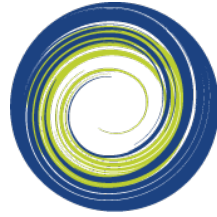


# Alternative Report

on Lithuania's sixth, seventh and eighth periodic report to the UN Committee on the Elimination of Racial Discrimination (CERD)

November, 2015  
Vilnius, Lithuania



CENTER FOR  
EQUALITY  
ADVANCEMENT



## About the Coalition

The report is submitted by the European Network Against Racism National platform in Lithuania, consisting of the coalition of 3 organisations:

- NGO “Center for Equality Advancement”, <http://gap.lt/>.
- Association “Lithuanian Centre for Human Rights”, <http://lchr.lt>
- NGO having a public entity status “Roma Community Centre”: [www.roma.lt](http://www.roma.lt)

The members of the coalition are long-term partners working on different issues relating to monitoring, human rights education, social inclusion of minorities, advocacy, etc. All the organisations are members of the European Network Against Racism.

Lithuanian Centre for Human Rights has been developing shadow reports on “Racism in Lithuania” to European Network Against Racism since 2007 and has a long experience of monitoring and human rights education in cooperation with Center for Equality advancement and the Roma Community Centre.

Special attention should be also given to the Human Rights Monitoring Institute that allowed to use the information provided by them in the Human Rights Review 2013/2014 that was published in 2015: <http://pasidomek.lt/>

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## Introduction

Lithuania submitted its sixth, seventh and eighth periodic report concerning its efforts for the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to the UN-Committee on the Elimination of Racial Discrimination (CERD) on 11 June 2014.

The following alternative report analyzes the implementation from the civil society perspective.

It covers the time period since the examination of the fourth and fifth periodic report of Lithuania before the Committee in 2011.

These comments from the non-governmental organizations do not claim to be comprehensive parallel report provided by the Government of Lithuania.

The aim of this report is to point out issues that civil society considers important and problematic and thus in need of the Committee's attention. There are many more issues that the organizations were not able to cover to be taken into consideration – especially public discourse encouraged by politicians from almost all political parties during the preparation for acceptance of 1105 refugees: the usage of racist, islamophobic language, introduction of draft laws limiting the freedoms and lack of public discussions on preparation for integration process of the new-coming refugees.

The order of the issues follows the order of the Articles of the Convention and the comments provided by the civil society organizations in 2011.

The report is primarily based on the detailed shadow report of 2011. The analysis of this previous report still remains valid as the CERD recommendations have not been fully implemented by the State.

## A. Summary

The NGOs recognize the state efforts in improving the situation in Lithuania, as well as involvement of the civil society organizations in the follow-up procedure of the implementation of recommendations, however stresses the importance of more partnership based follow-up. As the working group to follow-up on UN CERD has met only once.

It is with concern that the non-governmental organisations (NGOs) note that in the reporting interval 2011-2015 the majority of the recommendations of CERD have not been implemented, taking into considerations the new challenges arising in terms of racist discourse being used in the light of the current refugee influx in Europe.

The recommendations submitted by the UN CERD in 2011 thus remain valid.

It can be noticed that the policy planning became more realistic, foreseeing clear budgets for implementation of the anti-discrimination measures. Overall, public authorities became more aware of the fact that discrimination is one of the main elements preventing the integration of different ethnic communities within the Lithuanian society and therefore actions have to be taken. The same cannot be said about the integration of third-country nationals and refugees.

The lack of prioritization of equal opportunities can be noted also following the process of appointing the Equal Opportunities Ombudsperson – the institution remained without a permanent Ombudsperson appointed, rejecting two high-profile professional candidates. Finally an Ombudsperson was appointed in June, 2015.

There is a noticeable lack of public dialogue in promotion of respect for diversity and understanding anti-racist discourse, e.g. lack of speaking out against “hate speech” used by politicians, other public figures.

Lithuania lacks relevant data measuring the extent, types and effects of racial discrimination. Therefore it is difficult to carry out effective analysis to monitor the effect of measures taken by the State and the municipalities.

The following points can be made from the view of the NGOs:

1. The hostile attitude towards some minorities depending on different geopolitical context and electoral cycles (especially people of Polish origin – mostly in 2012-2013, Russian origin – from

2014, especially people of color, Muslims of both genders from 2015, migrants and asylum seekers in general – especially from 2015) – very often used by political parties to gain support using populist slogans.

2. The media and different politicians from all political spectrum have used different racist attitudes since the last review in 2011.
3. The recent developments in criminal procedure – recording a lower number of racist crimes (among them also hate speech incidents) despite the noticeable increased level by the civil society organizations, raise concerns;
4. Some changes have been made to the anti-discrimination laws. Further more in depth review of existing anti-discrimination laws and their implementation in practice is needed to ensure efficient anti-discrimination measures are taken in the field of education, employment and housing (this report does not analyse the discrimination in the field of healthcare and goods and services);
5. There is still a lack of effective and efficient measures to improve the situation of individuals experiencing discrimination in the fields of education, employment and housing. During the relevant reporting period there have not been any court decisions deciding on above mentioned issues;
6. Lithuania still does not have an independent national human rights institution;
7. The legal situation of foreigners and asylum seekers is still under question, as Lithuania still does not have a comprehensive migration policy and different measures to be taken for effective integration of refugees are not very clear for public;
8. The working conditions for migrants and refugees remain quite difficult, putting them in more vulnerable position in the labour market;
9. The situation of Roma community, even though very small in size, is still very alarming in all the areas: housing, employment and education.

## B. International commitments

1. Although it is stated in the official report submitted by Lithuania that the country is open to all mechanisms applied by international organizations to monitor the situation in the field of human rights, it should be noted that neither governmental bodies, nor NGOs have permanent monitoring mechanisms for racist practice in Lithuania. Therefore the information reflecting the present situation must be taken from various sources. However there are some mechanisms that are still not in place in Lithuania.
2. As CERD noted in its' concluding observations in 2006 and in 2011, Lithuania hasn't established a National Human Rights Institution: "The Committee encourages the State party to consider the establishment of an independent national human rights institution, in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134), which would, *inter alia*, contribute to monitoring and evaluating progress in the implementation of the Convention at the national and local levels". There has been a working group established by the Human rights committee, whose structure has changed since 2011 several times. There were attempts to establish the National Human Rights Institution within the Seimas Ombudsperson Office, nevertheless different versions of draft laws that were prepared did not encompass all the powers and competences established by the Paris Principles and deliberations of it stopped inside the Parliament without passing all the procedures.
3. Besides it, Lithuania has not yet followed another recommendation from Committee on the Elimination of Racial Discrimination since 2006 – to ratify Protocol No.12 to the European

Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup>. It would give an opportunity to expand protection of human rights in all social life areas. Lithuania has not taken any measures to ratify the Protocol so far.

4. There are many international agreements that Lithuania is a part of, nevertheless their implementation is not effective as neither Lithuania's human rights bodies are involved in active formation of the human rights policy developments and monitoring, nor there is an action plan how to develop protection of human rights in general.
5. Moreover, Lithuania has never included discussions to ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The European Economic and Social Committee and the European Parliament considered the adoption of the Convention as the best way to recover human capital which is, as Lithuania also noted, is the biggest problem recent years. Meanwhile, European Parliament considers that, in order to encourage the social and political integration of migrant workers, they should be granted equivalent rights; calls, therefore, on the Member States, the Commission and the Council to take all necessary steps to ensure recognition of the right of migrants who have been continuously resident in the Union for at least five years to vote in local and European Parliament elections<sup>2</sup>. In the report Lithuania mentioned that the main reason decrease of the population is the emigration of young people. Lithuania recognizes the reasons, but it does not take active role to implement decisions to solve the problem of decrease of young inhabitants in this Lithuania, particularly migrants who are skilled or highly qualified workers. "Brain drain" is one of the most harmful effects of migration for the developing countries. One of the first steps to ensure the effective protection of the rights of migrant workers and to solve the existing problems cause by increased migration flow is to ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
6. Following up the report submitted to the CERD in 2011 – “the budget cuts in 2009 also affected the structure of the Ministry of Interior Affairs (the main institution responsible for the national migration and asylum policy). Its Department of Migration Policy was abolished, and its functions were transferred to a newly established Division of Migration Affairs, within the Department of Public Security Policy. The human resources of the new division were reduced<sup>3</sup>. As Lithuania does not have a coherent migration policy, such changes in the structure of the main governmental body responsible for these matters seem to be the opposite of the necessary steps to be taken.”<sup>4</sup>. Additional information to 2010 situation – “The initiative of the Ministry of the Interior to abolish the Migration Department will have a particularly negative effect on Lithuania’s asylum system and the proper guarantee of asylum seekers’ rights. At the start of 2015 the Ministry of Interior proposed transferring the competences of the Migration Department to the Police Department and the State Border Guard Service (SBGS). Following the reform, asylum procedures would be entrusted to the SBGS.
7. The State Border Guard Service is responsible for protecting Lithuanian borders and

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<sup>1</sup> § 26, Concluding observations of the Committee on the Elimination of Racial Discrimination, Lithuania, No. CERD/C/LTU/CO/3 (11 April 2006).

<sup>2</sup> European Parliament resolution on an EU approach to managing economic migration; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0408+0+DOC+XML+V0//EN>, accessed February 2, 2010

<sup>3</sup> Vidaus reikalų ministerijos Valdymo tobulinimo komisijos veiklos rezultatai, available in Lithuanian at: [http://www.vrm.lt/fileadmin/Padaliniu\\_failai/Rysiu\\_su\\_visuomene\\_sk/visokie/pasiulymai/rezultatai-VTK-2009.doc](http://www.vrm.lt/fileadmin/Padaliniu_failai/Rysiu_su_visuomene_sk/visokie/pasiulymai/rezultatai-VTK-2009.doc) (15.09.2010)

<sup>4</sup> ENAR Shadow report 2009/2010, Racism and Discrimination in Lithuania, Gediminas Andriukaitis and Nerijus Kliukas, Lithuanian Centre for Human Rights, unpublished version.

strengthening national security – it is not the right institution for examining claims for asylum made by foreigners arriving to Lithuania.

8. Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state. Many are prone to thinking that immigrants subsist on taxpayer money and may cause social unrest. These stereotypical attitudes are not based on any practical evidence – the majority of respondents indicated that they have had no personal interactions with any group of immigrants from third countries.
9. The amendment to the Law on the Legal Status of Foreigners entered into force on November 2014, tightening the requirements for temporary residence permits to stay in Lithuania: they set a fairly high bar in terms of required foreign investments, the length of time a company had to have been in operation, the number of jobs it brought and the company's equity capital.
10. These strict new requirements and criteria make it exceptionally difficult for foreigners to come to and legally operate in Lithuania. Furthermore, foreigners who have already established themselves in Lithuania and have been acting in accordance with the old provisions now find it difficult to remain here and continue their work.<sup>5</sup>

## C. National legislation

11. The situation regarding the implementation of international obligations remains almost the same as in 2011. Despite the effort to meet the requirements of international organizations by forming certain laws in the national legislation, the current situation proves lack of attention towards further exercising of these laws, such as the legal provisions regulating the criminalization of hate speech, hate crime and investigation of discrimination cases.
12. As mentioned in the official state report, a number of national legal acts were passed and/or amended to implement articles 2 to 7 of the International Convention on the Elimination of All Forms of Racial Discrimination during the period of 2004-2007. The Law on Equal Treatment that came into force in 2005 was designed to implement the EU Anti-discrimination directives (Race Equality Directive 2000/43/EC, Employment Equality Directive 2000/78/EC) into the national legislation. The period to implement the Race Equality Directive 2000/43/EC<sup>6</sup> passed for Lithuania in 2005. No major changes were made in the period of 2011-2015, therefore it can be argued whether the current wording of the national legislation fully implements the requirements of the EU anti-discrimination law.
13. One of the major issues for victims of discrimination – the efficacy of sanctions – remains unsolved in the legislation. Only in June 2008 the right to claim compensation for racial discrimination was introduced in the Law on Equal Opportunities of Women and Men. This is the only provision, which could be regarded as effective and compensatory, if only applied properly. The national anti-discrimination law offers no other provisions of this character. Legally, the Ombudsperson has the competence to investigate complaints on discrimination, but its decisions do not have a compensatory effect to the victim. The Ombudsperson is empowered to impose administrative sanctions (according to Administrative Violations Code), although they can hardly be regarded as effective, proportionate and dissuasive. Moreover, the Ombudsperson rarely issues fines as an administrative sanction<sup>7</sup>. The decisions of the Ombudsperson are mostly warnings of

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<sup>5</sup> Human Rights Overview 2013-2014, Human Rights Monitoring institute, 2015, p. 38-39, <http://pasidomek.lt/en/>

<sup>6</sup> Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal of the European Communities, L 180/22.

<sup>7</sup> In 2008 no decisions to issue a fine as an administrative sanction were taken by the Ombudsperson.

recommendatory character<sup>8</sup>. The relevance of this issue was also stressed by the EU Fundamental Rights Agency<sup>9</sup>.

14. According to Migrants integration index – “Changes in policy LT's several minor amendments to immigration laws may benefit the integration of a few non-EU immigrants, including the very small number of high-skilled workers admitted in LT in recent years. Integration policies started to move beyond ad hoc principles and funds in 2014. First the LT Migration Policy Guidelines set out a special chapter on the Integration of Foreigners. Next, the Social Security and Labour Ministry created a multi-stakeholder working group and finally an Action Plan on the Integration of Foreigners. The implementation of this Action Plan should lead to new support measures and concrete policy changes in 2015 and beyond.
15. LT has far to go to develop strong and comprehensive integration policies. LT's policies are overall slightly unfavourable for integration of current and future immigrants. LT's slight areas of strength on integration are very new and required by the EU (e.g. reforms of family reunion, long-term residence, labour market mobility, anti-discrimination). As immigration increases, schools, hospitals, employment services and local communities may need greater targeted support to equally service immigrants and profit from their skills (see improvements in EE, CZ, IE, PT, Nordics<sup>10</sup>).
16. There were positive initiatives to draft the new Law on National Minorities. It's draft has been presented to public for comments in November 2013, nevertheless it has not been adopted since or presented within the Parliament.
17. “The Law on Elections to Municipal Councils was amended at the end of 2012, setting out that only permanent residents of that particular municipality may be elected to a municipal council, namely, i.e. Lithuanian nationals, nationals of other EU Member States who have the right to reside in Lithuania, as well as other persons with the right to permanently reside in Lithuania. The right of foreigners to free elections is limited : foreigners with temporary residence permits (non-EU nationals) are still excluded from running for office or voting in municipal council elections, while the ability to run for mayor is limited exclusively to Lithuanian nationals. From 1 January 2015 onwards, EU nationals also became eligible to membership in Lithuanian political parties, provided they do not belong to political parties abroad and have resided in Lithuania for the past 5 years without interruption. EU nationals cannot establish political parties in Lithuania. There is no comparable requirement for Lithuanian nationals to abstain from membership in political parties or organizations abroad.<sup>11</sup>”
18. “Migrant Integration Policy Recommendations from the Lithuanian Social Research Centre:
  - Increase mobility of migrant workers in labour market;
  - Increase the family reunion rate for non-EU citizens, particularly low-educated migrant workers;
  - Grant access for non-EU citizens to political parties and associations;
  - Through new consultative forum, regularly consult representatives of non-EU citizens on upcoming political issues;
  - Expand healthcare coverage entitlements for temporary non-EU residents;
  - Guarantee basic infrastructure to welcome newcomer pupils across the country.”

## D. Information on the implementation of individual articles of the Convention

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<sup>8</sup> However perpetrators tend to observe it and usually stop discriminatory actions or behaviour.

<sup>9</sup> European Union Agency of Fundamental Rights Annual Report 2008, p. 7, 17, 18, [http://fra.europa.eu/fra/material/pub/ar08/ar08\\_en.pdf](http://fra.europa.eu/fra/material/pub/ar08/ar08_en.pdf).

<sup>10</sup> Migrant Integration Policy Index 2015 (MIPEX), 2015, p. 8.

<sup>11</sup> Human Rights Overview 2013-2014, Human Rights Monitoring institute, 2015, p. 41-42, <http://pasidomek.lt/en/>



## Article 2

19. Sociological studies show that it is the Roma that most often face discrimination based on their ethnicity. A public attitude survey shows that Roma are still the least liked ethnic group: 48% of respondents would not want to work in one work place with Roma (43.1% of respondents in 2012 and 42% in 2011). 60.7% of respondents claimed that their opinion of the Roma worsened over the last five years (63.6% claimed this in 2012).<sup>12</sup>
20. Population survey in 2014 showed that opinion about Russian ethnic group significantly decreased. More than one third (34.2%) of respondents declared their worsening attitudes about Russian ethnic group.<sup>13</sup> In 2013 survey there were twice less respondents (15.0 %) whose opinion about Russian ethnic group was negative and higher number of respondents (41.0%) had positive attitudes to this ethnic group.<sup>14</sup> Research suggests that population's worsened opinion about an ethnic group might occur as a reaction to political developments and events in the last two years.<sup>15</sup>
21. The Analysis of the Changes in Public Attitudes and Reasons and Results of discrimination carried out by the Mental Health Perspectives, ordered by the Ministry of Social Affairs, covering 2009-2014 – disclosed that the public opinion mostly worsened towards homosexual people, Roma people, Jehova witnesses and Muslims.
22. In 2011 public opinion mostly became worse towards people of Polish origin, that were evaluated until 2010 more positively than negatively, whereas Jews remain the fifth mostly unflavored group in Lithuania. According to the analysis, the racist attitudes are getting stronger towards black people<sup>16</sup>.
23. "In Lithuania, it is the Roma that most often face discrimination because of their ethnicity . A public attitude survey shows that Roma are still the least liked ethnic group: 66% of respondents would not want Roma neighbours; 48% would not want to work in one work place with them and 60.7% claimed that their opinion of the Roma worsened over the last five years.
24. In the beginning of 2015, media reported that the Vilnius City Municipality has started to draft a project aimed at relocating Roma to the newly built village. Such initiatives, whereby Roma communities are relocated from one "ghetto" to another, do not contribute to the social integration of the community, do not deal with problems relating to their social exclusion, discrimination and poverty; on the contrary – they further contribute to their stigmatization and exclusion from society<sup>17</sup>".
25. "The key factors promoting religious discrimination in Lithuania are the Catholic Church (52%), the media (43%) and regulations that restrict the opportunities available to religious minorities in public (32%). Traditional religious communities are given more rights than religious communities seen as non-traditional – for example, the faith of traditional religious communities may be taught in public schools, the state pays social security and health insurance contributions on behalf of the clergy of traditional religion and interference with religious rites amounts to a criminal offense only when rites of state-recognized religious associations are concerned<sup>18</sup>".
26. Yet another case of religious discrimination occurred in the Foreigners' Registration Centre, where Muslims were being given meals without consideration for their religious beliefs (they were given pork without due regard to the fact that its consumption is prohibited in Islam). After investigating

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<sup>12</sup> Lietuvos socialinių tyrimų centro Etninių tyrimų instituto užsakymu atliktos visuomenės nuostatų apklausos 2013 m. rezultatai <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>13</sup> Lietuvos socialinių tyrimų centro Etninių tyrimų instituto užsakymu atliktos visuomenės nuostatų apklausos 2014 m. rezultatai .

<sup>14</sup> Lietuvos socialinių tyrimų centro Etninių tyrimų instituto užsakymu atliktos visuomenės nuostatų apklausos 2013 m. rezultatai <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-2013.pdf>

<sup>15</sup> Petrusauskaite V. (2013) Etninės ir socialinės grupės Lietuvoje: visuomenės nuostatos ir jų kaita 2013 metais, Etniškumo studijos, 2013/2: 180-191.

<sup>16</sup> The Analysis of the Changes in Public Attitudes and Reasons and Results of discrimination carried out by the Mental Health Perspectives, ordered by the Ministry of Social Affairs, covering 2009-2014, [http://www.perspektyvos.org/images/failai/diskriminaciniu\\_nuostatu\\_kaitos\\_ataskaita\\_2014\\_11\\_14.pdf](http://www.perspektyvos.org/images/failai/diskriminaciniu_nuostatu_kaitos_ataskaita_2014_11_14.pdf)

<sup>17</sup> Human Rights Overview 2013-2014, Human Rights Monitoring Institute, 2015, p. 35, <http://pasidomek.lt/en/>

<sup>18</sup> Human Rights Overview 2013-2014, Human Rights Monitoring Institute, 2015, p. 37, <http://pasidomek.lt/en/>

the case, the Equal Opportunities Ombudsperson Office found that these people were discriminated against based on their religious beliefs.<sup>19</sup>”

## 27. Rights of stigmatized groups

28. “It is difficult for refugees to successfully integrate into Lithuanian society. Asylum seekers who have been granted asylum in Lithuania experience the feeling of being inferior, useless and unwanted outsiders – human beings whose human rights are limited, who have been imprisoned or bound both psychologically and geographically.
29. The very first challenge that many refugees face is their reception and detention upon arrival. Asylum seekers complain of how the officers treat them both during arrest and later on, once they have been accommodated in the Foreigners’ Registration Centre. An incident involving two asylum seekers from Afghanistan being detained and imprisoned in 2013 provides an illustrative example of such practices. State Border Guard Service officers arrested these Afghan nationals – who at the time of detention claimed to be 14 and 17 years old – after they crossed the Lithuanian border; the two youths then had to spend more than three months in the Lukiškės remand prison, locked in together with adult men.
30. The initiative of the Ministry of the Interior to abolish the Migration Department will have a particularly negative effect on Lithuania’s asylum system and the proper guarantee of asylum seekers’ rights. At the start of 2015 the Ministry of Interior proposed transferring the competences of the Migration Department to the Police Department and the State Border Guard Service (SBGS). Following the reform, asylum procedures would be entrusted to the SBGS. The State Border Guard Service is responsible for protecting Lithuanian borders and strengthening national security – it is not the right institution for examining claims for asylum made by foreigners arriving to Lithuania.
31. Lithuanian residents tend to perceive immigrants as having a negative impact on society and the state. Many are prone to thinking that immigrants subsist on taxpayer money and may cause social unrest. These stereotypical attitudes are not based on any practical evidence – the majority of respondents indicated that they have had no personal interactions with any group of immigrants from third countries.
32. The amendment to the Law on the Legal Status of Foreigners entered into force on 1 November 2014, tightening the requirements for temporary residence permits to stay in Lithuania: they set a fairly high bar in terms of required foreign investments, the length of time a company had to have been in operation, the number of jobs it brought and the company’s equity capital.
33. These strict new requirements and criteria make it exceptionally difficult for foreigners to come to and legally operate in Lithuania. Furthermore, foreigners who have already established themselves in Lithuania and have been acting in accordance with the old provisions now find it difficult to remain here and continue their work.<sup>20</sup>”

## Anti discrimination

34. Positive developments: The Ombudsperson for Equal Opportunities was appointed by the Lithuanian Parliament in June, 2015<sup>21</sup>. Nevertheless it has to be indicated that two high-profile professional candidates have been rejected by the Parliament beforehand leaving the Equal Opportunities Ombudsperson’s Office without permanent Ombudsperson since spring of 2013. This still raises a question of prioritisation of anti-discrimination work and the work of institutions working in the field. One of the rejected candidates has filed a complaint against the Parliament of Lithuania regarding the discrimination during the appointment procedure.
35. A working group was formed by the Equal Opportunities Ombudsperson to review the existing anti-discrimination law. The Law on Equal Treatment came into force on 1 January 2005 and was

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<sup>19</sup> Ibid.

<sup>20</sup> Human Rights Overview 2013-2014, Human Rights Monitoring Institute, 2015, p. 38-39, <http://pasidomek.lt/en/>

<sup>21</sup> Lietuvos Respublikos Seimo nutarimas dėl Agnetos Lobačevskytės skyrimo lygių galimybių kontroliere, 2015 m. birželio 18 d. Nr. XII-1814, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1043591](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1043591)

designed to implement the EU Anti-discrimination directives (Race Equality Directive 2000/43/EC, Employment Equality Directive 2000/78/EC) into the national legislation. The period to implement the Race Equality Directive 2000/43/EC<sup>22</sup> passed for Lithuania in 2005, however, it can be argued whether the current wording of the national legislation fully implements the requirements of the EU anti-discrimination law<sup>23</sup>.

36. The requirement of the Race Equality Directive regarding the engagement of associations in judicial proceedings on behalf of or in support of the victim has been transposed to the national law in – the Code of Civil Procedure mentions the right for associations to engage in judicial process. Except, the current law also limits the number of NGOs, which in theory could engage in legal proceedings on behalf of the victim to those associations who have a provision in their founding documents, that the representation of victims of racial or ethnic discrimination at courts is their field of work<sup>24</sup>. It is doubtful, that at present there are such NGOs at national level that could fully match the criteria<sup>25</sup>.
37. Secondly, one of the major issues for victims of discrimination – the effectiveness of sanctions – remains unsolved. The right to claim compensation for racial discrimination was introduced in the Law on Equal Opportunities of Women and Men only in June 2008. This is the only provision, which, if properly applied, could be considered effective and compensatory. There are no other provisions of this character in national anti-discrimination law. Legally, the Ombudsperson has the competence to investigate complaints on discrimination, but its decisions do not have a compensatory effect to the victim. The Ombudsperson has a right to impose administrative sanctions (according to Administrative Violations Code), however they can hardly be considered to be of an effective, proportionate and dissuasive character. Additionally, the Ombudsperson rarely issues fines as an administrative sanction<sup>26</sup>. Mostly the decisions of the Ombudsperson are warnings of a recommendatory character<sup>27</sup>. This issue was also stressed by the EU Fundamental Rights Agency<sup>28</sup>.

### Ethnic profiling

38. The Lithuanian Centre for Human Rights has received information from separate persons of African descent in 2014 regarding stop and search practices addressed towards the persons of African origin without any particular reason. No complaints have been registered in this respect.
39. In 2014 the police organized a check-up of the Islam information and culture centre during the feast of Ramadan checking the identity of every person entering the building. European Network Against Racism in cooperation with ENAR Lithuania members as well as the Islam Information and Culture Centre addressed the Ministry of Interior, as well as the Police department. The letter also encouraged the Police department to change the Long-term Action Plan on Preventive Counter-terrorist measures, adopted by the order of the Police Commissioner General of Lithuania. The wording used in the Preventive Counter-terrorist measures named persons practicing “radical Islam” as a possible threat to security, the measures were changed and the term was changed to “violent extremism”<sup>29</sup>.

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<sup>22</sup> Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal of the European Communities, L 180/22.

<sup>23</sup> ENAR Shadow report 2009/2010, Racism and Discrimination in Lithuanian, Gediminas Andriukaitis and Nerijus Kliukas, Lithuanian Centre for Human Rights, unpublished version.

<sup>24</sup> Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official publication, *Valstybės Žinios*, 1998, Nr. 112-3100. [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=312549](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312549).

<sup>25</sup> ENAR Shadow report 2009/2010, Racism and Discrimination in Lithuanian, Gediminas Andriukaitis and Nerijus Kliukas, Lithuanian Centre for Human Rights, unpublished version.

<sup>26</sup> In 2008 no decisions to issue a fine as an administrative sanction were taken by the Ombudsperson.

<sup>27</sup> However perpetrators tend to observe it and usually stop discriminatory actions or behaviour.

<sup>28</sup> European Union Agency of Fundamental Rights Annual Report 2008, p. 7, 17, 18, [http://fra.europa.eu/fra/material/pub/ar08/ar08\\_en.pdf](http://fra.europa.eu/fra/material/pub/ar08/ar08_en.pdf).

<sup>29</sup> Lietuvos policijos generalinio komisaro įsakymas dėl Lietuvos policijos generalinio komisaro 2010 m. gruodžio 20 d. įsakymo Nr. 5-V-967 “Dėl Lietuvos policijos prevencinių kovos su terorizmu veiksmų ilgalaikės programos ir jos įgyvendinimo priemonių plano patvirtinimo pakeitimo”, 2014 m. rugšėjo 14 d. Nr. 5-V-865.

40. **Recommendations:** recognize racial profiling as a form of discrimination and promote cooperation of Police Department with different religious and ethnic communities.

### Article 3 and Article 5

41. The UN CERD expressed in its' Concluding observations in 2011: "**The Committee expresses its concern that the Roma continue to be marginalized and live in precarious conditions in terms of adequate housing <...> (art. 3 and 5).**"
42. The following information is provided in relation to the implementation of Article 3 and Article 5, p. (iii) The right to housing.
43. "There is an obvious lack of data, regarding access to housing and possible discrimination in this field. Department of Statistics provides annual data on household-dwelling units and housing conditions. Lithuania has taken obligations to support each person's right to have a habitation of a certain standard and to prevent the spread of homelessness as well as try to gradually eliminate it completely. However, the economic situation of the country as well as the shortage of social housing prevents the implementation of standards set forth by the international legal acts. The difference between those standards and the living conditions of many people is significant. It is particularly striking, when speaking about the Roma community, particularly the 400 inhabitants of Kirtimai settlement (20–25% of all Roma people living in Lithuania)."
44. **Roma housing:** As it was indicated in the Shadow report submitted to the UN CERD in 2011, the housing issue within Kirtimai settlement remains unsolved since the Restoration of Independence of Lithuania in 1990. The privatization of houses was not allowed at the beginning, later on – the status of the land has changed, and it is considered to be not suitable for creating households. Attempts were made to register the houses and provide some sort of legal recognition to them – according to the information provided by the Roma Community Centre: the State Territorial Planning and Construction Inspectorate under the Ministry of Environment gave numbers to the houses, but recently claim the registration of houses does not exist and started demolition procedures towards older built houses.
45. The recent results of the survey of Roma people, conducted by Diversity Development Group, ordered by the Office of the Equal Opportunities Ombudsperson, highlight the conditions that Roma in Lithuania are living in: "The average size of housing among roma person is smaller than the average among other inhabitants of Lithuania (respectively 48 and 63 sq.m.), and the size of the area that is attributed to one person is twice smaller (12,6 compared to 26,2 sq.m.) and smaller than the state regulated minimal area per one person. The existing housing differences are also reflected in quality of the existing housing facilities: a lot fewer Roma inhabited households have a bathtub or shower (56% do not have one, compared to 16% of country average), toilets with wastewater (51% do not have one, compared to 16% of state average).
46. Roma households can also be characterized as having lower quality – 68% of respondents indicated that they face the following problems: leaking rooftop, wet walls (floors, foundation), rotting window frames or floors (state average – 19%). Roma households are in most situations darker (do not have enough daylight) (among Roma – 37%, state average – 13%). Roma usually live in neighborhoods that are known for higher rate of crime, violence and/or vandalism (Roma – 34%, state average – 5%).
47. Compared to state average, a larger part of Roma households indicates they do not have enough heating in their households (Roma – 49%, state average – 15%).<sup>30</sup>
48. The living conditions in Kirtimai community with around 400 inhabitants (more than half of them – children) are particularly troubling. None of the houses have running water. Lack of electricity is common among the households. Urban drainage or local sewage system does not exist there. Some

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<sup>30</sup> Sociological research "Situation of Roma people in comparison with other inhabitants of Lithuania, Report, April 30, 2015. Diversity Development Group, p.8.

of the households are equipped with gas cylinders. Majority of households are considered to be officially illegal by the state (do not have formal legal status), except one house in Kirtimai settlement.

49. It is not clear at the moment how many people are enlisted in the queue waiting for social housing as due to administrative changes in 2008 and also due to not submitted financial declarations in 2015 a number of Roma people living in Kirtimai have dropped out of the list for social housing. Most of them still consider themselves to be on the list without formal knowledge of the procedure.
50. Roma houses in Kirtimai settlement not having any legal status are continued to be demolished through formal court procedures, without provision of alternative housing to Roma families. The State Territorial Planning and Construction Inspectorate under the Ministry of Environment used to have a list of registered houses that were built before the Restoration Independence of Lithuania, there was a silent agreement not to demolish the older built dwellings. Nevertheless in recent years legal processes were begun by the Inspectorate against the people living in the dwelling that were built long before the Restoration of Independence. Currently 9 Roma households where approximately 50 Roma people are living are awaiting demolition according to the decisions made by Courts, without provision of alternative.
51. The State report provides the information that "In order to integrate the Roma community from Kirtimai into the society, the Ministry of Social Security and Labour is currently drafting the Action Plan for Greater Social Inclusion for 2014–2020, which is to lay down specific measures on allocation of social housing. Vilnius City Municipality also drafts measures for the integration of the Roma from this settlement." The non-governmental organization acknowledge the meetings that have been organized by the state institutions to discuss the matter where the Ministry of Social Affairs as well as the Vilnius municipality so far expressed that the common rules of social housing apply to Roma people. Formal requests by the Roma Community have been addressed to the Government of the Republic of Lithuania in April, 2015. No formal responses were received. 9 Roma households are being warned of the demolition's in the near future. The Roma Community Centre express their concerns regarding the timing of demolition of houses – that usually take place in winters.
52. The Roma Integration Action Plan for 2014-2020 does not have any planned measures to deal with the Roma housing issue. Public institutions have met in 2015 to initiate the discussion and as a rapid reaction to new cases of demolition of Roma houses in Kirtimai area, but no further decisions were taken.
53. **Political developments:** Vilnius City Municipality has prepared a draft Roma integration action plan, sent out to the working group members on 2<sup>nd</sup> November, 2015. Measures foreseen in the draft plan are limited to provision of information to Roma community on social housing and provision of social housing following the Lithuanian laws. No budget is planned to be allocated to the implementation of these measures.

## Recommendations – Article 3 and Article 5

54. Develop clear state and municipal policy steps to solve the Roma housing issue, especially in the settlement of Kirtimai (Municipality of Vilnius) where approximately 400 inhabitants live in dwellings that do not have any legal status.

## Article 5

### i. Employment

55. There is no official research on the frequency of discrimination. Academics note that discrimination and racism in the labour market could be happening on a frequent basis. Officially, the tendency is that discrimination happens incidentally. Representatives of Trade Unions and The Ombudsperson favour this position.
56. Only a few claims are yearly submitted to the Ombudsperson's Office and even fewer to the Law

Enforcement institutions. During the reporting period, there were no cases in the Lithuanian Supreme Court. De facto, it is hard to distinguish whether people are not suffering discrimination, do not recognize discrimination or have no motivation in reporting the unfair treatment to the relevant institutions. E.g. mobbing on the ground of ethnicity in the workplace is not conceived as discrimination by society, therefore it is hard to understand and single out discrimination. Discrimination cases are hard to prove, difficult to recognize and not always clearly identifiable.

57. Considering structural discrimination, immigration policies can be considered as discriminatory per se. The state decides whom to let into the country and, by extension, the European Union. The state does this for the purposes of regulating the mobility of people, but immigration policy in itself discriminates against third country nationals. Due to EU and national legislation, migrants with higher education qualifications have fewer difficulties in employment.<sup>31</sup>
58. In 2013, important changes were made to the Law on Equal Opportunities. Article 5 of the Law was supplemented by the provision that State and municipality institutions, among other things, are obliged to ensure equal opportunities in their strategic planning documents. Municipal institutions must insure means for equal opportunities in municipal strategic development and/or municipal strategic action plans. The Law entered into force on 1 October 2014.
59. Amendments to the Law on Equal Opportunities of Women and Men were made in March 2012, ensuring that discrimination at all stages of employment could be tackled. In addition, it set a term of 10 days for different institutions, legal entities and persons to submit information to the Ombudsperson upon a request. The latter rule is important also for investigation of discrimination complaints, as it ensures that they may be handled in a timely manner.
60. The Minister of Social Affairs adopted the Decision regarding the employment of a foreign national for a job requiring high professional qualifications and its conformity with the needs of the labour market at the end of 2012. A new legal instrument on the "Conditions and description of the procedure of the issuance of work permits for foreigners" was introduced, which replaced the previous version of the same regulation. Institutions must facilitate work permit validation for highly qualified workers.
61. Statistically, unemployment is more widespread among ethnic minorities compared to the majority population. Migrants from third countries come to Lithuania only with a valid working permit and an employment contract. Therefore, they have restricted mobility in the labour market – they cannot change work place, employers can fire employees at any stage of the contract, workers become vulnerable and can potentially be abused. If an employer terminates the contract, an employee has to leave the country in 3 days. There were cases reported in 2012-2013 when a migrant worker did not receive his/her salary, then they were fired and had to leave the country<sup>32</sup>.
62. The structural problem is that such people do not turn to institutions for redress, even though mechanisms have been developed. Work migrants have none or little information<sup>33</sup>.
63. Refugees and asylum seekers find themselves in more precarious working conditions, as during the integration process they are not well acquainted with their rights in employment.
64. A public opinion survey has found that 16.3% of people would not want to work with refugees.<sup>34</sup> Public opinion towards refugees is negative. Social workers from the Lithuanian Red Cross Society and Centre PLUS provide services as going together with refugees to work interviews in order to mediate and advocate.
65. Asylum seekers who gain subsidiary protection have to apply for a new residence permit yearly. Temporary residence permit cannot be extended. This is an example of structural discrimination.

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<sup>31</sup> From ENAR shadow report, 2012-2013, Racism and related discriminatory practices in employment in Lithuania

Birutė Sabatauskaitė, Eglė Urbonaitė Lithuanian Centre for Human Rights, Interview with: Dr. Pilinkaitė-Sotirovič Vilana, Centre for Equality Advancement, Institute for Ethnic Studies, Vilnius, 9 July 2013.

<sup>32</sup> From ENAR shadow report, 2012-2013: Interview with Posochovas Aleksandras, Lithuanian Service Workers' Trade Union, Vilnius, interview 27 August 2013.

<sup>33</sup> From ENAR shadow report, 2012-2013: Interview with Dr. Žibas Karolis, Institute for Ethnic Studies, Vilnius, 16 July 2013.

<sup>34</sup> Lithuanian Social Research Centre, Institute for Ethnic Studies, The results of a public opinion survey conducted by market research and public opinion company Baltic surveys Ltd. by request of the Institute of Ethnic Studies at the Lithuanian Social Research Centre; 1,000 respondents aged 15–74 were interviewed. Available at: [www.ces.lt](http://www.ces.lt).

An employer has no intention of employing a person who has been granted a temporary residence permit and potentially will have to leave the country in 5-6 months.<sup>35</sup> Economic principles stipulate that most migrants work in transport and construction sectors. Consequently, 95 – 97% of labour migrants are men<sup>36</sup>. An important consideration, which stems from this, is whether there is discrimination towards migrant women.

66. Migrant women or women with a national minority background have a very precarious position in the labour market. Academics and experts stress the need for research on this issue. Having no official data leaves uncertainty in this narrow field.

## Recommendations – Article 5 (Employment)

- Fully transpose the provisions of the 2000/43/EC and 2000/78/EC Directives.
- Adopt a new Law on National Minorities, as the old one ceased to exist since 2010.
- Amend the Law on the Office of Equal Opportunities Ombudsperson in order to provide that the Office assists and legally represents victims of discrimination in court. The Equal Opportunities Ombudsperson must take measures to protect victims of discrimination and assist them in filing complaints against their perpetrators.
- Authorities should adopt the draft law, which extends access to social security to persons granted subsidiary protection as soon as possible.
- The State should ensure the right of migrant workers to receive a fair wage through monitoring the implementation of existing legal acts.
- Permanent monitoring system of introduced programmes and support mechanisms should be developed by the State (not project-based support) to ensure the assistance for the long-term unemployed persons, as almost a half of the unemployed minorities faced long-term unemployment.
- Continuous programmes for the integration of migrant workers should be actively implemented and accordingly updated.
- Law on Equal Treatment provides that State and municipality institutions must implement documents to guarantee equal opportunities. Policy measures should be created to ensure equal opportunities and prevention of discrimination in the labour market in all sectors.
- Research on migrant and ethnic minority women in the labour market should be carried out by the state funded research institutes, including discrimination, racism in access to employment and at the workplace.
- Research on national minorities and migrant workers in employment and their situation in different economic sectors should be carried out.
- Requirements that are unnecessary for job position (e.g. citizenship, language proficiency, etc.) should be challenged and re-evaluated. High occupational levels should be accessible to non-EU nationals.
- To organise state funded awareness-raising campaigns, training courses for employers in order to reduce their negative approach and stereotypical views towards ethnic minority groups.
- To provide supported employment and individual support to increase the employability of members of ethnic communities.

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<sup>35</sup> From ENAR shadow report, 2012-2013: Interview with Siniovas Vladimiras, Mykolas Romeris University, Institute of International and European Union Law, 30 July 2013.

<sup>36</sup> From ENAR shadow report, 2012-2013: Interview with Dr. Žibas Karolis, Institute for Ethnic Studies, Vilnius, 16 July 2013; Dr. Žibas K., Immigration Trends of Third Country Nationals in Lithuania (2004-2008). Ethnicity Studies 2009/2. Migrant Integration: Third Country Nationals in Lithuania. Institute for Social Research, Vilnius: Eugrimas, p. 17-39 ISSN 1822-1041. (Žibas K. Issue Editor).

## ii. Housing

More information is provided under the chapter “Article 3 and Article 5”.

## iii. Education

67. There is a lack of comprehensive data on racism and discrimination in education. The Migrant integration policy index 2015 provides information regarding the responsiveness of the education system to the needs of the children of immigrants: “Scoring 5<sup>th</sup> from the bottom, Lithuanian schools do not receive systematic guidance and support to address any other specific needs or opportunities that newcomers bring to the classroom. As immigration increases, newcomers may fall behind their peers, while Lithuanian pupils may not be well-equipped to live in diverse society. These policies are generally weak in Central Europe.<sup>37</sup>”
68. “Traditional religious communities are given more rights than religious communities seen as non-traditional – for example, the faith of traditional religious communities may be taught in public schools, the state pays social security and health insurance contributions on behalf of the clergy of traditional religion and interference with religious rites amounts to a criminal offense only when rites of state-recognized religious associations are concerned. In the beginning of 2013, a draft law was proposed that would have required compulsory religious education in school. The revised bill retained the right of parents to select religious studies or ethics classes for their children, but also provided that familiarization with the fundamentals of religion must become a compulsory part of ethics programmes.
69. This inclusion of the topic of the “fundamentals of religion” in the ethics programme basically attempts to circumvent the parents’ decision on the religious education for their children, as well as the constitutional provision stating that state and municipal educational institutions are secular in nature<sup>38</sup>”.
70. **Roma education** still remains a relevant and important issue in Lithuanian society. According to a sociological survey in the Kirtimai area, which was done in 2011, children and youth to the age of 20 compose 54 percent of Roma community in this area.<sup>39</sup> This number reflects quite the real composition of Roma population where children to the age of 15 compose 46 percent of all Roma society.<sup>40</sup> Whereas Roma’s analysis that was made by the Office of Equal Opportunities Ombudsperson reveals that in the year of 2015 there are 35 percent of illiterate Roma people in the age group from 10 to 19 years old.<sup>41</sup>
71. But according to the Lithuanian Ministry of Education and Science, the situation on Roma schoolchildren attending schools is getting better every year: in the 2007-2008 school year there were 502 Roma pupils at schools and in the 2008-2009 school year it increased to 579.<sup>42</sup>
72. Summarizing the opinion of experts it is stated that the main reasons why a majority of Roma has learning difficulties are related with the lack of social skills, language barriers and nonattendance of school. It is considered that among other reasons early school drop out among Roma is conditioned by Roma’s non-qualitative preschool education and schools not having any clear position or plan how to solve the issues of school non-attendance.<sup>43</sup>
73. Preschool education of Roma children is emphasized as a very important part of the education

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<sup>37</sup> Migrant Integration Policy Index 2015 (MIPEX), 2015, p. 17.

<sup>38</sup> Human Rights Overview 2013-2014, Human Rights Monitoring Institute, 2015, p. 37, <http://pasidomek.lt/en/>

<sup>39</sup> NVO pasiūlymai romų integracijos strategijai, 2014-04-08, Vilnius.

<sup>40</sup> Romų padėties tyrimas: romai švietimo ir darbo rinkos sankirtoje, Tyrimo ataskaita, Socialinių tyrimų instituto Etninių tyrimų centras, 2008 m., p.3

<sup>41</sup> Sociologinio tyrimo “Romų tautybės asmenų padėtis lyginant su kitais šalies gyventojais”, tyrimo ataskaita, 2014-04-30, Vilnius

<sup>42</sup> Romų padėties tyrimas: romai švietimo ir darbo rinkos sankirtoje, Socialinių tyrimų instituto Etninių tyrimų centras, 2008, [accessed 18, September, 2015] [http://www.ces.lt/wp-content/uploads/2008/06/STI\\_TMID\\_Romu-padeties-tyrimas-2008\\_ataskaita.pdf](http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf)

<sup>43</sup> Romų padėties tyrimas: romai švietimo ir darbo rinkos sankirtoje, Socialinių tyrimų instituto Etninių tyrimų centras, 2008, [accessed 18, 21 September, 2015] [http://www.ces.lt/wp-content/uploads/2008/06/STI\\_TMID\\_Romu-padeties-tyrimas-2008\\_ataskaita.pdf](http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf)



system.<sup>44</sup> It also could include that schools often do not have any supervision system i.e. it was noticed that at some schools children are transferred to higher grades just formally (money allocated to schools depend on the number of pupils).<sup>45</sup>

74. Another issue is that one third (33,8 percent) of Roma schoolchildren are educated by special education programmes.<sup>46</sup> Such a high proportion of children having special needs among Roma pupils is doubtful.<sup>47</sup>
75. One of the goals of the Roma integration plan 2015 - 2020 was to improve grown-up Roma people's education.<sup>48</sup> The Office of Equal Opportunities Ombudsperson's analysis on Roma people shows that only 38 percent of people older than 20 years old have primary school education.<sup>49</sup> But only 8,5 percent of Roma people attended trainings organized by national labour market or participated at non-formal education programmes.<sup>50</sup>

## Recommendations – Article 5 (Education)

- Migrant children or children from different ethnic backgrounds (among them – Roma) should receive language support in schools, including trained teachers;
- Develop and provide support to schools in running intercultural education programmes within the school curriculum;
- Provide clear access to support of migrant children, returning Lithuanian migrant children, as well as their parents, to orient them in education system, and prevent the under-qualification and early school drop-out;
- Lithuania needs common systematic state and municipal level regulated policies to prevent the early school drop-outs of Roma children from education:
  1. Interdependent social, education and if needed social assistance to families measures should be taken;
  2. Any actions taken to prevent early school drop-out of Roma children as well as other children should be taken continuously, i.e. introduction of school assistants should be available not related to project funding and ad hoc initiatives – but implemented continuously.
  3. Programmes for education of adults among Roma community should be implemented;

## Article 6

76. The following information is provided based mostly on the Research on racist crime in Lithuania carried out by Lithuanian Centre for Human Rights for the 2013/14 ENAR Shadow Report on racist crime in Europe.
77. "Ethnic and religious minority groups experience incidents of racist crime in Lithuania which are often not reported or correctly recorded by authorities. Perpetrators of these crimes often go unpunished and those in positions to protect and prosecute, at times, fail to carry out the most basic investigations into complaints. The extent of the problem is difficult to fully expose due to the lack of

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<sup>44</sup> Romų švietimo iššūkiai, Tadas Leončikas, Socialinių tyrimų institutas, Etniškumo studijos, 2006.

<sup>45</sup> NVO pasiūlymai romų integracijos strategijai, 2014-04-08, Vilnius.

<sup>46</sup> Romų vaikai švietimo sistemoje: Vilniaus ir Ukmergės savivaldybių atvejai, Sociologinis tyrimas atliktas lygių galimybių kontrolieriaus tarnybos įstatymu, Vita Petrušauskienė, 2012. p. 19

<sup>47</sup> Romų vaikai švietimo sistemoje: Vilniaus ir Ukmergės savivaldybių atvejai, Sociologinis tyrimas atliktas lygių galimybių kontrolieriaus tarnybos įstatymu, Vita Petrušauskienė, 2012. p. 19

<sup>48</sup> Dėl romų integracijos į Lietuvos visuomenę 2015 - 2020 metų veiksmų plano patvirtinimo.

<sup>49</sup> LGKT romų tyrimo galutinė ataskaita, 2015.05, p. 14

<sup>50</sup> LGKT romų tyrimo galutinė ataskaita, 2015.05, p. 14

systematic official monitoring of these offences. This briefing provides information on incidents of racist crime; examines the key issues; and provides recommendations for ways forward<sup>51</sup>.”

78. **Lithuanian criminal law.** Racist crime falls under the scope of Lithuanian criminal law. Incitement to hatred (Art 170) is a substantive offence, which means that incitement of hatred is a criminal act itself, and the Criminal Code foresees a criminal liability for it. Thus, it will generally be accompanied by a higher penalty. There is also an article which can enhance the penalties in cases of other articles, other crimes (such as, property damage) and is regulated by the article on aggravating circumstances (Art. 60 p. 1 p. 12). Other criminal offences such as murder (Art. 129), severe and non-severe health impairment (Art. 135 and 138) and desecration of a grave (Art. 312) include an aggravating sentence clause. Due to this classification, the specificity of the racist bias motive can be recognized and the penalty is potentially higher than if the crime was committed without the bias motivation.
79. In addition, Art. 60, part 12 of the Criminal Code states that acts committed in order to express hatred towards a group of people on the grounds of race, nationality, language, origin, faith, conviction or views, will include aggravating circumstances. It has however only been included in criminal law following requirements of international bodies and has not been correctly implemented as the aggravating circumstance or penalty enhancement is rarely used by the prosecution or police officers.<sup>52</sup>
80. Data regarding some racially motivated offences are recorded and published online on a regular basis by the Lithuanian Ministry of Interior. Data on the racial motivation of these crimes is disaggregated by ethnic group, nationality, gender, age and geography. However, information on religion is not recorded. It is not clear from the data available online how many crimes targeted individuals because of the real or perceived belonging to a religious minority, as there is no data disaggregated according to person’s beliefs and data is disaggregated for certain ethnic backgrounds such as Russian, Polish, and Lithuanian. There is also no data on how many people were found guilty of crimes when they are committed with the motive set in Art. 60 and this constitutes a significant gap in building a comprehensive data collection system.
81. **Racist crimes in Lithuania in 2013, 2014 and 2015.** “In 2013, official authorities recorded 84 racist crimes, while civil society organisations<sup>53</sup> recorded twice as many, with 186 offences. The figure of 186, however, does not give a comprehensive picture of all racist crimes and incidents in 2013, as not all organisations working with different communities submitted data to the LCHR.
82. The 84 officially recorded crimes were categorized as incitement to hatred and violence and so there appears to be a gap in official data collection as no other type of racist crime has been recorded. Civil society organisations have identified that racially motivated crimes consist of a range of crimes including physical assault and serious harassment, damage to property and incitement to hatred. Furthermore, victims report that they experience multiple and repeated acts of racist crimes so the picture is particularly complex<sup>54</sup>”.
83. “According to the official statistics<sup>55</sup> the total number of hate crimes was smaller in 2014 than in 2013 – 106 and 152 accordingly. A total number of hate crimes recorded in January-March, 2015 – was 25. Among those recorded, total majority are recorded as incitement of hatred. During March, 2014-March, 2015 – a total number of incitement of hatred acts were recorded were 90, out of them

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<sup>51</sup> Briefing of the research on racist crime in Lithuania carried out by Lithuanian Centre for Human Rights for the 2013/14 ENAR Shadow Report on racist crime in Europe, published in May, 2015.

<sup>52</sup> Interview with Mr. Rimvydas Valentukevičius, Prosecutor at the Criminal Prosecution Department, Office of the Prosecutor General.

<sup>53</sup> Including the Lithuanian Centre for Human Rights, Human Rights Monitoring Institute, European Human Rights Foundation, Roma Community Centre and Multicultural Volunteering Centre.

<sup>54</sup> Briefing of the research on racist crime in Lithuania carried out by Lithuanian Centre for Human Rights for the 2013/14 ENAR Shadow Report on racist crime in Europe, published in May, 2015.

<sup>55</sup> Answer from Information Technology and Communications department under the Ministry of Interior Affairs, October 12, 2015.

- 7 were incitement of hatred cases towards a person or group of persons because of their race, 25 – because of their ethnic belonging, 5 – their religion, 54 – other group belonging.<sup>56</sup>
84. The state's figures also do not provide a full picture of the ethnic background of the victims, whereas civil society organisations have recorded racist offences that target individuals from different communities including Jewish, Polish, Muslim, Roma and Black people.
85. **Under-reporting of racist crimes.** The number of racist crimes and the types of crimes recorded by the state is significantly lower than those recorded by civil society organisations in 2013 (there is no alternative data collected for 2014). Under-reporting of racist crimes, therefore, appears to be a serious problem in Lithuania. Findings from civil society victimization questionnaires reveal that there are many reasons for victims not reporting crimes to the police. Victims believe that the police do not take these crimes seriously and that it can be hard to prove. Moreover, prosecutors tend to investigate and pursue the case only when there is deliberate intention for a crime, and the suspect admits it. If the suspect does not admit the crime or it was unintentional<sup>57</sup>, cases are usually closed. Irregular migrants who are victims of racist crime are also reluctant to report crimes to the police for fear of deportation. Roma have said that they face discrimination from the police when reporting racist crimes. In 2013 one Roma victim reported being arrested and others were asked to present their documents to the police officers. As confirmed by the Prosecutor's General Office, the majority of complaints of racist crimes reported to the police are made by NGOs and not by individual victims. This underlines the problem that victims not reporting racist crimes to the authorities.
86. **Police investigations.** The police also under-qualify racist crimes. The Human Rights Monitoring Institute evaluated whether the Lithuanian legal system effectively responds to hate crimes while taking into account victims' rights. In their findings they state "Offence classification is often inaccurate where hate crimes are concerned leading to instances where hate crime is being labelled as hooliganism rather than bias motivated".<sup>58</sup> The failure of authorities to correctly record racist crime might also be linked to the fact that the police do not receive training on how to record and investigate racially motivated crimes. Furthermore the police do not systematically recognise and investigate the racial elements of crimes unless the victim or witness explicitly states it was a racist crime. The lack of investigation of the racist element or motivations may occur even when the use of racist language is reported.
87. **Victim support.** Legislation on the State-Guaranteed Legal Aid, adopted in 2005, constitutes a positive step in the implementation of a comprehensive victim support service. It provides victims with aid that covers legal advice to legal representation in the court. However, not all victims of racist crime are eligible to free legal aid. The margin for improvement in victim support services is still significant. Firstly, it is unclear whether interpretation and translation services are always provided free of charge for victims, whilst this service is available for suspects. Secondly, there are provisions in victim support services to provide police protection during the prosecution but in reality this is almost never implemented. Lastly, there is no systematic practice in the police and criminal justice system that prevents the intimidation or the re-victimization of victims of racist crime.
88. **Conclusions drawn in the Human Rights Review 2013/2014 provide similar outcomes:** "Law enforcement authorities also lack knowledge in this area. As demonstrated by a HRMI study in 2013, victims of hate crimes do not always receive assistance from law enforcement officials; officials' attitude towards victims is often insensitive and ignores their vulnerability. Officials still lack knowledge on the nature and motivations of hate crimes, with too much reliance placed on the opinion of outside experts when making decisions. Hate speech in Lithuania is still mostly directed against individuals or groups on the basis of sexual orientation, race, nationality,

<sup>56</sup> Summary made for the Research on Afrophobia in Lithuania, carried out by the Lithuanian Centre for Human Rights for the ENAR shadow report on Afrophobia in Europe, October 15, 2015.

<sup>57</sup> In some cases prosecutors claim that a person expressed a very categorical drastic opinion but did not wish to incite hatred.

<sup>58</sup> 'Protection of hate crime victims' rights: the case of Lithuania', study, Human Rights Monitoring Institute, 2013. [www.hrmi.lt/uploaded/Apzvalgos/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013.pdf](http://www.hrmi.lt/uploaded/Apzvalgos/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013.pdf)

language or origin. When examining hate crimes, the Lithuanian courts wrongfully rely on the “opinion” argument and acquit defendants; require an explicit, specific intent to inflame people, to incite hatred or discrimination; and in their reasoning rely exclusively on the opinions of outside experts. As stated by the Supreme Court of Lithuania, the duty to determine whether saying or writing a particular text constitutes a crime rests with the court examining the case, not with specialists or other persons. Furthermore, hate crimes are still not being properly recorded and analyzed in Lithuania.”

## Recommendations – Article 6

89. Encourage increased reporting of racist crimes by developing national awareness strategies and campaigns on the effects of racist crime and on victims’ rights from the initial contact with the police and throughout the investigation by directly engaging with vulnerable minority groups.
90. Appoint the Equal Opportunities Ombudsperson, that has not been appointed since the end of term of the last Equal Opportunities Ombudsperson in 2013, and ensure their active role in reaching out to different communities and providing assistance in defending their rights and recognising discriminatory behaviour as well as hate crime.
91. Ensure that under-reporting of hate crime is recognised by the prosecution, police department, and ensure that these institutions proactively investigate hate speech and reach out to communities to gain their trust and identify hate crime.
92. Develop, in collaboration with civil society organisations and the equality body:
  - a shared understanding of racist crime across the criminal justice system and guiding principles for racist crime training to be offered to law enforcement forces, prosecution services, judges, court staff and victim support services;
  - clear guidelines on how the state should respond to racially motivated crimes at all levels, from recording and investigating complaints through to sentencing and victim support, and disseminate these guidelines to law enforcement, judiciary and victim support personnel; and
  - provide coordinated, coherent and ongoing professional training for all law enforcement and criminal justice personnel, based on a shared understanding of racist crime, to ensure that theoretical approaches become engrained in practice. Monitor performance in this area through appraisals.
93. Train the police service and insert in the curriculum of future police officers specific training to recognise unconscious bias and structural discrimination and ensure that cases of discriminatory behaviours by the police are publicly sanctioned.
94. Develop a common recording and reporting interface for law enforcement officials, the prosecution and the judiciary, in accordance with data protection standards, to ensure that data collection and reporting is systematic and coordinated from the start of a complaint to the end of the judgement.
95. Introduce victim support services that could be provided by civil society organisations, communities that provide not only legal support but mediation and social, emotional support to victims of hate crime.
96. Provide funding to victim support services, civil society organisations and academics to carry out research, data collection and reporting on the nature and extent of racist crime.
97. Civil society organisations and institutions work together to develop mechanisms to record information on incidents of racist crime and the impact on victims and use that data to advocate for improved legislative frameworks that ensure clear recognition of the racist motivations as well as other hate motivation.