ŽMOGAUS TEISIŲ STEBĖJIMO INSTITUTAS
HUMAN RIGHTS MONITORING INSTITUTE

Human Rights Committee: List of Issues for Lithuania

105th Session, 9 – 27 July, Geneva

Written Replies to the List of Issues by the

Human Rights Monitoring Institute in Lithuania

June 2012

8. Please provide information on whether, following the closure of the Prosecutor General's investigation, further independent and public inquiry will be conducted into state actor's alleged involvement in the establishment and potential operation of secret detention sites, as reported by the parliamentary inquiry released on 22 December 2009.

In 2009, the name of Lithuania appeared for the first time on the list of countries suspected of complicity in the U.S. Central Intelligence Agency's (CIA) secret detention and extraordinary rendition programme. Although two official inquiries were conducted following the allegations, both of them failed to investigate whether any detainees were brought and held in secret detention facilities in Lithuania. Parliamentary Inquiry established that Lithuanian intelligence agency – State Security Department – has received a request from the CIA to equip facilities suitable for holding detainees, and that such facilities were actually built and equipped. It has also established that CIA chartered aircraft related with transportation of rendition victims have landed at Lithuanian airports. Moreover, the Inquiry found that Lithuanian intelligence officers created conditions for uncontrolled transportation of persons and/or cargo through Lithuanian border by preventing border and customs inspections. Hence the Parliamentary Inquiry confirmed that all conditions for operation of secret detention sites in Lithuania were created.

On 11 December 2009 Human Rights Monitoring Institute (HRMI) addressed the Office of the Prosecutor General requesting to initiate pre-trial investigation under the Articles 291 (*Illegal Crossing of the State Border*), 292 (*Unlawful Transportation of Persons across the State Border*), 146 (*Unlawful Deprivation of Liberty*) and 100 (*Treatment of Persons Prohibited under International Law*) of the Criminal Code of the Republic of Lithuania (CCRL).

The Office of the Prosecutor General failed to open an independent investigation under the above mentioned Articles of CCRL. The pre-trial investigation was initiated only after the Parliamentary Commission of Inquiry has published its report, and limited itself to investigating abuse of office. Being narrow in scope, the criminal inquiry failed to investigate if any detainees were unlawfully transported and imprisoned, and was prematurely closed in January 2011 citing the absence of evidence of criminal activity and the lack of information from the U.S. as the main reasons. No comprehensive information was ever provided to the public that could shed some light on the actual scope of the criminal investigation. The only information provided was vague and limited to abstract statements such as "all that could have been investigated, has been investigated".

Despite the repeated appeals made to the Office of the Prosecutor General by non-governmental human rights organisations, and regardless of new flights information supplied to the Lithuanian prosecutors by Reprieve, an NGO based in the United Kingdom, the criminal investigation was never re-opened. Judging from the public statements issued by Lithuanian public officials and law enforcement, there is no determination on their part to conduct a thorough investigation and provide redress to the victims. The lack of official information from the U.S. is usually cited as the main reason, and "emergence" or "arrival" of new information or evidence is being seen as the only possible stimulus to re-open the investigation. It is obvious that such passive stance taken by the Lithuanian Government and the law enforcement is contrary to Lithuania's obligation to thoroughly investigate the allegations of torture and inhuman and degrading treatment.

In October 2011, Open Society Justice Initiative and HRMI communicated a joint submission to the Country Report Task Force for the Human Rights Committee's 103rd Session held on 17th – 4th November

in Geneva (please see Annex I). By this written reply, HRMI is reiterating the observations contained therein that:

1) It is a well-established fact, confirmed by official U.S. government documents, that the CIA subjected its prisoners to torture and abuse under the rendition programme;
2) It was established by the Parliamentary Inquiry, that the conditions for the operation of CIA-run secret detention sites in Lithuania were created;
3) Lithuanian State failed to fulfill its obligation to thoroughly investigate the allegations of unlawful deprivation of liberty, torture and inhuman and degrading treatment that occurred in Lithuanian jurisdiction.

Consequently, the Lithuanian State, by failing effectively to investigate possible torture in secret CIA prisons on Lithuanian territory, has violated Article 7 of the ICCPR prohibiting torture and inhuman and degrading treatment. By permitting the CIA to subject prisoners to secret detention on Lithuanian territory, Lithuania has violated Article 9 of the ICCPR prohibiting arbitrary arrest and detention, and Article 10 providing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Recommendations

The State Party should:

1) **Open a new independent public inquiry that would investigate the allegations not covered by previous inquiries such as unlawful transportation and unlawful detention of persons, and the treatment prohibited under international law.**
2) **The new inquiry should *inter alia* include seeking testimonies from CIA rendition victims and an extensive cooperation with the authorities and law enforcement of other European states, European institutions and intergovernmental organisations such as EuroControl.**

11. Please specify how many individuals are currently being held in pre-trial detention, as well as the average length of pre-trial detention. Please also comment on information before the Committee on the use of illegally prolonged pre-trial detention.

According to data publically available from the Lithuanian Statistics Department (and provided by Prison Department under the Ministry of Justice of the Republic of Lithuania) there have been 1 347 persons held in pre-trial detention at the end of 2011. For the purposes herein pre-trial detention encompasses any period for which a person is held in custody, on the basis of an order from court, before a judgement is passed and comes into effect. Unfortunately no data is publically available on the average length of pre-trial detention. Under the *Code of Criminal Procedure of the Republic of Lithuania* pre-trial detention can be ordered for up to 18 months in the pre-trial phase. However, once the case reaches court, no limitations apply.

A focal problem concerning the pre-trial phase of the criminal procedure in Lithuania is the overall willingness of the courts to grant detention. Pre-trial detention is often seen as the main means of

ensuring an unhindered criminal process and the participation of the suspect that only occasionally can be substituted by less strict measures such as home arrest or bail, and not the other way around.

In order to grant pre-trial detention there are two conditions that must be met: inadequacy of less strict measures, and requirement that the offence must carry a penalty of more than one year imprisonment. However, in practice the first one is mostly observed only formally, and detention is often the preferred measure. As regards the second condition, this threshold is of very little practical relevance as almost all offences carry a penalty that exceeds one year of imprisonment. There are also numerous other provisions in the *Code of Criminal Procedure* regarding the pre-trial detention, which benefit the prosecution and disadvantage the accused, and make the grant of detention more likely.

The conditions under which detainees are kept are very similar and in some cases worse than those of actual imprisonment. Bearing in mind the liberal application of the said measure, this gives base to considerations that pre-trial detention is overused by Lithuanian courts contrary to Article 9 of the ICCPR, and even may in some instances become a form of early punishment incompatible with the presumption of innocence.

Recommendations

The State Party should:

1) **Introduce a limit to the maximum detention length when a case is brought before court.**
2) **Take action to prevent liberal application of pre-trial detention and form a policy of use of detention only when strictly necessary.**
3) **Take action to increase the use of less strict measures alternative to detention during criminal proceedings.**

15. Please provide information on what steps are being taken to ensure that the law explicitly prohibits all forms of corporal punishment of children in detention and all institutional settings, including schools.

In its *Replies to the List of Issues*, the Lithuanian Government submitted that the last proposal discussed in the Parliament (or Parliament committee) on legislating a ban of corporal punishment of children in the *Law on Fundamentals of the Protection of the Rights of the Child*, was submitted by the Parliament member Gediminas Navaitis on 1 April, 2010: the draft Law amending articles 2, 4, 10, 43, 49, 53, 57 of the Law on Fundamentals of the Protection of the Rights of the Child (the draft law). The draft law proposed to define the concepts of physical, psychological (mental) and sexual violence against the child; set forth an obligation of the parents or other legal representatives of a child, state, local and public authorities, other natural and legal persons to prevent physical, psychological or sexual violence against a child; the prohibition of any violence, torture, injury, degrading child's honour and dignity, cruel treatment; the prohibition to discipline a child with physical, mental or sexual violence, and so on. The Government submitted that the draft law is still assumed to be in deliberation, as an opinion from the key committee – Labour and Social Affairs Committee of the Parliament – allegedly has not as yet been submitted.

The above reply is misleading and omits the context of the situation. First of all, the mentioned draft law will not undergo any considerations, as the Government has issued decree of 24 November, 2010 stating that the draft law being prepared by the Ministry of Labour and Social Affairs on the Wellbeing of the Child will regulate the child abuse issues, including corporal punishment, so there is no need to amend the *Law on Fundamentals of the Protection of the Rights of the Child*. However, this contradicts findings by HRMI in "Child's Legal Protection from All Forms of Violence: Situation Analysis 2011". HRMI has analysed the current legal protection of the child from all forms of abuse in home and institutional environments, including protection from corporal punishment, and has concluded that the legal protection is not sufficient and no legal act explicitly bans all forms of violence against the child, neither the corporal punishment is forbidden. Moreover, the mentioned draft law on the Wellbeing of the Child is not even intended to protect children from violence or abuse. It is focused on social and economic wellbeing measures (in any case, despite being scheduled for consideration in the spring session 2011 this Law was never passed as well). The current legal protection bans only the most severe violence forms, such as injuries, torture, and degrading and cruel behaviour, whereas the most common child abuse forms: corporal punishment and psychological abuse are not banned in any legal act.

In this case it is also important to reveal the context of the situation. Since restoration of Independence numerous child rights and human rights NGOs and several MPs have lobbied for explicit legal protection of children from all forms of violence, including full ban of corporal punishment, however, unsuccessfully. In the spring of 2010 the amendments for the *Law on Fundamentals of the Protection of the Rights of the Child* were suggested again, but on 30 March, 2010 Parliament has turned down the suggestions to ban all forms of violence against the child and ban corporal punishment. The notorious parliamentary hearings displayed attitudes that corporal punishment is cultural heritage and based on traditional Christian values. Reacting to the situation HRMI had organized a public campaign and issued a public statement signed by prominent intellectuals, professionals and celebrities that questioned the double standards applied to a child and a grown-up and called to protect child's dignity. The mentioned draft law initiated by MP Gediminas Navaitis appeared as a reaction to the mentioned notorious hearings, but apparently yielded no effect.

These attitudes of MPs are but an illustration of the recent "family politics" that has been implemented through various legal acts since 2007, and protects so called traditional values that are fundamentally contra posed to human rights concept.

Recommendations

The State Party should:

1) Define all forms of violence against child explicitly in legal acts and ban them, including the corporal punishment.

18. Please provide information on how the constitutional prohibition of arbitrary interference in an individual's personal correspondence or private and family life is guaranteed in practice. Please comment on the significant rise in 2009 in investigations by the State Data Protection Inspectorate

into allegations of arbitrary interference with privacy by Government officials and companies, and provide information on remedial action taken.

The amendments made to the *Law on Legal Protection of Personal Data* in 2009, providing for regulation of video surveillance was a positive step in personal data protection legislation. Nevertheless, there are a couple of issues that still raise concern.

The most important one is the growing number of video surveillance cameras used by both private individuals and legal entities in public or private areas. Since video surveillance is an interference with a person's right to privacy, it must be used only as *ultima ratio* and only upon the permission granted by the State Data Protection Inspectorate (the Inspectorate). However, the *Law on Legal Protection of Personal Data* fails to set out such procedure; instead the Law establishes a procedure of notification, i.e. a legal entity seeking to conduct a video surveillance must merely notify the Inspectorate of the fact and purposes of video surveillance. Thus, as long as the Inspectorate has been notified of the video surveillance, it is considered to be lawful without any thorough examination by the Inspectorate in relation to the legitimacy of its purposes, suitability of the measure for achieving those purposes and availability of other less restrictive measures for the achievement of the indicated purposes.

According to the case-law of the Lithuanian courts, the *Law on Legal Protection of Personal Data* is not applicable to private individuals conducting video surveillance for their personal needs. As a result, persons subjected to video surveillance in their private areas (back yard, entrance to the house, staircase, etc.), conducted by other private individuals for their personal needs, are unable to invoke the provisions of the *Law on Legal Protection of Personal Data* for protection of their privacy rights.

More generally, it should be noted that as the agency of the executive branch of Government the State Data Protection Inspectorate lacks independence and is prone to pressures from political institutions. E.g., the recent refusal on formal grounds by the Inspectorate to allow implementation of the *Google Maps Street View* project in Lithuania has been reversed under the pressure from the particular Ministers.

Recommendations

The State Party should:

1) **Introduce a provision to the *Law on Legal Protection of Personal Data* stating explicitly that video surveillance is *ultima ratio* and can be used only upon the permission granted by the State Data Protection Inspectorate.**
2) **Introduce amendments to the *Law on Legal Protection of Personal Data* in order to eliminate the legal gap allowing for an unlimited video surveillance conducted by private individuals for their personal needs.**
3) **Change the status of the State Data Protection Inspectorate from the executive to an independent agency, accountable to the Parliament.**

21. Please provide information on legislative restrictions placed upon the right of peaceful assembly, including criteria for prohibiting an assembly. Please also specify the reasons why, in March 2009, the Human Rights Monitoring Institute and the Center for Equality Advancement were refused a permit to hold a rally, while the Lithuanian National Center, which allegedly openly sympathized with neo-Nazi groups, were at the same time allowed to hold a march.

In its *Replies to the List of Issues*, the Lithuanian Government submitted that a certificate for Human Rights Monitoring Institute and Center for Equality Advancement (CEA) to hold a rally *Against Racism and Xenophobia – for Tolerance and Non-discrimination* in March 2009 was denied based on "*the arguments of a police officer who participated in the meeting, as well as intelligence information gathered on planned confrontations and other unlawful actions during the march*" and also because the police representative stated that due to a number of events, the police "*will not be able to properly maintain public order during the march, which may pose threat to public safety*". The Government submitted that the municipal decision not to grant a certificate for the peaceful assembly "*was made in accordance with Article 11(1)(2) of the Law on Assembly*".

The above reply of the Lithuanian Government is misleading: in April 2011, the Supreme Court of Lithuania concluded that the refusal of Vilnius Municipality to issue a certificate to HRMI and CEA for a peaceful assembly was unlawful. The Supreme Court, invoking the case-law of the European Court of Human Rights and Lithuanian Constitutional Court, stated that the refusal to issue a certificate on the grounds of a danger to the State security, public safety, public order, public health, morals and the rights and freedoms of others, as argued by the Municipality, had to be substantiated by convincing evidence rather than assumptions based on classified information. The Court also reminded of the State's positive obligation to ensure practical enjoyment of the right to freedom of assembly.

In August 2011, HRMI and CEA again addressed Vilnius Municipality requesting a certificate for a peaceful assembly on 11 March, 2012. After some hesitation and repeated requests to provide additional information on the planned event, three months later the Municipality issued a certificate for the rally, which took place on 11 March, 2012.

In its *Replies to the List of Issues*, the Lithuanian Government also submitted that no grounds for refusal under the *Law on Assembly* had been found, nor features of unlawful assembly had been established, when deciding to allow holding a rally for the Lithuanian National Centre, an organization openly sympathizing with neo-Nazi groups. It further stated that "*until the day of the march, there had been no information on planned confrontations or threat to public order during the march. Therefore, the Lithuanian National Centre was authorised*" to hold an assembly. The latter argument invoked by the Government suggests that the Government misunderstands the notion of "a positive obligation". Even more worrying is the circumstance that the Government does not see the demonstrations organized by the Lithuanian National Centre as a threat to the rights and freedoms of other individuals.

During the first rally held by the Lithuanian National Centre in 2008, around 200 skinheads marched on the main street of the capital city of Vilnius. Some of the participants had their faces hidden under scarves; they were carrying modified Nazi symbols and flags bearing skulls, and were shouting slogans

such as "*Juden raus*", "*Lithuania for Lithuanians*" or "*nice Lithuania without Russians*". The march did not receive an adequate response from Lithuanian public officials and the slogan "*Lithuania for Lithuanians*" was "legitimized" by the court which found that the slogan caused no danger to democratic development of the country and did not incite hatred.

Lithuanian National Centre held the marches again in 2009, 2010, 2011 and 2012. The participants of the demonstrations again carried flags with skulls and used slogans such as "*We are white brothers*", "Skin *Heads*: *For Lithuania, race and nation"*, etc. (please see the pictures contained in Annex II). The marches are commonly attended and supported by several MPs.

As stated by the Government, a peaceful assembly may be prohibited in cases of potential threat to state or public security, public order, health or morals or the rights and freedoms of other individuals (Article 11(1)(2) of the *Law on Assembly*). Since the demonstrations held by the Lithuanian National Centre openly incite hatred towards ethnic and national minorities and promote neo-Nazi ideology, they violate the rights and freedoms of other individuals. This is a lawful and well-founded reason to refuse issuing a certificate for holding such assembly.

Lastly, *the Law on Assembly* fails to set out an effective mechanism to appeal the Municipality decision to refuse issuing certificate. The Law provides that a notification on the assembly "*must be considered not later than within 3 working days from its receipt and not later than 48 hours before the beginning of an assembly*". In case of refusal to issue a certificate, the organizers may address the local court. However, the court must examine such application not later than within 3 days. Therefore, in cases when Municipality adopts a decision to refuse issuing a certificate concerning the coordinated place, time and form of an assembly 48 hours prior to the event, it becomes practically impossible for the organizers to have such decision reversed by court in due time, i.e. before the assembly planned.

Recommendations

The State Party should:

1) **Introduce amendments to the *Law on Assembly* setting out an effective procedure of appeal of Municipality decisions to refuse issuing certificate concerning the coordinated place, time and form of an assembly.**
2) **Train the officials responsible for administration of notifications on planned peaceful assemblies on the proper application of the *Law on Assembly* and international standards, in particular on the content of the grounds prohibiting peaceful assemblies.**