



Lietuvos žmogaus teisių centras



**JOINT UPR SUBMISSION OF  
LITHUANIAN CENTRE FOR HUMAN RIGHTS, LITHUANIAN GAY LEAGUE AND  
EQUAL RIGHTS AND SOCIAL DEVELOPMENT CENTRE  
LITHUANIA – OCTOBER 2011**

**Equality and Non-discrimination**

1. The office of the Equal Opportunities Ombudsperson is the main national anti-discrimination body, founded in order to fulfill the requirements of the EU law, and financed from the State budget. Candidacy for the office is identified by the Chair of Parliament, ombudsperson is appointed by the Parliament, and he/she acts as the State official. Civil society is neither consulted, nor involved in the process of a selection and appointment. The only form of ombudsperson's accountability is the presentation of a yearly report to the Parliament. Current Ombudsperson remains in office since the establishment of the institution in 1999. On a number of occasions, the Ombudsperson lacked vigilance and consistency in application of the Law on Equal Treatment, in particular on sensitive issues such as those related to the rights of homosexual individuals.

2. As an equality body the Ombudsperson lacks certain features that are obligatory under the EU law.<sup>1</sup> First of all, providing independent assistance to victims of discrimination in pursuing their complaints on discrimination, bringing discrimination complaints or intervening in legal cases does not fall under the competence of the Ombudsperson according to national law. These activities are also not exercised in practice. Although in 2009 the competence of the Ombudsperson was expanded to include the implementation of independent research, drafting of independent reports and providing an overview on discrimination in general, however, this field of competence remains unexplored. In addition to this, awareness raising, research, surveying or other functions, obligatory under EU law, do not officially fall under the competences of the Ombudsperson.

3. Secondly, one of the major issues for victims of discrimination – the effectiveness of sanctions – remains unsolved. The right to claim compensation for discrimination was introduced in the Law on Equal Opportunities of Women and Men only in June 2008. This is the only provision, which, if properly applied, could be considered dissuasive and compensatory. There are no other provisions of this character in national anti-discrimination law. Legally, the Ombudsperson has the competence to investigate complaints on discrimination, but its decisions do not have a compensatory effect to the victim. The Ombudsperson has a right to impose administrative sanctions, however they can hardly be considered to be of an effective, proportionate and dissuasive. Additionally, it rarely issues fines as an administrative sanction<sup>2</sup>. Mostly the decisions of the Ombudsperson are warnings of a recommendatory character. This issue was also stressed by the EU Fundamental Rights Agency<sup>3</sup>.

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<sup>1</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>>;

<sup>2</sup> In 2008-2010 no decisions to issue a fine as an administrative sanction were taken by the Ombudsperson;

<sup>3</sup> European Union Agency of Fundamental Rights Annual Report 2008, P. 7, 17, 18, available at <[http://fra.europa.eu/fra/material/pub/ar08/ar08\\_en.pdf](http://fra.europa.eu/fra/material/pub/ar08/ar08_en.pdf)>;

4. *Law on Equal Treatment* provides that discrimination means any direct or indirect discrimination, harassment, instruction to discriminate on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.<sup>4</sup> Notably, gender identity is not explicitly provided for in the *Law on Equal Treatment* as a ground of prohibited discrimination.

5. The purpose of the *Law on Equal Treatment* is to ensure the implementation of the provisions of Article 29 of the Constitution of the Republic of Lithuania enshrining the equality of persons and prohibition of restrictions on human rights or extensions of privileges. Article 3 of the Law provides for the exception, which states that the provisions of the Law shall not apply to: employees or staff of religious communities; the admission of persons to study at schools of religious communities and associations, schools established by them or their members; cases where organisations uniting individuals on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion decide on membership of, or employment in, these organisations, provided it is genuine, legitimate and justified in relation to the common ground of an organisation.<sup>5</sup>

6. These exceptions permit religious communities and associations to ignore the provisions of the Law, and thus discriminate against an individual justifying their discriminatory behaviour on the grounds of their religion or belief.

### **Discriminatory Legislation and Practices**

#### *- Law on the Protection of Minors against the Detrimental Effect of Public Information*

7. The seemingly fundamental homophobic undercurrent within the Lithuanian parliament voiced itself in September 2007 when an amendment suggesting that ‘propagation of homosexuality’ to minors should be included in the *Law on the Protection of Minors against Detrimental Effect of Public Information* was firmly put on the agenda and adopted despite criticism from European institutions and civil society.

8. Homophobic amendments to the *Law on the Protection of Minors against the Detrimental Effect of Public Information* came into effect on 1 March 2010.<sup>6</sup> Now the Law bars minors from receiving information about any type of sexual relationship, and seeks to protect the “traditional” concept of family defined by the Lithuanian Constitution as the union between a man and a woman.

9. In its original version the Law amendment prohibited the publication of “information which agitates for homosexual, bisexual and polygamous relations” in places, including schools, public spaces and media, which are accessible to persons under 18 years of age. In the light of international criticism and the misgivings of the Lithuanian President, the Law was amended on 28 December 2009. All direct references to the promotion of homosexuality have been removed and text of amendment was changed in some way.

10. Now among other topics deemed unfit for minors is information “which promotes sexual intercourse” and information “which scorns family values and promotes the concept of marriage and family formation, other than that stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania”.<sup>7</sup>

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<sup>4</sup> Article 2 of the Law on Equal Treatment, No IX-1826, 17 June 2008, available at <[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>5</sup> *Ibid.*;

<sup>6</sup> Law on the Protection of Minors against the Detrimental Effect of Public Information, No XI-333, 14 July 2009, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=362891](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=362891)>; 22 December 2009, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=361998](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=361998)>;

<sup>7</sup> *Ibid.*, Article 4;

11. According to the Lithuanian Constitution, marriage is based on free agreement between a man and a woman.<sup>8</sup> Though Constitution recognizes family as foundation of the society and state, it does not, however, give the exact definition of what family is. There is no family definition in the Civil Code either. Sections III and IV of Book 3 of the Civil Code, applicable to family relations, provides for rights and obligations of spouses, children and parents. Furthermore, Lithuanian Parliament has approved Family Conception, according to which only married couples are recognized as families.<sup>9</sup>

12. The law is deemed homophobic and slammed by human rights watchdogs, including Amnesty International and Human Rights Watch.<sup>10</sup>

- *Law on Education*

13. On 8 December 2010, the Committee of Education, Science and Culture approved the suggestion of several Parliament members to eliminate the concept of equal opportunities from the draft *Law on the Amendment of the Law on Education*. The decision was taken as a result of reluctance of Lithuanian legislative power to include the ground of sexual orientation into the Law. Consequently, it was decided to remove all grounds of discrimination altogether from the draft Law, including the basis of gender, race, nationality, language, origin, social position, beliefs, convictions or attitude, age, disability, ethnic origin and religion, in order not to “discriminate” on the basis of sexual orientation in the legislation process.

14. The initial draft *Law on the Amendment of the Law on Education* presented by the Ministry of Education and Science laid down the principles of the education system, aimed at ensuring equal opportunities for all actors of the education system while assuming that the “education system is socially fair” and “it ensures actualization of people’s rights irrespective of their gender, race, nationality, language, origin, social position, beliefs, convictions or attitude, age, sexual orientation, disability, ethnic origin and religion.” Voting for these amendments will take place in spring 2011.

- *Law on Provision of Information to the Public*

15. The amended *Law on Provision of Information to the Public* contains an article, which prohibits publishing in advertising and audio-visual commercial communications information, which degrades human dignity, <...> also contains manifestations or promotion of sexual orientation.<sup>11</sup> It means that any audio-visual commercials containing any manifestation of sexual orientation should be prohibited though audio-visual commercials promoting heterosexual orientation are available in the media. Manifestations of non-traditional sexual orientation are prohibited.<sup>12</sup>

- *Amendments to the Criminal Code and Administrative Code*

16. On 19 October 2010 the notorious legislative amendments to Lithuania’s Criminal Code, which would criminalize the promotion of homosexual relations in public places, were withdrawn by their initiator, Member of Parliament, Petras Grazulis. The proposed amendment would have introduced a provision into the Criminal Code under which “a person promoting homosexual relations in public

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<sup>8</sup> Article 38 of the Constitution of the Republic of Lithuania, 25 April 2006, available in English at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=275302](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=275302)>;

<sup>9</sup> National Conception on Family Policy, 3 June 2008, available at <<http://www3.lrs.lt/docs2/GYWHJWWE.DOC>>;

<sup>10</sup> Amnesty International. Public Statements, 25 February, 2011, available at <<http://www.amnesty.org/en/region/lithuania?page=3>>;

<sup>11</sup> Article 39 (1) of the Law on Provision of Information to the Public, 18 October 2010, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=383812](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383812)>;

<sup>12</sup> Egle Digrytė. “Public official teaching tolerance have not approved video clip about lesbians”, 29 April 2010, *Delfi.lt*, available at <<http://www.delfi.lt/news/daily/lithuania/tolerancijos-mokantys-valdininkai-nepraleido-i-eteri-klipo-apie-lesbietes.d?id=31649789&rsslink=true>>;

places is committing a criminal offense which is punishable with community work or a fine or imprisonment.” The offence could also be committed by legal persons.<sup>13</sup>

17. The withdrawn legislative initiative was immediately replaced by the same MP with updated version of the amendment to the Administrative Code.<sup>14</sup> A proposed provision entitled “Public promotion of homosexual relations“ and states that “public promotion of homosexual relations is to be punished by a fine from two thousand to ten thousand litas (€580 - €2900)”.<sup>15</sup>

18. On 21 October 2010 Lithuanian MP Petras Grazulis submitted project, No. XIP-2595, to amend Administrative Code with a new Article 214 (30). The new Article in the Administrative Code is entitled “Public promotion of homosexual relations” and states that “public promotion of homosexual relations is to be punished by a fine from two thousand to ten thousand litas (€580 - €2900)”. The aim of this amendment according to explanatory letter of the initiators is “to assert that there would be administrative responsibility for public defiance of just and harmonious society values, and public encouragement to score them”.<sup>16</sup>

19. MP Petras Grazulis argued that this proposal was implementing the *Law on the Protection of Minors against the Detrimental Effect of Public Information*, legally enacted in March, 2010. Furthermore, MP Grazulis stated that this amendment is necessary to protect traditional family values and morals of society.<sup>17</sup> He explicitly stated that one of the most important objectives of the amendment is to prevent events like *Baltic Pride* from taking place in Lithuania ever again in the future.

20. On 12 November 2010 during the first reading, Lithuania’s Parliament decided to go ahead with legislation: 31 legislators voted in favour and 7 were against the draft law amending Administrative Code.<sup>18</sup> The far right fractions of Parliament have managed to push the draft Law to the point where it could have been voted into the Law. Both the Ministry of Justice and the President have condemned the draft legislation.

21. On 12 January 2011 the Government has issued a statement expressing its opposition to the draft legislation that seeks to make “public promotion” of homosexuality a punishable offense. “The provisions of the bill are contrary to both international and EU law,” the Government wrote in a statement. Nevertheless, this question is still on the Parliament agenda, and if not postponed, it will be dealt with in spring session in 2011.

#### - Civil Code of the Republic of Lithuania – Rights of Transgender Persons

22. Until the adoption of the new Civil Code of the Republic of Lithuania, there were no legal provisions pertaining to the issues of transsexuality in Lithuanian legal system. The new Civil Code entered into force on 1 July 2001.<sup>19</sup>

23. Article 2.27 of the Civil Code entered into force on 1 July, 2003, and it provides that “*an unmarried natural person of full age enjoys the right to the change of designation of sex in cases*

<sup>13</sup> Draft Law on the Supplementation of Criminal Code, XIP- 668(2), 16 June 2009, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=346178&p\\_query=homoseksual\\*&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=homoseksual*&p_tr2=2)>;

<sup>14</sup> Draft Law on the Amendment and Supplementation of Code of Administrative Offences, No. XIP – 2595, 19 October 2010, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=383747&p\\_query=Homoseksuali%F8%20santyki%F8&p\\_tr2=1](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383747&p_query=Homoseksuali%F8%20santyki%F8&p_tr2=1)>;

<sup>15</sup> *Ibid.*;

<sup>16</sup> Explanatory Letter, available at <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=383749](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383749)>;

<sup>17</sup> Stenograph of the Parliament’s Session, 12 November 2011, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=385963](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=385963)>;

<sup>18</sup> Voting results, 12 November 2011, available at <[http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-9810](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-9810)>;

<sup>19</sup> Civil Code of the Republic of Lithuania, No VIII-1864, 23 December 2010, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=390766](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=390766)>;

when it is feasible from the medical point of view.” A request by the person concerned shall be made in writing. Article 2.27 also stipulates that the conditions and the procedure for the change of designation of sex shall be prescribed by law.

24. On 27 December, 2000 the Government of the Republic of Lithuania adopted a Decree specifying the measures needed for the implementation of the new Civil Code.<sup>20</sup> Preparation of a Law on Gender Reassignment was mentioned in it and scheduled to take place until 1 January 2003. The Draft Law on Gender Reassignment was prepared by the Ministry of Health in early 2003.<sup>21</sup> On 3 June 2003 the Government approved the draft Law, sending it for consideration to the Parliament. However, the draft Law has never been examined in the Parliament and thus has never been adopted.

25. Article 5 of the Passport Law provides that a citizen’s passport must be changed if the citizen *inter alia* changes his or her forename, surname, gender or personal code.<sup>22</sup> Rule 109.8 of the Civil Registration Rules, approved by an Order of the Minister of Justice on 19 May 2006, permits a change in civil-status documents if person’s gender, forename and surname had been changed following gender reassignment.<sup>23</sup>

26. As a result, today there is a gap in the pertinent legislation: Lithuania recognizes one’s right to change his/her gender and also his/her civil status, however, there is no law providing for the conditions and procedures of full gender reassignment, nor for procedures of the change of civil-status documents. Therefore, today there are no suitable medical facilities reasonably accessible or available in Lithuania itself.<sup>24</sup>

27. This contradictory legal situation caused many problems for transsexual people and violated their rights, in particular their right to respect for private life granted by the European Convention on Human Rights.

28. An example that illustrates this problem is the case of *L. v. Lithuania* that was considered before the European Court of Human Rights. In 1997 the applicant – a Lithuanian citizen – was diagnosed as a transsexual. A consecutive treatment for a few years, including the partial gender reassignment surgery, was disrupted because of the absence of a relevant law that had to be adopted four years ago. For the same reason the change of the person’s civil status was also blocked.

29. On 11 September, 2007 the European Court of Human Rights found a violation of Article 8 of the Convention in respect of L.<sup>25</sup> Lithuania paid EUR 40,000 in pecuniary damage for the applicant, However it did not adopt the subsidiary legislation regarding gender reassignment.

30. On 9 March 2011, the Committee on Health Affairs registered a proposal to amend the Civil Code to prohibit gender reassignment surgeries in Lithuania. The initiators of the draft amendment proposed not only a removal of provision allowing gender reassignment in Lithuania, but also introduction of judicial procedure in order to change civil registry entries concerning person’s gender and other related data after the surgery has been performed abroad.

#### - State Family Policy Legal Framework

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<sup>20</sup> Government of the Republic of Lithuania. Decree on the Adoption of Implementation Measures of the Civil Code of the Republic of Lithuania, No 1506, 3 March 2003, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=211072](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=211072)>;

<sup>21</sup> Draft Law on Gender Reassignment, No IXP-2627, 4 June 2003, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=212187&p\\_query=&p\\_tr2=>](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=212187&p_query=&p_tr2=>)

<sup>22</sup> Passport Law, No IX-590, 12 October 2010, available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=384399](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=384399)>;

<sup>23</sup> Minister of Justice, Order on Approval of Civil Registration Rules, No 1R-294, 22 July available at

<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=325576](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=325576)>

<sup>24</sup> ECHR Judgment of 11 September 2007, *L. v. Lithuania*, Application No. 27527/03,

<[http://legacy.lclark.edu/faculty/tomas/objects/Lithuania\\_Case.pdf](http://legacy.lclark.edu/faculty/tomas/objects/Lithuania_Case.pdf)>;

<sup>25</sup> *Ibid.*

31. On 3 June 2008 the Parliament of Lithuania adopted the *Conceptual Framework for National Family Policy*, which imposed State's obligatory concept of family on the whole society. By making a clear division between what is considered to constitute a family and what is not, Lithuania violates Lithuanian citizens' constitutional right to the inviolability of private life. The *Conceptual Framework for National Family Policy* provides for a concept of family limited to a married heterosexual couple with children.<sup>26</sup> Such a narrow perception of the family embodies a systematic discrimination against cohabitating couples with children, single parent and homosexual families. Moreover, it does not provide equal legal protection for children born out of wedlock and have a negative impact on women's exercise and enjoyment of their human rights in marriage and family relations.

32. Thus Lithuania fails to ensure non-discriminatory policies for all its citizens. CEDAW Committee called upon the State to monitor effectively the impact of the *Conceptual Framework for National Family Policy* on non-traditional families as recognized in the Committee's general recommendation No. 21, and as protected by the *Law on Equal Treatment*.<sup>27</sup> However, these recommendations have been ignored by Lithuanian decision makers who confront family state policies against gender equality.

33. The gender equality machinery has been disempowered. A separate Gender Equality Division at the Ministry of Social Security and Labour was closed and gender equality issues have been erased from the agenda of state policies.

34. Since 2008 Lithuanian Parliament has initiated number of legal acts relying on the provisions of the *Conceptual Framework for National Family Policy* and consequently reinforced stigmatization, exclusion and discrimination of the citizens who are beyond the restricted concept of family definition. Provisions of the *Law on the Protection of Minors against the Detrimental Effect of Public Information* restrict public information which may corrupt family values and promote non-traditional family and marriage, because this information might negatively affect juvenile's psychic development.<sup>28</sup>

35. Though the Civil Code introduced the concepts of civil partnership and identified the necessity for further legislation to establish the regulations for its registering, terminating and ending, the *Law on Partnership* has not been adopted till present. Thus, cohabitating couples, both heterosexual and homosexual, cannot legally register their civil partnership. As a result legal acts related to spouses' relationships within family such as property regulations, social benefits, child adoption provide different treatment to the persons in marriage on the one hand, and cohabitating partners, on the other.<sup>29</sup>

#### - *Women in Labor Market*

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<sup>26</sup> Conceptual Framework for National Family Policy. No. X-1569. 3 June, 2008 available at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=322152&p\\_query=Valstybin%EB%20F0eimos%20politikos%20konceptija&p\\_tr2=2;](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=322152&p_query=Valstybin%EB%20F0eimos%20politikos%20konceptija&p_tr2=2;)

<sup>27</sup> CEDAW Concluding comment CEDAW/C/LTU/CO/4, available at <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/973a62ca86ca2136c12574aa003f86a2?OpenDocument>;

<sup>28</sup> Law on the Protection of Minors against the Detrimental Effect of Public Information No. XI-333, 14 July 2009 available at [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=349306](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=349306)

<sup>29</sup> Vanagienė G. 2004. "Sutuoktinių ir sugyventinių (partnerių) teisinės padėties Lietuvoje lyginamoji analizė" (Comparative Analysis of Legal Aspects of Married Couples and Cohabiting Partners) in Davidavičius A. and E. Platovas (eds). 2004. Šeimoms Politikos ir Teisės Iššūkiai Europoje (Family Policy and Legal Challenges in Europe). Vilnius: ESTEP. LGL

36. Though the economic crises hit more men than women (unemployment ratio of men is 6.6% bigger than that of women in 2009),<sup>30</sup> the structural reasons for women's discrimination have not been removed.

37. Primary women's role as care-provider for dependant family members makes significant obstacles for their employment and prospective carrier. 10% of women drop out from labor market due to child birth and care responsibilities. Today there is limited access to child and other dependents' care services, particularly in rural areas. The paid child-care leave covers the period of two years and does not establish the father's quota. This strongly affects the reproduction of women as care-givers stereotype and makes serious obstacles for their reintegration into the labor market.

38. Official statistics show that pay-gap between the wages of women and men is higher than 15%. In almost all economic sectors men's wages are higher than women's indicating existence of vertical segregation of labor market. Only three out of nine economic sectors demonstrate gender-balanced employment (close to ratio 40/60%).<sup>31</sup>

39. 20.6% of population in Lithuania lives on risk-of-poverty level. Women's risk of poverty rate increases in the age above 65 and is 2.5 times higher than that of men (respectively 31.3 and 13.2%).<sup>32</sup> Another group experiencing the highest level of poverty is single mothers (46.4% in 2009).<sup>33</sup>

## Hate crimes

40. It is almost impossible to assess the real scale of hate crimes in Lithuania, due to erroneously functioning data collection system. Currently this system is based on the collection of data from statistical cards (templates, filled by pre-trial investigation institutions), supervised by the Ministry of Interior. Although prerequisites for data collection on hate crimes became available at the end of 2006, the information collected, however, fails to completely correspond to the real number of registered crimes. For instance, according to the crime registry,<sup>34</sup> during the period of 2007-2009, no racially motivated crimes were registered, 5 crimes were motivated with religious hatred, another 5 – with national hatred. In contrast, according to the General Prosecution office,<sup>35</sup> at least 52 instigation of hatred or discrimination cases were brought to the court during the same period.

41. The General Prosecution Service recognizes that there are significant disparities between data, administered by the IT and Communications Department under the Ministry of Interior and by the General Prosecution Service itself.<sup>36</sup> Regional and local police offices as well as other pre-trial investigation bodies do not take the obligation to provide accurate and timely data to the crime registry seriously. Since there is no other monitoring mechanism available, there is a clear lack of control over delivery of accurate statistical cards to the registry. In addition to this, no effort to systemize information on hate crimes or make it easily accessible to the public has been made so far.

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<sup>30</sup> Women and Men in Lithuania. 2009. Vilnius 2010. Department of Statistics available at [http://www.stat.gov.lt/lt/catalog/list/?cat\\_y=2&cat\\_id=3](http://www.stat.gov.lt/lt/catalog/list/?cat_y=2&cat_id=3)

<sup>31</sup> Women and Men in Lithuania 2009. Vilnius, 2010. Department of Statistics available at [http://www.stat.gov.lt/lt/catalog/list/?cat\\_y=2&cat\\_id=3](http://www.stat.gov.lt/lt/catalog/list/?cat_y=2&cat_id=3)

<sup>32</sup> Income and Living Conditions 2009. Vilnius 2010. Department of Statistics available at <http://www.stat.gov.lt/lt/catalog/viewfree/?id=1874> or [http://www.stat.gov.lt/lt/catalog/list/?cat\\_y=2&cat\\_id=3](http://www.stat.gov.lt/lt/catalog/list/?cat_y=2&cat_id=3)

<sup>33</sup> Income and Living Conditions 2009. Vilnius 2010. Department of Statistics available at <http://www.stat.gov.lt/lt/catalog/viewfree/?id=1874> or [http://www.stat.gov.lt/lt/catalog/list/?cat\\_y=2&cat\\_id=3](http://www.stat.gov.lt/lt/catalog/list/?cat_y=2&cat_id=3)

<sup>34</sup> Official letter of response from the IT and Communications Department under the Ministry of Interior to the Inquiry of the Lithuanian Centre for Human Rights, 2010-07-30, No. (6-2) 9R-7559;

<sup>35</sup> Special Investigation department of the General Prosecutor's Office. Annual report for 2009, Nr. 17.9.-212, 2010-01-29, available at <http://www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx>;

<sup>36</sup> General Prosecutor's Office. Overview of the crimes against equality of persons, No 12.14-41,2008-12-31, available at <http://www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/STSapibendrinimai2008m/tabid/430/Default.aspx>;

42. Despite the lack of precise official data, the crime trends are visible fairly well. Inadequate response of law enforcement institutions to the racist, anti-Semitic and other kinds of intolerance created conditions for the outburst of xenophobia, racism and anti-Semitism, the peak of which has been reached in 2007-2008 and continues today. Incitement of hatred is common on the Internet; a number of racist manifestations took place in sports, while national celebrations are often used by right-wing youth to manifest openly racist slogans.<sup>37</sup> *Amnesty International* noted racist attacks and discrimination to be carried out against non-European migrants and the Roma minority in Lithuania.<sup>38</sup> The situation of the Roma is particularly alarming because of the discriminatory behaviour of the police towards them, including acts of violence. Almost none of them are reported to the police, since a mechanism of objective inner investigations within police itself is weak.

43. Almost all criminal investigations related to the hate crimes have been launched by prosecutors of the Special Investigation Department of the Prosecution Office. The police, which is the main pre-trial institution, rarely starts pre-trial investigations on these issues. Though the role of the Special Investigation Department of the Prosecution Office when investigating racist crimes was undeniable, it was, nevertheless, closely linked to the amount of complaints submitted by the NGOs. Despite its modest progress, the Special Investigation Department of the Prosecution Office was closed in the beginning of 2011.

44. In addition to that, difficulties proceed at judicial level. It is disturbing that Lithuanian courts require an exclusively high standard of proof for racial or ethnic discrimination crimes and tend to misinterpret and misapply the case-law of the European Court of Human Rights. The Lithuanian case-law tends to demonstrate that public incitement against any racial, ethnic, religious or other group of persons (Article 170 of the *Criminal Code*) is conceived as a minor crime, which does not pose serious danger to the public or state. Until 2009 the severest punishments imposed by the courts on convicted persons in such cases were fines.

45. On 25 May 2009, Lithuanian Supreme Court rejected an appeal of the Prosecutor's office concerning the acquittal by the trial court of a person who had advocated violence against the Roma in one of the news portals.<sup>39</sup> The court declared that not every negative statement about a person or group of persons belonging to particular group constitutes a criminal offence under the meaning of Article 170 of the *Criminal Code*. Moreover, the court found the lack of *direct intent* to incite hate, though it is quite difficult, if possible, to reach that standard of proof in cases of hateful online comments. In addition, the court ruled that different standards should be applied depending on whether expression is a fact or a value judgment (opinion). The court quoted case-law of the European Court of Human Rights and underlined that a democratic society should also be tolerant towards opinions that are shocking or offensive to others. But unlike the Supreme Court of Lithuania, the European Court for Human Rights accepts expressions that are shocking and/offensive for the majority for population when they are used by members of minorities and not *vice versa*.

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<sup>37</sup> ENAR Shadow Reports on Racism in Lithuania 2005-2009, available in English at <[http://www.enar-eu.org/Page\\_Generale.asp?DocID=15294&la=1&langue=EN](http://www.enar-eu.org/Page_Generale.asp?DocID=15294&la=1&langue=EN)>;

<sup>38</sup> Amnesty International. Annual Report 2009: Lithuania available at <<http://www.amnesty.org/en/region/lithuania/report-2009>>;

<sup>39</sup> Decision of the Lithuanian Supreme Court, 26 May 2009;