

# **ECRI REPORT ON LITHUANIA**

**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 25 March 2011 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on 21 February 2006, progress has been made in a number of fields covered by that report.**

The Law on Citizenship no longer raises issues of discrimination on grounds of ethnic or national origin. In 2009 the Criminal Code was amended in connection with: racist motivation, incitement to hatred, the founding of certain groups, the public denial or support of certain crimes and acts of vandalism. The Special Investigations Division of the General Prosecutor's Office has acquired competence over criminal acts related to discrimination and incitement to hatred. The Law on Equal Treatment has been amended to protect against discrimination on grounds of national origin, language, convictions and social status and provide for sharing the burden of proof and the right of associations or other legal persons to represent victims in court. The Code of Administrative Offences now forbids discrimination in employment relations also on grounds of "race", ethnic origin and religion. Pedagogues have been hired in the Vilnius area to assist Roma children. The Supreme Administrative Court has awarded non-pecuniary damages to Roma whose illegally built houses had been demolished.

The Law on the Status of Aliens no longer provides for the detention of asylum-seekers who have illegally entered in Lithuania or overstayed. The term for appealing against asylum related decisions has been extended. A memorandum has been signed by the UNHCR, the State Border Guard Service and the Red Cross Society covering the training of border guards, regular visits by lawyers to entry points and reception facilities and the provision of information on asylum. Certain persons with subsidiary protection are now eligible for full health insurance. The law no longer requires a two year residence period before refugees become eligible for family reunification and recognises such a possibility for refugee minors.

**ECRI welcomes these positive developments in Lithuania. However, despite the progress achieved, some issues continue to give rise to concern.**

Lithuanian citizens of non-Lithuanian ethnicity/origin may not stand for presidential elections. The 1989 Law on National Minorities is no longer in force. Very few cases were filed under Article 169 of the Criminal Code prohibiting discrimination. The number of cases referred to court under its Article 170 (prohibiting incitement to hatred) and the number of convictions remain very low. Usually, the sanction inflicted for these offences consists in a fine. There are plans to scale down the prosecutors' Special Investigations Division. In practice, it is almost impossible for NGOs to represent victims of discrimination in court. There is no obligation to suppress the public financing of organisations that promote racism. There have been allegations of mistakes in the collection of data on the application of criminal law provisions and the statistics do not contain a field with the outcome of the trials. There does not seem to be any systematic collection of data on racist motivation and the application of anti-discrimination legislation. The Equal Opportunities Ombudsman's mandate does not encompass citizenship as a ground of discrimination or the provision of independent assistance to victims. This Ombudsman does not have the power to lodge a discrimination complaint with courts and frequently resorts to recommendations or warnings instead of inflicting fines. The budget of her Office has been cut substantially.

There is little coordination between the different minority/anti-discrimination programmes. No impact assessment other than a financial audit report is foreseen in this connection. Statements were made by prominent political figures showing little sensitivity towards the need to fight racism and intolerance. The Programme for the Integration of Roma into Society for 2008-2010 and those that preceded it have not produced any tangible results, despite some positive initiatives undertaken in education and, to a far lesser extent, employment. There is lack of coordination between the authorities that implement the different parts of the Roma Integration Programme. In

November 2010 the programme had not yet been extended for 2010-2012. The funding for the positions of the Roma pedagogues looks uncertain. No steps have been taken to find a wide range of housing alternatives for the Roma community. Although registration at the employment agency is needed to access the welfare system, only a very small proportion of the Vilnius Roma population is registered. Several antisemitic articles have appeared in the press and on the internet, also in reaction to the draft law on Jewish property restitution. As regards the restitution of private property expropriated during WWII, various laws adopted successively as of 1991 have restricted the eligibility of Jewish persons who had “repatriated”. The newly established department of minorities is understaffed and its budget has been greatly reduced. Responsibility for issues affecting national/ethnic minorities has been split up between various ministries and the Ministry of Culture does not have the capacity to ensure coordination.

When dealing with appeals in asylum cases, administrative courts in most instances uphold the Migration Department’s decisions. Although during the first interview the asylum seeker is presented with a form outlining some of his/her rights, only few asylum seekers received additional information on the asylum procedure. Persons granted subsidiary protection do not have a right to social assistance, except during their one year stay at the reception centre. They only benefit from emergency medical care (except for certain categories specified by law). Cases of detention of non-citizens without expulsion have occurred. A non-citizen may be detained when his/her stay constitutes a threat to national security, public order or public health. The law does not establish a maximum period of detention pending expulsion. Other than in the context of the 2011 census, the authorities do not plan to collect systematically information broken down by ethnic origin, language, religion and nationality in areas such as employment, housing and education.

**In this report, ECRI requests that the Lithuanian authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

In setting the requirements for candidacy to the Presidency of the Republic, any distinction on grounds of ethnic origin should be removed. A Law on National Minorities guaranteeing at the very least the rights previously granted under the 1989 law should be adopted. All persons working within the criminal justice system and the Inspector of Journalist Ethics should pay special attention to the application of the newly introduced criminal law provisions, as well as other provisions against racial discrimination and incitement to racial hatred. Sanctions inflicted for hate crimes should be more dissuasive and proportional in character. The authorities should continue to train police officers, lawyers, judges and prosecutors on legislation against racism and racial discrimination\*. Before any decision is taken to dismantle the prosecutors’ Special Investigations Division, an assessment on the results it has achieved should be carried out. The Law on Equal Treatment should be amended and citizenship should be included as a prohibited ground of discrimination. NGOs should be given the right to take part in judicial proceedings on behalf or in support of victims; the law should provide details as to the procedure to be followed in this connection. The law should also provide for an obligation to suppress public financing of organisations that promote racism. The Government should collect data in a systematic way on the application of criminal law provisions, including the outcome of each trial. The collection and publication of data on the application of civil and administrative anti-discrimination legislation should also be strengthened.

The Equal Opportunities Ombudsman’s mandate should include citizenship as a prohibited discrimination ground and the provision of independent assistance to

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



victims. The Ombudsman should be endowed with the power to initiate civil and administrative proceedings when the Law on Equal Treatment has been breached. She should use the full array of sanctions that are available, depending on the gravity of the offence. The trend to cut her Office's budget should be reversed. When programmes geared to fighting racial discrimination are implemented by more than one authority, a body should ensure coordination and duplication should be avoided. The Government should condemn swiftly and systematically all forms of racism, xenophobia and antisemitism.

An inter-institutional body on Roma issues should be set up. Coordination with the Municipality of Vilnius should be enhanced. Adequate funds for the Roma Integration Programme should be ensured<sup>7</sup>. The existing positions of Roma pedagogues should be maintained and strengthened; such positions should be created in all schools in which Roma pupils are enrolled. The problem of Roma housing should be addressed as a matter of priority. Registration at the employment agency should be facilitated and promoted by explaining its implications. The authorities should dispel all antisemitic feelings arising in connection with property restitution. Persons who fell in the "repatriated" category and who are covered by the judgement of the Constitutional Court of November 2006, should be recognised a right to lodge restitution claims. The authorities should explore ways to strengthen the weak framework governing national/ethnic minority policy, clarify the issue of responsibilities over its anti-discrimination/integration components and intensify consultations with the Council of National Minorities.

Administrative courts' capacity to deal effectively with asylum appeal cases should be enhanced. Written information on the asylum procedure should systematically be provided to all asylum applicants. The authorities should adopt the draft law extending access to social security to persons granted subsidiary protection. Provision should be made for financing the health coverage of all such persons<sup>8</sup>. Threat to national security, public order or public health should no longer be considered as a ground for detaining non-citizens. Non-citizens should only be detained when and as long as this is strictly necessary for effecting a lawful expulsion. The authorities should set a limit to detention pending expulsion. The capacity of the Department of Statistics should be strengthened. It should systematically collect ethnic data in accordance with certain safeguards.

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<sup>7</sup>The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Application of Legal Provisions

#### International legal instruments

1. In its third report, ECRI recommended that the Lithuanian authorities sign and ratify the following international instruments: Protocol No.12 to the European Convention on Human Rights (ECHR), the European Convention on Nationality, the European Charter for Regional or Minority Languages, the UNESCO Convention against Discrimination in Education, as well as the European Convention on the Legal Status of Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI encouraged the Lithuanian authorities to finalise their work towards the ratification of the Additional Protocol to the Convention on Cybercrime and the Convention on the Participation of Foreigners in Public Life at Local Level. It further reiterated its recommendation that the Lithuanian authorities accept the provisions contained in Article 19 of the European Social Charter (revised) that they had not yet accepted and Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
2. ECRI is pleased to note that the Lithuanian authorities ratified the Additional Protocol to the Convention on Cybercrime on 12 October 2006, which entered into force on 1 February 2007. ECRI has also been informed that Lithuania is considering signing and ratifying the European Charter on Regional and Minority Languages, the European Convention on Nationality and the UNESCO Convention against Discrimination in Education, although no timeline has been indicated. As regards the Convention on the Participation of Foreigners in Public Life at Local Level, signed by the Lithuanian authorities on 12 February 2008, ECRI has been informed that the authorities are working towards its ratification. In this respect, the authorities have informed ECRI that some of the provisions of the Convention have already been transposed into national legislation. As a result, any person who is a long-term resident can vote and stand as a candidate in municipal elections. ECRI welcomes the steps taken to transpose at national level some of the provisions of the Convention on the Participation of Foreigners in Public Life at Local Level and looks forward to the ratification of the Convention and of the other instruments mentioned in this paragraph.
3. To date, the Lithuanian authorities have not signed or ratified Protocol No.12 to the ECHR or the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Lithuanian authorities have yet to make a declaration under Article 14 of the ICERD, thereby accepting the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive complaints. They have informed ECRI that currently they have no intention of accepting additional obligations under Article 19 of the European Social Charter (revised).
4. As regards Protocol No.12 to the ECHR, the Lithuanian authorities have informed ECRI that they are weighing all arguments in favour and against its ratification. The authorities state that, having ratified the International Covenant on Civil and Political Rights (ICCPR), which guarantees in Article 26 the right to “equality before the law without any discrimination to the equal protection of the law”, in principle, there should be no difficulties in ratifying Protocol No. 12. On the other hand, they claim that the case-law under Protocol No. 12 is too limited and that they wish to see how it will

develop before any steps towards ratification are taken. As regards the latter argument, ECRI would like to remind the authorities that the case-law on Article 14 of the ECHR has been and will be used by the European Court of Human Rights (ECtHR) to interpret Protocol No. 12, in particular as regards the concept of discrimination (See the Grand Chamber judgment of the ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina* of 22 December 2009). As concerns Article 14 of ICERD, ECRI notes that whereas the Lithuanian authorities have not accepted CERD's competence to receive individual complaints, they have ratified the Optional Protocol to the ICCPR. As a result, any person subject to Lithuania's jurisdiction may raise, with the Human Rights Committee, issues concerning the principles of discrimination and equality before the law. Given that ICERD gives expression to and further develops the same principles, in ECRI's view, making a declaration under its Article 14 should be seen as a complementary step, in respect of which there should not be any major legal or practical obstacles.

5. As concerns the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ECRI has been informed by the authorities that currently they do not intend to sign or ratify it, as it sets out many more rights than those guaranteed by national and EU legislation, it conflicts with national legislation and its implementation would be too costly. ECRI would like to highlight that the ratification of the above-mentioned Convention and of the relevant provisions of the European Social Charter (revised) would signal a firm commitment towards the development of an integration policy. The ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families would also assist the authorities in their efforts to control irregular migration by eliminating incentives for labour exploitation and work in abusive conditions.
6. ECRI recommends that the Lithuanian authorities sign and ratify the European Charter on Regional and Minority Languages, the European Convention on Nationality, the UNESCO Convention against Discrimination in Education, as well as ratify the Convention on the Participation of Foreigners in Public Life at Local Level – treaties in respect of which the authorities have expressed a positive and forward-looking attitude. It reiterates its recommendation to sign and ratify Protocol No.12 to the ECHR and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI further reiterates its recommendation that the Lithuanian authorities make a declaration under Article 14 of ICERD, and accept the provisions contained in Article 19 of the European Social Charter (revised) that they have not yet accepted.

## **Constitutional and other fundamental provisions**

### *- Law on Citizenship*

7. In its third report on Lithuania, ECRI recommended that the Lithuanian authorities ensure that the provisions of the Law on Citizenship, and notably those regulating the loss of Lithuanian citizenship, do not discriminate against Lithuanian citizens on grounds such as "race", colour, language, religion and national or ethnic origin. More specifically ECRI had drawn attention to the discriminatory nature of the law on citizenship insofar as the acquisition of another state's citizenship engendered the loss of Lithuanian citizenship, unless the subject was of Lithuanian descent.
8. ECRI notes that on 13 November 2006, the Constitutional Court of the Republic of Lithuania examined the compliance of the Law on Citizenship

with the Constitution. Among other issues, the Constitutional Court looked into whether Article 18<sup>1</sup> of the Law on Citizenship conflicted with Article 29<sup>2</sup> (establishing the principle of equal treatment) and Article 12 (limiting the admissible cases of double citizenship) of the Constitution. The Constitutional Court found that paragraph two of Article 18 of the Law on Citizenship was indeed in violation of Article 12, second sentence of the Constitution and that “no matter how the legal regulation of citizenship relations of the Republic of Lithuania may be revised in the future, the provisions of the Constitution, which inter alia provide for the equality of all persons and non-discrimination on the basis of one’s ethnic origin must be respected”. ECRI notes with satisfaction the outcome of the case. The Law on Citizenship was accordingly amended on 15 July 2008 and, as a result, the acquisition of citizenship of another state engenders the loss of Lithuanian citizenship (paragraph 2 of Article 18.1), unless the new acquired citizenship is that of a state with which Lithuania has signed a treaty on double citizenship (Article 18.2). Accordingly, in ECRI’s view the Law on Citizenship no longer raises issues of discrimination on grounds of ethnic or national origin.

- *The Constitution and the Law on Presidential Elections*

9. ECRI is concerned that Lithuanian citizens of non-Lithuanian ethnicity/origin have been impeded from standing for presidential elections in Lithuania. Such limitation is to be traced to Article 78 of the Lithuanian Constitution and Article 2 of the Law on Presidential Elections. Under Article 78 of the Lithuanian Constitution, to be eligible for presidential election, a person must be “Lithuanian by origin”. Likewise, under Article 2 of the Law on Presidential Elections, a presidential candidate must be a citizen of the Republic of Lithuania by origin/descent. Although the above condition, as set by the two laws is unclear, ECRI has been informed that an equivalent concept can be found in the Law on Citizenship, as recently amended. More specifically, Article 1, third sentence of the Law on Citizenship states that a person is of Lithuanian descent “if his/her parents or grandparents or one of his/her parents or grandparents is/was Lithuanian and the person considers himself/herself Lithuanian”<sup>3</sup>. ECRI deems that these provisions preclude

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<sup>1</sup> Article 18 on loss of citizenship stated that: 1. Citizenship of the Republic of Lithuania shall be lost: 1) upon renunciation of citizenship of the Republic of Lithuania; 2) upon acquisition of citizenship of another state; 3) on the grounds provided for by international agreements to which the Republic of Lithuania is a party. 2. Subparagraph 2 of paragraph 1 of this Article shall not be applicable to: 1) persons who held citizenship of the Republic of Lithuania prior to 15 June 1940, their children, grandchildren and great-grandchildren (provided that the said persons, their children, grandchildren or great-grandchildren did not repatriate); 2) persons of Lithuanian descent whose parents or grandparents are or were or one of parents or grandparents is or was Lithuanian and the person considers himself Lithuanian. 3. A person may be recognised as having lost citizenship of the Republic of Lithuania if he is in the military service of another state or is employed in the public service of another state without having been granted authorisation by relevant institutions of the Republic of Lithuania.

<sup>2</sup> Article 29 of the Constitution establishes the general legal principle of equal treatment which states that “all persons shall be equal before the law, the court and other state institutions and officers” and that “a person may not have his or her rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, conviction or opinions”. Under Article 12 of the Constitution, “citizenship of the Republic of Lithuania shall be acquired by birth and other grounds established by law. With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time. The procedure for the acquisition and loss of citizenship shall be established by law.”

<sup>3</sup> The authorities favour another interpretation, namely that Article 78 of the Constitution and the Law on Presidential Elections exclude naturalised citizens, which, however, is not supported by any statutory text.

Lithuanian citizens of non-Lithuanian national/ethnic origin from exercising an important right such as the right to stand for presidential elections<sup>4</sup>.

10. ECRI recommends that, in setting the requirements for candidacy to the Presidency of the Republic of Lithuania, the Lithuanian authorities remove any distinction on grounds of ethnic origin, drawing inspiration from the case-law of the ECHR.

- *Legislation on national/ethnic minorities*

11. In its third report, ECRI recommended that the Lithuanian authorities ensure that any legislation adopted in the field of the protection of the rights of national/ethnic minorities does not result in a lower level of protection than that already enjoyed by persons belonging to national/ethnic minorities.

12. As of 1 January 2010, the 1989 Law on National Minorities which previously regulated minority rights is no longer in force and no law has been adopted to fill the legal vacuum. Draft laws which were already the subject of discussions during ECRI's third report have not been passed to this day. The latter were proposed in order to adapt legislation to European and international standards, as well as to solve a conflict with the Law on State Language, with respect to the right to use national/ethnic minority languages, alongside the official language, in topographical signs and geographic indications<sup>5</sup>. According to the authorities, the draft law which is currently under discussion contains provisions similar to those of the lapsed 1989 Law, including provisions establishing that in areas populated by national/ethnic minorities by more than one third, the minority language may be used for topographical signs along the official State language. The authorities are hopeful that the law will be adopted in the course of 2011; however, ECRI is aware that the draft law has met strong political opposition.

13. ECRI has been reassured by the authorities that minority rights are currently protected by the Constitution and by other national laws and that rights which were previously protected under the 1989 Law are protected to this day, notwithstanding the absence of a special law on national/ethnic minorities. ECRI has doubts whether this is true as no provision currently in force establishes the right to use minority languages in addition to Lithuanian, for signs and topographical indications. Nor do the provisions in force establish the right to use minority languages in addition to Lithuanian before public authorities in areas populated by a high percentage of national/ethnic minorities, whereas the latter rights were expressly recognised under the lapsed law. Further, ECRI observes that, whereas the use of English is tolerated in the display of signs, there are conflicting claims as to whether the same applies for Russian and Polish signs in areas populated by national/ethnic minorities. In this connection, ECRI is of the opinion that there should be no ethnic discrimination in the application of the Law on State Language.

14. More generally, ECRI notes that representatives of national/ethnic minorities have clearly expressed a sense of uneasiness in connection with the abrogation of the 1989 Law to which they associate a decrease in the level of protection afforded to national/ethnic minorities. ECRI considers that the majority of the issues discussed in this connection can be best addressed

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<sup>4</sup> See the Grand Chamber judgment of the ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina* of 22 December 2009.

<sup>5</sup> More specifically, the 1989 Law on National Minorities recognised this right, while the Law on State Language provided exclusively for the use of the State language. In practice the Law on State Language was considered to prevail over the Law on National Minorities.

under the Framework Convention for the Protection of National Minorities (FCNM) which Lithuania has ratified. That having been stated, ECRI is also concerned that the abrogation of the 1989 Law on National Minorities, coupled with the absence of a new law establishing a similar level of protection, raises doubts as to the intentions of the authorities vis-à-vis national/ethnic minorities. ECRI encourages the Lithuanian authorities to dispel this doubt by adopting without further delay a Law on National Minorities which recognises at the very least the rights previously granted under the 1989 Law on National Minorities.

15. ECRI recommends that the Lithuanian authorities adopt without further delay a Law on National Minorities which, at the very least, clearly sets out the rights previously granted under the 1989 Law on National Minorities.

### **Criminal law provisions**

16. In its third report, ECRI recommended that the Lithuanian authorities keep the effectiveness of the existing criminal law provisions under close review and drew the attention of the Lithuanian authorities to its General Policy Recommendation No. 7 on national legislation to combat racism<sup>6</sup> and racial discrimination<sup>7</sup>, which contains a comprehensive list of acts that ECRI considers should be criminalised. In particular, ECRI strongly recommended that, in accordance with this General Policy Recommendation, the Lithuanian authorities introduce a provision which expressly considers the racist motivation of an offence as a specific aggravating circumstance.
17. ECRI is very pleased to note that in the course of 2009 the Criminal Code was amended in various respects and that in its remit were introduced several acts which ECRI traditionally considers should be criminalised. More specifically, on 16 June 2009, the Parliament amended Article 60 of the Criminal Code and included racist motivation<sup>8</sup> in the list of aggravating circumstances. Further, Article 170 (incitement to hatred) was amended and now, inter alia, punishes the production, distribution, acquisition, transportation or storage of items that incite hatred on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views. The latter were previously considered administrative offences under Article 214(12) of the Code of Administrative Offences (See paragraph 22 of ECRI's third report on Lithuania). In July 2009, Article 170(1) was introduced in the Criminal Code, thereby establishing criminal liability for founding groups and organisations whose aim is to discriminate or incite hatred towards a group of persons, and for the activities carried out by such organisations. This was also previously considered an administrative offence under Article 214(13) of the Code of Administrative Offences. A provision criminalising the public denial or support expressed in respect of international crimes/crimes against Lithuania or its residents committed by the USSR or Nazi Germany was introduced in the Criminal Code under Article 170 (2). Finally, Article 312 second sentence of the Criminal Code was amended and now punishes with community service, a fine or imprisonment for a term of

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<sup>6</sup> ECRI, in its General Policy Recommendation No. 7, defines "racism" as the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

<sup>7</sup> ECRI, in its General Policy Recommendation No. 7 defines "racial discrimination" as any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>8</sup> Under Article 60 of the Lithuanian Criminal Code, racist motivation is defined as: "When an act is committed in order to express hatred towards a group of persons or a person on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views".

up to three years, “persons who carry out acts of vandalism in a cemetery or another place of public respect or who desecrate a grave or another place of public respect for racist, nationalist or religious reasons”. ECRI welcomes these amendments and stresses the importance of monitoring the application of the newly introduced provisions, as well as other provisions against racial discrimination and incitement to racial hatred in order to combat racism and racial discrimination.

18. In this connection, ECRI notes that since its third report very few cases were filed under Article 169 of the Criminal Code (discrimination on grounds of nationality, race, sex, descent, religion or belonging to other groups), that even fewer were referred to court and that, finally, to ECRI’s knowledge, there were no convictions under this provision. As concerns the legal provision prohibiting incitement to racial hatred, it is clear that since ECRI’s third report the number of investigations opened for breach of Article 170 has notably risen (See paragraphs 75 and 81), yet the number of cases which are referred to court and the number of convictions still remains very low.
19. Having stated that, ECRI is pleased to note that at least three persons were convicted (and fined) for incitement to hatred for having participated in a demonstration on 11 March 2008 and having shouted antisemitic and racist slogans<sup>9</sup> (See paragraph 75). On the other hand, ECRI notes that another participant in the same demonstration was acquitted on counts of incitement to hatred for having shouted “Lithuania for Lithuanians”. ECRI in fact deems that the latter statement implies, *a contrario*, that anyone who is not nationally/ethnically Lithuanian has no place in Lithuania and therefore could incite hatred or discrimination towards this category of persons.
20. Several sources have indicated that the low number of convictions may be due in part to the high evidence requirements of courts. Generally, it is undisputed that a great number of hate crimes go unnoticed as they are not reported or not registered as such.
21. As regards the application of the newly introduced provision establishing racist motivation as a general aggravating circumstance, no statistics have been made available to ECRI.
22. ECRI recommends that all persons working within the criminal justice system – members of the police force, the prosecution service and the judiciary – as well as the Inspector of Journalist Ethics pay special attention to the application of the newly introduced provisions, as well as other provisions against racial discrimination and incitement to racial hatred. ECRI recommends that all instances of racial discrimination and incitement to racial hatred, including in the press and on the internet, be thoroughly investigated and punished.
23. ECRI notes that in the majority of cases the sanction inflicted consists in a fine and that only in two instances a prison term was ordered. Such a state of affairs casts doubt as to the effectiveness, proportionality and dissuasive character of the sanctions inflicted.
24. In its third report ECRI recommended that the Lithuanian authorities monitor the application of Articles 214 (12) (punishing the production, ownership, distribution or display of racist material) and Article 214 (13) (punishing the establishment of, or participation in the activities of an organisation that advocates national, racist or religious dissention) of the Code of

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<sup>9</sup> Such as, for instance, “a better Lithuania without Russians”.



Administrative Offences and take any necessary measures to ensure that these articles are applied consistently. As mentioned in paragraph 17 of this report, the above offences were removed from the Code of Administrative Offences and introduced in the Criminal Code. During the first ten months of 2010, three investigations were opened for breach of Article 170, first sentence (former Article 214(12) of the Code of Administrative Offences). No investigations were opened for breach of Article 170(1) (former Article 214(3)). Prior to this development sources indicate that the provisions were rarely applied.

25. In its third report, ECRI recommended that the Lithuanian authorities ensure that all those involved in the criminal justice system, from the lawyers to the police, the prosecuting authorities and the courts, are equipped with thorough knowledge of the provisions in force against racism and racial discrimination. ECRI notes that police, lawyers, prosecutors and judges have indeed received some training since ECRI's third visit to Lithuania and that some of these initiatives were carried out in the context of the National Anti-Discrimination Programme (See paragraph 66). The information collected by ECRI indicates that some of these initiatives consisted in a "one-off" event and that others, such as those run by the Ministry of Justice Training Centre, are conceived as more systematic training. ECRI commends the efforts made by the authorities to raise legal practitioners' awareness of anti-discrimination legislation.

26. ECRI recommends that the authorities continue in their efforts to train police officers, lawyers, judges and prosecutors on the provisions in force against racism and racial discrimination and that training be conceived as a periodic recurrence rather than as a «one-off » event. ECRI also recommends that specific attention be paid to training on the newly introduced provisions in the Criminal Code, notably Article 60, Articles 170, 170 (1) and 170(2) and Article 312.

27. ECRI notes that, from 8 March 2006 until 17 January 2011, the competence of the Special Investigations Division of the General Prosecutor's Office was expanded to include the investigation of criminal acts related to discrimination of persons and incitement to hatred. This Division was entrusted with coordinating, managing and carrying out pre-trial investigations in criminal cases involving violations of the principles of equality and freedom of conscience; it was also tasked with developing a uniform practice for such pre-trial investigations<sup>10</sup>. ECRI commends this initiative as it permits prosecutors to develop an expertise in racism and racial discrimination and to become more aware and sensitive to these types of crime. ECRI regrets that the hate crime division of the General Prosecutor's Office has been dismantled. The General Prosecutor's Office has reassured ECRI that further to this reorganisation some prosecutors will continue to be responsible for this area. However, ECRI sees the dismantling of the Special Investigating Division as a step back in the fight against racism and racial discrimination.

28. ECRI recommends that the Division of the General Prosecutor's Office specialised in hate crimes resume its work and the development of its special expertise.

29. In its third report ECRI recommended that, while acting against incitement to racial hatred and the dissemination of racist or xenophobic material, the

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<sup>10</sup> The General Prosecutor's Office can initiate inquiries *ex officio* concerning incitement to racial hatred rather than just react to formal complaints and apparently has exercised this prerogative in many cases.

Lithuanian authorities pay particular attention to the material posted on websites and Internet fora. ECRI notes that since its third report, most investigations opened for breach of the incitement to hatred provision, concerned racist comments in articles published on-line (See paragraph 81). Moreover, the General Prosecutor's Office has confirmed that this type of criminal activity has increased over time. Although the Police Department has a cybercrime unit which also deals with hate crimes, this unit does not monitor the Internet for hate speech systematically; rather, it reacts to complaints received. A useful initiative in ECRI's view is the Safe Internet Plus Project, launched by the Ministry of Education and Science and the Communications Regulatory Authority, and implemented with the participation of the Inspector of Journalist Ethics and the Police Department. If a member of society finds racist comments on the internet he/she can inform the authorities by filling a questionnaire on the relevant website (See paragraph 82).

30. ECRI recommends that the cybercrime unit of the Police Department be reinforced and that its competencies be extended to include the systematic monitoring of the internet for racist comments.

### **Civil and administrative law**

31. In its third report, ECRI recommended that the Lithuanian authorities keep the effectiveness of the existing civil and administrative law provisions against racial discrimination under review and drew the attention of the Lithuanian authorities to its General Policy Recommendation No. 7, which outlines the areas which ECRI considers should be covered by anti-discrimination legislation.
32. Since ECRI's third report, the scope of the Law on Equal Treatment, which initially prohibited any direct or indirect discrimination on the grounds of age, sexual orientation, disability, race or ethnicity, religion was broadened to include the following grounds: national origin, language, convictions and social status<sup>11</sup>. The Equal Opportunities Ombudsman's mandate has consequently also been expanded. ECRI welcomes this development and encourages the authorities to include citizenship as an additional ground of discrimination.
33. ECRI recommends that the authorities amend the Law on Equal Treatment so as to prohibit, on grounds that it constitutes discrimination, differential treatment based on citizenship that has no objective and reasonable justification.
34. Another positive development observed was the inclusion of the principle of the sharing of the burden of proof in the Law on Equal Treatment, consistently with ECRI's General Policy Recommendation No. 7 and with Article 21 of the EU Racial Equality Directive 2000/43/EC. Finally, the Law on Equal Treatment now recognises the right of associations or other legal persons to represent victims before court<sup>12</sup>. However, this right can be exercised only if the articles of association of the association/other legal person expressly provide for it. ECRI is pleased about these amendments and encourages the authorities to take these legislative efforts one step

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<sup>11</sup> Amendment of 17 June 2008.

<sup>12</sup> Under Article 12, 2<sup>nd</sup> sentence of the Law on Equal Treatment "Associations or other legal persons which have, in accordance with the legal act regulating their activities, the defence and representation in court of persons discriminated against on a particular ground as one of their activities may, on behalf of the person discriminated against, represent him in judicial or administrative procedures in the manner prescribed by law".

further. Notably, as established in ECRI's General Policy Recommendation No. 7, paragraph 25, ECRI encourages the authorities to provide that associations having a legitimate interest in combating racism and racial discrimination are entitled to bring civil cases, intervene in administrative cases or make criminal complaints *even if a specific victim is not referred to*. If a specific victim is referred to, their consent should be obtained.

35. ECRI recommends that the Lithuanian authorities amend the Law on Equal Treatment so that associations having a legitimate interest in combating racism and racial discrimination be entitled to bring civil cases, intervene in administrative cases or make criminal complaints *even if a specific victim is not referred to*. If a specific victim is referred to, their consent should be obtained.
36. ECRI was informed that in practice it is still very difficult, if not impossible, for NGOs to represent victims of discrimination in court. On the one hand, the Law on Equal Treatment states that associations or other legal persons may "represent persons in judicial or administrative procedures in the *manner prescribed by law*". However, while Article 56 of the Law on Administrative Procedure enables NGOs to apply to court<sup>13</sup>, it provides little detail as to the specific procedure in place in order to represent/support the claimants; moreover, there are no cases to serve as an example in this connection. Furthermore, the Code of Civil Procedure does not grant NGOs the right to represent plaintiffs in court.
37. ECRI recommends that the authorities amend the Law on Administrative Procedure and the Code of Civil Procedure in order to grant NGOs the right to take part in judicial proceedings on behalf or in support of victims and to provide details as to the procedure that must be followed.
38. As regards the application of the Law on Equal Treatment, ECRI notes that since ECRI's third report, there has been a rise in the complaints received by the Ombudsman for breach of the above law on grounds of race, ethnicity and religion (See paragraph 56).
39. In its third report, ECRI recommended that the Lithuanian authorities provide for an obligation in law to suppress the public financing of organisations, including political parties, which promote racism. The authorities have informed ECRI that no such provision exists; however national law provides for certain legal measures such as the liquidation of a legal person when it has been proved that it has acted against the Constitution, the law or the public interest.
40. ECRI reiterates its recommendation to introduce in the law an obligation to suppress public financing of organisations, including political parties, which promote racism, in line with ECRI's General Policy Recommendation No. 7.
41. In its third report ECRI also recommended to the Lithuanian authorities to ensure that the Code of Administrative Offences outlaws in employment relations the infringement of equal treatment on grounds such as "race", ethnic origin or religion to the same extent as it does on grounds of gender. ECRI is pleased to note that on 13 October 2005 Article 41 sentence 6 of the above-mentioned Code was amended and is now in line with the above recommendation.

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<sup>13</sup> More specifically, under the Law on Administrative Procedure mandatory legal representation is "usually, but not necessarily" exercised by an attorney, thereby leaving an opening for possible representation by associations.

## Collection of data on the application of criminal, civil and administrative law provisions

42. In its third report, ECRI recommended to the Lithuanian authorities to improve the collection of data on the application of the existing civil, administrative and criminal law provisions against racism and racial discrimination. ECRI notes that, whereas steps forward have been taken in respect of criminal law provisions, the same cannot be said about civil and administrative law provisions.
43. As regards the collection of data on the application of criminal law provisions, the Department of IT of the Ministry of the Interior maintains an institutional registry with statistical data on registered criminal acts, results of investigations and names of criminal suspects. The data is transmitted by law enforcement officials, prosecutors and courts. The information is broken down in the following categories: number of opened investigations, number of cases referred to court and number of discontinued pre-trial investigations. The statistics however, do not contain a field with the outcome of those same trials. To ECRI's knowledge figures are available only in respect of the absolute number of convictions per reference year. This data however, does not help to assess the percentage of convictions compared to the opened investigations. Further, ECRI notes that there have been allegations of mistakes in the collection of data.
44. Although law enforcement officials as of 2006 are required to indicate whether crimes are committed out of intolerance (hatred) for persons of another "race", nationality, sexual orientation, social status or belonging to any other type of group, both in the statistical card of the results of the investigation and the statistical card of the victim, the information does not appear to be systematically collected by the Ministry of Interior. ECRI is aware that racist motivation as an aggravating circumstance has been introduced only very recently, and acknowledges the importance of this new development - reason for which it is all the more relevant to collect statistics on its application by the competent authorities.
45. ECRI was also informed that the authorities collect data on the victim's ethnic origin; however not all ethnicities, inter alia the Roma ethnicity, figure among the boxes to be ticked on the statistical cards.
46. ECRI recommends collecting data in a systematic way on the application of criminal law provisions so that their effectiveness can be assessed. This data should include, inter alia, the outcome of each trial. Particular attention should be paid to collecting data on the newly introduced criminal provisions in Articles 60, 170, 170 (1), 170(2), and 312 of the Criminal Code.
47. ECRI recommends that the Lithuanian authorities strengthen the collection of data on the implementation of criminal law through training of the competent authorities.
48. ECRI recommends that the Lithuanian authorities note all ethnicities, when collecting data on the ethnicity of the victim.
49. To ECRI's knowledge the authorities do not collect systematically statistics on the application of anti-discrimination legislation, including the number and nature of the civil and administrative complaints/actions filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded, nor is this data made public.

50. ECRI reiterates its recommendation to strengthen the systematic collection and publication of data on the application of the existing civil and administrative law provisions against racism and racial discrimination including the number and nature of the complaints/actions filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.

## **Procedural rights**

51. In its third report, ECRI recommended that the Lithuanian authorities ensure that the legislation in force concerning the right of individuals to legal proceedings in a language that they understand is thoroughly respected in practice (See General Policy Recommendation No.7, paragraph 26). ECRI is not aware of any cases in which the right of individuals to legal proceedings in a language that they understand was not respected.

## **II. Anti-discrimination Bodies and Policy**

52. The Equal Opportunities Ombudsman is an independent state institution appointed by and accountable to Parliament. The current Ombudsman was appointed in 1999 and is in her third term of office (for a full description of the Ombudsman's Office mandate, see paragraph 31 of ECRI's third report on Lithuania). The Office of Equal Opportunities Ombudsman cooperates with the Parliamentary Ombudsman's Office (See paragraph 193). Each Office refers cases to the other institution, when it deems that they fall under the other's competence.

53. In its third report ECRI recommended that the Lithuanian authorities keep the effectiveness of the legislation that regulates the Equal Opportunities Ombudsman under review taking into account its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia and intolerance at national level and General Policy Recommendation No. 7. In particular, ECRI encouraged the Lithuanian authorities to consider including nationality (i.e. citizenship) and language among the equality grounds to be covered by the Equal Opportunities Ombudsman.

54. While language has been introduced as an equality ground into the Equal Opportunities Ombudsman's mandate, citizenship is still excluded (See paragraph 32). ECRI was informed that in July 2009, the competence of the Ombudsman was expanded to include conducting independent research and studies on discrimination. On the other hand, the Ombudsman's mandate does not encompass the provision of independent assistance to victims, as per ECRI's standards and the EU Racial Equality Directive. Further, while the Ombudsman can act as an expert or a witness upon a domestic court's request, he/she cannot lodge with the court a discrimination complaint. The Ombudsman's Office plays an important role in training and in raising the public's awareness on discrimination (See paragraph 59) and it may propose legislative amendments, inter alia, to repeal laws which are in breach of anti-discrimination legislation.

55. ECRI recommends to the authorities to expand the Equal Opportunities Ombudsman's mandate and introduce citizenship as an equality ground as well as the provision of independent assistance to victims. ECRI further recommends to the authorities to endow the Equal Opportunities Ombudsman with the power to initiate civil and administrative proceedings when the Law on Equal Treatment has allegedly been breached.

56. As regards the Ombudsman's Office caseload, while from 2003 to 2005 it had received only two complaints which concerned discrimination covered by

ECRI's mandate, by contrast, in 2006, 2007, 2008 and 2009, it investigated respectively 20, 23, 28 and 16 complaints concerning discrimination on the grounds of race and ethnicity and it received a few discrimination complaints on grounds of religion. ECRI notes that this marks an improvement in public awareness of anti-discrimination legislation and in confidence in this body. It must be noted however that studies show that despite the improvement there are still many persons who knowingly do not turn to national human rights bodies for redress, partly due to lack of trust in these institutions and because the sanctions they inflict are not perceived as sufficiently dissuasive. More specifically, while under the Code of Administrative Offences the Ombudsman can issue fines, he/she frequently resorts to recommendations or warnings to the institutions/natural or legal persons involved.

57. ECRI recommends that the Equal Opportunities Ombudsman consider using the full array of sanctions that are available to her, depending on the gravity of the offence.
58. In its third report ECRI encouraged the Lithuanian authorities continually to review the adequacy of the resources that are available to the Ombudsman for Equal Opportunities, in order to ensure that the Ombudsman's Office can carry out all the functions covered by its mandate, including those related to raising society's and target groups' awareness of equal opportunities legislation and remedies. ECRI also recommended that the Lithuanian authorities support the Equal Opportunities Ombudsman's efforts to improve accessibility of this institution in the different regions of Lithuania.
59. On 1 January 2005, the Ombudsman's mandate was extended to cover grounds such as race, ethnic origin and religion and, since 2008, grounds such as national origin, language, convictions and social status (See paragraphs 32 and 54). Notwithstanding the increase in the Ombudsman's Office responsibilities and the Parliament's commitment to increase funds and number of staff, the office's budget was progressively decreased and, since 2008, it has been cut approximately by 45%. Furthermore, although awareness raising activities and training are not formally part of the Ombudsman's mandate, in practice, the Government considers the Ombudsman for Equal Opportunities as the key institution responsible for this type of activity and has entrusted it with awareness/training activities in various governmental programmes on social inclusion and anti-discrimination. In particular, the Ombudsman's Office has provided training on discrimination legislation to the police, experts in employment agencies (Labour Exchanges), representatives of trade unions, municipal civil servants and business representatives. ECRI was informed that while in 2009 funds were made available to the Ombudsman's Office in order to organise trainings and publish leaflets and advertisements in connection with the National Anti-Discrimination Programme, in 2010 no resources were allocated. As regards the need to improve the Ombudsman's accessibility to different regions in Lithuania, the Ombudsman's Office had requested funding in the past to appoint representatives in ten counties; however these funds were again never allocated.
60. ECRI recommends reversing the present trend of cutting the Equal Opportunities Ombudsman's budget, especially in light of the increased responsibilities that this office has been entrusted with.
61. ECRI recommends that awareness raising activities be formally included in the Equal Opportunities Ombudsman's mandate and that a special budget line be set aside for this specific activity.

62. ECRI recommends that the authorities take concrete actions in order to ensure the presence of representatives of the Equal Opportunities Ombudsman in different regions in Lithuania.
63. As regards national programmes geared to tackle the issue of discrimination, since ECRI's third report, the Government adopted the following policy documents: 1) the Strategy on the Development of the National Minority Policy until 2015; 2) the Programme for the Integration of National Minorities into Lithuanian Society for 2005–2010; 3) the National Anti-Discrimination Programme for 2006-2008; 4) the National Anti-Discrimination Program for 2009-11; 5) The Roma Integration Programme (See paragraph 91).
64. The Strategy on the Development of the National Minority Policy until 2015, aims to teach the state language, preserve minority culture and promote tolerance, in continuity with the Programme for the Integration of National Minorities into Lithuanian Society for 2005–2010, which it replaced in 2007. Although these initiatives focus on minority culture (funds have been provided for publishing dictionaries in national/ethnic minority languages; festivals and folklore gatherings have been organised), Lithuanian language lessons have been also provided. Notably, according to the authorities, 59 classes of Lithuanian language have been organised for adults in Visaginas (See paragraph 71) and the Vilnius region. In addition, training on non discrimination and tolerance have been held for civil servants and police officers and funds have been allocated for awareness raising campaigns in the media.
65. ECRI is concerned that no funds were allocated to NGOs for the implementation of the Strategy on the Development of the National Minority Policy in 2010<sup>14</sup>. It would appear from the information provided by the authorities that the bulk of funding, i.e. 624 000 Litas, was given to four public institutions, i.e. the House of National Communities, the Roma Community Centre<sup>15</sup>, the Kaunas Cultural Centre of Various Nations and the Ethnography and Folklore Centre of the Lithuanian National Minorities.
66. As concerns the National Anti-Discrimination Programme for the years 2006-2008, its objectives were to train police officers, employees of employment agencies, trade unionists, employers, NGO representatives, pedagogues, judges and lawyers on discrimination and equality. ECRI is aware that in the context of this Programme training was indeed provided to police officers, border security guards, lawyers, trade unionists and staff of employment agencies. Under the National Anti-Discrimination Programme for 2009 – 2011, training for law enforcement and other state officials was organised on international anti-discrimination legislation. More specifically, under this programme 111 judges and 21 prosecutors were trained. ECRI has been informed by the authorities that several ministries are involved in the Programme (the Ministry of Culture implements three parts, whereas the Ministry of Social Security and Labour implements the parts which concern social security and labour) and that coordination is ensured by the Ministry of Social Security and Labour. However, it would appear that such coordination does not go beyond ensuring that relevant information is collected from the various ministries. ECRI was further informed that only ten per cent of the funds allocated have been released in the last few years.

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<sup>14</sup> According to the authorities the funding for national/ethnic minority programmes will be increased by 60% in 2011.

<sup>15</sup> See footnote 21.

67. It is clear that the financial crisis has had an impact on the resources available for implementing the above programmes, which according to the authorities have been disproportionately affected. Furthermore, ECRI notes that in addition to the problem of resources and implementation, the following structural issues should be tackled: the little coordination between the different minority/anti-discrimination programmes; the absence of a coordination mechanism, evidenced by overlapping activities; and the lack of an impact assessment, other than a financial audit report, for each programme.
68. ECRI recommends that the programmes geared to fighting discrimination be provided with adequate funding throughout their entire duration. When programmes are implemented by more than one authority, a specific body should ensure coordination. Finally, duplications should be avoided.

### III. Discrimination in Various Fields of Life

69. Social research shows that members of national/ethnic minorities experience discrimination twice as much as ethnic Lithuanians. Notably 10-12% of national/ethnic minority respondents had experienced discrimination in the areas of employment, education and healthcare.
70. As regards employment, in its third report, ECRI recommended that the Lithuanian authorities undertake additional efforts to promote genuine equal opportunities in employment, regardless of ethnicity, and that they strengthen their efforts to monitor the employment situation, including through collection of relevant data broken down by ethnic origin. Further, ECRI recommended that the authorities take steps to counter any patterns of discrimination found, notably through measures aimed at raising the awareness of public and private employers.
71. The 2009 annual report of the Equal Opportunities Ombudsman shows that discrimination in the area of employment accounted for one fourth of the discrimination complaints on the basis of "race", ethnicity and language received by this Office. The data collected shows a marked increase in cases of employment discrimination on grounds covered by ECRI's mandate as compared to the situation observed in ECRI's third report. On the other hand, ECRI was informed by the authorities that under the 2006-2008 Anti-Discrimination Programme, the Ministry of Social Security and Labour jointly with the Equal Opportunities Ombudsman and the Lithuanian Labour Market Training Service, organised training sessions for employment agencies' staff, NGOs and trade unions on discrimination and equal opportunities in employment (See also paragraph 66). Moreover, further to the decommissioning of the State owned Ignalina Nuclear Power Plant, which employed most Visaginas residents (85% of which are members of national/ethnic minorities), a series of activities were launched in order to integrate into the labour market the employees who were made redundant. As a result, 63 persons who were formerly employed at the power plant found employment in 2009 and 59 persons in 2010. According to the authorities, as of October 2010, in Visaginas 24 persons were registered as unemployed and the unemployment rate stood at 13 percent.
72. As regards monitoring of the employment situation, the collection of data on employment by ethnicity was stopped in 2004. The Lithuanian authorities have justified this by stating that the Lithuanian Labour Exchange, the entity which collected such data, provides services irrespective of the nationality/ethnicity of the job seeker. However, data is available for Roma as they benefit from specific programmes. ECRI would like to remind the



authorities that collection of employment data broken down by ethnic origin, if done in full respect of confidentiality, self-identification and informed consent, will help determine the scale of any manifestations of racism and direct and indirect racial discrimination. Given the rising number of discrimination complaints based on race/ethnicity, ECRI believes that the above measure would be welcome.

73. ECRI recommends that the authorities continue to provide training on anti-discrimination legislation to employers and trade unions. ECRI further recommends that the authorities resume monitoring the employment situation of national/ethnic minorities and migrants, thorough the collection of data on employment by ethnicity.

#### **IV. Racist Violence**

74. Since ECRI's third report, there have been a number of reports of violent allegedly racist incidents, whose racist motivation in most cases has not been confirmed by the Lithuanian authorities (See also paragraph 137). The only case, in which racist motivation was indeed proved, was the case of a Lithuanian woman who attacked a famous South African singer of Indian descent in April 2008 and was sentenced to a two month imprisonment term. In two cases, the competent authorities looked into racist motivation, but did not find it. Notably, in spring 2007, four foreigners, two of whom were dark skinned, were assaulted in Klaipeda. The competent authorities informed ECRI that the violent attack took place in the context of a robbery and that the court did not find racist motivation. Further, in December 2009, a Somali student at Kaunas Medical University died after having been beaten in October of the same year. ECRI received information indicating that he had spoken on television about violence and racism he had experienced in the country. However, the authorities have stated that the man did not allege any racial discrimination and that, further to an investigation, no racist motivation could be proved. In addition to the above, there are several cases in which, according to ECRI's information, no investigation was opened. For instance, in autumn 2007, a Member of Parliament rescued an Italian citizen who had been attacked by a neo-nazi on account of his presumed Muslim belief. Furthermore, according to NGOs, there are many incidents in which the victim does not lodge a complaint out of fear. Although, according to official sources, there has been a recent decline in the number of violent racist crimes, ECRI is concerned that the racist motivation of violent attacks is not always taken into account and recalls the need of training in this connection.

#### **V. Climate of Opinion and Public Discourse**

##### **Climate of opinion and political discourse**

75. ECRI notes that, since its third report on Lithuania, a number of statements were made by prominent political figures of the country which, at best, showed little sensibility towards the need to fight all forms of racism and, at worst, perpetuated hostility and negative stereotypes towards members of minority groups. In 2006 the Chairperson of Lithuania's Parliamentary Drug Addiction Prevention Commission, in the course of an interview with the Lithuanian TV station LNK, portrayed the demolition of Roma homes as an effective way to fight drug dealing and drug addiction. She also cited the demolition of Roma homes in Russia's Kaliningrad Region as another successful example. With reference to the march which took place in the centre of Vilnius on 11 March 2008 (See paragraph 19), during which racist slogans were shouted, for which courts imposed criminal sanctions, the Lithuanian Prime Minister stated that the event was irrelevant and that his

country was "truly a sufficiently tolerant state"<sup>16</sup> ECRI was also informed that in the course of a Parliamentary debate a politician used the word "nigger" to refer to a certain person. Finally, an article written by an official of the Ministry of Interior, which cast doubt on the extermination of Jews and criticised the Nuremberg trials, was condemned by the Minister of Interior only three weeks after it had been published in a reputable weekly magazine, a day after the authorities had received an official letter of protest from six ambassadors who, inter alia, had criticised Lithuanian authorities for failing to react rapidly (See paragraph 138). ECRI notes that the public prosecutor has opened an investigation on the matter.

76. In addition to the above statements the following incidents are also of relevance in order to evaluate the climate of opinion: the failure to react to antisemitic articles published in *Respublika* and *Vakaro Zinios* in 2009 (See paragraph 137)<sup>17</sup>; the decision of an administrative court in Klaipeda to consider the swastika a traditional Lithuanian symbol and as such, one that could be legitimately displayed in public (See paragraph 138)<sup>18</sup>: the acquittal of a person on counts of incitement to hatred for having shouted during a public march "Lithuania for Lithuanians"(See paragraph 19).

77. ECRI recommends to the Lithuanian authorities to condemn swiftly and systematically, in the strongest possible terms, all forms of racism, xenophobia and antisemitism, including articles which appear in the media, and public gatherings or marches in which racist, xenophobic or antisemitic sentiment is pronounced.

78. As regards statements made by members of Parliament (MP), ECRI has been informed that the Parliament has a code of ethics and has set-up a Permanent Commission of Ethics (the Commission) which is competent to review MP's allegedly unethical behaviour, including racist speech. When an MP is found to have violated the code of ethics, this is made public. The Commission may also reduce the MP's salary, and submit a letter to Parliament proposing his/her impeachment. As regards in particular the incident in which an MP referred to somebody as a "nigger", ECRI has been informed that the Commission is leading an enquiry. ECRI welcomes the work of this Commission; however the information it has received allows room for doubt as to the effectiveness with which ethical standards are enforced – the case of the Chairperson of Lithuania's Parliamentary Drug Addiction Prevention Commission is an example.

79. ECRI recommends that a programme of measures be put in place to enforce the Parliament's code of ethics more vigorously.

## Media

80. In its third report, ECRI reiterated its recommendation that, in the context of the media, all instances of incitement to racial hatred should thoroughly be investigated and punished.

81. According to various sources, racist comments on the internet constitute one of the persisting problems (See paragraph 29). According to data from the Prosecutor General's Office, in 2007 and 2008, respectively, 13 and 19

<sup>16</sup> It was only following criticism from the media and NGOs that the procession was condemned by top level state officials and the police initiated a pre-trial investigation on incitement to hatred.

<sup>17</sup> Those responsible for the publication of an identical *Respublika* publication had been acquitted in 2004.

<sup>18</sup> The decision, rendered on 18 May 2010, acquitted a group of persons who displayed posters with swastikas during the Independence Day parade on 16 February of the same year in Klaipeda on grounds that they are Lithuanian's historical heritage rather than symbols of Nazi Germany.

criminal cases were referred to court on counts of incitement to hatred through electronic media. Further, since ECRI's third report, the Office of the Inspector of Journalists' Ethics<sup>19</sup> (the Inspector) received a significant number of complaints about antisemitic comments on the internet. In particular, further to a series of antisemitic comments which were posted on a leading internet portal (www.delfi.lt), on 9 February 2007 the Inspector declared such comments to be discriminatory and apt to incite hatred against Jewish people. The inspector thereby issued a warning to the chief editor of this website.

82. ECRI has received conflicting information as regards the Inspector's power to act ex officio. On the one hand, ECRI has been informed by the authorities that the Law on Provision of Information to the Public contains a provision to this effect. On the other hand, according to the Inspector, she only reacts to complaints concerning racist comments in the media. Further, although the Police Department has a special unit which is responsible for cybercrime, including hate crimes, it does not continually monitor the internet in order to identify racist comments; it too, reacts to complaints. ECRI was informed that in order to counteract more effectively these types of crimes, the Safe Internet Plus project was devised, whereby persons who notice hateful comments on the internet can signal it to the competent authorities (Police and the Inspector) via a special website (See paragraph 29). If the comment is made from abroad, then the information is transferred to the competent jurisdiction. ECRI considers this tool to be extremely useful in the fight against racism. However, ECRI believes that even greater results could be achieved if the competent authorities had the capacity continually to monitor the internet and exercised its power to act ex officio.
83. ECRI recommends that the capacity of the authorities who are competent to investigate instances of incitement to hatred through the internet, be strengthened, so as to enable them continually to monitor the internet and act ex officio when they deem that a crime has been committed or the Law on Public Information has been breached.
84. Under the Law on Provision of Information to the Public, the Inspector may investigate instances of incitement to hatred as long as there is no suspicion that a criminal act has been committed. If this is the case, the Inspector refers the case to the prosecutor. The Inspector can inflict a fine of up to 7000 Litas (2000 Euros) for repeat acts and can order that the authors remove the information from a website. By contrast, it cannot order the suppression of a website.
85. ECRI recommends that the Inspector of Journalist Ethics be empowered to inflict greater sanctions than those currently available to this institution in order to deter racist expression through the press, media and the internet.
86. The Commission on Journalists' Ethics<sup>20</sup> monitors compliance with the Journalists' Code of Ethics and it may cut access to State subsidies in cases of repeated failure to respect the code.

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<sup>19</sup> *The Office of the Inspector of Journalist Ethics is a state institution accountable to the Parliament. The Inspector of Journalist Ethics is appointed for a five-year term by the Parliament and is nominated by the Ethics Commission of Journalists and Publishers. The Inspector is responsible for the supervision of the Law on the Provision of Information to the Public as well as the Law on the Protection of Minors against the Detrimental Effects of Public Information.*

<sup>20</sup> *The Commission on Journalist Ethics is a self regulatory body.*

87. ECRI is also concerned about the media coverage of persons of Roma ethnicity which is limited to their association with criminal activities and drug dealing or consumption.
88. ECRI recommends that the Lithuanian authorities impress on the media, without encroaching on their independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of the Roma community and the need to play a proactive role in countering such an atmosphere.

## VI. Vulnerable/Target Groups

### Roma

89. To this day, the Roma community remains one of the most vulnerable groups in Lithuanian society and is subject to multiple discrimination in the fields of education, healthcare, housing, employment and policing. In its third report ECRI recommended that any new programme aimed at the integration of the Roma population into Lithuanian society be backed by political will, notably, that adequate funding be made available for its implementation as well as for the co-ordination of the departments that are responsible for the implementation of different segments of the programme.
90. ECRI regrets that no improvement has been observed in this respect, with the exception of the funding of a number of measures in the realm of education.
91. The Programme for the Integration of Roma into Lithuanian Society for the years 2008-2010 aimed at addressing education, health care, employment and social issues affecting the Roma community, as well as preserving its distinct identity. However, according to various sources, including the Lithuanian authorities, this Programme and those that preceded it have not produced any tangible results, despite some positive initiatives undertaken in respect of the education of Roma children and, to a far lesser extent, in respect of employment (See paragraph 120). In any event, the Programme appears to have lost momentum. The required financial resources were only partially allocated in 2008 and 2009, whereas, according to several sources of information, no resources were attributed in 2010<sup>21</sup>. Moreover, ECRI is concerned about the fact that the new Programme for the Integration of Roma into Lithuanian Society for the years 2010-2012 (which according to the authorities would focus once more on education and assistance to families) had not yet been approved in November 2010; at that time the implementation Guidelines were still in the process of being drafted. In ECRI's view, more decisive action and political will is required in order to engender any concrete improvement in the life of the Roma people.
92. Moreover, ECRI notes with concern the absence of a holistic approach in tackling the problems faced by Roma as regards access to education, employment, housing and healthcare. Obstacles faced in one field of life (access to proper housing and sanitation, for instance) create a vicious circle (problems of access to education or employment for instance) ultimately leading to social exclusion. Accordingly, it is not possible to solve the problem durably without coordinated action on all fronts. Various sources, however, have highlighted the lack of coordination between the public authorities that implement the respective parts of the Roma Integration Programme, in accordance with their mandate. In particular, concern was

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<sup>21</sup> The authorities, on the other hand, have informed ECRI that resources were allocated in 2010 and attributed to the Roma Community Centre.

voiced by the authorities and civil society as regards the lack of coordination in the drafting and implementation of the Roma Integration Programme with the municipality of Vilnius, which is directly responsible for certain issues such as land ownership and access to basic services. In addition, according to information received by the authorities, the municipality had an autonomous integration programme (the Municipal Integration Programme) for Roma, whose implementation was not coordinated with the national Roma Integration Programme<sup>22</sup>.

93. Further to the dismantlement of the Department of National Minorities and Lithuanians Living Abroad (DNMLLA), the Ministry of Culture is now formally responsible for the national Roma Integration Programme and, more generally, for Roma issues. Various sources have highlighted the inappropriateness of identifying the Ministry of Culture as the competent authority for Roma issues, as most problems faced by Roma are of a social nature. Furthermore, the Ministry of Culture has acknowledged its limited resources and experience in the field and has suggested that a new coordinating body be set up.
94. ECRI recommends that an inter-institutional body on Roma issues be set up with a view to coordinating the action of the authorities responsible for the implementation of Roma Integration Programme. Coordination with the Municipality of Vilnius should in particular be further enhanced. ECRI moreover recommends that the authorities guarantee adequate funds for the Roma Integration Programme.
95. In its third report, ECRI recommended that the Lithuanian authorities extend any new integration programme to cover the whole Roma population of Lithuania and that the Roma community be involved in its preparation. The Lithuanian authorities, however, have explained that although the 2008-2010 Programme, in principle, addressed the wider Roma community beyond the municipality of Vilnius, in practice, the lack of funds and the little interest expressed by the Roma population resulted in the Programme having a more narrow geographical scope.
96. Although the biggest Roma community is located in Vilnius and the latter is the only city in which Roma live compactly in a single encampment, Roma living in other parts of the country face similar problems<sup>23</sup> which should also be addressed by the authorities.
97. ECRI reiterates its recommendation that the new Roma Integration Programme should cover the whole Roma population of Lithuania.
98. In its third report, ECRI urged the authorities to ensure that the Roma community is associated to the designing of any new strategy concerning the community and that the capacity of the Roma community to participate and shape decision-making be enhanced. Various sources have confirmed that, to a certain extent, the Roma community through its representatives was consulted during the drafting process of the Roma Integration Programme. More specifically, a draft was sent to them for comments. However, no measures have been taken to ECRI's knowledge as concerns the

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<sup>22</sup> ECRI notes that there the municipal programme has been criticised for being inconsistent, promoting on the one hand the legalisation of the unauthorised homes of the Roma and, on the other hand, encouraging them to leave the Kirtimai encampment .

<sup>23</sup> According to the Raxen Report on Housing conditions of Roma and Travellers, the 2001 census indicated that Roma were concentrated in the municipalities of Vilnius (640 persons), Kaunas (364 persons), Panevėžys (141 persons), Šiauliai (170 persons), and Klaipėda (58 persons).

enhancement of the community's capacity to participate and shape decision-making.

99. ECRI strongly recommends that on issues concerning Roma the communities concerned are consulted appropriately.

100. In its third report, ECRI recommended that the new integration programme include measures targeted at the non-Roma population and aimed at countering societal prejudice. It would appear that the only initiative launched was the creation of the website [www.roma.lt](http://www.roma.lt) which allegedly presents information on Lithuanian Roma in three languages – Lithuanian, Russian and English. ECRI notes that this website does not contain any information on Roma culture or history. Further, no campaign has been launched in order to overcome societal prejudice towards this segment of the population or to sensitise the population on the importance of overcoming the exclusion of this community.

101. ECRI reiterates its recommendation that decisive action be taken in order to sensitise the non Roma population of the importance of countering societal exclusion of the Roma and to fight discrimination towards this segment of society.

102. In its third report, ECRI made a series of recommendations related to education, notably that: (i) Roma children who have attended preparatory courses in view of their integration in mainstream schools, integrate into such schools as soon as possible; (ii) the authorities find ways to promote more regular school attendance of Roma children, especially of girls and to this end, that they work closely with the families of these children; (iii) the authorities address any disproportionate representation of Roma children in schools designed for children with special needs.

103. As mentioned earlier on in this report, several positive steps have been taken that go in the direction of the above-mentioned recommendations. ECRI notes that pre-school training classes for Roma children aged 6 to 8 years are organised aimed at preparing them for elementary school. Social pedagogues have been hired in three schools in the Vilnius area in order to provide pedagogical, linguistic and psychological assistance to Roma children. The Vilnius municipality provides financially disadvantaged Roma families with school textbooks and meals at school free of charge. In this connection, pedagogues assist families who are incapable of lodging the relevant requests themselves. Further, Roma families can receive means-tested social assistance. In 2009, two Roma students (one attending university, the other attending high school) were granted scholarships of 1000 litas. In the Roma Community Centre in Vilnius, Roma children are provided with meals free of charge as well as courses in art, fine-arts, sports, games, computer courses and free access to the Internet.

104. ECRI's delegation visited one school in Vilnius, the Sauletekis school, in order to examine how the above measures were implemented in practice. The ECRI delegation all in all had a positive impression of the measures that the school had adopted in order to integrate Roma children. ECRI has reservations only about the separate class for Roma children of grades 1 to 4, of which more will be said in the paragraph below. Further, ECRI's delegation was also disappointed to see several Roma pupils who were attending the separate Roma class, loitering in the Roma encampment (Kirtimai) on a school day, a few days later.

105. ECRI was informed that 94 Roma students, aged 7 to 18 were enrolled in Sauletekis school in 2010 and that in 24 years, no pupil has ever completed

secondary school<sup>24</sup> whereas four pupils have completed basic education (grades 5 to 10). By contrast, in 2010 six Roma pupils were enrolled in 10<sup>th</sup> grade and one in 12<sup>th</sup> grade. The school employed three social pedagogues: one, with the aid of a law-enforcement official, visits once a week approximately ten families at the Roma encampment in order to motivate parents to send their children to school and to address any social and psychological problems; the second pedagogue meets with Roma pupils at school to help them with their studies; the third pedagogue works with children who have special needs or who have disabilities (these pupils are integrated in the usual school structures). ECRI considers that their work has a positive impact and that their presence and function should be further strengthened in order to have a concrete effect on the attendance and performance of Roma children. ECRI is therefore, very concerned to hear that the position of these pedagogues will be funded only until the end of 2010 and considers this to be a clear step back. Further, ECRI holds reservations on the separate class for Roma children mentioned in paragraph 104 of this report. ECRI has been informed that in 2011 this separate class will disappear as no new pupils are accepted therein. However, ECRI must stress that Roma children should not be segregated in special classes or schools; they should be integrated in regular classes and, if need-be, receive appropriate assistance in order to be at a par with fellow classmates.

106. ECRI strongly recommends maintaining and strengthening the positions of social pedagogues who work with Roma children.

107. ECRI has been informed by several sources that early drop-out from school still remains the primary problem affecting Roma children's education. Many pupils join primary school; however their number decreases steadily at basic and secondary education. The cause of poor school attendance is partly due to parents' lack of motivation. However, ECRI has been informed that such motivation is stronger when parents themselves have attended school. ECRI takes this as an indication that Roma schooling would increase greatly if it were possible to educate one generation of pupils, thereby creating a virtuous cycle. Other causes of early drop-out are early marrying age for girls and involvement in profit-making activities for boys. With respect to the early drop-out rates for girls, ECRI notes that no special measures have been adopted by the authorities in order to counter this phenomenon. Poor school attendance has also been invoked by the Principal of Sauletekis school in order to explain to ECRI why some Roma children attend a separate class. More specifically, according to the principal, the separate class has been created upon the request of parents and because Roma children do not attend class on a regular basis and consequently lag behind.

108. ECRI recommends that Roma adults/students who have completed their studies be involved in spurring children's motivation to attend school, notably by providing their "success story".

109. Those responsible for Sauletekis school are of the opinion that better transportation services from the Kirtimai settlement would help boost school attendance. ECRI recalls that in urban areas all school children have a right to reduced fares, the reduction depending on the family's financial situation. However, ECRI has also been informed that the Kirtimai settlement is not

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<sup>24</sup> The Lithuanian schooling system is divided in primary school - grades 1 to 4, basic school - grades 5 to 10, and secondary school - grades 11 to 12. School is compulsory until 10th grade and the law provides for administrative sanctions in case of unjustified absences. However, these sanctions do not appear to be enforced.

well serviced by public transportation, the nearest bus stop being “less than a kilometre away”. ECRI considers that this could indicate a long distance for children of young age to cover especially in a country where weather conditions are not always clement. Given that Kirtimai is home to a significant number of school-age children, ECRI considers that further efforts can be made to facilitate school attendance by redesigning the bus stops system.

110. ECRI recommends that efforts should be made to facilitate school attendance by children living in Kirtimai settlement by providing better transportation services.

111. ECRI did not receive any information indicating that Roma children attend disproportionately special needs schools.

112. In its third report ECRI recommended to provide specific training for teachers on working in a multicultural environment and to include information on Roma history and culture in the curricula of all schools and train teachers in these subjects. The Lithuanian authorities have told ECRI that under the Roma Integration Programme secondary school teachers working with Roma pupils were to be trained and information about Lithuanian Roma history and culture was to be included in textbooks and programmes of secondary education. However, these measures were not implemented due to lack of funds.

113. ECRI reiterates its call for specific training for teachers on working in a multicultural environment. In accordance with its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, ECRI also recommends that the Lithuanian authorities include information on Roma history and culture in the curricula of all schools and that they train teachers in these subjects.

114. In its third report, ECRI recommended that the authorities take steps to improve the housing situation of the Roma population, notably by seeking a durable solution in close co-operation with this community and identifying as wide a range of housing alternatives as possible.

115. ECRI has been informed that since its last report, some Roma families have received social housing. The 2009 Raxen report on Housing Conditions of Roma and Travellers for instance shows that since 2006, 18 flats have been rented to Roma in the Vilnius area (out of 40 requests for social housing) and 40 families are currently in a queue to obtain such housing. ECRI however is concerned that since its last report, virtually no steps have been taken in order to find a wide range of housing alternatives for the Roma community, particularly the community residing in Kirtimai settlement in Vilnius. Under the Roma Integration Programme for 2008-2010, the authorities were to draft a feasibility study on the housing alternatives for Roma. However, no such study/plan has been produced. Further, in 2008 the authorities had announced plans to provide Roma living in Kirtimai with the opportunity to legalise certain unauthorised homes. However, the municipal authorities informed ECRI that no such legalisation was possible due to the complete state of disrepair of the homes and the non conformity with parameters and standards provided by law.

116. ECRI in its second and third report described the living conditions in Kirtimai settlement as being extremely poor, lacking basic services and amenities. ECRI, a delegation of which visited the settlement in November 2010, confirms that this evaluation is still valid. The fact that most dwellings are unauthorised and considered illegal implies that most families cannot access



public utilities such as electricity and water. Nor can they access important private services such as private credit. This has an impact on all areas of life such as health, education and employment. In particular, both Roma representatives and other interlocutors have highlighted that unhygienic living conditions and absence of basic amenities make Roma children's school attendance very difficult. ECRI's delegation, indeed, during its visit to the Kirtimai settlement on a cold winter day, observed that Roma families living in the encampment only have access to two communal water pumps which provide cold water. ECRI observes that this state of affairs renders personal hygiene in winter time very difficult and clearly affects children's ability to go to school.

117. ECRI urges the authorities to address the housing of Roma as a matter of priority. A number of viable housing options, including social housing or subsidies for rental, should be laid out and discussed with the Roma community. As a measure of last resort, and on a strictly temporary basis, while other options are being explored, the legalisation of homes already built should be foreseen. This measure would at least provide Roma people with a legal address of residency and, hopefully, access to utilities and services they are currently lacking.

118. ECRI urges the authorities to address the problem of housing as a matter of priority. A number of viable housing options, including social housing and subsidies for the rental of dwellings should be laid out and discussed with the Roma community. If in two years time no alternative housing arrangements have been made, the legalisation of homes already built should be foreseen as a measure of last resort, on a strictly temporary basis while other options are being explored.

119. ECRI in its third report recommended that any claims for compensation for unlawful destruction of property in the Kirtimai settlement are examined and processed (for more information on the destruction of the property see ECRI's third report on Lithuania, paragraph 87). After four years of court proceedings, the Supreme Administrative Court found that the municipality did not have the authority to order the demolition of the unauthorised homes in the settlement. The court therefore awarded compensation for non-pecuniary (non-economic) damages to the victims<sup>25</sup>. ECRI is pleased that the above claims were examined and processed. However the court's decision emphasises once more the importance of resolving the illegal nature of the homes in the Kirtimai settlement.

120. In its third report ECRI recommended that the Lithuanian authorities take steps to improve the employment situation of the Roma community of Lithuania while addressing at the same time the discrimination faced by it. ECRI has been informed by the authorities that, under the Roma Integration Programme for 2008-2010, an event called Labour Market Days was organised on a quarterly basis. During these days, Roma were encouraged to search for employment and to take part in vocational training; language training was also organised. As regards the EQUAL programme, already launched at the time of ECRI's third report, its implementation ended in 2008. The programme aimed to develop mechanisms for the integration of Roma into the labour market and was financed by the European Social Fund. Under this programme a few vocational courses were organised<sup>26</sup> and Roma were assisted in finding suitable jobs. However, out of 84 participants, only six persons would appear to have found employment. In addition to the

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<sup>25</sup> *At the same time fines were inflicted on them due to the illegal nature of their homes.*

<sup>26</sup> *On driving, flower arrangement and languages.*

above, training on skills development and assistance in finding suitable employment was provided under the EU funded project Turn to Roma: Measures of Innovative Roma Participation in the Labour Market. Further to this programme, 30 persons found employment. However, not all persons remained employed. Furthermore, ECRI is pleased to note that in 2009, an employment search engine was created in the Roma Community Centre, in order to assist Roma in finding employment. The latter search engine is connected with the Labour Exchange Office.

121. ECRI has been informed by the authorities that around 90 persons of Roma ethnicity have registered with the Vilnius Labour Exchange and that only approximately 30 people are regularly employed. It must be borne in mind that among the unemployed only persons who are registered in the labour exchange have access to vocational training, social services and full health insurance<sup>27</sup>. This implies that registration in the Labour Exchange is of paramount importance in order to have access to the Lithuanian welfare system and that, accordingly, many Roma in Vilnius do not benefit from the latter (see footnote 23).
122. ECRI has also been informed that in order to secure registration in the Labour Exchange, previous work experience is required. Further, once registration has been secured, it is difficult for Roma to benefit from training and to find employment due to educational requirements that they do not meet. At the same time, ECRI notes that there have been cases in which persons who had benefited from training and were offered a job, refused such an opportunity - the social assistance benefits that this person and his/her spouse would obtain as unemployed persons would in fact be financially more advantageous than the employment itself. Given this data, ECRI is of the opinion that the Lithuanian authorities must rethink how to best promote employment and access to social service for Roma people.
123. ECRI recommends that registration in the Labour Exchange should be facilitated by eliminating the requirement of previous work experience, and further promoted, by explaining the important implications of registration (such as social welfare entitlements). ECRI encourages the authorities to continue and multiply the vocational training initiatives and to assist Roma in finding suitable jobs. ECRI further recommends to the authorities to explore ways in which employment will not be considered financially less attractive than welfare benefits.
124. In its third report ECRI recommended that the Lithuanian authorities strengthen their efforts to ensure that all Roma enjoy adequate access to primary and secondary healthcare and to improve their general health situation. ECRI has been informed by the Lithuanian authorities that most Roma living in Lithuania possess Lithuanian citizenship or residence permits and consequently have the same right to health care as other citizens and legal residents. However, as mentioned in the paragraphs above, full health coverage for the unemployed is conditional on registration in the Labour Exchange.
125. ECRI notes that drug dependency continues to be a serious problem among the Roma community living in Kirtimai and is pleased that, since its third report, the mobile service providing preventive care and assistance to drug addicts has not discontinued its work.

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<sup>27</sup> Those who are not registered have access to basic health services.

126. ECRI has been informed that since its last report, Roma have experienced serious delays in receiving emergency services, notably the ambulance service. Several sources have told ECRI that the ambulance service arrives on average with one to two hours of delay and that, as a result, one person died<sup>28</sup>.
127. ECRI recommends that the authorities enquire into the delays with the ambulance services experienced by Roma living in Kirtimai, and ensure emergency services are provided to this community in a timely manner.
128. In its third report, ECRI recommended that the Lithuanian authorities further investigate the situation as concerns Roma possession of citizenship, residence permits and other personal documents and take measures to facilitate the acquisition of the relevant documentation. In this connection, ECRI was informed that, prior to its abolition, the DNMLLA, under the Programme for the Integration of Roma into Lithuanian Society for the years 2008-2010, had introduced measures in order to provide identity documents to Lithuanian citizens of Roma ethnicity as well as Roma non citizens who had the means to sustain themselves. This measure was implemented via the Roma Community Centre, which in a period of two years, assisted around 30 Roma in receiving identity documents.
129. In its third report, ECRI recommended that the authorities engage in constructive dialogue with the members of the Roma communities on issues of policing and that, in particular, the authorities provide information to the Roma community about avenues for reporting police misconduct and thoroughly investigate all alleged such cases towards members of this community.
130. ECRI was informed by the authorities that meetings are organised and attended by representatives of the Vilnius City Chief Police Commissariat and the Vilnius Roma community. During these meetings Roma are briefed on avenues to report police misconduct or to lodge complaints concerning other institutions. Meetings with the families of children in the Roma settlement have also been organised by the police in order to motivate them to send their children to school. In 2010, two such meetings were organised in the Roma Community Centre.
131. Indeed, ECRI has been informed that complaints of police ill-treatment were lodged by Roma with the police and the Seimas Ombudsman. These complaints often refer to cases of violence used during police raids or patrollings in Kirtimai settlement. In one such case, one person allegedly was stopped by the police and force was used to impede him/her from reaching the other side of the encampment. This person later lodged a complaint to the police.
132. ECRI is aware that police surveillance is needed in the Kirtimai settlement due to problems of drug dealing and drug use. However, incidents such as those described above and more generally, intimidation of persons living or visiting the settlement should be avoided.
133. Roma representatives have highlighted that, notwithstanding a few complaints having been lodged, most Roma are afraid to address State institutions.

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<sup>28</sup> The authorities have provided data for the period between January and March 2011, according to which the average waiting time for the arrival of the ambulance was 16 minutes.

134. ECRI encourages the authorities to continue strengthening the dialogue between the police and the Roma community in an appeasing atmosphere such as that provided by the Roma Community Centre so as to avoid stigmatisation, enhance confidence and cooperation and improve the security situation in the Kirtimai settlement and around it. ECRI recommends that the authorities ensure that the police do not stigmatise members of the Roma community and that episodes of gratuitous violence be avoided in all circumstances.

### **Jewish community**

135. In its third report, ECRI strongly recommended that the Lithuanian authorities monitor all instances of antisemitism very closely and strengthen their efforts to find and punish the perpetrators of antisemitic crimes. In particular, it recommended that the Lithuanian authorities ensure that the existing provisions against incitement to racial hatred are applied in all cases of incitement to hatred against the Jewish communities.
136. ECRI has been informed that there continue to be incidents of antisemitism in Lithuania against persons and property. Whereas some manifestations of antisemitism have been followed-up with legal action and/or condemned by the authorities, many other incidents have not received any attention.
137. Since ECRI's third report, there have been several antisemitic acts such as the vandalising of Jewish cemeteries, memorials and monuments. In most cases, investigations were opened by the relevant authorities, however the culprits were not found. Furthermore, several antisemitic articles have appeared in the press and on the internet, particularly in reaction to discussions held on Jewish property restitution and on a dispute between the Jewish community and a company that wanted to build on an area that was, until the 19th century, a Jewish cemetery. ECRI's attention was drawn to two articles, published in the daily newspaper Respublika and in the daily Vakaro Zinios in 2009: the first was illustrated by the caricatures of an orthodox Jew and a homosexual holding the globe under the heading "Who rules the World?"; the article on the issue of property restitution to the Jewish community, was illustrated by a photomontage of the Chairman of the Jewish community behind an abacus. To ECRI's knowledge these articles were not condemned by the authorities<sup>29</sup>. Finally, in 2010 a pig's head with a hat and ear locks was placed in front of the synagogue door in Kaunas, during Sabbath service. Although an investigation was opened, the police qualified the act as public nuisance. In ECRI's view, failure to condemn such publications or to prosecute cases as racist crimes may generate the conviction in society that antisemitic behaviour is not reproachable.
138. ECRI also expresses great concern about the belated reaction of the authorities to an article published in November 2010 in the weekly newspaper Veidas (See paragraph 75) and about the decision of 18 May of a court in Klaipeda to consider the swastika a traditional Lithuanian symbol (See paragraph 76).
139. In its third report, ECRI encouraged the Lithuanian authorities to finalise, in close co-operation with the Jewish community, the adoption of the amendments to the Law on the Procedure for the Restoration of the Rights of Religious Communities to Existing Real Estate Property.

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<sup>29</sup> Criminal (breach of Article 170 of the Criminal Code) and administrative proceedings had already been opened against Respublika for the same publication in 2005 and 2006 without success.

140. ECRI has been informed that a draft law on the Compensation of Real Estate Property to the Lithuanian Jewish Community was adopted by the Government and is now pending before the Parliament. Under the new draft law, around 128 million Litas, corresponding to 30% of the actual property claims, will be deposited in a fund and transferred to various Jewish communities. The money will be earmarked for religious, cultural, educational, scientific and charity purposes and the respective Jewish communities will decide how to distribute and use the sums. As already mentioned in the paragraphs above, the draft law has stirred much debate and antisemitic sentiment in Lithuanian society and such problematic is also referred to in its preamble. The latter however does not explain why a law on property restitution/compensation is specifically needed for the Jewish community. It must be borne in mind that the law regulating property restitution (the 1995 Law on the Procedure for the Restoration of the rights of Religious Communities to Existing Real Property) only concerned religious communities which were present in Lithuania prior to 21 July 1940, were expropriated by the State, and in respect of which a successor religious community has been re-established and recognised by the competent supreme religious authority of the confession. Due to the Shoah, apart from few isolated cases, no Jewish “successor religious communities” were present in Lithuania, as most Jews had either been exterminated or had fled. Nor was there a supreme religious authority which could recognise the “revived” religious communities. Therefore the conditions set by the law could not be satisfied<sup>30</sup>. For this reason, an ad hoc law for the Jewish community was needed. ECRI believes that these circumstances should be made clear to Lithuanian society in order to disperse any antisemitic sentiment which has been stirred by discussions over property restitution/compensation.
141. ECRI recommends that the authorities take action to dispel any antisemitic sentiment in connection with property restitution to the Jewish community. For instance, the authorities could provide a clear explanation of the reasons behind the ad hoc law for the compensation of the Jewish community.
142. As regards the restitution of private property expropriated during WWII, ECRI notes that various laws adopted successively as of 1991 have restricted the eligibility of Jewish persons who had “repatriated”<sup>31</sup> to Israel, to apply for property restitution<sup>32</sup>. According to these laws, ownership rights can only be restored upon Lithuanian citizens. Until 2006, the Law on Citizenship distinguished between ethnic Lithuanians and others in connection with “retention” of the right to Lithuanian citizenship. Non ethnic Lithuanians retained the right to citizenship if they had not “repatriated”. In a judgement issued in November 2006, the Constitutional Court found that this distinction breached the principle of equality. However, persons who had their position vindicated by the judgement of the Constitutional Court could not exercise their right to property restitution because the relevant time-limit had expired. While their position has improved under the 2004 Restoration Amendment Act, ECRI notes that this piece of legislation does not give a right to people who have missed the time limit as a result of the application of discriminatory rules, to apply for property restitution. It simply provides that courts may

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<sup>30</sup> The Prime Minister adopted a special order in 1992, further to which a few synagogues were returned.

<sup>31</sup> Repatriation was understood to be departure to the ethnic homeland or settlement and interpreted as encompassing the return of Jewish persons to Israel.

<sup>32</sup> On the other hand, Jewish persons who had left Lithuania for other destinations were considered eligible under the law to apply for property restitution.

extend this time limit on a case-by-case basis if they deem that the statutory time limit was not respected due to important impediments.

143. ECRI recommends that persons who fell in the “repatriated” category and who are covered by the judgement of the Constitutional Court of November 2006, be recognised a right to lodge claims for the restitution of private property.

#### **Other national/ethnic minorities**

144. According to the 2001 census, there are around 115 national/ethnic minority communities in Lithuania. The largest are the Polish and Russian communities, followed by the Byelorussian and the Ukrainian.

145. In its third report, ECRI recommended that the Lithuanian authorities: ensure that the Council of National Minorities is thoroughly consulted and heard on all matters of relevance to it; that adequate funding is available for the implementation of the Action Programme for the Integration of National Minorities into Lithuanian Society (2005-2010); and that the authorities address any manifestations of prejudice or hostility vis-à-vis members of national/ethnic minorities.

146. Since ECRI’s last report, in an effort to curtail spending, responsibilities for the development and implementation of minority policies and for the protection of national/ethnic minorities’ rights were reorganised. In December 2009 the DNMLLA, which used to be in charge of national/ethnic minority policy, was dismantled and its functions were attributed to the Ministry of Culture. ECRI notes with concern that no assessment of the DNMLLA’s work was conducted prior to the above reorganisation. Most importantly, the Ministry of Culture has highlighted that it has reservations about taking on board minority issues, that the newly established department of minorities is understaffed and that the budget, compared to the resources available to the DNMLLA, has been cut by two thirds. ECRI has also been informed that during the transition from the dismantlement of the DNMLLA to the set-up of the new department of minorities, serious problems were encountered both with regards to staff and the organisation of the work. Several resources have further indicated that, while the DNMLLA was in charge of all issues affecting national/ethnic minorities, now the responsibility has been split up between various competent ministries and the Ministry of Culture cannot ensure coordination between the various stakeholders.

147. The Government has also established a Commission for Ethnic Minorities Affairs whose mandate is to make proposals to integrate national/ethnic minorities into the country's political, public and cultural life and to provide expertise on the preparation of draft legal acts relating to national/ethnic minorities. The Commission is headed by the Prime Minister and includes the Ministers of Culture, Finance, Foreign Affairs, Social Security and Labour, Education and Science, and Internal Affairs, the chairman of the Council of Ethnic/National Minorities and six representatives of national/ethnic minorities. ECRI did not have the opportunity to meet with the Commission for Affairs of Ethnic Minorities.

148. The Council of National Minorities continues to carry out its advisory role on cultural issues, policies and legislative acts which affect national/ethnic minorities and works under the responsibility of the Ministry of Culture. However, the demand for consultations would appear to be much lower than before and, ultimately, the Council of National Minorities does not seem to be an empowered political player.

149. ECRI recommends that the authorities explore ways to strengthen the currently weak framework governing national/ethnic minority policy, clarify the issue of responsibilities over the antidiscrimination/integration components of national/ethnic minority policies and intensify consultations with the Council of National Minorities.

150. In its third report, ECRI recommended that the Lithuanian authorities pursue their efforts in the field of providing minority language education and that they address in close consultation with the representatives of the national/ethnic minorities concerned any persisting difficulties, notably as concerns the number of students needed to establish minority language class and schools and availability of good quality textbooks.

151. ECRI has been informed that the number of students required to establish minority language schools still remains a problem, especially as regards the last years of secondary school. More generally the authorities state that over the last five years the number of school children has decreased by 22,000 each school year. Accordingly, many schools have been shut down, including schools with minority language as the language of instruction. Certain minority representatives have highlighted that in certain areas the only school offering schooling in minority languages was closed. Although the authorities contest it, another point which was highlighted was the persisting scarcity in minority language textbooks. For instance, there were no eighth grade history textbooks in Russian. As concerns secondary school final examinations, the rules provide that, while questions are asked in Lithuanian, students attending minority schools may reply in their mother-tongue. However, ECRI was informed that the authorities are considering to eliminate this provision and to make responses in Lithuanian mandatory. According to minority representatives, this would already be the case in practice.

152. On a general note, ECRI is of the impression that since its third report on Lithuania, education in minority schools is increasingly provided in Lithuanian. ECRI considers that issues related to the right to education in a minority language can be best addressed under the FCNM. ECRI nevertheless is concerned about the right of minorities to receive quality education just as non-minorities. In this connection, ECRI is worried that the alleged lack of textbooks in the minority languages and the fact that minority teachers are increasingly required to teach in the official language instead of their mother-tongue, may frustrate the above right.

153. ECRI recommends that the authorities ensure that children belonging to national/ethnic minorities are not effectively deprived of existing rights to minority education. It also recommends that the authorities ensure the availability of textbooks in minority languages at all levels of education, to the extent that the curriculum provides for the teaching of subjects in minority languages. Lastly, ECRI recommends that education in Lithuanian should be imparted by teachers who speak this language fluently.

### **Refugees and asylum seekers**

154. In its third report, ECRI reiterated its call on the Lithuanian authorities to ensure that all persons entitled to refugee status under the Convention relating to the Status of Refugees actually secure such status. It recommended in particular that further efforts be made to enhance the capacity of the administrative courts to deal effectively with asylum appeals cases and that the Lithuanian authorities raise the awareness of all those

involved in the asylum determination procedure of gender-specific aspects of asylum.

155. ECRI notes that, similarly to the situation observed in its third report, the number of individuals who have been granted refugee status remains very low; by contrast, the number of persons who secure subsidiary protection is much higher. The authorities have justified these figures by stating that most applicants are of Chechen origin and have been recognised subsidiary protection on account of human rights violations which have been registered in their homeland. In 2009, out of 449 asylum claims, 11 persons were granted refugee status and 217 persons were granted subsidiary protection. The overall recognition rate of first time applications in 2009 was 29% (Convention status 7.6%; subsidiary protection 21.5%). In 2008, 540 asylum applications were lodged, many of which at state border crossing points (110); out of these, refugee status was granted to 14 persons and 350 were granted subsidiary protection. In 2007, out of 480 asylum seekers, nine persons were recognised as refugees and 393 were granted subsidiary protection.
156. As regards the capacity of the administrative courts to deal effectively with asylum appeals cases, the authorities have stated that training programmes and seminars were offered to civil servants of the Migration Department and to judges of administrative courts on the subject. According to several sources however, when dealing with appeals in asylum cases, administrative courts in most instances uphold the Migration Department's decisions, basing their judgments on the information provided by the latter, often without even examining the information presented by the applicant. In 2009, for instance, out of 104 appeals on first instance, 3 decisions of the Migration Department were partially annulled and files were returned for its re-examination. In neither of these cases did the re-examination lead to recognition of asylum. As regards appeals on second instance, out of 32 appeals, only 4 files were returned to the Migration Department for re-examination. More importantly, ECRI has been informed that judges in administrative courts do not necessarily have expertise on asylum issues and deal with a multitude of cases. ECRI therefore maintains its opinion that administrative courts should develop expertise in such issues, and to this end, greater efforts should be made to enhance their capacity to deal effectively with asylum appeals cases.
157. As concerns the need to raise the awareness of all those involved in the asylum determination procedure of gender-specific aspects of asylum, ECRI has been informed that in recent years the UNHCR has organised seminars for all relevant governmental institutions, including courts, civil servants of the Migration Department and NGOs which focused on gender issues.
158. ECRI reiterates its call on the Lithuanian authorities to ensure that all persons entitled to refugee status under the Convention relating to the Status of Refugees actually secure such status and to take action to enhance the capacity of the administrative courts to deal effectively with asylum appeal cases.
159. In its third report on Lithuania, ECRI recommended that the Lithuanian authorities ensure that asylum seekers only be detained when it is absolutely necessary and that measures alternative to detention be used in all other cases. It recommended, in particular, that children are not kept in detention.
160. ECRI welcomes the fact that, since ECRI's third report, the Law on the Status of Aliens has been amended and no longer provides for the detention



of persons who have illegally entered or stayed in Lithuania, if they have lodged an asylum application. If the person has illegally entered or stayed in Lithuanian territory and has lodged an asylum claim following his/her detention, in principle, illegal entry/stay charges are dropped and he/she is released from detention. On the other hand, ECRI has been informed that in order to be released, the detained person or his/her attorney must apply to the court. In this connection, ECRI has been informed of cases in which non-citizens remain in detention due to poor knowledge of the procedure or inadequate contacts with their lawyer. Further, ECRI has observed that courts are not required to consider, as matter of priority, measures alternative to detention; consequently no such measures are applied.

161. As regards unaccompanied minors seeking asylum, they are accommodated at the Refugee Reception Centre in Rukla. ECRI is not aware of unaccompanied minor asylum seekers kept in detention.

162. Given that Lithuanian domestic law provides for the release of persons who have lodged an asylum application and who are detained on grounds of illegal entry or stay in the Lithuanian territory, ECRI recommends that such release no longer be made conditional on the detainee's or his/her lawyer's application to court. The release of the person, for instance, could be initiated by the Migration Department itself, who could apply to court to this end, upon receipt of the asylum application.

163. In its third report on Lithuania, ECRI recommended that the Lithuanian authorities keep the list of grounds for refusing asylum seekers admission to the territory under review in order to ensure that refugees are not prevented from obtaining protection in Lithuania. It also recommended that adequate time be made available for asylum seekers to challenge all asylum-relevant decisions concerning them, including decisions on admission to the territory.

164. The conditions for refusing asylum seekers admission to the territory have not changed since ECRI's third report, and therefore still include: transit through a safe third country, arrival from a safe country of origin and submission of a manifestly unfounded application. In this connection, a problem that has been raised is the fact that, under the Law on the Status of Aliens, when a person arrives from a safe third country, the application is not examined as to the substance. ECRI notes that Lithuania does not have a list of safe third countries. In general, ECRI is concerned that refusal to examine the merits of an asylum application on this ground could lead to a violation of the principle of non-refoulement as enshrined in international human rights and refugee law, as not all countries may ensure the same level of protection. Further, even though statistics show that asylum applications are increasingly being lodged at border crossing points, ECRI has not receive statistics on how many persons have been refused access to the territory and their application not examined on the grounds indicated above, nor of how many persons have appealed against such decisions.

165. In the above cases, the applicants' asylum request must be processed by the competent authorities within 48 hours. This period, according to the authorities may be extended to seven days. During the first 48 hours, the applicants stay at the border. Beyond this period, and in case of appeal, they are accommodated at the Pabrade Foreigners Registration Centre. ECRI has received complaints about problems related to facilities capable of accommodating asylum seekers at the border during the first 48 hours.

166. ECRI recommends that the authorities examine the merits of the asylum applications at all times, including when applicants have transited through a

safe third country. ECRI further recommends that data on the number of persons who have been refused access to the territory on grounds of transit through a safe third country, arrival from a safe country of origin and submission of a manifestly unfounded application be made public, as well as the number of appeals of such decisions.

167. ECRI is pleased that, since ECRI's third report, the terms for appealing all asylum relevant decisions, including the decisions on admission to territory, have been extended from seven to fourteen days, re-establishing the term that was applicable in the past.
168. In its third report, ECRI reiterated its call on the Lithuanian authorities to ensure that all potential asylum seekers are able to access the asylum procedure in practice and that they ensure that national security and public order considerations do not jeopardise the rights of asylum seekers and refugees to seek and obtain effective protection in Lithuania.
169. In its third report, ECRI had indicated various obstacles as regards asylum seekers' effective access to the asylum procedure (See paragraph 108 of ECRI's third report on Lithuania). Although the authorities contest it, according to the Fundamental Rights' Agency 2010 Thematic Report on the Duty to Inform Applicants About Asylum Procedures, many asylum seekers were not aware of the time limit for appealing against a decision on their asylum application and that the decision on their application was served in Lithuanian, a language which they did not always understand<sup>33</sup>. Further, although during the first interview the asylum seeker is presented with a form outlining, inter alia, some of the asylum seekers' rights, only few asylum seekers received additional information/written material on the asylum procedure.
170. On a positive note, the authorities have indicated that since ECRI's third report, several seminars on asylum-related issues were organised for border guards, and, as a result, the number of properly processed applications lodged at the border crossing points has increased significantly (e.g. in 2009 over 30% of all applications). Further, ECRI has been informed that the UNHCR Regional Representative for Nordic and Baltic Countries, the State Border Guard Service and the Lithuanian Red Cross Society have signed a tripartite memorandum of understanding on modalities of mutual cooperation to support access of asylum seekers to the Lithuanian territory and its asylum procedures. Under this agreement the parties agreed to organise activities such as: the training of border guards, regular visits of lawyers to border crossing points, Vilnius International Airport and the Foreigners' Registration Centre in Pabrade, and distribution of information about the right to asylum and the asylum procedure. ECRI welcomes the authorities' efforts to provide full information on access to the asylum procedure and encourages the authorities to continue in their endeavours.
171. ECRI recommends that written information on the asylum procedure, including the time limit for appealing, be systematically provided to all asylum applicants. ECRI further recommends that the decisions on their applications be served in a language that they understand or be translated.
172. Notwithstanding the efforts made to provide border guards with training on asylum-related issues, ECRI holds reservations as regards the authorities' plan to transfer the responsibility for examining asylum applications from the

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<sup>33</sup> According to the authorities, this would be in breach of the Law on Public Administration, the Law on Aliens and a ministerial decree on the procedure for the examination of asylum applications.

Migration Department to the border guards as it is not certain that the latter may have the expertise required.

173. ECRI recommends that the Lithuanian authorities do not transfer the responsibility for examining asylum applications from the Migration Department to the border guards unless sufficient training is provided to border guards on asylum issues.

174. In its third report, ECRI recommended that persons granted subsidiary protection have adequate access to social security and health care services. ECRI therefore encouraged the Lithuanian authorities to adopt the amendments which would include children, the elderly and the disabled who have been granted subsidiary protection in the regular health care system.

175. ECRI welcomes the fact that, under the Law on Health Insurance, the following foreign nationals who have been granted subsidiary protection are now eligible to benefit from full health insurance: persons under 18 years of age; persons who have been diagnosed with specific illnesses or disabilities, as provided for under Lithuanian law; single parents raising under-age children; pregnant women - 70 days before child birth or 56 days after child birth; persons who have reached the retirement age. As regards other persons who have been granted subsidiary protection, and who do not work, the Law on Health Insurance provides that their health coverage will be financed in accordance with a decree of the Government; however no such decree has been issued. They are however, provided with emergency medical care.

176. Persons granted subsidiary protection, stay at the Rukla Refugee Reception Centre camp for their first year in Lithuania. During this time, they may receive social security benefits; however, after this period they no longer have a right to social assistance<sup>34</sup>. ECRI has been informed by the authorities that amendments to the Law on Cash Social Assistance for Low Income Families and Single Residents have been drafted and will be examined by Parliament in the second quarter of 2011. Under the draft law, persons temporarily residing in the country who have subsidiary protection will be eligible for monetary social assistance benefits.

177. ECRI recommends the authorities to swiftly adopt the draft law which extends access to social security to persons granted subsidiary protection. ECRI further recommends that provision be made for financing the health coverage of all persons granted subsidiary protection.

178. In its third report, ECRI recommended that the Lithuanian authorities ensure that persons seeking asylum in Lithuania benefit from adequate reception facilities, notably providing social, psychological and rehabilitation services.

179. ECRI was informed that in 2008, the Pabrade Foreigners' Registration Centre employed on permanent posts two workers for the day-to day social and psychological assistance in the Centre. Subsequently, in April 2008, the Lithuanian Red Cross and the Vilnius Caritas moved their social, psychological and legal assistance out of the Centre and established Pabrade Refugee Day Centre, close to it. This initiative permits asylum seekers who are out of the Foreigners' Registration Centre to benefit from different social activities, receive humanitarian aid and additional medical services. It is important to note however, that this project is funded by the European Refugee Fund, and, when the EU funding period will be over, the

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<sup>34</sup> However, under the Law on Cash Social Assistance for Low Income Families and Single Residents, the City Councils may grant, from their own budgets, monetary social assistance benefits.

future of the day centre will be uncertain. ECRI has also been informed by organisations that have access to the Pabrade Centre that separate facilities to accommodate unaccompanied women and women with children are needed.

180. ECRI recommends that the authorities continue their cooperation with the Lithuanian Red Cross and Vilnius Caritas in order to continue to ensure the psychological, social and medical services provided at present in the day centre, close to the Pabrade Foreigners Registration Centre. ECRI recommends that a separate facility to accommodate unaccompanied women and women with children be provided.

181. In its third report on Lithuania, ECRI urged the Lithuanian authorities to ensure that the right to family reunification of non-citizens living in Lithuania, and notably recognised refugees, is thoroughly respected.

182. In particular, in its third report, ECRI noted that the law required a two year residence period for recognised refugees before being eligible for family reunification. ECRI is pleased to note that this requirement has been dropped. Further, while at the time of ECRI's third report the Law on the Status of Aliens did not recognise the right of an unaccompanied minor to reunify with his/her parents in Lithuania, the law has been amended and now provides for the possibility of family reunification if the child has been granted refugee status. Under the Law on the Status of Aliens, however, the right to family reunification is still not granted to those who receive subsidiary protection.

183. In its third report ECRI recommended to support civil society initiatives which aim to counter stigmatising or stereotyping media reports on asylum seekers and refugees and promote respect of non-citizens, particularly asylum seekers and refugees. ECRI has been informed that under an EU funded project, the Journalists' Association and the Consumers' Institute have produced a guide for journalists on how to write about asylum seekers in order to promote tolerance. Further, journalists from the largest and most read newspapers took part in the annual refugee day celebration in the Rukla Refugee Camp. ECRI is pleased that such initiatives have taken place and encourages the authorities to support and multiply these activities.

## Other migrants

184. Under Articles 113 and 126 of the Law on the Status of Aliens, non-citizens who have entered or stayed illegally in Lithuanian territory or whose stay constitutes a threat to national security or public order are liable to detention and expulsion; however a few sources have indicated that cases of detention without expulsion have been registered. ECRI notes that such cases would raise an issue with Article 5.1 of the European Convention on Human Rights (ECHR)<sup>35</sup>. Further, under Article 113 point 7 of the Law on the Status of

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<sup>35</sup> Under Article 5.1 of the ECHR, No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of un-sound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Aliens, a non-citizen may be detained when his/her stay constitutes a threat to public health. This provision would raise an issue under Article 5.1 of the ECHR, which allows for detention on a much narrower ground, namely to prevent the spreading of infectious diseases<sup>36</sup>. ECRI has been informed by the authorities that the new draft Law on the Status of Aliens no longer provides for the detention of non-citizens when their stay constitutes a threat to national security, public order or public health. ECRI welcomes this development and encourages the authorities to adopt this amendment.

185. ECRI recommends that the threat to national security, public order or public health no longer be considered as a ground for detaining non-citizens and that the Law on the Status of Aliens be amended accordingly.

186. As for the other cases covered by Article 113 of the Law on the Status of Aliens, ECRI recommends that non-citizens only be detained when and as long as this is strictly necessary for effecting a lawful expulsion.

187. The Law on Aliens does not establish a maximum period of detention pending expulsion, contrary to the European Union Return Directive<sup>37</sup> which provides for three month detention orders, with a maximum length of detention of up to six months, and a possible extension of a further 12 months. The authorities have informed ECRI that in 2008, non-citizens were detained at most for 9 months. Further, it would appear that a draft law has been submitted to the Parliament in order to bring Lithuania in line with the EU return directive.

188. ECRI encourages the authorities to set a limit to detention pending expulsion, in line with the European Union Return Directive.

189. As regards unaccompanied minors not seeking asylum, these are covered by a general provision to the effect that aliens under 18 may be detained only in exceptional circumstances, taking into account their best interests. According to statistics provided by the authorities, detention of unaccompanied minors has been resorted to: seven times in 2006, two times in 2007 and once in 2008. However, ECRI has been informed by other sources that detention of unaccompanied minors not seeking asylum is frequent practice in Lithuania. They are usually detained at the Foreigners' Registration Centre or in police custody.

190. ECRI recommends that the authorities ensure that children be kept in detention only in exceptional circumstances.

## VII. Conduct of Law-Enforcement Officials

191. In its third report, ECRI reiterated its recommendation that the Lithuanian authorities set up an independent mechanism, separate from the police structures, for investigating allegations of police misconduct, including racist or racially discriminatory behaviour.

192. According to the authorities, there are several independent institutions mandated to control police activities and authorised to investigate potential manifestations of racist behaviour of the police. Under Article 10,

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<sup>36</sup> This is a separate ground for detention in the Lithuanian Law on the Status of Aliens. Moreover, doubts have been raised as to the compatibility with Article 5.1 of the ECHR of provisions that specifically target non-citizens for detention on health grounds.

<sup>37</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on "common standards and procedures in Member States for returning illegally staying third-country nationals".

paragraph 1, of the Law on Police Activities, the following institutions exercise control over police activities: the Minister of the Interior, the Prosecutor's Office, the Parliamentary Ombudsman's Office, the Office of Equal Opportunities Ombudsman and the administrative courts.

193. More specifically, the Parliamentary Ombudsman may investigate complaints about officers' abuse of power, bureaucratic hurdles or violations of human rights in the field of public administration. He/she may: refer the investigation to a pre-trial investigation body or a prosecutor when there is suspicion that a criminal act has been committed; try to obtain the officers' dismissal by a court if they are found guilty of abuse of power; and recommend to the institution concerned to impose disciplinary sanctions on the officers found guilty. The Parliamentary Ombudsman's Office has confirmed that indeed it receives complaints of police misconduct; however they are not lodged on racial/ethnic grounds. This Office believes moreover that racism and racial discrimination is not a serious problem in Lithuanian society.
194. As regards the Equal Opportunities Ombudsman's Office, ECRI notes that, even though it is the competent institution for addressing cases of racial discrimination, it does not have the power to impose disciplinary sanctions or try to obtain a police officer's dismissal by a court. It can on the other hand, adopt a decision to refer the case to a pre-trial investigation institution or a prosecutor if there is the suspicion that a crime has been committed; or investigate administrative offences and impose administrative sanctions.
195. Administrative courts may also review decisions, actions, refusal to act and delays of public authorities, including the police, as well as decisions taken in cases of administrative offences. Complaints may also be submitted to the heads of the police and, if there is reasonable suspicion that a crime has been committed, a pre-trial investigation is initiated and is monitored by a prosecutor. Furthermore, the police have the power to carry out in-house inspections on complaints lodged by victims of racism and racial discrimination, which are monitored by the Inspector General's Division of the Ministry of the Interior. This Division also investigates claims and complaints about completed in-house inspections, assesses the objectivity and soundness of the conclusions and may conduct in-house inspections of alleged illegal conduct by police officers on its own. ECRI was informed by this institution that in the last ten years, it has never received a complaint concerning alleged illegal conduct of the police on grounds of intolerance and racism, and, consequently, it has never reviewed any police in-house inspection in this connection.
196. The prosecutor may also carry out part of or the entire investigation him/herself. ECRI was informed by the Prosecutor's Office that 2098 investigations of police officers' conduct were carried out in 2009 and that specific statistics were not available as regards racist misconduct by the police.
197. ECRI takes note of the multiple institutions which can oversee police activity and investigate cases of police misconduct. ECRI however is of the opinion that, in addition to the prosecutor (competent when there is suspicion that a crime has been committed), a single institution should be set-up or attributed with all of the following characteristics: independence from the police; a mandate encompassing racist misconduct by the police; sensibility and expertise in the latter topic; adequate investigating powers; the power to forward its investigation report to the criminal prosecution authority to decide whether to bring criminal proceedings and to the police to decide whether to

bring disciplinary proceedings. ECRI is of the opinion that none of the above institutions possesses all of these characteristics.

198. ECRI recommends that the authorities set up an independent mechanism, separate from police structures, for investigating allegations of police misconduct, including racist or racially discriminatory behaviour and endow it with the characteristics described below. Alternatively, ECRI recommends that the Lithuanian authorities reinforce one of the existing institutions which are independent from the police and which supervise its work, by providing it with all of the following characteristics: a mandate encompassing police misconduct on grounds of racism; sensibility and expertise in the latter topic; adequate investigating powers; the power to forward its investigation report to the criminal prosecution authority to decide whether to bring criminal proceedings and to the police to decide whether to bring disciplinary proceedings. The institution's mandate should be made well known to potential victims. ECRI draws the authorities' attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

199. In its third report on Lithuania, ECRI encouraged the Lithuanian authorities to consider measures to ensure adequate representation of members of minority groups in the police, including the identification of barriers preventing members of minority groups from entering the police force in practice, and the adoption of targeted measures to overcome such barriers.

200. ECRI was informed by the authorities that police officers are not required to specify their ethnic/national origin, ECRI therefore infers that the conditions needed to analyse whether national/ethnic minority groups are sufficiently represented in the police force and to eliminate barriers to such access, are not in place. ECRI recalls that the collection of data broken down by ethnicity, if done in accordance with the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group, can be used to assess the representation of members of vulnerable groups in the police, promote a more balanced composition of the police forces and favour increased sensibility towards vulnerable groups and their ways of life. In particular, ECRI encourages the authorities to analyse and take steps to overcome the barriers faced by Roma in accessing police careers. Informing children and young adults attending school about careers in the police force and the educational requirements in order to access such career, may be a useful measure.

201. ECRI reiterates its recommendation to the Lithuanian authorities to take steps to ensure adequate representation of members of national/ethnic minority groups in the police, including the identification of barriers preventing members of such minority groups from entering the police force in practice, and the adoption of targeted measures to overcome such barriers.

### **VIII. Monitoring Racism and Racial Discrimination**

202. In its third report on Lithuania, ECRI strongly recommended that the Lithuanian authorities improve their monitoring systems by collecting relevant information broken down by ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. ECRI also recommended that these systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

203. ECRI was informed that under the 2006-2008 National Anti-Discrimination Programme, the Department of Statistics was mandated to collect information on the composition of the Lithuanian population according to ethnicity and citizenship. In effect, the 2010 Statistical Book of Lithuania, inter alia, contains information and charts on the Lithuanian population, broken down by the above two categories. The Department of Statistics has also prepared the questionnaire that will be distributed during the 2011 census. ECRI was informed that the DNMLLA, prior to its abolition, participated in the designing of the census and that the questionnaire includes non-mandatory questions on citizenship, ethnicity, language (including mother tongue plus knowledge of additional languages), religion and employment status. ECRI is satisfied that in the context of the census it will be possible to analyse information on employment, housing and education in conjunction with data related to citizenship, ethnicity, language and religion. The questionnaire will be provided in Russian, Polish, English and Lithuanian and information will be posted in Polish and Russian in those regions where there is a high percentage of Polish and Russian speakers. Though this initiative is commendable, ECRI is convinced that this data should be collected and analysed on a continual basis.
204. ECRI notes that, other than the 2011 census, the authorities have not made plans to collect systematically information broken down by ethnic origin, language, religion and nationality in policy areas such as employment, housing and education. As mentioned in paragraph 72, the collection of data on employment by ethnicity has not resumed since 2004, however, the data collected up to 2004 was very useful in showing that a high percentage of the unemployed were Russians and Poles<sup>38</sup>. ECRI would like to remind the authorities that collecting the information as described above, is an indispensable tool for understanding whether persons belonging to vulnerable groups are discriminated in their every day life, be it in employment, education or housing.
205. ECRI recommends that the Lithuanian authorities strengthen the capacity of the Department of Statistics and entrust it with the systematic collection of information on different policy areas, including employment, housing and education, broken down by ethnic origin, language, religion and nationality with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.

## IX. Education and Awareness-Raising

206. In its third report on Lithuania, ECRI recommended that the Lithuanian authorities strengthen the human rights component of the existing civic education courses, notably through teacher training and the improvement of textbooks and encourage the authorities to consider making human rights, including non-discrimination, a separate compulsory subject at both primary and secondary level.
207. ECRI notes that human rights continues to be taught in the context of civic education. More specifically, schools use a textbook containing two sections, one of which is devoted to human rights. In the past, civic education was taught in grades 7 and 8, whereas now it is compulsory only in grades 9 and 10. The Ministry of Education has also informed ECRI that various seminars on human rights are organised at secondary schools. Further, in 2007 the Ministry of Education and Science, in cooperation with the Ministry of Justice,

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<sup>38</sup> It must be borne in mind, however, that persons of Roma ethnicity often do not disclose their ethnicity and state that they are Russian.



supplied 50 schools with the textbook "The law for everybody" (1000 copies) on the promotion of tolerance and human rights

208. ECRI recommends that human rights and knowledge about the culture of ethnic/national minorities be made a compulsory subject at school as early as possible.
209. In its third report, ECRI recommended that the authorities strengthen their efforts to raise the awareness of key professionals and the general public of issues of racism and racial discrimination, notably by providing support to civil society organisations active in these fields.
210. ECRI notes that some initiatives aimed at countering discrimination were organised by State authorities together with NGOs. For instance, since ECRI's third report, the DNMLLA organised, in cooperation with the Human Rights Monitoring Institute, an exhibition of photos on the life of Lithuanian Roma by a famous photograph. The event was accompanied by dances performed by the Roma Community Centre women dance-group. Further, the Equal Opportunities Ombudsperson, in cooperation with local NGOs, organised an awareness raising project A Closer Look at Multiple Discrimination. In the context of this initiative, training was provided to NGOs and state officials and a film festival aimed at raising awareness of discrimination was organised, attracting almost 13 000 viewers. ECRI is convinced, however, that greater synergies can be created with NGOs in order to raise the public's awareness on issues of racism and racial discrimination.



## INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Lithuania, are the following:

- ECRI recommends that an inter-institutional body on Roma issues be set-up with a view to coordinating the action of the authorities responsible for the implementation of Roma integration programmes. Coordination with the Municipality of Vilnius should in particular be further enhanced. ECRI moreover recommends that the authorities guarantee adequate funds for the Roma Integration Programme.
- ECRI recommends that the authorities continue in their efforts to train police officers, lawyers, judges and prosecutors on the provisions against racism and racial discrimination and that training be conceived as a periodic recurrence rather than as a «one-off » event. ECRI also recommends that specific attention be paid to training on the newly introduced provisions in the Criminal Code, notably Article 60, Articles 170, 170 (1) and 170(2) and Article 312.
- ECRI recommends the authorities to swiftly adopt the draft law which extends access to social security to persons granted subsidiary protection. ECRI further recommends that provision be made for financing the health coverage of all persons granted subsidiary protection.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.



## **Bibliography**

This bibliography lists the main published sources used during the examination of the situation in Lithuania: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Lithuania**

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Lithuania on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 25 March 2011, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



## OBSERVATIONS PROVIDED BY THE AUTHORITIES OF LITHUANIA AS REGARDS THE ECRI REPORT ON LITHUANIA

(Fourth monitoring cycle):

### 1. Comments regarding Summary (page 8, paragraph 2)

With due regards to the provisions of Article 22 part 4 of *the Law on Cash Social Assistance for Low-Income Families and Single Residents* the municipality administrations are granted the right from their budgetary resources to allocate cash social assistance to families and single residents in other cases not provided by this law (for instance, to allocate a single allowance, to compensate housing costs that are not foreseen in the law provisions, and etc.). Thus, the statement „persons granted subsidiary protection do not have a right to social assistance, except during their one year stay at the reception centre“ should be supplemented by the following phrase: „or cases when municipalities allocate cash social assistance from the municipal budgetary resources“.

### 2. Comments regarding Summary (page 8, last paragraph).

Article 12, part 2 of *the Law on Equal Treatment* stipulates that „Associations or other legal persons which have, in accordance with the legal act regulating their activities, the defence and representation in court of persons discriminated against on a particular ground as one of their activities may, on behalf of the person discriminated against, represent him in judicial or administrative procedures in the manner prescribed by laws“.<sup>39</sup> Therefore, the Ministry of Social Security and Labour considers that it is not expedient to make any changes in the Law on Equal Treatment. Article 56, part 1 of the Civil Code of the Republic of Lithuania regulates representation in court, which should be supplemented by the provision, ensuring the right for associations to represent persons discriminated on a particular ground in court.

Moreover, the Ministry of Social Security and Labour considers that it is not expedient to make any changes in the Law on Equal Treatment and foresee an obligation to suppress public financing of organizations that promote racism. Separate regulations for financing NGOs (regarding separate provisions for financing organizations) exist in national legislation.

### 3. Comments regarding part 9.

Constitutional conditions for candidacy to the Presidency of the Republic of Lithuania were inaccurately described as requiring that, to be eligible for presidential election, a person must be “*Lithuanian by origin*”. Article 78 of *the Constitution of the Republic of Lithuania* stipulates that “a Lithuanian citizen by origin” may be elected President of the Republic<sup>40</sup>. This criterion does not define the requirement based on the grounds of ethnicity, but the one of citizenship acquired in a specific manner (i.e. other than by means of naturalization). The same criterion has been enshrined in *the Law on Presidential Elections*<sup>41</sup>. It does not coincide with the notion “a person of Lithuanian origin” used in *the Law on Citizenship*<sup>42</sup>, the interpretation of which is presented in the ECRI Fourth Report to substantiate the assessment that the requirements for the candidacy to the Presidency of the Republic of Lithuania are discriminatory on the grounds of race (ethnicity). Therefore, it is doubtful whether the recommendation

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<sup>39</sup> The Republic of Lithuania Law on Equal Treatment.  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389500](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500);

<sup>40</sup> The Constitution of the Republic of Lithuania. [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=275302](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=275302)

<sup>41</sup> *The Republic of Lithuania Law on Presidential Elections*.  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=389873&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389873&p_query=&p_tr2=);

<sup>42</sup> The Republic of Lithuania Law on Citizenship.  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=395555&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=395555&p_query=&p_tr2=);

presented in part 9 (making reference to the European Court of Human Rights Grand Chamber judgement of 22 December 2009 in the case of *Sejdić and Finci v. Bosnia Herzegovina*) and the recommendation in part 10 are relevant to and applicable in respect of Lithuania. In this regard, it should also be taken into account that the provisions of the ECHR, which are legally binding on Lithuania, do not encompass the person's right to stand for presidential elections (see the European Court of Human Rights decision of 21 October 1998 in the case of *Baškauskaitė v. Lithuania*).

#### 4. Comments regarding part 15.

The Ministry of Culture is in charge for the preparation of *the Draft Law on National Minorities*. In 2010, the interdepartmental group with representatives of national minorities prepared *the Draft Legal Regulation Concept of the Law on National Minorities* (henceforth, referred to as the Draft Concept). The Draft Concept maintains provisions ensuring that the scope of rights and freedoms of persons belonging to national minorities is not narrowed with regard to those, granted under the 1989 *Law on National Minorities*. It is noteworthy, that the Draft Concept lays down the provisions that would in principal be in line with the EU National Minority Framework Convention for the Protection of National Minorities.

#### 5. Comments regarding part 33.

Lithuanian authorities do not support this recommendation as such ground (citizenship) is not established in *the Constitution of the Republic of Lithuania* and also in the EU appropriate Directives on which basis the Law on Equal Treatment was amended in 2008 (also see *comments regarding part 55*).

#### 6. Comments regarding part 55.

*The Law on Equal Treatment* was adopted having regard to two Council Directives - the EU Racial Equality Directive (2000/43/EB) and the EU Employment Directive (2000/78/EB), as foreseen by the Amsterdam Treaty, and in particular Article 13 thereof.

The EU Racial Equality Directive (2000/43/EB) implements the principal for equal treatment between persons irrespective their racial or ethnic origin. This Council Directive is designated to establish basic principals, aiming at combating discrimination on the grounds of racial or ethnic origin. The EU Employment Directive (2000/78/EB) is a Council Directive establishing a general framework for equal treatment in employment and occupation. The purpose of this Council Directive is to establish basic principals, aiming at combating discrimination on the grounds of religion, beliefs, convictions and view, disability, age or sexual orientation in the field of occupation and vocational training. It is noteworthy, that there are indications in both Council Directives made, noting that the Council Directive **does not include equality on the grounds of citizenship, and it does not breach the provisions and conditions** applied with regard to third country nationals and stateless persons, crossing the EU Member state territory and accommodating therein, as well as other cases related with the legal treatment of third country nationals and stateless persons.

Moreover, the currently valid *Law on Equal Treatment* does not foresee a possibility for the Equal Opportunities Ombudsman to initiate civil and administrative proceedings when the Law on Equal Treatment has allegedly been breached. The judicial practice as regards different cases of discrimination is now under the process of formation.

The authorities receive few civil, labour and administrative cases with regard to discrimination. The Equal Opportunity Ombudsman executes the right to initiate investigations ex officio, and the number of such investigations has been generally increasing. Furthermore, the Equal Opportunity Ombudsman has a right to transfer the material to pre-trial investigation authorities when there are enough grounds for allegations of criminal offence.

It is significant to note, that in recent years, there is a common practice in Lithuania at the request of interested parties or under the initiative of the court to involve the Office of

Equal Opportunity Ombudsman into civil proceedings as a mandated institution for presenting its conclusions. In this regard, a divergence of different practice prevails in EU Member states.

#### **7. Comments regarding part 57.**

Council Directives do not foresee any special provisions to determine the implementation of „effective, proportional and deterrent sanctions”; therefore, this issue is left to the full discretion of each EU Member state. *The Law on Equal Treatment for Women and Men of the Republic of Lithuania* foresees a possibility for a person who considers himself wronged by failure to apply equal treatment to him shall to appeal to the Equal Opportunities Ombudsman. The Office of Equal Opportunities Ombudsman, having examined a complaint, can apply one of the decisions laid down in Article 24. Article 24 (3) foresees a possibility to investigate cases of administrative violations and offer an administrative penalty. The provisions of Article 4(16) and 187 (5) of the Code of Administrative Violations of Law of the Republic of Lithuania allow for an administrative penalty of up to 4000 Litas. Taking into consideration the fact, that in Lithuania there are few cases of discrimination in court, the imposed sanctions are treated to be sufficient.

Pursuant to the Equal Opportunities Ombudsman Report for the years 2005-2010, the application of administrative penalty is not considered to be an effective measure in combating discrimination, as it does not fully resolve the conflict. With regard to complaint investigation procedure, the Office of Equal Opportunities Ombudsman takes the priority to peaceful settlement of the conflict, whereas administrative penalty is imposed for deliberate, malicious and repeated violations of law (Article 3, Council Directive 2000/78/EB).

#### **8. Comments regarding part 65.**

In the year 2011, the funding for national minority programmes, coordinated by the Ministry of Culture, the Division of National Minority Affairs, was increased by more than 60 percent (1029 thousand Litas).

#### **9. Comments regarding part 69.**

The statement that „social research shows that members of national/ethnic minorities experience discrimination twice as much as ethnic Lithuanians“ needs to be clarified. It is important to note, that from all the complaints submitted to the Equal Opportunity Ombudsman Office with regard to discrimination based on ethnicity, approximately 10 percent of national minority respondents had experienced discrimination in the areas of employment, education and healthcare.

#### **10. Comments regarding part 82.**

Article 50 part 2 (1) of *the Law on Provision of Information to the Public* stipulates that executing the functions enshrined therein and possessing information about the violations not indicated in the complaint, the Inspector has a right to open investigations ex officio or to transfer the collected data to the competent authorities for further investigation.

In practice, having received information about any alleged cases of incitement to hatred, the mandated authority generally addresses the Office of the Inspector of Journalists' Ethics asking its experts to monitor and determine whether the public information presented on Internet incite hatred on grounds of gender, sexual orientation, race, nationality, language, origin, social status, religion or beliefs (Article 50 part 1(8) of *the Law on Provision of Information to the Public*).

## **11. Comments regarding part 98.**

Seeking to promote and ensure better consultation with Roma representatives as well as to involve them into decision-making, the Department of National Minorities and Lithuanians Living Abroad under the authority of the Republic of Lithuania (henceforth, the DNMLLA) consulted the Roma NGO representatives as regards the preparation of *the Programme for the Integration of Roma into the Lithuanian Society for 2008 - 2010* (henceforth, *the Roma Integration Programme*). The leader of the Roma NGO „The Fire of Gypsies“ as well as head of the public institution „The Roma Community Centre“ were members of the interdepartmental working group that worked on the preparation of the document. It is significant to note, that a lot of proposals introduced by Roma were taken into consideration. The DNMLLA organized several meetings with Roma representatives in Vilnius and Kaunas, introducing the targeted measures of *the Roma Integration Programme into the Lithuanian Society for the year 2008-2010*.

Lithuanian authorities are concerned to ensuring and maintaining further consultations with Roma NGO and public institutions working with Roma in drafting new documents concerning the integration of Roma into the society of Lithuania.

## **12. Comments regarding parts 122 and 123.**

There is no requirement of previous work experience for the unemployed persons to be registered in Labour Exchange. With regard to *the Law on Support for Employment and Description of Conditions and Procedure for Registration and Accounting of Job Seeking Persons in Local Labour Exchange Offices* every unemployed person might be registered in Labour Exchange irrespective of having or not work experience. The previous work experience is asked as additional information, which subsequently helps Labour Exchange personnel to search for a suitable job.

## **13. Comments regarding part 143.**

For the sake of clarity, an explanation regarding the meaning of the recommendation presented in part 143 to extend the scope of applicants to lodge claims for the restitution of private property is needed. In particular, it is worth making clear whether this recommendation is fully in line with the case-law of the European Court of Human Rights regarding the scope of entitlement to the restitution of property rights breached before the entry into force of the ECHR (in which case specific case-law on which this recommendation is based should be indicated), or whether it is recommended to ensure a higher level of the protection of property rights than guaranteed by the ECHR.

## **14. Comments regarding part 147.**

During their study visit to Lithuania, ECRI experts had a possibility to meet with stakeholders of many public authorities, including the Ministry of Culture, the Ministry of Science and Education, the Ministry of Social Security and Labour, the Ministry of the Interior, representatives of the Council of National Minorities (including the chairman). Representatives from the Ministry of Foreign Affairs participated in the final meeting. These institutions constitute the basis of the Commission for National Minorities Affairs.

## **15. Comments regarding parts 151, 152, 153.**

Secondary schools with the Russian language of instruction are provided with the textbooks in Russian for the teaching of the following subjects: the 8th grade - mathematics, physics, chemistry and geography, the 9th grade - mathematics, biology, physics, chemistry; the 10th grade - mathematics, physics and chemistry. In the year 2011, new 8th grade history

textbooks and a 10th grade mathematics textbook are to be published.<sup>43</sup> It is significant to note, that all textbooks for the teaching Russian and Polish as a native language for 1-12 grade pupils have been written and published in Lithuania.

Adopting *A General Secondary Education Native Language Programme*, next generation textbooks for the teaching Polish and Russian as a native language will be prepared and published.

#### **16. Comments regarding part 164.**

It is noteworthy, that in all cases the applicant's asylum request submitted at the border crossing points of the Republic of Lithuania is being accepted. In accordance with the currently valid legal regulations, during the first 24 hours an applicant's personal file is being formed, which together with the request and other required documents is being forwarded to the Migration department under the authority of the Ministry of the Interior of the Republic of Lithuania (henceforth, the Migration department). Subsequently, the Migration department within 48 hours processes the applicant's asylum request and takes the final decision concerning granting or refusing temporal territorial asylum to the applicant. (In case the applicant's asylum request is considered to be evidently unfounded, it should be examined within 48 hours. This period can be extended no longer than seven days).

In accordance with the provisions enshrined in the Law of the Republic of Lithuanian „On the Legal Status of Aliens“, the asylum seeker may file an appeal against the decision. Having submitted a request for asylum, the applicants are not being detained and their freedom is not restrained. They are temporally accommodated at the premises designated for asylum seekers that are hosted in the subdivisions of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter, referred to as the SBGS).

It is significant to note, that aliens seeking asylum are provided with full information on access to the asylum procedure, including the possibility to file a complaint concerning the decision, in a language they understand (i.e. an interpreter's service is guaranteed). The final decision to grant the asylum is being presented in writing in the state language; however, each asylum applicant is being acquainted with the decision in a language he/she understands.

On June 2, 2010, the SBGS, the Regional Office for the Baltic and Nordic Countries of the United Nations High Commissioner for Refugees (hereinafter referred to as the UNHCR) and Lithuanian Red Cross Society (hereinafter referred to as the LRCS) signed the *Memorandum of Understanding* regarding a mutual co-operation in the issues related to asylum applicants (persons falling within the scope of the UNHCR mandate). Pursuing the provisions enshrined in *the Memorandum of Understanding*, the SBGS state officials, having received the asylum applicant's request at border crossing points, undertake obligation to inform the LRCS, whose representatives, pursuing the tripartite memorandum, execute asylum procedure monitoring, from the submission of asylum applications and formation of the primary information for asylum applicants' case. Subsequently, all measures are taken to ensure that the procedure for granting asylum should not be violated.

#### **17. Comments regarding part 176.**

Under the Draft Law on Cash Social Assistance for Low-Income Families and Single Residents, persons temporarily residing in the country who have subsidiary protection will be eligible for **cash** social assistance.

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<sup>43</sup> There has been one 8th grade two-part history textbook published in Lithuania and a 10 th grade mathematics textbook is currently under publication.

## 18. Comments regarding part 179.

Although the Refugee Day Centre in Pabradė provides social, psychological and legal assistance, the staff working in the SBGS Foreigners Registration Centre also provides social, psychological and medical assistance (a social worker, a psychologist, a family doctor, a pediatrician and three nurses are employed there). Each asylum applicant is guaranteed a state legal assistance. In the SBGS Foreigners Registration Centre separate facilities are provided for male and female applicants, as well as women with children and family members.

## 19. Comments regarding parts 189 - 190.

According to the SBGS, in practice unaccompanied minors are not treated as detained persons in the SBGS Foreigners Registration Centre.

In accordance to Article 32 of *the Law on Legal Status of Aliens*,<sup>44</sup> unaccompanied minor aliens, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, are accommodated in the Refugee Reception Centre in Rukla.<sup>45</sup> Since these are aliens under the age 18, the Lithuanian authorities take care of them taking into account their best interests. In the Refugee Reception Centre, unaccompanied minor aliens must be taken into temporary guardianship/custody for the period of the child's stay in the Republic of Lithuania. The temporary guardian/custodian of an unaccompanied minor alien shall represent the interests of the unaccompanied minor alien.

Moreover, unaccompanied minor aliens has the right to be provided with 1) free accommodation and receive state support; 2) to study at general education and vocational schools 3) to be provided with free basic medical aid; 4) to be provided with free social services; 5) to receive State-guaranteed legal aid unless the laws of the Republic of Lithuania provide otherwise; 6) to contact the representatives of non-governmental or international organisations of the Republic of Lithuania.

Therefore, the statement that „ECRI has been informed by other sources that detention of unaccompanied minors seeking asylum is frequent practice in Lithuania” needs to be supported by relevant data and sources.

## 20. Comments regarding part 198.

In the Fourth Report, ECRI recommends that the Lithuanian authorities set up an independent mechanism, separate from police structures, for investigating allegations of police misconduct, including racist or racially discriminatory behavior and endow it with the characteristics described below. Alternatively, ECRI recommends that the Lithuanian authorities reinforce one of the existing institutions which are independent from the police and which supervise its work. The General Prosecutor's Office of the Republic of Lithuania holds an opinion that in accordance with the currently valid national legislation (*the Criminal Code of the Republic of Lithuania, the Law on Prosecution of the Republic of Lithuania, and others*) prosecutors organize, manage, conduct and control pre-trial investigations in criminal cases.

Following the recommendations concerning the distribution of investigations of criminal offenses to pre-trial investigation bodies, which was adopted by General prosecutor of the Republic of Lithuania, the prosecutors themselves are recommended to conduct a pre-trial investigation concerning the criminal offenses that contain a particular public value, as well as the ones, committed by pre-trial police officials (taking into account that the police is a

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<sup>44</sup> *The Republic of Lithuania Law on the Legal Status of Aliens.*  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=356478;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=356478)

<sup>45</sup> *The Refugee Reception Centre is a budgetary agency providing social services, intended for accommodating aliens who have been granted asylum in the Republic of Lithuania and unaccompanied minor aliens as well as for implementing social integration of the aliens who have been granted asylum. The Refugee Reception Centre shall be set up, re-organised and liquidated by the Minister of Social Security and Labour.*



principal universal pre-trial investigation institution in our country), in case such a pre-trial investigation has not been delegated to another authority with a higher subordination level, or to a central institution of pre-trial investigations, or the Special Investigation Service of the Republic of Lithuania. Pursuant to the latter provisions, there exists an established practice, which entails that if there is a pre-trial investigation concerning the criminal offences (misconduct) committed by the state officials, they are not being investigated by the pre-trial investigation officers. Subsequently, such an investigation is being conducted by the prosecutors or by the Special Investigation Service of the Republic of Lithuania - a specialized institution for pre-trial investigations that deals with allegations of police misconduct.

Concerning the complaints regarding the investigations of police officials' misconduct that used to take place during their service or being off duty, and when there is a lack of evident proof of criminal offense, the Police department under the authority of the Ministry of the Interior is in charge to conduct and organize an inner service verification of these police officials.



