racism, Anti-Semitism and Other Forms of Intolerance.

Right to Respect for Private Life

Very few positive shifts in the area of private life protection in 2007–2008 were observed: privacy was even further restricted. The rapid development of new technologies led to the growth of personal data use in a variety of areas, however, the low level of society's awareness and knowledge in this field provided opportunities for ongoing careless treatment of personal data and an increase in personal data thefts. Politicians, state officials and judges demonstrated insufficient understanding of personal data protection. The introduction of surveillance systems in city streets, private grounds, closed premises and places of employment spread, too. The problem of protection of privacy in the media also emerged: the balance between the right to freedom of expression and the right to respect for private life was further outweighed in favour of the first. The courts and public institutions continued to demonstrate outdated, insensitive attitudes towards the value of a person's privacy. During the reporting period, attempts were again made to solve the protracted dispute concerning the spelling of names and family names of Lithuanian nationals belonging to ethnic minorities.

Vulnerability of Personal Data

The fast penetration of high technologies into everyday life leads both to the growth of personal data use and its vulnerability. Personal data is a valuable and sought-after source of information that allows the control of, and impact on the choices and behaviour of the subject of the personal data; they can also be used for purposes that are harmful or criminal in regard to the subject of the personal data. Therefore, it is very important to raise the awareness of the public and improve its knowledge in the area of personal data protection as well as to ensure effective legal regulation and protection mechanisms in this area. The perception of Lithuanians of the content, meaning, proper use and protection of personal data lags behind the technological progress¹.

It has been reported previously that personal data has become a commodity in Lithuania². In 2007–2008, there was a marked increase in the number of personal data thefts³. 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 malware⁴. 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 customers⁵.

The unjustified requirement to provide excess personal data, in particular ID code, continued to be practiced in shopping centres⁶, hotels⁷, and other public and private places⁸. The media reported that in 2008, a person received a folder with the data of 128 neighbours (their names, family names, ID codes, numbers of purchase contracts) from a real estate registry⁹.

Politicians also abused personal data. In their election campaigns, the political parties mailed letters to voters, although pursuant to *the Law on Legal Protection of Personal Data* personal data can only be used for direct marketing and political promotion purposes with the consent of personal data subjects¹⁰.

On 30 April 2008, amendments to the *Law on Elections to the Seimas*¹¹ came into force; these amendments meant that political parties were no longer able to obtain general lists of the electorate specifying voter's name, family name, address and birth date, during the election campaign. However, during the parliamentary elections of 2008, voters were actively called and emailed¹². The legislation does not regulate these forms of personal data from being used for political marketing.

In regard to human rights protection, the devaluation of personal data disclosures, demonstrated by law en-

forcement institutions and a court in 2007–2008, raises particular concern. In 2007, the Police Department of Vilnius on its website published the personal data of individuals penalised for *Road Traffic Regulations* violations by indicating their name, family name, birth date, time and place of committed violation, established level of alcohol intoxication and the applied Article of *Code of Administrative Infringements*¹³.

The Police Department claimed that this was done for the purposes of public information, education and with the aim of prevention of violations of road traffic regulations. The State Data Protection Inspectorate (SDPI) obligated the Police Department to discontinue the publicising of these personal data; however, the Supreme Administrative Court of Lithuania declared that placement of personal data of drunk drivers on a website was lawful¹⁴.

After evaluating the balance of interests in the case, i.e. the harm caused by the disclosure of personal data of a person who committed an infringement of the law and the prevention of threat to the life, health and safety of other participants of traffic, the court concluded that in this case the person's right to respect for private life does not outweigh public interest to prevent violations of the *Road Traffic Regulations*. In the opinion of the

court, the public right to information about penalised drunk drivers is more important than the interest of a data subject to keep his/her personal data private. This argument fails to convince since there is no evidence supporting the claim that disclosure of the personal data would have any preventive effect. The court did not also provide an opinion on whether the disclosed data were not excessive for the purpose of preventing infringements, and whether the data subject's rights are not infringed when following disclosure of personal data it is recognised that there was in fact no violation (for example, if the court overrules the decision imposing the penalty).

The insufficient sensitivity to the protection of personal data is demonstrated by the wide spread use of ID code, frequently mentioned in previous *Overviews*¹⁵, and the method of its constitution.

In the majority of democratic states respecting human dignity, the ID code excludes data disclosing a person's private data (such as gender and age)¹⁶. Yet, in Lithuania, pursuant to the provisions of the *Law on Population Register*, the first digit of the ID number shows a person's gender while those from the second to the seventh reveal the date of birth¹⁷. The law in effect does not provide for the possibility to change the code¹⁸.

In the case *L. v Lithuania* heard in the European Court of Human Rights in 2007, it was 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 ID code, has to suffer significant inconveniences and restrictions, and experiences humiliations and emotional tensions in everyday life¹⁹.

If no urgent measures are taken to improve the legal regulation of the protection of personal data and to actively educate the public, state officials and judges, the number of personal data and identity thefts as well as criminal offences related to the use of personal data may increase in Lithuania in the near future²⁰.

Further Proliferation of Surveillance

The invasion of people's privacy continued in 2007–2008: video surveillance cameras were installed in streets of the cities and closed premises such as shopping centres²¹, workplaces²², schools²³, and detention cells²⁴. Surveillance equipment was also installed in police patrol cars²⁵. According to the head of the State Data Protection Inspectorate, the number of recorded cases when surveillance cameras are installed in especially privacy-sensitive places, for example, dressing-rooms of stores or next to ATMs, is increasing²⁶.

The State Data Protection Inspectorate has issued instructions warning that surveillance in areas must be noted with special notice plates indicating who, and for what purpose is conducting the surveillance²⁷. Data managers were obliged to prepare such notices; however, there are actually very few seen in public places.

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 years²⁸, but further expansion of these systems is still motivated by public statements about their benefits²⁹.

According to reports of IT specialists and business figures, the number of companies using software enabling employers to control their employees' e-mails, internet browsing and telephone conversations increased in 2007–2008³⁰. This software is marketed together with other software; it can be also bought online³¹.

The control of e-Workplace is not sufficiently regulated in Lithuania; therefore, no reliable protection exists

ensuring employee protection from unjustified restriction of human right to privacy at work. The *Law on Legal Protection of Personal Data* does not regulate the issue of e-Workplace control. It seems that the only measure against illegal spying on employees is Article 214⁽¹⁴⁾ of the *Code of Administrative Legal Infringements* foreseeing administrative responsibility for illegal handling of personal data.

New forms of tracing employees by tracking down their mobile telephone location also emerged; this allows employers continuously monitor an employee's location and direction of movement³².

During the reporting period, *Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the Retention of Data Generated or Processed in Connection with the Provision of Publicly Available Electronic Communications Services or of Public Communications Networks*, otherwise known as the Data Retention Act, was transposed into Lithuanian law.

The provisions of the directive will be transposed into the Lithuanian legal system with the adoption of amendments to the *Law on Electronic Communications*. Pursuant to the draft *Amendment Law to the Law on Electronic Communications*, data related

to the network of fixed telephone connection and mobile phone connection as well as online data on sent emails and internet browsing will be retained in Lithuania³³.

Regretfully, the discussions concerning the content of the Directive and its impact on a person's private life began only after the adoption of the Directive, once the obligation to transpose its provisions to the national legislation occurred.

The adoption of the Directive was explained by the efforts to fight terrorism and organised crime³⁴. However, with no available data proving that data collection on persons residing in the European Union will yield expected results, the justification and proportionality of the restriction of the right to private life raise serious doubts³⁵.

Issues of Privacy Protection in Media

When information on private life of a certain person is made public in media, a conflict between the right to private life and the right to freedom of expression occurs.

The state is entrusted with a positive duty to effectively ensure the right to respect for private life. In 2008, Lithuania lost the first cases in the Eu-

ropean Court of Human Rights (ECHR) for the failure to fulfil this duty³⁶.

The ECHR established the violation of the *European Convention on Human Rights* in the *Law on the Provision of Information to the Public* (version of 2001) that determined a limit which disproportionately restricted the size of non-pecuniary damage caused by the illegal disclosure of information on person's private life in mass media. The ECHR stressed that a compensation of LTL 10,000 for the incurred non-pecuniary damage was disproportionate to the violation of privacy when a daily newspaper disclosed information on the applicants' health without their consent. In the opinion of the ECHR, such instruments of national legislation may not guarantee effective protection of the human right to respect for private life.

Although the ECHR clearly stated that the right to respect for private life should be given higher value, and despite the fact that the *Civil Code (CC)* does not limit the amount of non-pecuniary damages for violations of privacy, the courts are still hesitant to award higher monetary compensations.

The journalists of *L.T. Daily* spied on a popular performer and published the secretly gathered information in

press. Following a court action, in 2007 Vilnius County Court established an infringement of the right to respect for private life due to the disclosure in the press of a family secret and an illegally recorded telephone conversation. The court awarded compensation of LTL 10,000 for non-pecuniary against the publisher.

In summer 2007, *L.T. Daily* published photos of a daughter of an ex Prime Minister of Lithuania and her husband taken on a nudist beach³⁷. One of the TV channels made announcements on a TV show that were going to show secret shots of these persons. Both the institutions supervising journalist activities and the court recognised the infringement of the right to image and privacy. The broadcasting of the said show was banned by court decision. By the decision of the trial court, the publisher was obliged to compensate the claimants by paying each of them LTL 75,000 for the caused non-pecuniary damage. The Appeal Court left this decision in effect³⁸. Nevertheless, at the beginning of 2009, the Supreme Court of Lithuania (SCL), adhering to the Lithuanian court practice criticised by the ECHR, reduced the awarded monetary compensations to LTL 15,000 for each claimant. Given the fact that claimants incurred litigation expenses, which were paid from the awarded compensation, this decision of the SCL rendered the efforts to defend one's privacy almost fruitless³⁹.

In 2007–2008, journalists following the exception provided for in the *Law on the Provision of Information to the Public*, saying that information on private life may be published without a person's consent in cases where it is instrumental in disclosing infringements of the law or criminal offences as well as when information is provided publicly in the hearing of a case⁴⁰, often used this exception when disclosing private information from court hearings. This practice is inappropriate since not all information on a person's private life heard (obtained) during court hearing can be made public without the consent of the person in question. The SCL stated that being aware of this information does not entitle other persons, including the media, to make it public despite publicity at the court hearing⁴¹. Therefore, legally obtaining or receiving information in a public court hearing does not mean that the publication of this information via media channels is legal.

The Court Council by its 27 April 2007 resolution approved the *Rules on the Provision of Information on the Court Proceedings to the Public and Mass Media*⁴², that aim at ensuring the publicity of court proceedings and providing media with the necessary conditions for receiving information promptly. However, the amount of information on court hearings provided to the media raises doubts

with regard to the safeguarding of the right to respect for private life. The following data are provided: date, time, venue, case number, names and family names of participants of the proceedings (codes and names of legal entities) and case merit. In certain cases only data of person's name and surname and case merit (for example, divorce, adjudgement of alimony to children) results in the disclosure of sensitive information on person's private life without his/her consent⁴³.

Pursuant to the amended *Law on the Right to Receive Information from the State and Municipal Institutions and Agencies* that came into force on 31 July 2008⁴⁴ information on the salary of employees of state and municipal institutions or agencies is considered to be the same as information on the operation of these institutions, therefore, it no longer deemed to be private information. Yet, the publication of salaries of people working in state and municipal institutions or agencies cannot always be justified to be in the public interest. With the view to safeguarding of human rights, the salaries of those persons working in the public system who have power to make public decisions (execute public administration functions, administer the provision of public services or if their regular work has impact on public affairs) should undoubtedly be made public⁴⁵.

The entitlement of a journalist or public information organiser to receive information sooner than other members of public does not include the privilege of receiving more detailed information, including information on a person's private life.

With the development of technologies an explosion of videos of a private nature is observed on websites. For example, in August 2007 internet browsers could watch a man beating a woman⁴⁶. Although such video footage is often publicised without the consent of the persons concerned, no effective supervision mechanism that could protect people from wilful dissemination of footage on the internet exists⁴⁷.

Ongoing Problem of Name and Family Name Spelling

A fruitless discussion on the effective procedure for the spelling of personal names and family names has been ongoing in Lithuania for a number of years⁴⁸.

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 citizens of the Republic of Lithuania, as well as the norm of the *Civil Code of the Republic of Lithuania* (Art. 3.282) say-

ing that a person's name and family name are to be written in Lithuanian characters, people 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.

The year 2007 saw the preparation of one more legal instrument aiming at solving this issue, i.e. the draft *Law on Names and Family Names* that provides for a possibility to enter names and family names in documents not only in Lithuanian but in other Latin alphabets⁴⁹ as well; however, this decision was again met with active but irrational resistance⁵⁰.

¹ For example, during the awards of *LT tapatybė* (LT Identity) on 19 February 2007, the scanned passports and ID cards of nominated candidates for awards were shown on the big screen on the stage of the Little Theatre and later via Lithuanian TV.

Also see Eglė Digrytė, Lukas Simonas Zada-reckas, Customers' Passport Copies in Litter Sacks Next to Hansabankas Bank, *Delfi.lt*, 12 July 2007, <http://www.delfi.lt/archive/article.php?id=13766972>.

² Implementation of Human Rights in Lithuania: Overview, 2005, p. 10.

³ New Wave of Hackers is Overwhelming Lithuania, *Delfi.lt*, 21 April 2008, <http://www.delfi.lt>.

delfi.lt/news/daily/crime/article.php?id=16760362&categoryID=5995.

⁴ Arnoldas Remeika, Frauds Online, *Klaipėda*, 6 April 2007, http://www.info.lt/index.php?page=naujienos&view=naujiena_arch&id=99510;

Gediminas Stanišauskas, Virtual Thieves Tamper with Bank Accounts, *Kauno diena* Daily, 4 January 2007, http://info.lt/index.php?page=naujienos&view=naujiena_arch&id=92728.

⁵ LTV programme Žurnalisto tyrimas (Journalist's Investigation), 3 July 2007, 9.10 pm; Birutė Vyšniauskaitė. Personal Data Thieves Lead to Enslavement, *Lrytas.lt*, 13 August 2007, http://www.lrytas.lt/?data=20070813&id=akt13_a1070813&sk_id=99&view=2&p=1.

⁶ Teodora Rašimaitė. Personal Data Should not be Left Unattended, *Savaitė*, 11 February 2007, <http://www.alfa.lt/straipsnis/123354>;

Traders Illegally Request Personal Data for Processing Refund, *Alfa.lt*, 12 March 2008, <http://www.alfa.lt/straipsnis/175385>.

⁷ State Data Protection Inspectorate determined that certain hotels requested excess data from guests, for example, nationality, sexual orientation, skin colour or vehicle licence number. Rasa Lukaitytė. Study: the hotel recorded the guest's sexual orientation, too, *Delfi.lt*, 25 March 2008.

⁸ Ministry's Forms with Hints on Whom to Vote for, *Delfi.lt*, 31 October 2007, <http://www.delfi.lt/archive/article.php?id=14866836>.

⁹ ID Codes are No Secret, *BNS*, 2 September 2008, http://www.alfa.lt/straipsnis/196175/?Asmens.kodai..jokia.paslaptis=2008-09-02_09-59.

¹⁰ Information Society Development Committee will Consider Issues of Legal Protection of Personal Data, *Infolex.lt*, 2 April 2008, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&Str=20997>.

¹¹ *Law on Elections to the Seimas*, version effective between 30 April 2008 and 24 April 2009, No. I-2721, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=319351&p_query=&p_tr2=.

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¹⁴ 24 April 2008 Ruling of the Supreme Administrative Court of Lithuania in administrative case *Police Department of Vilnius v State Data Protection Inspectorate*. Case No. A⁵²⁵-689-08, procedural decision category: 25.

¹⁵ See Implementation of Human Rights in Lithuania: Overview, 2006, p. 11. Implementation of Human Rights in Lithuania: Overview, 2005, p. 11–12. Implementation of Human Rights in Lithuania: Overview, 2004, p. 20–21.

¹⁶ See more details in Right to Respect for Private Life: the use of ID code in Lithuania, HRMI, <http://www.hrmi.lt/project.php?strid=1191&id=2050>.

¹⁷ Pursuant to Article 8 of the *Law on Population Register*, the first digit of the ID code reflects the person's gender and the century he/she was born in, the second and the third digits show two last digits of the birth year, the fourth and the fifth show the birth month, the sixth and the seventh show birth day, while the eighth, the ninth and the tenth show serial number of entering those born on the same day into the registry, while the eleventh is a control digit of previous ten digits. http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=233559.

¹⁸ Pursuant to Paragraph 3 Article 8 of the *Law on Population Register*, the ID code granted to an individual is unique and unalterable.

¹⁹ In case *L. v Lithuania*, the applicant explained that he cannot show anyone his university diploma, sign an employment or any other contract, take a credit from the bank, etc. since in these and similar cases he is required to disclose his ID number. See Dainius Sinkevičius. Lithuania Lost a Case in Strasbourg to a Woman Seeking Sex Change, *Delfi.lt*, 11 September 2007, <http://www.delfi.lt/archive/article.php?id=14343095>; Džina Donauskaitė. No Humanity in Downtrodden Society, *Atgimimas Weekly*, 19 October 2007, <http://www.atgimimas.lt/articles.php?id=1192709995>.

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²¹ Dalia Gudavičiūtė. Drama for the Hairpin that Cost LTL 7, *Lrytas.lt*, 8 June 2007, http://www.lrytas.lt/?data=20070608&id=akt08_a1070608&view=2.

²² Chairman of Parliamentary Committee on Human Rights was quoted saying that the Committee is increasingly contacted by people

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²³ Tadas Širvinskas. Children Will be Under Video Surveillance, *Kauno diena Daily*, 16 January 2008, <http://kauno.diena.lt/dienrastis/kita/vaikus-stebes-kameros-54350>.

²⁴ Seimas Ombudsman: the right to privacy is infringed in lockups, *Delfi.lt*, 20 December 2007, <http://www.delfi.lt/news/daily/lithuania/article.php?id=15375579>.

²⁵ Vincas Grigas. Equipment Tracking Licence Plates in Klaipėda, *Klaipėda*, 30 January 2007, <http://www.delfi.lt/archive/article.php?id=11977735&categoryID=174757&ndate=1170108000>.

²⁶ Liepa Pečeliūnaitė. Protection of Personal Data is the Business of Data Subjects, *Alfa.lt*, 4 February 2008, <http://www.alfa.lt/straipsnis/c57756>.

²⁷ Neringa Jurčiukonytė. Video Cameras not Only Protect but also Embarrass Passers-by, *15 min. Daily*, 13 August 2007, <http://www.delfi.lt/archive/article.php?id=14054145>.

²⁸ See, for example, Implementation of Human Rights in Lithuania: Overview, 2005, p. 11–12.

²⁹ Eglė Digrytė. While Helping Law Enforcement Officers, the Cameras on the Streets Raise Concerns for the Human Rights Defenders, *Delfi.lt*, 27 July 2007, <http://www.delfi.lt/archive/article.php?id=13914675>.

³⁰ Audrius Sytas. Control of Employee Mind is Illegal, *Alfa.lt*, 5 April 2007, <http://www>.

naujasdarbas.lt/index.php?info=3&t=news&g=FF8BEA9B-BD63-470B-9F55-CB41DDE28D1C.

³¹ Teodora Rašimaitė. Modern world: privacy in danger, *Savaitė*, 1 December 2007, <http://www.alfa.lt/straipsnis/154287>.

³² Mindaugas Jackevičius. Employee Surveillance is Gaining Popularity in Lithuania, *Delfi.lt*, 26 March 2007, <http://www.delfi.lt/archive/article.php?id=12631860>.

³³ *Article 8 of the Draft Law Amending Articles 1, 3, 7, 12, 34, 77, Chapter 9 and Annex of the Law on Electronic Communications*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=309637&p_query=elektronini%F8%20ry%F0i%F8&p_tr2=2.

³⁴ Virginija Spurytė. New Fee for Surveillance, *Klaipėda Daily*, 01 October 2007, <http://www.delfi.lt/archive/article.php?id=14562813>.

³⁵ Each One Can Become a Suspect Soon, *BNS*, 9 November 2007, <http://www.balsas.lt/naujiena/173945>.

³⁶ See Judgement of ECHR of 25 November 2008 in cases: *Biriuk v. Lithuania* (Application No. 23373/03) and *Armonas v. Lithuania* (Application No. 36919/02), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>.

³⁷ See 24 October 2007 Decision No. SPR-23 of Journalists' Ethics Inspector On the pictures contained in publications *Naked Mertinas family like dessert for eyes / Mertinas family demonstrated their beauties in Nida* (*L.T. Daily*, 25 August 2007, No. 193/442), http://www3.lrs.lt/pls/inter/zetika?r_id=5083&k_id=1&d_id=71163.

³⁸ R. Lukaitytė. The Appeal Did Not Help: *L.T.* will have to pay LTL 150,000 for the

pictures of nude Mertinas family. *Delfi.lt*, 23 September 2008, <http://www.delfi.lt/news/economy/Media/article.php?id=18639234>.

³⁹ See 13 February 2009 Ruling of the Supreme Court of Lithuania in Case No. 3K-3-26/2009 initiated according the Application of D. M. and L. M. against the defendant UAB Ekstra žinios, procedural decision categories: 26.7; 44.2.4.2.

It has to be noted that the competence of the Supreme Court of Lithuania includes the issues of law but not fact. The determination of compensation for non-pecuniary damage requires the evaluation of consequences of illegal actions, i.e. factual circumstances.

⁴⁰ Paragraph 3 Article 14 of the *Law on the Provision of Information to the Public*.

⁴¹ See 13 March 2007 Ruling of the Supreme Court of Lithuania in civil case *V.P. v. UAB Lietuvos rytas* No.3K-3-90/2007, procedural decision category: 26.7.

⁴² 27 April 2007 Decision No. 13P-60 *Rules on the Provision of Information on the Court Proceedings to the Public and Mass Media*, http://www.teismai.lt/savivalda/nutarimai_visi.asp.

⁴³ D. Sinkevičius. Judicial System Discloses the Surnames of the Raped, *Delfi.lt*, 13 February 2007.

⁴⁴ *Law Amending Articles 1 and 2 of the Law on the Right to Receive Information from the State and Municipal Institutions and Agencies* (Official Gazette, 2008, No. 87-3473).

⁴⁵ The Issue of Public Disclosure of Clerks' Salaries Solved Using Borrowed Examples, *Respublika Daily*, 4 October 2008, <http://www.balsas.lt/naujiena/217077/valdininku>

atlyginimo-viesumo-problema-isspresta-svetimais-pavyzdziais/rubrika:naujienos-lietuva-politika.

⁴⁶ Mindaugas Milinis. Village Bruiser was Pleaded by the Victim, *Lietuvos žinios* Daily, 9 August 2007, <http://www.delfi.lt/archive/article.php?id=14024250>.

⁴⁷ Virginija Spurytė. Teachers Shudder Seeing Execution Episodes, *Klaipėda* Daily, 5 April 2007, <http://www.delfi.lt/archive/article.php?id=12774379>.

⁴⁸ See Implementation of Human Rights in Lithuania: Overview, 2005, p. 16.

⁴⁹ Paragraph 1 Article 9 of draft *Law on Names and Family Names*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=298978&p_query=vard%F8&p_tr2=2.

⁵⁰ Cross-purposes in Family Name Spelling in Passports, *Lrt.lt*, 14 July 2007, <http://www.alfa.lt/straipsnis/143684>.

The Right to Fair Trial

A public poll conducted at the end of 2008 showed that the right to fair trial is seen as the most vulnerable (65% respondents) human right among a number of civil and political rights. The right to fair trial was also named the most vulnerable right in equivalent surveys of 2004 and 2006¹. However, in 2007–2008 the public saw no fundamental reforms related to the operation of courts, pre-trial investigation institutions and court bailiffs. Instead the political agenda was dominated by inessential issues such as the dismissal of the Chief Justice of the Supreme Court of Lithuania and a group of bailiffs. The practice of unreasonably restricting people's freedom and ignoring severe infringements of justice prevailed; the Constitutional Court remained inaccessible to citizens, while few people were aware of the state-guaranteed legal aid system, and those who are aware of it do not tend to use it. On the whole, the feeling of legal security has decreased further.

Severe Infringements of the Right to Fair Trial

It has been noted on numerous occasions that pre-trial investigations are characterised by a lack of profes-

sionalism², however, no measures have been undertaken to improve their quality.

In 2008, the European Court of Human Rights (ECHR) adopted a judgement in the case *Ramanauskas v Lithuania*³. In this case, the applicant contested the legality of the use of criminal conduct simulation model by police officers. The court established that in late 1998 and early 1999 K. Ramanauskas had been approached by AZ, a person previously unknown to him, through VS, a private acquaintance. AZ had asked him to secure the acquittal of a third person and had offered him a bribe in return. The applicant had initially refused but had later agreed after AZ had reiterated the offer a number of times. ECHR considered that there is no indication that the offence would have been committed without the intervention of AZ and VS and that their actions had the effect of inciting the applicant to commit the offence. The Court recognised that the applicant's trial was unfair.

In another case *Malininas v Lithuania*⁴, the ECHR also recognised the unlawful application of criminal conduct simulation model and the infringement of the right to fair trial. In its judgement, the Court stressed again that the use of special investigation techniques has to have clearly

defined limits, while the collection of evidence inciting one to commit a crime is unlawful. The Court also concluded that the transaction of the sale and purchase of psychotropic substances was provoked by the police officer.

Hurried hearing of cases in courts led to the conviction of innocent persons. The results of the inspection conducted by the Supreme Administrative Court of Lithuania in the first six months of 2007 showed that every third person whose case concerning a theft from a store was convicted for an offence that he/she did not commit⁵.

In one of the cases, an innocent person was imprisoned for 8 months for robbery based on the fictitious testimony of two people⁶. After the judgement was appealed against, and accusations were found to be false the eight months of imprisonment were valued at LTL 20,000, i.e. LTL 80 for each day of wrongful imprisonment. The same compensation of LTL 20,000 was awarded to another person for wrongful conviction and two years of wrongful imprisonment⁷. The emerging court practice shows obvious moves towards the devaluation of the human right to freedom, thus, increasing the ranks of disappointed people distrustful of courts in Lithuania.

During the pre-trial investigation and judicial hearing of Alma Jonaitienė's case in 2007 and 2008, the media often infringed the principle of presumption of innocence. In this case of murder of two minor children which attracted a huge amount of publicity, one of the media channels called the suspect a “murderess” who “killed two of her children” before she was found guilty by the court.

At the end of 2007, the Inspector of Journalist Ethics declared that such a description of the suspect before her conviction had violated the presumption of innocence. However, even after a warning was issued to the owner of the media outlet, it continued to violate the presumption of innocence in its subsequent publications⁸.

It has to be remembered that each person suspected of or charged with a criminal offence is deemed innocent until his or her guilt is proved following the rules of the *Code of Criminal Procedure* and recognised in a sentence passed by court.

Journalists often “sentenced” A. Jonaitienė on the basis of the material of the pre-trial investigation, although pursuant to law this material is confidential. The data of the pre-trial investigation can be made public before the hearing of the case in

court only with the prosecutor's authorisation and only to such extent as deemed necessary. However, in A. Jonaitienė's case the public was consistently and regularly updated with information from the pre-trial investigation and/or the testimonies of witnesses as well as being provided with an analysis of this information and conclusions.

Lithuanian media also reported that in one of the criminal cases the records of telephone conversations between the suspect and his attorney were presented as evidence⁹. Each person suspected of committing a criminal offence is guaranteed a right to defence. One of the elements of this right is the possibility to communicate confidentially with their chosen legal counsel. The European Court of Human Rights explained that any surveillance, recording or any other tracing or disclosure of the communication between the defence attorney and the suspect constitutes a severe infringement of the right to defence.

Proportionality of Arrest and Detention on Remand during Pre-trial Investigation

Problems related to the legal regulations and practice of arrest and detention on remand during pre-trial investigations were noted in 2007–2008.

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 remand¹⁰.

The appeal procedure against the arrest is absolutely ineffective. Pursuant to 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.

The application for detention on remand also occurs too often. In 2007, the Public Prosecutor's Office de-

clared that in cases of terminated pre-trial investigations where suspects have been detained on remand, they have on average spent almost a month (29.5 days) in detention facilities¹¹. Statistics show that in all district prosecutors' offices, except Klaipėda, the number of terminated investigations has increased of late.

Pre-trial investigation officers, prosecutors and judges must always be aware that the right to freedom is one of the most important human rights. Therefore, a detention on remand is 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 or departure prohibition, would prevent the smooth process of the pre-trial investigation.

Forestalling Necessary Reforms

Efforts at improving the judicial system, initiated by the State President three years ago became hostage to the interests and ambitions of politicians and lawyers. Non-essential disagreements concerning the new version of the *Law on Courts* prevented it from being adopted in 2008, so only certain amendments to the effective law were passed¹².

Among the main obstacles for the adoption of the new law were the attempts to introduce cassation of cases heard by the Supreme Administrative Court of Lithuania in the Supreme Court of Lithuania¹³, however, no convincing arguments supporting this proposal were provided. Therefore, his proposal was criticised by a great number of legal experts. Despite certain deficiencies, the system of administrative courts functioning for ten years shaped the Western perception of administrative law and contributed to the integration of human rights standards into Lithuanian judicial practice.

The solution of structural problems was hindered by the protracted conflict about the release of the Chief Justice of the Supreme Court of Lithuania (SCL). The previous Seimas twice rejected the President's decree on the release of the Chief Justice, whose term expired in July 2008. The President signed the third decree but the Seimas has not yet considered it¹⁴.

The story of the release of the Chief Justice of the Supreme Court of Lithuania illustrates attempts by certain politicians to control the judiciary. These attempts run against the constitutional principles of separation of powers and the rule of law and, by involving the judiciary into political power struggle, further undermines public trust in the institution of court.

While the confrontation of interests and ambitions over the personality of the Chief Justices continues, the essential problems are ignored. The Judicial Council, among the problems which require attention, names ineffective management of the judicial system, lack of publicity of court operations, inadequate procedures for the selection, appointment and transfer of judges, lack of accountability and insufficient social benefits for judges¹⁵.

The ever increasing workload of the courts and other reasons led to the increase in the length of proceedings, which has become a systemic problem¹⁶, however no further steps, except for the recognition of the problem, are being made.

In 2007, Lithuania lost two cases in the European Court of Human Rights; both cases acknowledged the infringement of the right to a trial within a reasonable time¹⁷.

A positive shift is seen in the adopted amendments to the *Law on Courts*. The law introduces audio recording of court hearings (effective from 1 July 2010), publication of final court decisions online, periodical assessment of judges' performance, participation of civil society in the institutions of judicial self-governance, and computerised case distribution among judges¹⁸.

Accessibility of the Constitutional Court

In 2007–2008, Lithuanian politicians, lawyers and media frequently mentioned the possibility of introducing an individual constitutional complaint¹⁹. On 4 July 2007, the Seimas adopted the *Resolution On the approval of the concept of the individual constitutional complaint*²⁰. The concept has to be implemented through relevant legislation in 2009²¹, however at the time of drafting this overview no measures to ensure the accessibility of the Constitutional Court to individuals were being undertaken.

Introduction of an individual constitutional complaint provides an additional possibility to defend human rights provided for in the Lithuanian *Constitution*; however, it is also important to ensure that this opportunity is practical and efficient, and not theoretical and illusory.

The implementation of the adopted concept may render the right to a constitutional complaint ineffective. The concept does not provide for the possibility to complain directly to the Constitutional Court about alleged violation of constitutional rights, but instead foresees the right to challenge the constitutionality of a law that served as the basis for the adopted decision allegedly infringing

constitutional rights. The term for lodging the complaint is three months from the final decision being passed by a state institution; the appeal has to be drafted by a lawyer and a certain type of stamp duty has to be paid.

In 2007–2008, no attempts were made to solve the problem of accessibility of constitutional proceedings and the issue of competition of proceedings faced by persons who contest the constitutionality of a legal instrument in a court of general competence raise doubts concerning its constitutionality²².

Efficiency of the System of State-Guaranteed Legal Aid

Public surveys show that both the awareness of state-guaranteed legal aid and the likelihood of using it on the part of population are decreasing.

Primary legal aid provided to all persons irrespective of their income is not much used. The State Audit Report of 2007 concludes that this is the consequence of the shortage of information about such options²³.

During a public survey conducted in 2006–2007, when asked the question ‘Do you know or have you ever

heard about primary legal aid?’ more than half of respondents said they never heard about such aid (2006 – 58.6%; 2007 – 50.8%), while the majority did not intend to use it (2006 – 35.6%; 2007 – 44.1%)²⁴.

Even fewer respondents knew and were likely to use secondary legal aid, which includes preparation of documents and representation in courts and State institutions. Responding to the question ‘Do you know or have you ever heard about secondary legal aid?’ the majority said they had never heard about such aid (2006 – 69.7%; 2007 – 82.2%), while others had heard about it but never used it (2006 – 23.6%; 2007 – 14.2%).

The amendments to the *Law on State-Guaranteed Legal Aid*, adopted in 2008, extend availability of secondary legal aid to additional population groups and simplified the procedure for obtaining it. However, the amendments transfer the power to assign a lawyer for specific criminal cases from the Bar to the services of State-guaranteed legal aid, i.e. State office. Given the fact that criminal prosecution is conducted by the State, the power to assign defence counsel for an accused by another State office raises doubts as to whether this solution is compatible with fair trial standards.

Persistent Problems Related to Court Bailiffs Work

The dissatisfaction with bailiff work ongoing for a number of years is in part the result of an improper legal and ethical framework for the activities of court bailiffs²⁵. However, no essential reforms were undertaken in 2007–2008.

Lithuanians continued to complain about the court work of bailiffs²⁶. The Ministry of Justice recognised that the majority of complaints were justified²⁷.

The media reported on disciplinary cases taken against bailiffs for example, a court bailiff for the demand of unreasonable fees²⁸, the dismissal of a bailiff after the court established that he had abused his position²⁹, violations of prohibition to publish advertisements³⁰ and numerous other breaches of the law and professional ethics. The public was outraged to learn about the sale of an apartment owned by a single mother raising two minor children for about one fourth of its market value in order to pay off outstanding utility bills³¹.

¹ See http://www.hrmi.lt/images/img/Zmogaus_teisiu_padetis_Vilmorus_2008.pdf.

² Implementation of Human Rights in Lithuania: Overview, 2006, p. 22–23.

³ See case *Ramanauskas v Lithuania*, Application No. 74420/01, ECHR Judgement of 5 February 2008.

⁴ See case *Malininas v Lithuania*, Application No. 10071/04, ECHR Judgement of 1 July 2008.

⁵ Dainius Sinkevičius. As Many as 35% of Individuals Were Convicted for Thefts They Never Committed, *Delfi.lt*, 8 July 2007, <http://www.delfi.lt/archive/article.php?id=13816305>.

⁶ Dainius Sinkevičius. LTL 20,000 to a Convicted Innocent Kaunas Resident, *Delfi.lt*, 5 November 2007, <http://www.delfi.lt/archive/article.php?id=14892088>.

⁷ Dainius Sinkevičius. LTL 1.5 Million Claim for a Wrongful Conviction and 2 Years in Prison, *Delfi.lt*, 23 April 2008, <http://www.delfi.lt/news/economy/law/article.php?id=16790003>.

⁸ See, for example, Children Murderess Already Chose a Cruel Punishment for Herself, *Lrytas.lt*, 29 January 2008.

⁹ Lawyers Feel They are Spied On, *ELTA, Delfi.lt*, 10 July 2008, <http://www.delfi.lt/archive/article.php?id=17674465>.

¹⁰ Seimas Ombudsman: duration of temporary detention must be reasonable, *Alfa.lt*, 24 May 2007, <http://www.alfa.lt/straipsnis/138094>.

¹¹ Public Prosecutor's Office. Statistical Analysis of Terminated Pre-trial Investigations During Which the Detention on remand was Imposed, *Prokuratūros.lt*, 30 May 2007, <http://www.prokuraturos.lt/Naujiena/tabid/104/ItemID/718/Default.aspx>.

¹² See the version of the *Law on Courts* effective from 15 November 2008, No. I-480, http://www.3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330875&p_query=&p_tr2= .

¹³ Dainius Sinkevičius. Law on Courts - for People or for Strengthening the Clout of V. Greičius?, *Delfi.lt*, 26 June 2007, <http://www.delfi.lt/archive/article.php?id=13614262>.

¹⁴ Egidijus Kūris: The Seimas is to dismiss the President of LSC, *BNS, Delfi.lt*, 23 December 2008, <http://www.delfi.lt/news/economy/law/article.php?id=19767935>.

¹⁵ Court Council: chaos in courts is a tradition, *Delfi.lt*, 31 October 2007, <http://www.delfi.lt/archive/article.php?id=14853268>. Also see, Implementation of Human Rights in Lithuania: Overview, HRMI, 2006, p. 23-24; Implementation of Human Rights in Lithuania: Overview, HRMI, 2005, p. 22-24; Implementation of Human Rights in Lithuania: Overview, 2004, p. 22-23.

¹⁶ See, for example, Implementation of Human Rights in Lithuania: Overview, 2006, p. 21.

¹⁷ *Gečas v Lithuania*, Application No. 418/04, 17 July 2007; *Baškiėnė v Lithuania*, Application No. 11529/04, 24 July 2007. The infringements of the right to fair trial were also determined in the following cases: *Balsytė-Lideikiėnė v Lithuania* (Application No. 72596/01), 4 November 2008 (dismissal of the applicant's request to call expert witnesses) and *Švenčionienė v Lithuania* (Application No. 37259/04), 25 November 2008 (inadequate information about the case), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>.

¹⁸ Vadimas Vileita, Jevgenijus Bardauskas. A New *Law on Courts* is Replaced by the Amendments to the Old One. *Lrt.lt, Delfi.lt*, 3 July 2008, <http://www.delfi.lt/archive/article.php?id=17616419>.

¹⁹ Jūratė Skėrytė. Lapinskas: Constitutional Court is inaccessible to the population without the right to individual complaint, *Alfa.lt*, 7 April 2008, <http://www.alfa.lt/straipsnis/178723>.

²⁰ See 4 July 2007 Resolution of Seimas of the Republic of Lithuania, *On the Approval of Concept of the Individual Constitutional Complaint*, No. X-1264, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=301583.

²¹ Stasys Gudavičius. Constitutional Court May Open its Doors to Citizens in a Year, *Delfi.lt*, 1 June 2007, <http://www.delfi.lt/archive/article.php?id=13386154>.

²² See Implementation of Human Rights in Lithuania: Overview, 2006, p. 25.

²³ National Audit Office of Lithuania. Audit Report *Provision of State-Guaranteed Primary Legal Aid and Registration of Civil Status Acts*, *vkontrolė.lt*, 26 July 2007, http://www.vkontrolė.lt/naujienos_pranesimas.php?277.

²⁴ Sociological Research *Evaluation of Legal Information and Dissemination* conducted by the Ministry of Justice of the Republic of Lithuania and Lithuanian Human Rights League, 2007, <http://www.tm.lt/veikla/tyrimai>.

²⁵ See more details in Implementation of Human Rights in Lithuania: Overview, 2005, p. 24.

²⁶ Most Complaints Received by the Ministry of Justice Concern Bailiff Actions, *Alfa.lt*, 18 May 2007, <http://www.alfa.lt/straipsnis/137378>.

²⁷ Rūta Skatikaitė. Clan of Bailiffs Protected by the Elite of Lawyers, *Delfi.lt*, 25 September 2007, <http://www.delfi.lt/archive/article.php?id=14503475>.

²⁸ A Disciplinary Case Commenced against a Bailiff, *Alfa.lt*, 25 April 2007, http://www.alfa.lt/straipsnis/135072/?Iskelta.drausmes.byla.antstolei=2007-04-25_08-53.

²⁹ A Convicted Bailiff from Vilnius is Dismissed, *BNS, lrytas.lt*, 10 July 2007, <http://www.lrytas.lt/?data=20070710&id=11840651231183747632&view=4>.

³⁰ Five Bailiffs Punished for Advertising, *Delfi.lt*, 11 October 2007, <http://www.delfi.lt/news/economy/law/article.php?id=14677264>.

³¹ Dainius Sinkevičius. The Court Returned the Apartment Cheaply Sold by a Bailiff, *Delfi.lt*, <http://www.delfi.lt/archive/article.php?id=15789235>.

Discrimination, Racism, Anti-semitism and Other Forms of Intolerance

Outbursts of attacks against foreign citizens, in particular, black people, were recorded in 2007 and 2008, comments inciting hatred proliferated rapidly on the Internet. A procession of young pro-Nazi people held on the 11th of March 2008 attracted a lot of attention. While it was condemned by top-level state officials for its loudly declared racist slogans, this was done half-heartedly. These years were also marked by an increased intolerance towards sexual minorities on the part of politicians and the public: Vilnius Council refused to issue permits for events related to the Lithuanian gay community several times, while the attendees at an international conference of sexual minorities were showered with smoke grenades in Vilnius. The long-delayed solution to the issues of Roma social exclusion and cases of potential exploitation of foreign workers also raise concerns.

Outbursts of Xenophobia, Racism and Anti-Semitism

The long-term disregard for the increasing intolerance towards “other” people on the part of the political authorities, the inadequate response of law enforcement institutions to the

racist, anti-Semitic and other kind of intolerance attacks created conditions for the outbursts of xenophobia, racism and anti-Semitism. It was only following the pro-Fascist youth procession on 11 March 2008 and the assault of a dark-skinned TV entertainer in Vilnius on 9 April 2008 which received considerable public attention¹ that the authorities took certain measures in response to intolerant behaviour and violence.

In spring 2007, four foreigners, two of whom were dark-skinned, were assaulted in Klaipėda within a few days of each other². There were quite a few attacks against the Chinese too. During a football match between Lithuanian and French teams in Kaunas in March 2007, Lithuanian football fans greeted the French with racist cries and posters³. Later they tried to disguise this attack as an innocent joke. In the summer, there were press reports about a man from Ghana who had been assaulted and beaten in Vilnius and also reports about a street fight between Lithuanians and Nigerians near the capital’s railway station.⁴ In the autumn, a member of parliament saved an Italian who was being attacked by a neo-Nazi because of his alleged Muslim belief.⁵ A black person submitted a complaint to the Office of Equal Opportunities Ombudsperson about the insulting comments of a ticket inspector of public transportation. Dark-skinned basketball players

playing on Lithuanian teams were victims of violence numerous times. The President of the Lithuanian Basketball Federation not only failed to condemn these attacks but also used racist phrases in an interview with the press⁶. In 2007–2008, there were further cases of vandalism against the Jewish community: their graves were desecrated⁷, while community buildings in Vilnius, Panevėžys⁸ and Klaipėda⁹ were smeared with paint, swastikas and anti-Semitic slogans.

These incidents were generally initiated by pro-Fascist skinheads, who, when getting no response, organised, on Lithuanian Independence Day (11 March 2008), their already traditional procession which had not previously provoked any reaction from State institutions. At the procession they carried flags with swastikas and skulls and repeatedly shouted *Juden raus; ...kill that little Jew; Lithuania for Lithuanians* and *Lithuania without Russians*¹⁰.

There was no immediate reaction from either the police or the state authorities. It was only following criticism from the media and NGOs, that the procession was condemned by top-level state officials; while the police initiated a pre-trial investigation of incitement to hatred, attempts were made to mitigate this Nazi incident and even to interpret it as an expression of patriotism¹¹. A few par-

ticipants of the procession were sentenced; however, a court acquittal was also adopted stating that the slogan *Lithuania for Lithuanians* is not a slogan likely to incite inter-ethnic hostility¹². The criminal case concerning the assault of a dark-skinned popular entertainment personality was also considered by court. Following these events, a working group for the analysis of issues relating to violence, racism and xenophobia was formed in the Parliament; nevertheless, the majority of draft law amendments and other measures it proposed remain unimplemented.

In 2007–2008, there was a marked increase of online comments expressing hatred for people of other races, ethnic origins or religion. These comments were of a spiteful and mocking nature and were also used to prompt others to annihilate them physically. The authors of comments inciting hatred are prosecuted under Article 170 *Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons* of the Criminal Code. Pre-trial investigations are often initiated by individual NGOs and citizens. According to data from the Prosecutor General's Office, 13 criminal cases were referred to court alleging incitement of hatred in the electronic media in 2007, 19 cases in 2008, while the other 9 cases referred were related to the incitement of hatred on the streets or during public events.

The severest punishments imposed on the guilty by the courts in such cases were fines. This practice by the courts shows that public incitement against any racial, ethnic, religious or other group of persons is construed as a minor crime, which does not pose serious danger to the public or state¹³. The emergence of a very strict standard of proof for these offences and a possibly incorrect interpretation of the practice by the European Court of Human Rights (ECHR) are raising concern. In one of the cases, the judge acquitted a person charged under Art. 170 of the Criminal Code, as it was not proved that the person committed the offence *with direct intent*. Furthermore, the court underlined that, in the opinion of the ECHR, a democratic society should also be tolerant towards opinions that are shocking or offensive to others. However, the ECHR applies this standard in the case of opinions, expressed by individuals coming from vulnerable minorities, which can be unpleasant, shocking or even insulting for the majority and not the other way around.

Rapid integration into the Western political and cultural area, implementation of the principle of tolerance and respect for human diversity together with the changing structure of the Lithuanian population in terms of race, ethnic origin and religion call for immediate action: Action is re-

quired to cultivate the tolerance of the Lithuanian population towards the “otherness”, and intolerance towards xenophobia, racism and anti-Semitism. State authorities should develop and effectively implement programmes for the prevention of hate attacks, improve legislation regulating the fight against the incitement of hatred¹⁴, and enhance the capacities of law enforcement officers and judges to apply this legislation appropriately¹⁵.

The Strategy for the Integration of Ethnic Minorities adopted in 2007¹⁶ reflects a passive and outdated attitude towards the integration of minorities. The Strategy provides for the further integration of traditional, essentially well integrated ethnic minorities into society through education, reduction of stereotypes, prohibition of discrimination and measures of occupational integration, however, it fails to reflect the changed political and changing demographic situation.

Roma Situation: no change

The fundamental issues of the Roma integration have not been tackled for a number of years¹⁷. The media, politicians and the public continue to escalate prejudices and negative stereotypes about this ethnic minority. Roma are often associated with involvement in drug dealing, dependence on social benefits and a reluc-

tance to work¹⁸. Vilnius authorities threatened to take away minor children from the Roma residing in Kirtimai compound in Vilnius if they have to live in areas where drugs are dealt¹⁹. The stating of a person's ethnicity in crime reporting remains an issue. This is observed almost exclusively in regard to suspects of Roma origin. In 2008, 11 such cases were recorded in police summaries²⁰ and press reports on the crimes. In the meantime, the essential issues concerning Roma minority, such as social exclusion and discrimination, are almost never touched upon, blaming the Roma themselves for the exclusion.

According to data from the Center for Ethnic Studies of the Institute for Social Research, the Roma are the most despised group by society. The survey of 2008²¹ revealed that Roma remain the most undesirable co-workers, while the survey of employer attitudes²² showed that as many as 40% of the employers would refuse to employ a Roma. Given these circumstances, the efficiency of the fragmented integration efforts is low. A few measures of Roma integration into the labour market were conducted in 2007–2008²³, however, they yielded very modest results.

The year 2008 saw the adoption of the *Programme for the Integration of Roma into Lithuanian Society 2008–*

*2010*²⁴, which has been drafted since 2005. The content of the Programme shows that although the main problems of Roma social integration are clear, so far the process of integration has been lacking the social policy dimension in a broad sense. The programme focuses on the education of Roma children, youth and adults, Roma inclusion into the labour market, however, fails to pay enough attention to the areas of social support, social work, health care and adequate housing.

The future of Kirtimai settlement remains vague. In both 2007 and 2008, the officials of Vilnius Municipality repeatedly threatened to move the settlement by relocating the Roma community to either Šalčininkai region²⁵, or settling the Roma in mobile homes²⁶ or special social housing²⁷, however, no programme for solving the housing issues of the Roma residing in Kirtimai settlement was adopted. In autumn 2008, the Vilnius County Governor announced plans to provide the Roma with an opportunity to legalise older buildings which had been constructed without the required building permits²⁸ (while new construction housing should be demolished). According to the announcement, the Roma would be given six months to legalise illegal buildings and to purchase the land. This, in fact means that before the house can be deemed to be legal, the Roma should first purchase the land,

connect the houses to the services and rearrange the interior so as to comply with the requirements of both electrical safety and fire prevention, which at the moment not a single house in the settlement complies with. At the time of drafting this review (March 2008), there was no further talk about this possible solution.

In 2007–2008, litigation concerning the demolition of Roma housing in Kirtimai settlement carried out by Vilnius Council in December 2004 was still underway. Although a ruling²⁹ in 2007, awarding damages to the aggrieved party (LTL 5,000 to each of 20 persons), was adopted, this ruling was appealed against by both parties to the court of higher instance. In 2008, the Supreme Administrative Court of Lithuania referred the case back to the lower instance court for additional evaluation of damage. The protracted litigation and the developing court practice of awarding relatively small sums of money as compensation for damages, makes Kirtimai residents even more vulnerable.

2008 saw the adoption of the landmark court ruling³⁰, stating that a person of Roma origin had faced direct discrimination while seeking employment. For the first time in Lithuania, the testing method was applied in this case. It was instrumental in identifying the discrimination

fact: after a Roma woman had been refused employment, a Lithuanian woman was asked to apply for the same job on the same day (within a couple of hours). She was immediately offered the job in contrast to the Roma woman. While negotiating the employment contract with the Lithuanian woman, the employer's administrator revealed that on that same day they had a woman sent by the labour exchange, she was a "gypsy" and as the staff did not want a "gypsy", they could not therefore employ her.

Intolerance towards Sexual Minorities

The years 2007 and 2008 were marked by a growing intolerance towards homosexual individuals and members of other sexual minorities, which was observed in the media, online comments and attacks against gays. Homophobia is becoming a systemic problem since it infiltrates into law-making and political discourse.

The 2007 Eurobarometer survey showed that a majority of the Lithuanian population (75-85%) agree that special measures should be taken to ensure equal employment opportunities for groups facing discrimination, including protection from discrimination on grounds of ethnic origins (supported by 75%). A smaller percentage of the population (49%) approved of the statement that in

ensuring equal opportunities, the sexual orientation of persons needs to be taken into account³¹. Social surveys reveal that the majority of interviewed homosexuals have to hide their sexual orientation and, therefore, they do not feel secure in their family (38%), educational institution (46%) or work (41%). 51% of homosexuals claimed they were considering the possibility of emigration³².

Vilnius Council has been noticeable for its one-sided homophobic attitudes. Responding to press reports about the promotion of homosexuals' rights initiated by the Lithuanian Gay League in advertisements on Vilnius trolley-buses, it announced that it disapproves of advertising of this character. The Mayor of Vilnius declared publicly: *We are tolerant towards people of all sexual orientations, yet by prioritising the traditional family and striving to promote family values, we disapprove of the public demonstration of homosexual ideas in Vilnius*³³. The Mayor referred to a person's sexual orientation as *a hobby*³⁴.

The Vilnius municipal administration refused to issue a permit for the event *For Diversity. Against Discrimination* organised on 25 May 2007. The refusal explanation was that *it may affect State or public safety, public order, people health or morality, or liberties of others and there is reliable*

information concerning potential violations of public order. This was the first time that a European Truck traveling around Europe and promoting tolerance ideas was banned from entry into a member state of the EU. The Office of Equal Opportunities Ombudsperson established that the refusal to issue the permit was based on a non-existent article of the *Law on Assembly*³⁵.

The annual regional conference of the International Gay and Lesbian Association took place in Vilnius in autumn 2007. It was attended by members from almost 40 European countries. During this conference, the organisers planned to raise the rainbow flag, however, Vilnius municipality did not issue the permit. They stated that they were concerned for the security of the participants due to the reconstruction work being carried out around the Town Hall yet unofficially admitted that the actual reason for the refusal was the fear of negative reaction from the public or even a riot in the city³⁶. The Lithuanian Gay League went to the law; however, after investigating the claim local court ruled that the Council's decision was legal. The position of Vilnius Council was reinforced by the attacks of homophobes: the conference attendees were showered with smoke grenades in Vilnius on one night of the conference, while in the morning they faced a crowd of protesters³⁷.

In 2008, even after the request of the European Commission representative office in Lithuania³⁸, neither Vilnius nor Kaunas municipalities issued a permit for the arrangement of an event that was banned a year ago, i.e., the show of the “European truck”. The event took place in Vilnius under an arrangement that allowed the European truck to be admitted to the parking lot of one of the shopping centres, while in Kaunas not even one store would agree to allow the truck onto its property. As a result of this conduct by the Mayor of Vilnius, the Mayor of Berlin refused to participate in the international Mayor forum organised in Lithuania in the Summer of 2009³⁹; While *Amnesty International*, one of the most influential non-governmental human rights organisations in the world, commented negatively on the Councils’ actions.

In its 2008 report, *Amnesty International*⁴⁰ criticised Lithuania for disrespect for the rights of homosexual people shown by its refusal to issue permits for events organised by the Lithuanian Gay League, as well as intolerant public statements. In addition, it was critical of the proposed legislation amendments under which information on homosexuality would be equivalent to episodes of physical or psychological violence, terrifying and intimidating information and information inciting violence or suicides.

Despite reasonable criticism stating that the amendment to the *Law on the Protection of Minors against the Detrimental Effect of Public Information*, prohibiting information “encouraging homosexual, bisexual and polygamous relations“, is not clear and could be used for the restriction of freedom of speech, the amendment was supported by the committees of the Parliament of the Republic of Lithuania. In the meantime, the amendment to the *Law on Equal Opportunities*, which expanded the list of grounds prohibited for discrimination, had a hard time being approved since it includes the prohibition to discriminate on grounds of sexual orientation⁴¹.

In 2007, Lithuania lost the case *L against Lithuania* in the European Court of Human Rights because of the gaps in the legal regulation of sex change. ECHR stated that in its Civil Code Lithuania provides for the right to change sex medically under certain conditions, however, by failing to adopt a law that is required for exercising this right, it has infringed the right to the private life of the person seeking a sex change under the European Convention on Human Rights, and committed Lithuania to adopt the *Law on Sex Change* within three months of the coming into force of the ruling⁴². The Committee of Ministers of the Council of Europe, supervising the implementation of the ECHR rulings, concluded that the situation breaching the European

Convention on Human Rights may only be remedied by adopting the *Law on Sex Change*. The ruling has not been implemented so far. On the contrary, disregarding the ECHR ruling and the principle of legitimate expectations consolidated in the Constitution of the Republic of Lithuania, two Members of Parliament initiated the nullification of the right to the sex change provided for in the Civil Code of the Republic of Lithuania.

Other Manifestations of Intolerance and Discrimination

In 2007 and 2008, the reform of the school system and conflicts among Vilnius District Lithuanian-language and Polish-language schools raised new tensions and were continuously reported in Lithuanian media. One of the conflicts between those communities was heard in court⁴³. Unresolved problems due to different subordination of schools (to the local council and to the county) result in exclusion and inequality among schools, and cause the above mentioned conflicts in this district densely inhabited by the Polish ethnic group.

In 2007 and 2008, the number of foreigners arriving to work in Lithuania was increasing, while the labour unions reported possible cases of exploitation of foreign workers resulting from gaps in Lithuanian legislation. The case of the deceived Chinese workers some of whom were

hired out to Vilnius and Kaišiadorys poultry farms when the building company who brought them into the country had no work for them, received wide coverage in the media⁴⁴. A few months later, some of the Chinese workers had to leave the country since their employer failed to formalise the migration documents properly⁴⁵. According to labour union officials, workers coming from abroad have little option of taking a case against employers who violate their rights because if they decide to resign from work they get no pay, they would have to leave the country immediately and, in the case where they initiate legal proceedings, they would need to obtain tourist visas and pay for their trips to Lithuania in order to attend them.

Illegal workers are especially vulnerable because of their status. Different state institutions⁴⁶ and media⁴⁷ report cases of illegal work done by foreigners in Lithuania. The Lithuanian Confederation of Industrialists and the Ministry of Social Security and Labour observe that the number of foreigners coming from neighbouring Belarus with tourist visas to work in Vilnius and the surrounding regions has been growing. The State Labour Inspectorate has investigated the alleged exploitation case of Ukrainian builders⁴⁸.

International organisations note that Lithuania pays insufficient attention to the fight against discrimination on

grounds of ethnic origin. This year the European Union Agency for Fundamental Rights has expressed its criticism⁴⁹ stating that Lithuania provides the opportunity to file complaints concerning discrimination on grounds of ethnic origin; however, these procedures never result in sanctions or compensations but rather in moral pressure and recommendations.

¹ Racist Attacks Oust Singer Berneen from Lithuania, *lrytas.lt*. 14 April 2008, <http://www.lrytas.lt/-12081627931207250952-rasist%C5%B3-sm%C5%ABgiai-vejadaininink%C4%99-berneen-i%C5%A1-lietuvos.htm>.

² Beaten US and Nigeria Citizens “Remembered” Violence, *www.delfi.lt*, 7 April 2007, <http://www.delfi.lt/archive/article.php?id=12796663>; Žaneta Skersytė. Outburst of Racism before Easter. *Vakarų Ekspresas Daily*, *www.ve.lt*, 11 April 2007, <http://www.ve.lt/?rub=1065924813&data=2007-04-11&id=1176220641>

³ L.Varanavičius: Severe Sanctions are Pending. *ELTA*, 26 March 2007, <http://www.delfi.lt/news/sport/abroad/article.php?id=12637050>; L.Varanavičius Addressed Lithuanian Football Fans. *www.delfi.lt*, *Eurofootball.lt*, *Futbolas.lt*, 26 March 2007, <http://www.delfi.lt/news/sport/abroad/article.php?id=12643243>.

⁴ Ieva Urbonaitė. Vilnius Resident Suffered in the Fight of Lithuanians and Blacks. *www.delfi.lt*, 28 May 2007, <http://www.delfi.lt/archive/article.php?id=13338375&categoryID=5995&ndate=1180299600>; E.Jennings was Shocked by Racist Attacks. L.T., *lrytas.lt*,

31 May 2007, <http://www.lrytas.lt/-11805602341178251927-e-jennings-%C5%A1okiravorasistiniai-i%C5%A1puoliai.htm>.

⁵ Member of Parliament Regrets not Hitting the Attacker. *Lietuvos Žinios Daily*, *www.balsas.lt*, 30 August 2007, <http://www.balsas.lt/naujiena/152923/seimo-narys-gailisineuztvojes-smurtautojui/rubrika:naujienos-lietuva regionai vilnius; Roberta Tracevičiūtė. Member of Parliament Regrets not Hitting the Attacker. www.delfi.lt, 30 August 2007, http://www.delfi.lt/archive/article.php?id=1422429>.

⁶ Gediminas Reklaitis. Manifestations of Racism in Words of the President of the Lithuanian Basketball Federation. *Kauno Diena Daily*, 25 October 2008, <http://kauno.diena.lt/dienrastis/sportas/lkf-vadovo-kalboje-rasizmo-apraiskos-164336>.

⁷ Jewish Graves Desecrated in Rokiškis District. *BNS*, *lrytas.lt* 18 July 2007, <http://www.lrytas.lt/-11847479401182539575-roki%C5%A1kio-rajone-i%C5%A1niekinti-%C5%BEyd%C5%B3-kapai.htm>.

⁸ Jewish Community Buildings Violated in Vilnius and Panevėžys. *BNS*, *www.balsas.lt*, 11 August 2008, <http://www.balsas.lt/naujiena/208439>.

⁹ The Fence of Klaipėda Jewish Community Building Violated. *www.delfi.lt*, 27 August 2008, <http://tv.delfi.lt/en/video-rated/3RdahTrS/>.

¹⁰ Mindaugas Jackevičius. Raving Skinheads Did not Interest Police. *www.delfi.lt*, 12 March 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=16279078>; Lukas Pileckas. Police Lost its Bearings after the Skinhead Procession. *www.lrytas.lt*, 13 March 2008, <http://www.lrytas.lt/-12053354811205324795-porskustagalvi%C5%B3-eityni%C5%B3-policija-prarado-am%C4%85-2-video.htm>.

¹¹ For example, a high ranking official of the Ministry of the Interior claimed that skinhead procession “was a move of about two hundred people in normal mood from one point to the other while carrying national flags and only few persons shouted racist slogans and thus spoil the general situation of the 11th of March, which was rather good”. Jūratė Damulytė. State Security Department: there exist no organised racist gangs in Lithuania. *www.delfi.lt*, 18 March 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=16370276>.

¹² Tomas Vaiseta. Lithuania for Lithuanians. *www.lrytas.lt*, 28 January 2009, <http://www.lrytas.lt/-12331593921231598236-lietuva-lietuviams-2-video.htm>.

¹³ Public Prosecutor’s Office of the Republic of Lithuania, On Data on Pre-trial Investigations, 5 February 2009.

¹⁴ Despite the recommendations of a number of international human rights institutions and officials (see, for example, UN Human Rights Council (2008). Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance in Lithuania, Doudou Diene. A/HRC/7/19/Add.4, 7 February 2008) and recommendations by the Working Group for Analysis of Issues Related to Violence, Racism and Xenophobia that worked in the Parliament in 2008, the Parliament has failed to adopt the drafted amendment of the *Criminal Code* that would consider the racist motive of the committed crime as the aggravating circumstance. At the moment, there is no possibility to qualify assaults as committed out of hate of a person belonging to a certain social group, and to apply stricter punishment for a person who committed such offence. The offences are most often qualified as the infringement of public order or hooliganism.

¹⁵ In evaluating the manifestations of racism, racial and national discrimination and xenophobia in Lithuania (see footnote 14), the UN the Special Rapporteur noted that the applicable laws are not effectively enforced in Lithuania.

¹⁶ Resolution of the Government of the Republic of Lithuania No. 1132 *On the Approval of the Strategy for the Integration of Ethnic Minorities* (Official Gazette, No. 112-4574).

¹⁷ See Implementation of Human Rights in Lithuania: Overview, HRMI, 2006, p. 27-29; Implementation of Human Rights in Lithuania: Overview, HRMI, 2005, p. 30-33.

¹⁸ Ainis Gurevičius. Plans to Declare War to the Roma Compound Within a Week, *www.balsas.lt*, 17 January 2008, <http://www.balsas.lt/naujiena/179797>; Lina Vyšniauskienė. Roma Compound Still Enjoys Peace. *Lietuvos Žinios*, *www.balsas.lt*, 22 January 2008, <http://www.balsas.lt/naujiena/180270>; Evaldas Utyra. Roma Compound Slums Should be Considered in Court. *www.delfi.lt*, 29 January 2008, http://www.tns-gallup.lt/media-intelligence/public/index.php?mod=main&sub=details&id=380933&itd=MzgwOTM_zfDg0fDliNTU3N2VIZTM2NzA5NzEzODU0NDY3NTFhNDRkYzg2; Evaldas Utyra. A. Butkevičius: The Roma Compound Should be Relocated Away to Mobile Homes. *www.delfi.lt*, 14 April 2008, <http://www.tns-gallup.lt/media-intelligence/public/index.php?mod=main&sub=details&id=419693&itd=NDE5NjkzfDg0fDdkYTIzYzg5ZWUwMzY3ODkyMTU1YTdmNmU2NWFmNGU4>.

¹⁹ Evaldas Utyra, Robertas Narmontas, Martynas Lapinskas. Roma Compound Children May Find Themselves in State Custody. *www.delfi.lt*, 6 September 2007, <http://tv.delfi.lt/en/video-rated/FOfUNjDh/?p=30>.

- ²⁰ Roma ethnic origins are often specified in the summaries announced on the police website <http://www.policija.lt/>.
- ²¹ Vilmorus. *Tolerance* (06-11 March 2008). Survey conducted for UAB Idea Prima.
- ²² Vilmorus. *Telephone Survey of Businesses*. (10–20 March 2008). Survey conducted for UAB Idea Prima.
- ²³ EQUAL project *Development and Testing of a Mechanism for Roma Integration into the Labour Market* implemented by Lithuanian Children's Fund with project partners. More about the project: <http://www.lvfi.lt/index.php?pg=.000002578.000002579&lang=1>.
- ²⁴ Resolution No. 309 of the Government of the Republic of Lithuania *Programme for the Integration of Roma People to Lithuanian Society 2008-2010* (Official Gazette, 2008, No. 42-1555).
- ²⁵ Attempts of Mr Paleckis to Move Roma Compound to Province. www.delfi.lt, 16 August 2007, <http://www.delfi.lt/archive/article.php?id=14082135&categoryID=7&ndate=1187211600>.
- ²⁶ Julius Girdvainis. A. Paleckis Seeks to Move the Roma to mobile homes. *Respublika Daily*, 01 October 2007, http://www.nkd.lt/files/spauda_raso/20071001_Spaudos_apzvalga.htm#0_39; Evaldas Utyra. A. Butkevicius: The compound should be relocated away to mobile homes. www.delfi.lt, 14 April 2008, <http://www.tns-gallup.lt/media-intelligence/public/index.php?mod=main&sub=details&id=419693&itd=NDE5NjkzfDg0fDdkYTIzYzg5ZWUwMzY3ODkyMTU1YTdmNmU2NWFmNGU4>.
- ²⁷ Evaldas Utyra, Robertas Narmontas, Martynas Lapinskas. Roma Compound Children May Find Themselves in State Custody. www.delfi.lt, 6 September 2007, <http://tv.delfi.lt/en/video-rated/FOfUNjDh/?p=30>.
- ²⁸ Reda Gilytė. Roma Will Have to Either Legalise or Demolish Illegal Buildings. www.lrt.lt, 21 October 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=18968834&categoryID=7>.
- ²⁹ Ruling of Vilnius County Administrative Court in administrative case No. I-8132-17/2007, 18 December 2007.
- ³⁰ Ruling of Vilnius County Court in civil case No. 2A-1020-464/2008, 10 December 2008.
- ³¹ Department of Ethnic Studies. *Euro-barometer Survey on Discrimination announced*. 2007, <http://www.ces.lt/list.php?strid=2909&id=4075>.
- ³² Arnoldas Zdanevičius, Jolanta Reingardė, Jolanta Samuolytė, Protection of Rights of Lesbians, Gays, Bisexuals and Transsexuals (LGBT) and the Survey of Social Exclusion. The study financed by the Office of Equal Opportunities Ombudsperson. October 2007, <http://www.lygybe.lt/assets/LGBT%20bendruomenės%20socialinės%20atskirties%20tyrimas.pdf>.
- ³³ Vilnius City Council. Press release: 'Promoting Family Values: capital's Council disapproves of homosexual promotion on Vilnius trolleybuses', 15 May 2007, <http://www.vilnius.lt/newvilniusweb/index.php/101/?itemID=84628>.
- ³⁴ News on LNK TV Channel, 16 May 2007, 6.45 pm.
- ³⁵ Office of Equal Opportunities Ombudsman. "The Council's Refusal to Issue the Permit for the Event was Based on Non-existent Article of the Law." 28 May 2007, <http://www.lygybe.lt/news.php?strid=1071&id=37924>.

³⁶ “Smoke Attack” Against the Members of Vilnius Gay Conference Raised the Interest of BBC. *BBC*, *www.delfi.lt*, *News Bridgex*, *www.balsas.lt*, 29 October 2007, <http://www.balsas.lt/naujiena/172769/duminc-ataka-pries-vilniaus-geju-konferencijos-dalyvius-susidomejo-ir-bbc-foto-atnaujinta/rubrika:naujienos-lietuva-regionai-vilnius>.

³⁷ Evaldas Utyra. Bomb Attack and Picket Against Gays in Vilnius. *www.delfi.lt*, 26 October 2007, <http://www.delfi.lt/archive/article.php?id=14816208>; A homosexual Conference Takes Place in Vilnius. *www.DELFI.lt*, *www.lrt.lt.*, 25 October 2007, <http://www.delfi.lt/archive/article.php?id=14803853>.

³⁸ Evaldas Utyra. “Tolerance Trailer” Knocks on the Doors of Lithuania Again. *www.delfi.lt*, 21 July 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=17795456>.

³⁹ Evaldas Utyra. Homosexual Berlin Mayor Will not Come to Vilnius. *www.delfi.lt*, 7 November 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=19177214>.

⁴⁰ Amnesty International (2008). Annual Report 2008. Lithuania. See: <http://www.amnesty.org/en/region/lithuania/report-2008>.

⁴¹ Eglė Digrytė. Discrimination Against Homosexuals Banned Amid Uproar in the Seimas. *www.delfi.lt*, 17 June 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=17423341>.

⁴² Human Rights Monitoring Institute. L Won the Case Against Lithuania in European Court of Human Rights. 11 September 2007, <http://www.hrmi.lt/news.php?strid=1010&id=4761>.

⁴³ Dainius Sinkevičius. The Dispute Concerning the Introduction of the Polish Class in Jeruzalė School Investigated in Court. *www.delfi.lt*, 3 October 2007, <http://www.delfi.lt/news/daily/education/article.php?id=14588>

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⁴⁵ Andrejus Žukovskis. A Part of Deceived Chinese Return Home. *www.delfi.lt*, 21 August 2008, <http://www.delfi.lt/news/economy/business/article.php?id=18225697&rsslk=true>.

⁴⁶ State Labour Inspectorate. Data on the Control of Illegal Work Forms in Terms of Economic Activity Sectors. <http://www.vdi.lt/index.php?-1268495359>.

⁴⁷ Rasa Lukaitytė. Illegal “Tourists” from Belarus Work in the Capital City. *www.delfi.lt*, 15 September 2007, <http://www.delfi.lt/archive/article.php?id=14395879>.

⁴⁸ Aurelija Simutis. Alleged Exploitation of Ukrainian Workers Under Investigation. *www.lrt.lt*, 29 September 2007, <http://www.lrt.lt/news.php?strid=31489&id=3977287>.

⁴⁹ Report on Racism and Xenophobia in the Member States of the EU. FRA 2007. p. 38. See: http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf.

Women's Rights

During 2007–2008, the principle of equal treatment for men and women remained unimplemented due to different hourly pay, persisting vertical and horizontal labour market segmentation and women's poverty. Issues of domestic violence and human trafficking remain significant. The newly formulated *State Concept of Family Policy* contributed in a large way to the entrenchment of the discrimination of women and children. The extension of paid parental leave for up to two years without foreseeing a 'paternal quota' facilitated further discrimination against women in the labour market.

Lithuania's assessment globally in terms of ensuring equal opportunities for women and men has dropped within the last few years. According to data of the World Economic Forum (WEF) which provides an annual evaluation on the differences in the situation of men and women with regard to economic, legal and social status, Lithuania was ranked 23rd in 2008 and has dropped by 9 positions in comparison to previous years (it was 14th in 2007)¹.

On 27 November 2008, the European Commission submitted a formal opinion to Lithuania concerning the failure to adequately implement the

2002 *Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women*², prohibiting discrimination on grounds of gender in employment. If the Government of Lithuania fails to submit a response, or response is evaluated as inadequate, the Commission may file a petition against Lithuania to the European Court of Justice (ECJ)³.

On evaluating the regular report of Lithuania on the implementation of the *Convention on the Elimination of All Forms of Discrimination Against Women* for the period of 2004-2007, the Committee on the Elimination of Discrimination against Women (CEDAW) made a number of critical comments⁴.

Situation in the Labour Market

In Lithuania, women find it more difficult to find a job than men; they receive lower remuneration and experience difficulties coordinating their career with children rearing.

The unemployment rate of women decreased in line with the general trend in unemployment decreasing in 2007. In the meantime, in 2008, as the rate of unemployment grew in general so too did the rate of unemployment amongst women. Of those registered as unemployed in November 2008, 52.6% were women as against 47.6% men, even though there were

51.9% more men unemployed in November 2008 than in the corresponding period of the previous year.

The percentage of unemployed women at the labour exchange remained higher, even though these unemployed women had university degrees or further special education. For example, in 2007 women accounted for 58% people with university education⁵. In addition women find it harder to find a job, although they are twice as active in lifelong learning programmes (6.8% women and 3.6% men participated in such programmes)⁶.

Different hourly rates of pay between women and men still exist. This difference grew by 3% from 2005 to 2007, i.e. from 17.61% to 20.7%⁷.

Distribution among labour sectors traditionally dominated by either men or women also saw no changes. However, even in jobs normally regarded as being for women, the average pay for men is higher than that for women, and this difference in rates can be up to as much as 40% in the financial services field. Increases in pay are also much slower in service sectors which traditionally employ women.

Judging from the public survey conducted by the public opinion and

market research company TNS Gallup, the situation of women in the labour market has deteriorated in recent years: in 2004, 35% of those interviewed maintained that men and women received equal rates of pay for their jobs, while in 2008, only 30% were of this opinion. 58% of respondents believed that women are paid less for the same job than men. This statement was supported by two out of three women and every second man. Differences in employment opportunities and different rates of pay were particularly noted by women aged 40-60. More than 70% of women in this age group observed that they are also more discriminated against when seeking jobs⁸. These facts were noted by the European Commission when expressing its criticism with regard to the inadequate implementation of the *Directive on the Implementation of the Principle of Equal Treatment for Men and Women in Lithuania*⁹.

Decisions taken when drawing up the budget in Lithuania never take into account the different impact of income and expenditure structure on women and men. Consequently, the programme of 'overcoming economic crisis' proposed by the new government raises concern with regard to the economic situation of women. Bearing in mind the experience of other countries, it can be assumed that in Lithuania the main burden of 'overcoming crisis' will fall on women's shoulders. Firstly, the pro-

gramme of 'tightening the belts' (reducing salaries) is planned for the public sector, where women account for 69.1% of employees. Secondly, the rejection of progressive taxes and the increase of VAT mean that the tax burden will primarily be felt by those on lower incomes, i.e. women, especially single mothers. And, finally, the higher prices of pharmaceuticals, various social, education and medical services will increase the load of unpaid domestic work for women (in particular, those from low-income families), which for many women means fewer hours of rest, a negative impact on health and fewer opportunities to study and enter the work force.

The effective eradication of the economic discrimination of women calls for the consistent implementation of complex measures instrumental in the fight against the vertical and horizontal segregation of the labour market, consolidation of gender representation quotas in economic decision making, not approving State and municipal budgets before evaluating their impact on women and men, and change in the stereotypical attitude towards the gender roles in the education system and family policy.

Women's Poverty

The data showing the poverty situation in 2007 on the website of the Department of Statistics does not

differentiate between women and men; however, certain assumptions can be made on the basis of the statistics provided¹⁰. For example, in 2007, 41.5% of those living with one or more children were living in poverty; it can be noted that the majority of these are single mothers. These women and single persons (whose poverty level reached 49.5%) make up the population group experiencing the highest risk of poverty. Given the fact that a woman's life expectancy is on average 12 years longer than a man's, their old age pension is lower and that 30% of pensioners live in poverty, it can be seen that many women are living in poverty.

In 2007, income per capita in families where the head of the family was a man was 15.19% higher than in families where the head of the family was a woman (respectively LTL 784.15 and LTL 924.68)¹¹. These differences resulted from both higher men's salaries on average and higher dependence of households managed by women on social benefits. Women aged 65 and above also face higher risk of poverty because their life expectancy is higher. Finally, earlier retirement also means that even having accumulated the same sum in the pension fund, women are paid a lower pension than men because of the specifics of second level pension accumulation.

In the meantime, the poverty of young women can be associated with maternity. In 2006, approximately every second child born to single mothers was born to women aged 16-24. This accounted for 48% of childbirths in this age group in 2007 and was characterised by an employment level three times lower than the average level of employment (20.45%)¹². However, these women were excluded from the *State Concept of Family Policy*, thus, condemning these women and their children to be at higher risk of poverty.

Moreover, marriage does not guarantee protection from poverty to women either. The differences between the salaries of women and men tend to grow in the country, while the family support policy focuses not on the development of social services but on the increase in benefits, which traditionally makes women sacrifice their careers. If no essential changes are implemented in the economic and social policies, the risk of women's poverty will only increase regardless of their family status.

Consolidation of Discriminatory Concept of Family

In 2007–2008, state policy in regard to gender equality was inconsistent. The Government approved the *Amendment of the Law on Women and Men Equal Opportunities*, which

aims to both ensure better protection of women and men from discrimination on grounds of gender and transposing the provisions of EU directives into Lithuanian legislation¹³; however, at the same time, the discrimination of women, men and children was consolidated at the national policy level by prioritising married families.

In June 2008, Seimas adopted *State Concept of Family Policy*¹⁴, which failed to include families that are not married into the definition of family and state support beneficiaries. Public declarations by those who initiated the concept stigmatised couples who are not married and families with single mothers, calling them inferior, causing social problems and threats and not being compliant with the state family vision¹⁵.

The support to the married family in this document is equivalent to discrimination against other families. The state vision of the well balanced family is associated, not with ensuring the welfare of each citizen regardless of his/her family or marital status, but with the institute of marriage, which by itself neither protects from poverty or violence, nor ensures living standards or privileges with regard to other forms of family. This concept not only infringes human rights but grants privileges based on one's social status¹⁶, it discrimi-

nates against women raising a biological or adopted child and rearing children born out of wedlock, but also makes women and children hostages of domestic violence since this makes them potentially choose between two evils: violence or stigma and poverty. The National Family and Parent Association which supported the *State Concept of Family Policy* project wholeheartedly, also strongly disagreed with the *Concept of Protection from Domestic Violence* submitted for the consideration of Seimas¹⁷, explaining its position by the fact that recognition of the issue of domestic violence discredits the concept of family.

The UN Committee on the Elimination of Discrimination against Women stressed that the *State Concept of Family Policy* approved by the Seimas could have a negative impact on women's opportunities to exercise their rights in marriage and the family, and urged Lithuania to closely observe the effect of the approved *Concept* on non-traditional families protected by the *Law on Equal Opportunities*¹⁸.

Formulation of the *State Concept of Family Policy*, by granting privileges to married families, makes one doubt the effectiveness of the *Programme of Family Welfare Policy Measures for 2008-2010*¹⁹. The programme provides for advanced measures, how-

ever, if the family concept comes to coincide with the marriage, the impact of the measures is narrowed and instead of encouraging the cohesion of society, it prompts the increase of exclusion. On the other hand, the decision makers fail to consider differences between the roles of men and women inherent in Lithuanian society when formulating long-term objectives, for example, the increase of employment rate of family members, coordination of work and family duties.

The decision to extend paid parental leave up to two years failed to consolidate the 'paternal quota' (mandatory condition for men to share parental leave period). Therefore, the tendencies prevailing in Lithuania (the responsibility for child care is traditionally entrusted to women: the percentage of men on parental leave is not even 3%) presupposes that in the long-term perspective the extension of parental leave will cause extra difficulties for women's integration into the labour market. Given the experience of other EU member states, the positive impact of these measures on the demographic situation raises doubts, as one of the prerequisites for an increase in the birth rate is a guarantee of employment for women. The situation could be markedly improved by more active involvement of men in child care, i.e. the introduction of the 'paternal quota' (part of paren-

tal leave that cannot be transferred to the other parent). In this case the issues of children's welfare would not need to be solved at the expense of women's welfare.

These contradictions show that equal opportunity provisions are excluded from state policy when complex measures are implemented in economic, social or family policy areas. An observer of processes in Lithuania has to admit that while the importance of gender equality provisions is recognised in the public sector (labour market, studies, service provision areas), contradictory tendencies directed towards the consolidation of patriarchal relations, threatening the progress of social and economic processes, are observed in the family policy area.

Reproductive Rights

In 2007–2008, no essential changes for ensuring women's reproductive rights took place. On the contrary, the draft *Law on the Protection of Life in Prenatal Stage* was submitted for the consideration of Seimas²⁰. It caused heated public discussions and protests by organisations protecting women's rights.

The UN Committee on the Elimination of Discrimination against Women expressed its concern that if

adopted the *Law on the Protection of Life in Prenatal Stage* restricting women's right of choice to have an abortion may lead them to have illegal and unsafe abortions, thus, putting their health and life in danger²¹.

The improvement of the situation in women's reproductive health calls for ensuring that a woman's right to decide freely and responsibly how many children and when she wants to have them is guaranteed, that there is access to services of sexual and reproductive health care and guaranteed access to, and choice of contraceptives. Mandatory sex education should be introduced in general education schools in order to enable pupils to receive comprehensive information on various issues of family planning.

Domestic Violence and Sexual Exploitation

Domestic violence continues to be a problem. The adoption of the *State Strategy for Reducing Violence against Women in 2007-2009*²² raised hopes that these issues will be solved more effectively; however, no essential changes in the fight against violence took place. Seimas failed to adopt the *Concept of Protection from Domestic Violence*²³ which would enable the amendments and improvements of laws, legalisation of perpetrator's eviction and investigation of domestic vio-

lence cases by using the procedure of public prosecution. The majority of women suffering from violence in Lithuania cannot receive effective help²⁴.

Changing media coverage of domestic violence against women can be seen as a positive change. The number of social prevention campaigns is growing. Violence against women is now more often seen as a serious infringement of human rights and an issue of public interest rather than a private matter. Demands for the unconditional eviction bring about radical change: the problem of domestic violence and ineffective assistance persists.

The issues of sexual exploitation and human trafficking of women are equally difficult to solve. According to a sociologist survey conducted by Vytautas Magnus University, Lithuania is becoming a sex tourism country²⁵. Unofficial statistics show that tourists seeking intimate relations or establishing them during their visit account for 10% of all tourists coming to Lithuania. The image of 'sexual' Lithuania is shaped both online where lots of websites for sex tourists operate, and in publications advertising Lithuania that offers 'Lithuanian products' – nature, history and girls of the country – to tourists.

The media is characterised by a tendency to eroticise prostitution (on the

image level) and to stigmatise and condemn women of this profession, but not their pimps or clients. For example, *Plaštakė 2007* (Butterfly 2007) raids organised by police showed that the efforts of law enforcement officers focus more on the prosecution of women than of their clients²⁶. This approach partially contributes to the public attitude towards prostitution, human trafficking phenomena and prevents effective implementation of the programmes of both prevention and victim integration into society.

¹ Opportunities of Men and Women Increasingly Diverge, *BNS*, 12 November 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=19244846>.

² Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/2007/EEC On the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0024+0+DOC+XML+V0//EN>.

³ EC Criticises Lithuania for the Failure to Implement Gender Equality, *Delfi.lt*, 27 November 2008, <http://www.delfi.lt/archive/print.php?id=19453075>.

⁴ Committee on the Elimination of Discrimination against Women (CEDAW), Forty-first session, 30 June – 18 July, see more details: <http://www2.ohchr.org/english/bodies/cedaw/cedaws41.htm>.

- ⁵ Department of Statistics. Education of the Unemployed, <http://www.stat.gov.lt/lt/pages/view/?id=1813>.
- ⁶ Department of Statistics. Main Indicators of Population Employment, <http://www.stat.gov.lt/lt/pages/view/?id=2428>.
- ⁷ Department of Statistics. Average Monthly Pay Before Taxes in Terms of Economic Sectors, <http://www.stat.gov.lt/lt/pages/view/?id=1304>.
- ⁸ Press release of TNS Gallup, http://www.tnsgallup.lt/lt/disp.php/lt_index/lt_news/lt_news_204/lt_news_204_23?cache=n&ref=%2FIt%2Fdisp.php%2FIt_search%3Fkwd%3Ddiskriminacija%2Bdarbo%2Bbrinkoje%26x%3D30%26y%3D10.
- ⁹ Audrius Barcišis. Do Women Have Fewer Rights than Men in Lithuania?, *Alfa.lt, BNS*, 27 November 2008, <http://www.alfa.lt/straipsnis/10238657>.
- ¹⁰ Department of Statistics. Indicators of Poverty Risk, <http://www.stat.gov.lt/lt/pages/view/?id=1333>.
- ¹¹ Department of Statistics. Average Income in Disposition in Terms of Household Type 2007, <http://www.stat.gov.lt/lt/pages/view/?id=1305>.
- ¹² Department of Statistics. Level of Employment in Terms of Age Group and Gender, <http://www.stat.gov.lt/lt/pages/view/?id=1318>.
- ¹³ Press release of Government Press Office, 17 October 2007, <http://www.euro.lt/lt/naujienos/apie-lietuvos-naryste-europos-sajungoje/naujienos/1790/>.
- ¹⁴ Draft State Family Policy, http://www3.lrs.lt/pls/inter/w5_show?p_r=5477&p_k=1.
- ¹⁵ Homeland Union, What Family Policy Does Lithuania Need?, 24 November 2007. <http://www.tsajunga.lt/index.php?198705759>.
- ¹⁶ Constitution of the Republic of Lithuania, (Official Gazette, 1992, No. 33-1014, Article 29).
- ¹⁷ *Concept of Protection from Domestic Violence*, http://www3.lrs.lt/pls/INTER/w5_show?p_d=70917&p_r=4445.
- ¹⁸ Committee on the Elimination of Discrimination against Women Forty-first session, 30 June–18 July 2008, www2.ohchr.org/english/bodies/cedaw/docs/statement/Opening_statement_Chairperson_41st.doc.
- ¹⁹ Ministry of Social Security and Labour, <http://www.socmin.lt/index.php?-98923019>.
- ²⁰ Seimas of the Republic of Lithuania, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p_id=271639.
- ²¹ Committee on the Elimination of Discrimination against Women Forty-first session, 30 June–18 July 2008, www2.ohchr.org/english/bodies/cedaw/docs/statement/Opening_statement_Chairperson_41st.doc.
- ²² *State Strategy for Reducing Violence Against Women*, <http://www.socmin.lt/index.php?-1231502251>.
- ²³ *Concept of Protection from Domestic Violence*, http://www3.lrs.lt/pls/INTER/w5_show?p_d=70917&p_r=4445.
- ²⁴ Karolina Kaunaitė. Speeches Against Violence, *Kontrastai*, 6 January 2008, <http://www.kontrastai.lt/?p=4761>.
- ²⁵ Neringa Bereišytė, Artūras Tereškinas. Lithuania: paradise of sex tourism?, *Delfi.lt*, 1 August 2008, <http://www.delfi.lt/news/daily/lithuania/article.php?id=17920809&categoryID=7>.
- ²⁶ Lina Vyšniauskaitė. Old ‘Butterflies’ are Retreating, *Lzinios.lt*, 16 July 2007, http://www.aids.lt/full_press.lt.php?id=1623&e=1&search_string=

Children's Rights

No significant changes took place in the area of children's rights in 2007–2008. The same problems as previously reported continued to be cause for concern, these include: the high level of child poverty as a social group; children of economic emigrants left without proper care or guarantee of rights; and the growth of violence among peers, at school and in families. The resolution of the said issues is aggravated by the insufficient availability of psychological help or state-guaranteed legal aid. A lack of cooperation between the different institutions of children's rights is also noted.

Perception of Child Wellbeing

Uniform indicators are compared in the European Union in order to compare the level of child wellbeing in member states. Different surveys conducted in 2007 show that the index of child wellbeing in Lithuania is among the lowest of 25 EU member states. The majority of indexes of child wellbeing, (for example, their material situation, perception of the degree of wellbeing, education, child relationships, civic activity, risk and safety), except for those in the health area, show that Lithuanian children are in the lowest, i.e. 25th position on the EU member state list¹. The report by the UNICEF *Innocenti Re-*

search Centre partially confirms these results: wellbeing of Lithuanian children, except in the area of health, lags behind the average of other countries, first of all, in the areas of 'behaviour and risk' and 'subjectively perceived wellbeing'².

Children's Poverty

Children, as a social group, face one of the highest levels of poverty in Lithuania. One in every four children in the country lives on the verge of poverty. In Lithuania the level of child poverty exceeds the total level of poverty of all households, which stands at 20%.

It has been established that child poverty depends mainly on the socio-economic situation of the parents and the structure of the family. The most vulnerable groups of children are the following: pregnant teenagers, children in state custody, disabled children, Roma children, children separated from their parents and children who are not attending school. The families most in need, first of all, include incomplete and large families, families who take care of disabled persons and families with low motivation and who are not capable of adjusting to changes in living conditions. An analysis of the situation conducted by the Children's Rights Protection Service shows that the risk of families raising one or

more children in Lithuania to end up in poverty ranges between 15 and 16%³.

The evaluation of the relative level of child poverty in terms of age group shows that the largest number of children in need is observed in the age group from three to five years of age. This can be explained by the fact that the state mostly supports families from the birth of the child until he/she is three years old. Later social benefits are paid to poor families to ensure a minimum income and an allowance is paid for a proportion of the costs of house heating and water.

Poverty experienced in childhood and teenage years is a factor of poverty risk. The competences of children from such families are not sufficiently developed, children have fewer opportunities to develop their abilities and talent, and special needs teaching or health care needed for their development is not available to them. As a result, some of them have problems at school: they lack the motivation to study and experience behavioural problems. One of the most important objectives in fighting child poverty is to ensure that children from poor families do not fall into the 'poverty trap' and to guarantee them the opportunities to move up the social ladder⁴.

Children of Emigrants

The issue of children left behind by parents who go abroad to seek employment still persists. There are still no official statistics on the numbers of children left in the care of third parties. It is believed that about half of emigrants had children but that only every second one of them left with their children. Reportedly, the children of every second émigré are left behind with either one of the parents, grandparents or other relatives⁵.

Leaving their children in the custody of other persons without legitimising this care and, as often seen from reports by the media⁶, without ascertaining the qualifications or motivations of the carers' ability to care for the children, the parents fail to ensure the child's right to grow up in a family. It has to be noted that the question of who should become legal representatives of the child and take care of him/her after the departure cannot be left exclusively to parents, since, as seen in practice, children are sometimes left to persons (grandparents, older children, etc.) who are incapable of taking care of their own or the interests of the entrusted child⁷.

Violence

The media gives wide coverage to cases of violence between pupils⁸ and between pupils and teachers⁹. Par-

ents use educational methods based on corporal punishment or psychological intimidation.

The Seimas has so far failed to adopt the *Law on Prohibition of Beating Children* although children's rights experts and non-governmental organisations have been discussing it for almost a decade, and a great number of surveys and studies have been conducted in this field. The United Nations *Convention on the Rights of the Child* and the Recommendations of the Council of Europe propose that member states prohibit corporal punishment. In its opinion, the *Committee on the Rights of the Child* urged Lithuania to prohibit the use of corporal punishment on children at the legislative level¹⁰.

The right to be nurtured without violence is an inalienable child's right. It has to be noted that international recommendations specify that infringements of the prohibition of corporal punishment do not necessarily need to lead to criminal punishment; as such a vicious circle of hostility may lead to further violence. Almost every other member state of the EU has incorporated such prohibition into its legislation or it has been established by court practice. In Latvia, Denmark, Finland and other European countries, corporal punishment of children is not allowed and no arguments justifying violence against

children exist. This provision is applicable to institutions of education, health care, and their employees, as well as the relations of parents and children in families¹¹.

The law, prohibiting individuals who have committed criminal offences against children from working in social, health care, sports and education institutions, institutions and organisations of children, irrespective of their employment functions, has not been adopted either¹².

There is no specific assistance to children suffering violence in schools. Usually, an investigation into the reasons for the conflict is avoided and no measures are taken to seek constructive solutions acceptable both to the child and the adult. The proposal of the Ombudsperson for the Protection of the Children Rights prohibiting persons, who use violence against children from teaching caused intense dissatisfaction among teachers¹³. Children's Rights Protection Services tend to disassociate themselves from violations of children's rights in schools, although it is the positive action of these services to ensure the protection of children's rights and the prevention of infringements in social areas, including educational institutions. The resolution of this problem calls for the development and expansion of a network of conflict mediation centres or groups.

Disagreements among schoolchildren, between schoolchildren and teachers as well as, among family members could be worked out in this way. This resolution approach could become one of the pre-requisites for reducing violence in the future.

One of the most important measures in the efforts to reduce the spread of violence among children and between children and adults should be the education of the public on positive education and amicable approaches to conflict resolution at national level. At the moment, most people justify the use of violence as a means of education, and the main reason for that is a basic lack of knowledge and impunity in relation to violence. Medical personnel, teachers and police officers must be regularly trained to recognise violence and respond to it as well as be aware of measures to be taken to defuse the situation. The crucial factor necessary to attain this aim is adequate interdepartmental cooperation.

Accessibility of Counselling

Psychological help is accessed by children with the same difficulty as previously¹⁴. It is mainly provided by NGOs such as *Vaikų linija* (Children's Line) who provide counselling by phone to children who are in stressful situations, suffering vio-

lence or attempting suicide. The organisation's data shows that the need for counselling in this way far exceeds the possibilities of the staff to satisfy it. For example, in 2006 the consultants of *Vaikų linija* answered almost 87,000 calls, while there were a total of 4 million attempted calls¹⁵.

Psychological help is accessible with great difficulty to children in public education and health care institutions, and child protection services, although the *Mental Health Strategy* adopted in 2005 foresaw the provision of counselling as a national priority. Public institutions do not have enough specialists and owing to a serious lack of funding, find it impossible to attract suitable staff. Children residing in remote rural areas are in the worst position in this regard.

Accessibility of State-Guaranteed Legal Aid

State-guaranteed primary legal aid (legal counselling) is very rarely provided to children. The main issue here is the different interpretation and application of the provisions of the *Law on State-Guaranteed Legal Aid* by public institutions organising and providing state-guaranteed legal aid. Certain public institutions organising and providing state-guaranteed legal aid hold that primary legal aid cannot to be provided to children due to the special status of

children, i.e. their inability to exercise their personal rights and duties independently from adults. Furthermore, neither state-guaranteed primary legal aid nor state-guaranteed secondary legal aid can be provided to child care institutions due to their legal status (they are legal entities) since the *Law on State-Guaranteed Legal Aid* provides for the provision of such aid to individuals¹⁶. Thus, children have practically no opportunity to receive legal assistance in case of infringement of their rights.

As a vulnerable social group, children should not be deprived of the opportunity to use state-guaranteed legal aid. Therefore, the situation calls for adequate education on the provision of state-guaranteed legal aid to children, employing understandable and available measures. The legal gap must be remedied and the law must clearly foresee that a child may seek state-guaranteed primary legal aid.

The Lack of Cooperation among the Institutions of Children's Rights

In 2007, Children's Rights Protection Services generally received negative coverage. The media reported numerous cases of inactivity and improper actions by officers of these services¹⁷. Actions are often taken by officers of other services: for example, police officers call medical

personnel and notify a Children's Rights Protection Service about cases which were already known to this Service, but find out that the consequences were not 'sufficiently' grave for any action to be taken; even when the most seriously abused/injured child has been removed from the family, no efforts are made to check the situation of other children raised in the same unsafe family¹⁸.

The activities of Children's Rights Protection Services are not sufficiently regulated: there is a serious lack of guidelines regulating children's interests, for example, the Ministry of Social Security and Labour has not yet approved the rules covering the removal of children from a family.

At present the functioning of all the institutions operating in the field of children's rights protection is not coordinated; there is a lack of interdepartmental communication. Undoubtedly, interdepartmental communication would be encouraged by the establishment of interdepartmental groups, consisting of various specialists (for instance, of social workers, psychologists, doctors, police officers, etc.). On learning of a child in danger, the issue should be considered by officers of all the related institutions, a decision on support to the family should be adopted and the impact and effectiveness of the support

should be monitored. There are isolated attempts to create interdepartmental cooperation groups; however, their existence is the exception rather than the rule. The *UN Committee on the Rights of the Child* in its reports regularly observes inadequate interdepartmental communication¹⁹.

In the opinion of experts, *Law on Fundamentals of Protection of the Rights of the Child* is seen as outdated in a number of aspects and not really applicable in practice. On the other hand, a new version of this law could become a forum for solving a number of current issues in the field of children's rights protection (clear attitude towards violence, response to consequences, reporting and responsibility, etc.)²⁰.

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⁷ Ombudsman for the Protection of the Children Rights. Summary *On ensuring the rights and legal interests of children whose parents left abroad in solving the issues of their living and studying*, www3.lrs.lt/docs2/YBTRWOIU.doc.

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Rights of Persons with Disabilities

The situation of the disabled, in particular, those who are mentally disabled, remained the same. Persons with mental disability remain among the most socially vulnerable groups; they faced serious discrimination, are negatively regarded by society, and are portrayed in a one sided negative manner by the media. This resulted in a difficult status for the disabled in the labour market, especially given current unemployment trends; risk of abuse of their rights and limited exercising of equal opportunities. The political solutions adopted in the mental health field in 2007–2008, that is, the approved *State Mental Health Strategy* and the plan for its implementation approved later, did not yield the expected results. Public buildings and locations remain unmodified or inadequately adapted for disabled wheelchair users, almost half of whom live in housing which has not been adapted for their needs. The newly adopted procedure for providing technical equipment for the disabled only complicated its acquisition. The years 2007–2008 saw the adoption of landmark rulings of the Supreme Court questioning current judicial practice in cases of legal incapacitation.

Society's Attitude towards the Mentally Disabled

The level of society's prejudice to the disabled, in particular, the mentally disabled, remains high. A 2008 survey showed that over 50% of Lithuanian residents agree that mental patients are among the most discriminated groups (5.91 points out of 10)¹. When compared to data from the equivalent surveys of 2004 and 2006, one can see that discrimination of the disabled is now more recognised; previous to this the most discriminated social group was deemed to be elderly people. Another survey reveals that 68% of Lithuanian respondents believe that mentally disabled persons are dangerous, unpredictable and have caused their own illness². The negative attitude of society is also the result of media reports³ which often portray mentally disabled persons in a negative and criminal manner⁴, and favour their isolation and restriction of their rights⁵.

Ensuring the Right to Work

The negative attitude of society towards people with mental disability, together with the lack of support from the State on their right to work leads to infringement of their rights in the labour market⁶.

Situation of people with mental disability

A survey conducted by Vilmorus, the centre for public opinion and market research⁷, showed that people with mental disability are the second most undesirable co-workers for Lithuanian residents (32.6%). The evaluation and comparative analysis of public tolerance to various social groups conducted by the Institute of Labour and Social Research⁸ shows that people with mental disability are the most undesirable co-workers (46.1%).

According to unofficial data, barely 1 per cent of mentally disabled people work in Lithuania, although about 60% of them would like to work and almost all of them are capable of doing so.⁹ 63% of Lithuanian residents agree that mentally disabled people should be in paid employment¹⁰. However, almost half of the employers interviewed (46%) stated that they tend to employ such persons for unskilled physical work only. As many as 30% of the employers interviewed admitted they would not employ such persons at all¹¹. Responsibility for the hardships encountered by mentally disabled people in seeking employment is attributed to the public (35%) and the state (34%), or even mentally disabled people are blamed themselves (12%)¹².

People with mental disability indicate that employers are afraid of them

and avoid those who think and work slower than the majority. Among the main obstacles for their employment these people indicate the lack of information for employers on how to communicate with persons having a specific disability, the conclusions of the Disability and Working Capacity Assessment Office (DWCA) on the type of work suitable for the disabled person, the lack of financial motivation, insufficient qualifications, legal incapacity, etc.¹³

The current employment system and mechanism of reducing social exclusion are ineffective and non cost-efficient for the state. The number of mentally disabled people is rising yearly in Lithuania, and the majority of these are young, employable persons. Significant savings on social welfare payments could be achieved by employing these people. The current system of working capacity assessment and support fails to provide motivation for people to work; generally they have unskilled, part-time jobs and are paid the minimum wage. The provision of continuous employment for 30 people would pay for itself in 4 years while after 11 years the economic benefit would exceed LTL 4 million¹⁴.

However, effective employment services are provided sporadically in the frameworks of international projects, although they are considerably cheaper than those now provided

nationally¹⁵. The project *Employment of people with mental and intellectual disorders* conducted by EQUAL Initiative of the European Union should be mentioned among these projects. The cost and benefit analysis of this project revealed that the employment of a mentally disabled person with the help of a work assistant is economically beneficial for the state¹⁶. The situation calls for the development of an integration and employment system aimed at providing the mentally disabled with the opportunity to work - thus, ensuring their rights- facilitating the economic burden of the state in supporting these persons, as well as the development of an effective, economic, psychosocial system for the development of labour skills¹⁷.

Situation of people with physical disability

Article 13 of the *Law on Public Procurement* provides that disabled enterprises may participate in the public procurement bids when at least half of the employees are disabled. However, the law is not actually enforced since the procedure for applying this law has not been developed, so companies employing the required numbers of the disabled cannot tender for contracts and so cannot expand.

At the end of 2008, the Ministry of Finance withdrew State support to companies which have employed dis-

abled persons through the labour exchange. And although this was done in error and the mistake has since been rectified, companies suffered substantial difficulties¹⁸.

The decisions of the Disability and Working Capacity Assessment Office often failed to reflect the actual state of health of a disabled person and, therefore, directly affected the financial situation of the person's family¹⁹.

The employer survey revealed that employers avoid employing disabled workers since they are dubious about their qualifications, quality of work and pace. They are also intimidated by the necessity of adapting the work place for special needs²⁰ and the fact that a disabled person may be ill much more often than a healthy person.

Adaptation of the Environment for Persons with Physical Disability

Adaptation of public environment

The public environment is either not adapted or adapted inadequately for the disabled in wheelchairs. It is next to impossible to get onto public transportation. There are also no toilets adapted for the disabled. The situation in smaller towns and settlements is even worse. Health centres, municipal councils and local state offices are not wheelchair accessible. There is still no orange card system

whereby the disabled may park their vehicles anywhere as long as they do not cause any obstruction to traffic.

At the moment, the State is only able to provide supplementary equipment to 75% of disabled people. There is a continued shortage of support equipment (such as wheelchairs, walkers, special functional beds and bedsores prevention mattresses) adapted to the disabled²¹. Furthermore, the newly enforced procedure for providing support equipment or materials²² makes them almost impossible to get. Furthermore the means assessment used was unduly restrictive. For example, special Braille paper is now provided only to blind learners or blind people doing creative work if they verify this with special certificates²³. Quite often even after receiving support materials, the blind cannot use them, since certified modern watches, thermometers or telephones speak only in English, which is not understood by the majority of the disabled²⁴.

The disabled still find it hard to use special parking lots for the disabled since they are often occupied by persons with no disability and the police do not penalise the offenders²⁵.

Adaptation of residential premises

Data from the Department for Affairs of the Disabled shows that in

2007–2008, only 52% of housing had been adapted as required.²⁶ Which means in effect that every second disabled person with special needs has to reside in housing that is not adapted to their special needs. This undoubtedly affects their personal dignity as they are not able to perform their personal hygiene needs and have limited freedom of movement as they cannot move around without the help of other people. This situation is the result not only of a shortage of funds but also an absence of goodwill and competence on the part of the Councils²⁷.

Adaptation of informational environment

Only every tenth student with special needs who has graduated from a high school in Lithuania continues his/her studies at university level. One of the main reasons for this is the poor adaptation of the physical and informational environment in universities, the lack of cooperation among the higher education institutions as well as the passive attitude of these institutions with regard to students with special needs²⁸.

Ensuring the Right to Vote

Only 19% of citizens with motion disability can exercise their voting right since the election commissions are usually located in premises that

are accessed by stairways. They cannot avail of the opportunity to vote in post offices either for the same reason. Moreover, voting at home is also not guaranteed as the election commissions are not obliged to either deliver the voting bulletins to the homes of the disabled or notify them about the time of their visit²⁹.

Legal Incapacity and Custody

The mechanisms developed as ‘safeguards’ for the protection of a person’s rights, i.e. the concepts of legal incapacity and custody, often cause severe infringements of human rights harming a number of people with disability. The media has reported numerous cases where close relatives or other interested persons initiated the procedure for legal incapacitation of mentally disabled for their own benefit.³⁰

The years 2007–2008 saw the adoption of two landmark rulings of the Supreme Court of Lithuania (SCL) disclosing serious procedural infringements in cases of legal incapacitation.

In its rulings (2007 case *G. L. v. D. L*³¹ and 2008 case of *V. Č.*³²), the SCL stated that a psychiatrist’s diagnosis concerning the mental or intellectual disorder of a person does not by itself determine the legal incapacity of a person; the legislation states

that it is possible for the court, but not necessarily it’s duty to recognise a person as legally incapable; a case of legal incapacitation is a matter of public interest. It was stressed that in reaching their decisions, courts give too much weight to the psychiatrists’ conclusions without considering the level of social skills of the mentally disabled person standing before the court.

In both cases the SCL over turned the rulings of the lower courts and referred the cases back for reconsideration. However, without the amendment of the main provisions in the relevant legislation (*Civil Code*³³, *Civil Procedural Code*), the possibility of applying the standards violating the rights of a mentally disabled person remains³⁴.

In 2008, a working group was established to draft relevant amendments to the *Civil Code* and *Civil Procedure Code*, to include an option of partial legal incapacity of individuals with mental disorders, thus, allowing them to enjoy at least some of the rights and not being stripped of all the rights as is the case under current legislation. Unfortunately, not a single organisation representing the interests of persons with mental disability was invited to participate in the working group, while its drafted proposals do not comply with the international legal standards³⁵ and

recommendations³⁶. For example, the working group did not touch upon the flawed system of guardianship for mentally disabled.

Involuntary Hospitalisation

Since 2005, the *Law on Mental Health Care*³⁷ provides that in cases of involuntary hospitalisation and involuntary treatment of mental patients the administration of a mental health facility must apply for legal aid if a patient is not represented by the lawyer of his/her own choosing. However, this amendment fails to properly ensure patients' rights as cases of involuntary hospitalisation are resolved through a simplified (written) procedure - a patient is not present at the hearings and the appointed lawyer represents his/her interests without even meeting him/her. In addition, the ruling adopted by court may not be appealed against.

Even this faulty procedure has not always been observed. There have already been several court precedents in Lithuania when patients who challenged their involuntary hospitalisation won their cases against mental health facilities³⁸. It is worth mentioning separately the case of a believer of Osho Meditation Centre *Ojas* who was hospitalized and treated in Vilnius Psychiatric Hospital without court authorisation for 52 days. The court awarded her LTL

110,000 for non-pecuniary damages³⁹.

The internationally accepted principle is to grant more rights to persons who are more vulnerable. Although Lithuanian legislation recognises the rights of mentally disabled persons, it also provides for a number of exceptions that eventually become rules. Mentally disabled are often not informed about their diagnoses and prescribed treatment. As mentioned above, the infringements of the rights of persons with mental disorders in cases of involuntary hospitalisation are especially frequent⁴⁰. There are reported cases where a person is not even notified about the court hearings in the case of his/her legal incapacitation or he/she is not informed about the court decision. This way an unaware person loses all his or her rights.

Implementation of Mental Health Strategy

On 3 April 2007, the Parliament of the Republic of Lithuania adopted the *Mental Health Strategy*⁴¹ (hereinafter – MHS). The purpose of the Strategy is to develop a mental health care system that is in-line with state-of-art scientific knowledge and values and that provides comprehensive assistance to persons with mental and behavioural disorders and their families in a rational and effi-

cient manner. Little over a year later, in 2008, the Government approved the *2008–2010 Implementation Programme of the State Mental Health Strategy*⁴² (hereinafter – SMH programme).

It was expected after the adoption of the MHS that this strategic document and implementation of the measures would directly and practically influence the enhancement of public mental health based on contemporary values, would provide comprehensive assistance for persons with mental and behavioural disorders and their families, as well as safeguarding their rights. In mid-2008, the NGOs⁴³ initiated the review of the implementation of the State Mental Health Strategy. However, the plan of the MHS implementation measures was made public only in summer 2008, therefore, the evaluation of the Strategy implementation, let alone the results or impact of this implementation has been so far impossible.

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⁵ See, Greta Čizinauskaitė. Killer with University Degree is Incapable, *Kauno Diena Daily*, 3 August 2007, <http://kauno.diena.lt/dienrastis/uzribis/zudikas-su-aukstuoju-issilavinimumdash-nepakaltinamas-49386>.

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¹¹ Inga Saukienė. Lithuanian Politicians are Advised to Keep Silent about their Mental Problems, *Delfi.lt*, 22 February 2008.

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²⁰ Irma Dubovičienė. Mission of our Generation: to get rid of faulty classification of people, *Valstiečių Laikraštis* Daily, 10 February 2008, <http://www.valstietis.lt/Archyvas/Pirmas-puslapis/2008-metai-Vasaris/Musu-kartos-misija-atsikratyti-ydingo-zmoniu-skirstymo>.

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³³ *Civil Code of the Republic of Lithuania*, Second Volume, Persons. Third Chapter on the Recognition of a Natural Person as Incapable or Having Restricted Capacity, and Third Volume, Family Law. Section VII: Custody and Care, Section XVII: General Provisions; Section XIX: Custody and Care of Adult Persons (Official Gazette, 2000, No. 74-2262).

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⁴² 18 June 2008 Resolution No. 645, *On the Approval of 2008–2010 Implementation Programme of the State Mental Health Strategy* of the Government of the Republic of Lithuania (Official Gazette, 2008, No.76-3014).

⁴³ Global Initiative on Psychiatry and the Center for Training, Research and Development.

Prisoner Rights

In 2007–2008, there were reports that a criminal underworld was flourishing in prisons and it was characterised by inequality and violence among the prisoners. Overcrowding in the prisons, unemployment, addiction to drugs or psychotropic substances, the frequent turnover of prison staff, insufficient training of prison employees as well as a shortage of employees were among the main obstacles for the reintegration of prisoners. Very few people served their sentence in an environment which would be more favourable to reintegration, i.e. an open imprisonment facility.

Prisoners' Subculture

In 2007–2008, a criminal underworld prospered in Lithuanian prison facilities. The system is an informal one based on the complex hierarchy of the prisoners and leads to outbreaks of violence as well as depriving them of opportunities for reintegration. For example, in 2007 in the Alytus Penitentiary, prisoners ate from different coloured plates, the colour of the plate indicating one's social status. When the plates of those deemed to be in the lower caste were withdrawn, they had to starve¹. No effective measures to fight this phenomenon in prisons were taken in 2007 or 2008.

In response to the concern about the growing criminal underworld expressed by the Council's of Europe Committee Against Torture, the Lithuanian government indicated in 2006 that special programmes were to be implemented among the prisoners in order to eradicate the inequality and violence². However, Seimas Ombudsmen note that the complaints received from prisoners who were victims of violence show that these measures are ineffective, while some of them were not implemented at all³.

At the beginning of 2009, following an order of the Director of the Prison Department, the *Prevention Programme for the Manifestations of Criminal Subculture in Prisons* was approved. The effective implementation of this programme has to be guaranteed.

Furthermore, more attention should be paid to the adequate training of junior officers for their work. As observed by the Head of the Labour Union of Lithuanian Penitentiaries, training of these officers was shortened to one month, it includes courses on the main principles of security and supervision as well as legal requirements, however, on a practical level it excludes psychology, ethics and other important disciplines that are vital for the work of officers directly communicating with prison-

ers. The training ends with the introductory course as no further professional development courses are organised for the junior officers⁴.

Problem of Drug and Psychotropic Substance Use

Drug and psychotropic substance use is an inherent part of the prison subculture. This is the main reason for the spread of HIV in prisons.

When prisoners were prohibited from receiving parcels with food products, statistics showed a decrease in the use of drugs, psychotropic substances and alcoholic drinks⁵, however the problem still remains. There is evidence to suggest that formal statistics do not reflect reality since the numbers of persons addicted to drugs and psychotropic substances do not decrease⁶. On the other hand, there is no data available on the number of people arriving in prison already addicted to drugs and psychotropic substances or how many become addicted while in prison.

In any case, adequate treatment must be ensured for persons suffering from addiction to drugs and psychotropic substances. The educational prevention programmes presently used⁷ are inadequate. The continuity of treatment to released HIV carriers must also be guaranteed⁸.

Overcrowding of Prisons

The overcrowding of prisons has a negative impact on the relationships between prisoners, their contacts with facility staff, the security of weaker prisoners and their reintegration.

The majority of prisons in Lithuania are overcrowded. Data from October 2008 shows that Kaunas and Šiauliai Remand facilities, Lukiškės Remand Prison and Prison Hospital were overcrowded. Although the formal number of prisoners in other prisons was not exceeded in terms of the available places, Alytus, Marijampolė Penitentiaries and Pravieniškės 2nd Penitentiary accommodated more prisoners than provided for in effective *Internal Order Rules of the Penitentiaries*⁹.

The inspection of the Lukiškės Prison Hospital revealed that due to overcrowding of the internal illness department, it is impossible to provide an area of 7 sq m for each patient bed as is required by the sanitary norms; the majority of the wards are overcrowded, the equipment is worn, some of the mattresses are torn, and the paint on the surfaces of shelves and tables is peeling off, which prevents adequate cleaning and disinfection. At the time of the inspection, the Lukiškės Prison Hospital administration explained that all

the funding allocated to the hospital goes towards repairs and renovation of the facility and the funds received are not sufficient to ensure that adequate patient care conditions are met as required by rules.

To solve the issue of overcrowding in prisons, *the Programme of Prison Renovation and Humanisation of Imprisonment Conditions for 2004–2009* was approved, according to which the number of beds in prison should be no higher than would be allowed in residential premises. However, in 2007 up to 12 persons at a time were accommodated in one room in the newly built residential premises of the renovated Kybartai Penitentiary and Vilnius 2nd Penitentiary¹⁰.

Insufficient Employment of Prisoners

Unemployment in prisons contributes to the loss of, or failure to acquire labour and social skills, which are prerequisites for getting employment and having a legal source of income following release from prison. With no opportunities to work, prisoners have to spend up to 23 hours in closed cells without any occupation in certain prisons. For instance, prisoners in Lukiškės Remand Prison allowed 1 to 1.5 hours for walking per day. Unemployment also reduces one's opportunities to compensate for the damage caused by one's criminal offences.

The number of working prisoners in Lithuania remains among the lowest in the European Union. At the beginning of 2008 about 20% of all prisoners were employed in prisons¹¹ according to data from the Prison Department. Data provided by the Department in September 2008 showed that prisoners had to pay compensation for claims totalling LTL 37 million, but the amount deducted from their salaries was LTL 337,700¹².

In 2007–2008, the Prison Department implemented a project of convict integration into the labour market, *The Selected*, which had been launched in 2005. 250 persons serving time in prison acquired vocational knowledge and social skills during the course of the project¹³. Activities like this one should not be carried out as once off projects but should be consistent and regular.

Although conditions in the labour market were very favourable for the employment of convicts in Lithuania until the end of 2008, in principle the situation did not change. Work in prison is seen as a privilege by the convicts¹⁴. Some of those unemployed would like and could be employed but there are no facilities for this¹⁵.

The management of prisons should, on their own or in cooperation with

private contractors, create employment positions for prisoners inside or outside the prisons¹⁶.

As mentioned previously¹⁷, the legal regulation of prisoners' employment should be improved in order to increase prisoners' motivation to work. Convicts earning income for work should have social insurance, while their work should be included in their record of service required to qualify for a pension.

Administration staff of the prison system needs to change their attitude towards the rationale of prisoner employment. At the moment, the profit gained by the prisoner from working is deemed to be the most important criterion¹⁸; however recommendations of the Council of Europe state that this is not and should not be the main purpose of their work¹⁹.

Issues of Turnover, Professionalism and Shortage of Prison Personnel

In October 2008, there were 214 staff vacancies in the prisons. Only 1,730 out of 1,944 prison warden posts were occupied in the Lithuanian prison system²⁰; in 2007, prisons were short of 29 social rehabilitation workers: Only 203 posts out of 231.5 were filled²¹.

In 2007, staff turnover in Lithuanian prisons reached about 15%. On 1 January 2008, 3,781 employees worked in the system (3,840 on 1 January 2007). Within a year, 511 employees were dismissed and 520 new employees were employed²².

The high turnover and shortage of prison staff impedes the functioning of the institutions and has a negative effect on their operational efficiency. Media reports reveal that the convicts complain about not having communication with workers responsible for social rehabilitation programmes²³.

The main reason for the high turnover and shortage of employees is inadequate work conditions.

Former workers of Lukiškės Remand Prison claim that conditions of work in this prison are extremely poor: huge workloads, psychological tension, bad relations between the administration and the staff, and low pay²⁴. Employees of Pravieniškės treatment and penitentiary facilities complained about hard work conditions, being coerced to do tasks that are not included in their job descriptions and the pervading lack of respect in relationships²⁵. The work conditions in the Lukiškės Prison Hospital are not satisfactory for either the convicts or the personnel: the premises and fittings of the institution are worn

out; most of the medical equipment is outdated and run down²⁶. The employees of Alytus Penitentiary have to be on watch for longer than provided for in the departmental legislation²⁷. Concern about manifestations of informal, as well as violent relations among institutional employees was voiced in one of the meetings arranged by the Ministry of Justice²⁸.

Poor professional skills contribute to bad decisions. For example, the administration of Panevėžys Penitentiary interpreted legal norms too narrowly, and unreasonably restricted the convicts' right to receive books from their relatives²⁹. In 2008, the Seimas Ombudsman determined that imprisoned women could only receive books from their relatives if the latter donated these books to the prison library, although the law validates the convicts' right to receive small parcels with press materials, the quantity of which is not restricted³⁰. When trying to call the administration's attention to the problem, the Seimas Ombudsman had to use vocabulary to prove to the administration of the institution that the term *press*, among other things, included books³¹.

Inadequate Resolution of Conflicts in Prisons

The combined effects of the above mentioned problems contribute to a favourable environment for conflict

situations to arise between prison personnel and convicts. The majority of convicts' complaints filed with the Seimas Ombudsman in 2007–2008 were related to the actions of officers. In 2007 this accounted for 39% of all complaints³², while in 2008 to 38%.³³

Shortage of employees and their lack of professionalism often result in the imposition of penalties in Lithuanian prisons. About 40 per cent of all disciplinary measures consist of the strictest measures: solitary confinement or confinement in an isolation cell, or transfer to bunker-type premises.

As testified by one convicted woman, as soon as there is any conflict prisoners are confined to solitary confinement cells³⁴. Positive outcomes can hardly be achieved with severe treatment.³⁵ Trust between officers and a convict is lost³⁶, even though it is known that good relations between officers and prisoners is one of the main indicators of the operational quality and atmosphere of an institution³⁷.

The validity of penalties imposed often raises doubts, too. For instance, on 25 May 2007 the Supreme Administrative Court of Lithuania left unchanged the ruling of Kaunas County Administrative Court annul-

ling the decision of the director of one of the penitentiaries who shut the applicant in the solitary confinement cell for ten days because he stood in the morning line without having his hair cut as he was required to do, according to the administration. The court stated that legislation does not regulate the length of prisoners' hair and does not provide for the obligation to have a short hair-cut³⁸. It has to be noted that pursuant to the Code of Sentence Execution of the Republic of Lithuania, the appeal against the penalty does not suspend the execution of the penalty.

The development of a national prevention mechanism for supervising conditions in prisons is likely to contribute to improvement in the professionalism of the personnel of prison facilities. Although Lithuania has not ratified the 2002 Optional Protocol to the UN *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* that commits countries to establish such mechanisms, a supervisory group for human rights situations in closed prison facilities was formed in the Seimas Ombudsmen's Office in 2008. Its main objective is to conduct preventive monitoring of closed prison facilities and to ensure the protection of rights of persons who are inmates there.

Failure to Apply Open Imprisonment Forms

Pursuant to the Recommendation *On the Rules of European Prisons* approved by the Committee of Ministers of the Council of Europe, the minimum required restrictions corresponding to the conviction should be imposed on convicts³⁹; and life in prison facilities should match as much as possible positive aspects of life in society⁴⁰.

Pursuant to the *Code of Sentence Execution of the Republic of Lithuania*, on court decision, adults convicted for negligent and deliberate minor offences may serve time in open colonies⁴¹. However, a very small number of persons are imprisoned in open colonies in Lithuania⁴².

Lithuanian legislation regulating the execution of sentences does not provide the possibility for the transfer of convicts from closed institutions to open ones, although such practice is common in the majority of Western countries, in particular, when the time of release is approaching.

ing place is assigned to them. During this term, corresponding specialists work with them to identify the inmate's psychological traits, physical state, the type of the crime committed and other matters. Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 36.

³ Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 36, <http://www.lrski.lt/files/276.pdf>.

⁴ Ministry of Justice: do non-statutory relations exist in penitentiaries?, *Pareigūnai.lt*, 8 October 2007, <http://www.pareigunai.lt/index.php?page=naujienos&id=141>.

⁵ In 2007, 292 cases of drug use were recorded, 164 cases of psychotropic substance use and 373 alcohol use cases in all prison facilities (respectively 407, 252 and 259 in 2006; 593, 432 and 160 in 2005). Social Rehabilitation Division of Prison Department under the Ministry of Justice of the Republic of Lithuania. Discipline of penitentiary inmates and applied disciplinary measures to them in 2006 as compared with 2005, and in 2007 as compared with 2006.

⁶ During previous years, about 18% of all imprisoned persons were officially deemed addicted to drugs and psychotropic substances. Statistics on the prevalence of drug and psychotropic substance use and their illegal turnover in Lithuania in 2006, provided by Drug Control Department under the Government of the Republic of Lithuania.

⁷ Cold Turkey after the Declared Quarantine, *Alfa.lt*, 20 March 2007, <http://www.alfa.lt/straipsnis/130732>; Inga Kontrimavičiūtė. Drug Feast in Prison, *Sekundė*, 25 September 2007.

⁸ Aida Valinskienė, HIV Concentration Camp, *Respublika Daily*, 30 November 2007, <http://www.sekunde.lt/content.php?p=read&tid=44056>.

¹ Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 36, <http://www.lrski.lt/files/276.pdf>.

² In-line with these programmes, new inmates are kept separately for two weeks before a liv-

⁹ Order No. 194 on the Approval of Rules of Internal Order in Penitentiaries, issued by the Minister of Justice on 2 July 2003. (Official Gazette, 2003, N.76-3498).

¹⁰ Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 36, <http://www.lrski.lt/files/276.pdf>.

¹¹ Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 38, <http://www.lrski.lt/files/276.pdf>;

Valentas Neviera. Why Does Only One in Five Prisoners Work?, *Veidas Weekly*, 10 March 2008, No. 10, <http://www.veidas.lt/leidinys.nrfull/47d1768d79cfc>.

¹² Summary of Activities of Social Rehabilitation Services for January–September 2008, Information System and Project Division of Prison Department under the Ministry of Justice of the Republic of Lithuania.

¹³ Programme of *The Selected*: 40% of convicts got employed, *Delfi.lt*, 19 September 2007, <http://www.delfi.lt/news/economy/business/article.php?id=14448561&rsslink=true>.

¹⁴ Gintarė Benaitytė, Asta Stankutė. Lithuania: nine years without capital punishment, *Lietuvos Žinios Daily*, *Balsas.lt*, 24 September 2007, <http://www.balsas.lt/naujiena/162361/devynerius-metus-lietuva-be-mirties-baumes/rubrika:naujienos-lietuva>.

¹⁵ Janina Razmytė. Shortage of Labour Force Diverts the Eyes to Prisoners, *LRT, Verslosavaite.lt*, 16 January 2008, <http://www.verslosavaite.lt/index.php/Verslas-ir-ekonomika/Darbo-jegos-trukumas-priverte-atsigrezti-ir-i-kalinius.html>.

¹⁶ Above mentioned recommendations, Paragraph 26.9.

¹⁷ See, HRMI, Implementation of Human Rights in Lithuania: Overview 2003, p. 34–35.

¹⁸ Valentas Neviera. Why Does Only One in Five Prisoners Work?, *Veidas Weekly*, 10 March 2008, No. 10, p. 38–39.

¹⁹ Recommendation R (2006) 2 *On the Rules of European Prisons* approved by the Committee of Ministers of the Council of Europe, Para. 26.

²⁰ Report on Disclosed Unlawful Relations, Criminogenic Situation and Seized Prohibited Items for January–October 2008, Information System and Project Division of Prison Department under the Ministry of Justice of the Republic of Lithuania.

²¹ Summary of Activities of Social Rehabilitation Services for January–September 2007, Information System and Project Division of Prison Department under the Ministry of Justice of the Republic of Lithuania.

²² Principal Data on Activities of the Prison Department and its Subordinate Institutions and State Enterprises, 2007.

²³ Ivona Kucharevič. Specific Rules in Prisons, *Savaitė, Alfa.lt*, 24 August 2008, <http://www.alfa.lt/straipsnis/c79185>.

²⁴ Ruslanas Arbušauskas. Lukiškės: situation is worse for wardens than for prisoners, *L.T., Delfi.lt*, 30 March 2007, <http://www.delfi.lt/archive/article.php?id=12689971>.

²⁵ Rūta Stankevičiūtė. Prison Wardens Work with Hoes, *Kauno Diena Daily*, 07 August 2007, <http://kauno.diena.lt/dienrastis/kita/kalejimosargai-mojuoja-kauptukais-49511>.

²⁶ Conditions in Imprisonment Hospital Satisfy Neither Personnel, nor the Convicts, *Infoplex.lt*, 11 August 2008, <http://www.infoplex.lt/>

portal/start.asp?act=news&Tema=1&str=22843.

²⁷ Totalitarianism in Alytus Penitentiary, *Pareigunai.lt*, 27 June 2008, <http://www.pareigunai.lt/index.php?page=naujienos&id=249>; Management of Alytus Penitentiary Ignores Even Procedures Determined by Legal Acts, *Pareigunai.lt*, 30 June 2008, <http://www.pareigunai.lt/index.php?page=naujienos&id=252>; Wardens in Alytus Penitentiary Have to be on Watch as Long as 6 Hours, *Pareigunai.lt*, 28 August 2008, <http://www.pareigunai.lt/index.php?page=naujienos&id=283>.

²⁸ Ministry of Justice: do non-statutory relations exist in penitentiaries?, *Pareigūnai.lt*, 8 October 2007, <http://www.pareigunai.lt/index.php?page=naujienos&id=141>.

²⁹ The administration of the institution based the prohibition to receive books sent by family on the provision in Article 95 of the *Code of Sentence Execution* saying that the convicts may receive mail parcel or submitted parcel containing only clothes or footwear. Although the same Article 95 consolidates the right of the convicts to receive small parcels with press, the quantity of which is not limited, the administration believed that the term *press* did not include books.

³⁰ Red Tape Flourishes in Prisons, *Vė.lt*, 4 November 2008, <http://www.ve.lt/?rub=1225371800&data=2008-11-04&id=1225786231>.

³¹ *Note On Visit to Panevėžys Penitentiary* prepared by Seimas Ombudsman Albina Radzevičiūtė, 15 October 2008, No. 2/3D-3587.

³² Activity Report 2007 of Lithuanian Seimas Ombudsmen, p. 34, <http://www.lrski.lt/files/276.pdf>.

³³ Activity Report 2008 of Lithuanian Seimas Ombudsmen, p. 30, <http://www.lrski.lt/files/353.pdf>.

³⁴ Mindaugas Jackevičius. The Convicted Woman Overpersuaded Minister of Justice, *Delfi.lt*, 26 July 2007, <http://www.delfi.lt/archive/article.php?id=13900272>.

³⁵ From an interview with a convict. Giedrė Maksimaitytė. Sentence Served. What's Next?, *Alfa.lt*, 26 July 2007, <http://www.alfa.lt/straipsnis/144820>.

³⁶ Ivona Kucharevič. Specific Rules in Prisons, *Savaitė*, *Alfa.lt*, 24 August 2008, <http://www.alfa.lt/straipsnis/c79185>.

³⁷ *The promotion of constructive as opposed to confrontational relations between prisoners and staff will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment.* European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT standards. "Substantive" sections of the CPT's General Reports. CPT/Inf/E (2002) 1-Rev. 2003.

³⁸ Administrative case No. A²-543/2007, 25 May 2007 Ruling of Supreme Administrative Court of Lithuania.

³⁹ Recommendation R (2006) 2 *On the Rules of European Prisons* approved by the Committee of Ministers of the Council of Europe, http://www.kdmc.lt/teises_aktai.htm.

⁴⁰ Para. 5.

⁴¹ Para. 1, Art. 90.

⁴² Data of 1 October 2008 shows that the open colony had 63 convicts.

Patients' Rights

The policy of patients' rights runs parallel with health sector reform. With ineffective health care reform, most of the patients' rights are left uncertain and are not implemented. The protracted and corrupt health care reform results in an ineffective arrangement for health care provision, fails to reduce queues in health care facilities and the practice of informal payments continues. The issues of access to health services and prescription drugs, poor quality service and patient safety persist, while the right to information is not protected. There are also legal loopholes with regard to compensation for malpractice.

Data from the independent research and information organisation Health Consumer Powerhouse shows that, in 2007, in terms of health care system efficiency as ranked by service consumers Lithuania ranked 26th out of 29 European countries that participated in the survey¹. The survey took into account criteria such as patients' rights and information, general accessibility to health services, treatment results, effectiveness of the health care system and patients' opportunity to access new drugs. According to specialist opinion, the functioning of the country's health sector is weak, and the main problem of health care

is the inability of patients to have a say in decisions taken in regard to their treatment². The situation did not change in essence in 2008. Experts stress that although issues of patients' rights and health care information are being solved adequately; more attention has to be paid to the accessibility of services, results and provision of drugs³.

These significant problems were discussed in the National Forum *Quality and Safety of Services to Patients: Challenges and Achievements* which took place in 2008. Lithuanian health care decision-makers committed themselves to the encouragement of doctor and patient communication based on the principles of equal partnership and mutual respect, and to diverting their efforts to the accessibility and quality of health care services as well as patient safety⁴.

Accessibility of Health Services

The number of complaints concerning service accessibility did not diminish during the period in question⁵. Patients did not receive appropriate or prompt health care; they found it difficult to visit a family doctor or get referrals to specialists or hospital. Generally, a person diagnosed with cancer is immediately written off by the doctor. In the case of various complications, even heavy bleeding, in-patient help is only accessible with

great difficulty⁶. Patients face long queues to be seen by endocrinologists, cardiologists, physical medicine and rehabilitation therapists. Patients have to wait several months to see some of them⁷. There are waiting lists of up to nine months to get an appointment with a paediatric cardiologist since there is a particular shortage of these specialists in Lithuania⁸.

The question of queues at health facilities has received a lot of publicity, but in spite of this there is no improvement. If a patient wishes to jump the queue, the patient has to pay and this happens in public care facilities. Private patients who are having elective surgery have priority over patients in the public system and whose costs are covered from the Mandatory Health Insurance Fund. This is social inequality.

Home visits by the family doctor remains one of the more contentious issues in the right to accessible services. Physicians claim that they have a great number of patients and too much administrative work at polyclinics, and so cannot guarantee their availability for home visits. Cases of family doctors refusing to make home visits because patients lived outside the catchment area were reported⁹. There were plans to tighten the procedure or even charge for home visits¹⁰, and to limit patients'

accessibility to appointments with specialists or treatment in hospitals¹¹.

The need for psychological help continues to grow in the country; however, there is still little opportunity to have professional counselling. Psychotropic pharmaceuticals were frequently prescribed when psychotherapy would have been more appropriate. In the case of post traumatic disorders Lithuanian citizens are not guaranteed any help, and have no option but to avail of expensive psychotherapy services in private facilities for which of course they must pay. There is no psychological support for schools either, in spite of the fact that data from a survey conducted by the World Health Organisation shows that the number of children being bullied in Lithuania is actually one of the highest in Europe¹². There are still no community-based crisis intervention centres in Lithuania, although the country has the highest number of suicides worldwide¹³.

Health decision-makers failed to pay sufficient attention to the process of ageing in society. These demographic changes are now seen in the majority of countries, however, in Lithuania people with old-age disabilities are taken care of only by the family. There are no specific pensions for them, while the opportunity to be hospitalised in case of senile dementia is not foreseen¹⁴.

The shortage of specialists in Lithuanian health facilities continues to increase¹⁵. The majority of physicians are elderly, while young specialists continue to leave for work abroad due to the low salaries and huge work load¹⁶. According to doctors' own estimates, about five per cent of medical specialists have already left for jobs abroad. Radiologists and anaesthesiologists in particular are very much sought after, while their shortage in Lithuania is becoming quite evident¹⁷. This has encouraged health decision-makers to implement a new internship concept and to employ interns in hospitals.

Health Service Quality and Patient Safety

The number of patients' complaints and claims for compensation for damage to health increased in 2007–2008. The growing number of patients' complaints concerning the poor quality of services provided show that health care fails to satisfy patients' expectations.

Quite a few cases of tragic mistakes by physicians were reported during last year. For example, because doctors failed to diagnose a brain tumour in an eight-year-old after trauma, the boy received the wrong treatment for over two years¹⁸. A three-year-old girl with a very high fever had to wait for

the family doctor for 10 hours¹⁹. This indifference of doctors not only hurts the patients²⁰, but in certain cases results in the patient's death. A seriously ill patient suffering from poisoning was not taken to the emergency unit in Naujoji Akmenė Hospital. Without immediate and urgent medical help, the patient died²¹. Similar circumstances were also reported as the cause of death in Ukmergė Hospital where a patient had to wait for an operation on a ruptured appendix for over 10 hours²². In Klaipėda, a small boy was seriously disabled after a simple cosmetic urological operation; his fingers and both his legs up to the calves had to be amputated because he acquired a staphylococcus aureus infection during the operation²³.

As a result of the non-existent culture of accountability for errors, physicians withdraw and tell lies. If they acknowledge a mistake, they risk losing their licence, reputation, source of income and the respect of their colleagues and society. Following the example of foreign countries, Lithuania has been called for recognition of the fact that doctors can make mistakes and for the introduction in medicine of a prevention and management system and a model of compensation for damage to patient's health 'without guilt' in order to promote the partnership of physicians and patients²⁴.

Accessibility of Pharmaceuticals

The possibility of treatment with modern, effective pharmaceuticals was not guaranteed in 2007–2008. The state was not able to treat patients with hepatitis C²⁵. These patients had to wait in long queues for expensive and suitable treatment or to pay for medicines from their own pocket. The public urged health decision-makers to increase financing for reimbursement of medicines for the treatment of leukaemia²⁶. It was only in response to the determined efforts of these patients, that the budget for effective medicines for leukaemia treatment was reviewed, however, it still does not apply to all patients with chronic myeloleukemia²⁷. Patients with rare diseases did not have the opportunity to receive vital drugs. These patients not only lacked information about their illness but also did not have reliable diagnostic facilities or suitable treatment. Although effective drugs have been developed for the treatment of certain rare illnesses, patients rarely receive them since the procedure for receiving and reimbursement is complicated and lengthy²⁸.

The problem of pain has become significant for a great number of patients with articular, spinal or oncological illnesses. Health decision-makers ignored the right of every person to live without unnecessary suffering. Specialists in pain treatment are not

educated in Lithuania, while there are only 13 of these specialists in pain clinics in the major cities. At the beginning of 2007, there were about ten municipalities where pain-killing opiates were not sold in the pharmacies²⁹. Because privatised pharmacies refused to buy licences to sell opiates, patients with cancer related and rheumatic illnesses were left without opiate pain-killers.

Right to Information

A patient has the right to approve or disapprove of the prescribed treatment. The doctor's duty is to inform the patient about the benefits and side-effects of the treatment and to allow the patient to make the decision freely.

During the period in question, there existed no practice of providing information in a clear and comprehensible way to the patient about his/her state of health, available health care services and alternative treatments. There is no public information on private (paid) services in state health care facilities. Generally, a patient learns about these services during his/her visit to the doctor or when he/she has to undergo certain tests.

It is possible that scientific research has been conducted in Lithuania

without consent, thus, committing harsh infringements of human rights. There have been media reports of unlawful clinical trials conducted with patients at Panevėžys Hospital. The patients were treated with experimental drugs without warning, and their informed consent forms were faked³⁰.

Laws regulating patient hospitalisation in mental facilities are also frequently violated. In one case a patient was involuntarily committed for up to 52 days without any court order.³¹ She was awarded compensation for non-pecuniary damage by Vilnius County Court.

Lithuanian legislation provides for the patient's right to choose both a doctor and a health care facility, however, the right of choice is only true in theory. In practice a patient has to choose the health facility according to his/her place of residence since in the case of acute illness he/she is not sure that immediate help will be provided at home. They often choose private health facilities because of the quotas and queues in public facilities and because they want to receive health service faster. However, without a referral, the patient has to pay for specialist consultations in a private facility. Private facilities are still not integrated into the health care system; consequently

patients are not able to choose an independent health care provider.

With the improvement of treatment skills, their rising costs as well as the increase in life expectancy, it is becoming clear that there is a growing need for clear and understandable information regarding the options available for free treatment, as well as the options and treatments available in the private system. Patients have the right to choose services according to their price, quality and availability.

Legal Gaps

In Lithuania, as in the majority of European countries, patients' rights are regulated by a separate law on patients' rights and compensation for damage to health. The new version of the *Law on the Rights of Patients and Compensation for Damage to Their Health* came into force on 1 January 2005, however, the practical applications raises doubts about certain provisions of this law, such as provisions concerning patient's representation, informed written consent, confidential information, processing of patients' complaints and compensation for material and non-pecuniary damage to health. The official attitude to patients' problems needs to be changed, while bureaucratic procedures have to be simplified.

Mandatory civil liability insurance for hospitals faces great difficulties. The insurance companies do not want to insure health facilities because of the undefined insurance risk, while health institutions see insurance premiums as unreasonably high. The Commission on Evaluation of Damage Inflicted upon the Health of Patients under the Ministry of Health has not operated effectively; it has become a red tape procedure preventing patients from going to court with cases of law infringement. A group formed pursuant to the Order of Seimas Board began drafting the *Draft Law of Amendment of the Law on the Rights of Patients and Compensation of the Damage to Their Health* was committed to submitting it to Seimas before December 2007. However, up to the end of 2008 the draft had not yet been considered in plenary sessions of the Seimas.

¹ Lithuanian health care is no longer the worst in Europe, *Health Consumer Powerhouse*, 1 October 2007, [http://www.healthpowerhouse.com/files/press_releases/Lithuania%202007%20EHCI%20\(4\)02%20\(2\).pdf](http://www.healthpowerhouse.com/files/press_releases/Lithuania%202007%20EHCI%20(4)02%20(2).pdf).

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