



# **ECRI REPORT ON LITHUANIA**

## **(fifth monitoring cycle)**

Adopted on 18 March 2016

Published on 7 June 2016

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 takes 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, those of the third round at the end of 2007, and those of the fourth round at the beginning of 2014. Work on the fifth round reports started in November 2012.

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

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 10 December 2015; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**



## SUMMARY

**Since the adoption of ECRI's fourth report on Lithuania on 22 June 2011, progress has been made in a number of fields.**

In early 2015, the authorities adopted the new Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination, which aims at assessing the current situation of relevant vulnerable groups, and at raising public awareness about their situation.

Within the framework of the Inter-Institutional Action Plan on the Promotion of Anti-discrimination for 2012-2014, training courses had been organised for police officers, prosecutors and judges on racist and homo-/transphobic violence.

The authorities also developed the new Action Plan for Roma Integration into the Lithuanian Society 2015 – 2020 which includes, inter alia, measures in the areas of housing, education, employment and health.

Lithuania participates in the EU programme Safer Internet, under which the Inspector for Journalist Ethics monitors online content with regard to hate speech. Cybercrime investigation units have been established at 10 district police headquarters. These units are tasked to investigate criminal offences committed on the Internet, including racist and homophobic hate speech.

Several positive developments have occurred in recent years with regard to the situation of persons who have been granted subsidiary protection, namely the amendments to the Law on Health Insurance adopted on 1 October 2013, which implemented one of ECRI's priority recommendations made in its last report on Lithuania, and amendments to the Law on Cash Social Assistance for Low Income Families and Single Residents, adopted on 1 December 2011. These changes have secured to beneficiaries of subsidiary protection access, on an equal footing with nationals of Lithuania, to full health care services and income support benefits available for individuals with low income.

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

Lithuania has neither signed nor ratified Protocol No. 12 to the European Convention on Human Rights and the authorities have not indicated any intention to prepare ratification.

The Lithuanian Criminal Code is still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. No steps have been taken to address the lacunae identified in ECRI's last report on Lithuania. Gaps also remain with regard to civil and administrative law provisions.

In addition to incidents of racist hate speech and violence, which are mainly directed at historical minorities, Lithuania experiences a widespread problem of incitement to homo- / transphobic hatred as well as acts of violence against LGBT persons. The growing level of intolerance against sexual minorities has remained largely unchecked. Furthermore, discrimination against LGBT persons persists in many areas of social life.

The situation of many members of the Roma community remains extremely difficult. The housing situation in the Kirtimai settlement has not improved since ECRI's last report and social marginalisation of Roma is still evident, for example in the areas of education and employment. The urgent measures needed to address these problems have not been taken by the Lithuanian authorities in recent years.

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

Lithuania should sign and ratify Protocol No. 12 to the European Convention on Human Rights.

The Lithuanian authorities should bring the Criminal Code, as well as civil and administrative law provisions, in general, into line with ECRI's General Policy Recommendation No. 7.

The authorities should carry out an evaluation of the anti-racism trainings for law enforcement officials and members of the judiciary.

The Lithuanian authorities should, as part of the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination, set up an inter-institutional working group to develop a comprehensive strategy to tackle effectively the problem of racist and homo-/transphobic hate speech. This group should include the relevant authorities, as well as civil society organisations, including, amongst others, representatives of the LGBT community.

The authorities should, as part of the Action Plan for Roma Integration 2015-2020, resolve the difficult housing situation of Roma, inter alia by co-operating more closely with and financially supporting relevant local authorities, in particular the Municipality of Vilnius, to provide sufficient social housing to vulnerable members of the Roma community; and by working with rental agencies and associations of private landlords to overcome prejudices against Roma in the private-sector housing market. Furthermore, the authorities should take steps as soon as possible to provide proper accommodation for persons living in the Kirtimai settlement and, in the meantime, ensure that no evictions take place, and that all necessary public services are provided to this community.\*

The Lithuanian authorities should comply without further delay with the judgment of the European Court of Human Rights on regulating the procedure and conditions of gender reassignment; as well as simplify the issuing of new identity cards to persons who have undergone gender reassignment surgery.

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\* This recommendation 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. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. In its third and fourth reports, ECRI had recommended that Lithuania sign and ratify Protocol No. 12. The Lithuanian authorities have informed ECRI that they are not prepared to do so because of the relatively small number of ratifications and the absence of a well-established body of case law of the European Court of Human Rights with regard to this instrument. ECRI considers, however, that the willingness to ratify the Protocol, which entered into force on 1 April 2005, should not be dependent on the number of other ratifications, but on its usefulness in fighting racism and racial discrimination in Lithuania. Moreover, ECRI wishes to draw Lithuania's attention to the *Sejdić and Finci v. Bosnia and Herzegovina* judgment of 22 December 2009, in which the Grand Chamber of the European Court of Human Rights established that Protocol No. 12 would be interpreted in the same manner as Article 14 of the European Convention on Human Rights.

2. ECRI once again recommends Lithuania to sign and ratify Protocol No. 12 to the European Convention on Human Rights.

##### - Criminal law

3. The Lithuanian Criminal Code (CC) contains a number of articles to address the problem of racism and racial discrimination. The relevant provisions can be found in Articles 60, 169, 170, 170(1), 170(2) and 312 CC. ECRI in its 2011 report recommended that Lithuania's Criminal Code be brought fully in line with its General ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. However, the Lithuanian authorities informed ECRI that no steps were taken in this regard and that the gaps remain. The following paragraphs will therefore focus on these lacunae.

4. Article 60 CC includes racist motivation in the list of aggravating circumstances, as recommended in ECRI's GPR No. 7, § 21. The article covers acts that have been 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 (henceforth: enumerated grounds).

5. Article 170 CC prohibits incitement to hatred and discrimination as well as insults against certain groups. A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person on the enumerated grounds of Article 60 CC shall be punished by a fine or by imprisonment for a term of up to two years. The article also punishes the production, distribution, acquisition, transportation or storage of items that incite hatred on the enumerated grounds, as recommended in ECRI's GPR No. 7, § 18(f).

6. Article 170 CC does not criminalise public defamation or threats, as recommended in ECRI's GPR No. 7 § 18(b) and (c), or the public expression, with a racist aim, of an ideology that claims superiority, as recommended in § 18(d). There is also no specific provision to punish racial discrimination in the

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean 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. According to GPR No. 7 "racial discrimination" shall mean 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.

exercise of one's occupation or public office, as recommended in ECRI's GPR No. 7, § 18(h).

7. The enumerated grounds in Articles 60, 169, and 170 do not include citizenship and colour. The Lithuanian authorities informed ECRI that they consider citizenship to be covered by the ground of nationality. However, there is no case law on this question. The list of grounds does not include gender identity either.<sup>2</sup>
8. ECRI recommends that the authorities bring the Lithuanian Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) add colour and citizenship, as well as gender identity, to the list of enumerated grounds in Articles 60, 169 and 170; (ii) amend Article 170 in order to criminalise public defamation or threats, and the public expression, with a racist aim, of an ideology that claims superiority; and (iii) criminalise racial discrimination in the exercise of one's occupation or public office.

- **Civil and administrative law provisions**

9. The Lithuanian Law on Equal Treatment entered into force in 2005 and was amended in 2008. It prohibits discrimination on the grounds of age, sexual orientation, disability, race, ethnicity, national origin, language, social status, or religion and convictions (henceforth: enumerated grounds). Since ECRI's fourth report on Lithuania in 2011, no amendments have been made to implement any of the recommendations in ECRI's previous report concerning this law.<sup>3</sup>
10. The list of enumerated grounds does not include citizenship or colour. Furthermore, gender identity is also not included.<sup>4</sup>
11. The law defines and prohibits both direct and indirect discrimination, as recommended in ECRI's GPR No. 7, § 4. However, acts of segregation, discrimination by association, announced intention to discriminate, inciting or aiding another to discriminate are not specifically mentioned, as is recommended in ECRI's GPR No. 7, § 6.
12. The law applies to natural and legal persons in the public and private sectors, including public authorities, as recommended in ECRI's GPR No. 7, § 7. There is, however, no provision in the law that places an obligation on public authorities to promote equality and prevent discrimination; or to ensure that contractors or partners they work with adhere to non-discrimination principles, as recommended in ECRI's GPR No. 7, §§ 8 and 9 respectively.
13. There is also no provision addressing the recommendation contained in ECRI's GPR No. 7, § 14 concerning the amendment or annulment of discriminatory provisions included in existing contracts or agreements.
14. Founding a racist organisation was previously considered an administrative offence under Article 214(13) of the Lithuanian Code of Administrative Offences. In 2009, criminal liability was introduced for this. This liability also extends to funding and supporting such organisations. However, there are no specific provisions in Lithuania to suppress the public financing of organisations, including political parties, which promote racism, as recommended in ECRI's GPR No. 7, § 16 and in ECRI's fourth report on Lithuania in 2011 (§ 40). There is also no provision for the dissolution of such organisations, as recommended in ECRI's GPR No. 7, §17.

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<sup>2</sup> This is relevant for sections I.2, I.3 and II.3 of this report.

<sup>3</sup> Issues concerning the effectiveness of the independent authorities entrusted with the fight against racism and racial discrimination, as per ECRI's General Policy Recommendations Nos. 2 and 7, are discussed in section II.2 of this report.

<sup>4</sup> This is relevant for section II.3 of this report.

15. In its fourth report on Lithuania, ECRI recommended in § 35 that the Law on Equal Treatment be amended to allow associations that have a legitimate interest in combating racism and racial discrimination to bring civil cases or make criminal complaints even if a specific victim is not referred to.<sup>5</sup> This recommendation has not been implemented.
16. ECRI recommends that the authorities bring the Lithuanian civil and administrative law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs. They should, in particular, amend the Law on Equal Treatment with the aim of including citizenship and colour, as well as gender identity into the enumerated grounds. The Law should also include a possibility for associations that have a legitimate interest in combating racism and racial discrimination to bring civil cases and make criminal complaints even if a specific victim is not referred to. Furthermore, it should include an obligation on public authorities to promote equality and prevent discrimination and to ensure that contractors or partners they work with adhere to non-discrimination principles; as well as an obligation to amend or annul discriminatory provisions in existing contracts or agreements. In addition, ECRI recommends introducing legislation to suppress public funding for organisations, including political parties, which promote racism and to provide possibilities for their dissolution.

## 2. Hate speech<sup>6</sup>

### - Data

17. In 2012, out of 263 acts of hate speech reported to the law-enforcement authorities 181 were related to the incitement of antisemitism or hatred of other religious, ethnic or national minorities (in particular Roma, Russians, and Poles).<sup>7</sup> This was a dramatic increase from 48 such acts in 2011. In 2012, there were also 13 incidents of hate speech against Black people, one more than in 2011.<sup>8</sup> These numbers declined since. The authorities informed the ECRI delegation that there were 106 recorded cases of hate speech in 2014.

### - Racist hate speech

18. Public expressions of racism in Lithuania are often linked to nationalistic and antisemitic extremists. In 2014, the Lithuanian Jewish Community warned that antisemitic attitudes were still widespread in the country and that more needed to be done, in particular in the field of education, to promote respect for cultural diversity.<sup>9</sup>
19. The problem of ultra-nationalist marches taking place to mark the two Lithuanian Independence Days on 16 February and 11 March persists. Sympathy for wartime Nazi-collaborators is often expressed during these events. In 2015, the Lithuanian Nationalist Youth Union organised such a march in Kaunas, during which some of the participants were seen wearing swastika-symbols. The march took place near the historical site of the Kaunas massacre, during which some 10,000 Jews were murdered in October 1941.<sup>10</sup> In 2011, swastika flags were hoisted on three occasions on 20 April, the birthday of Adolf Hitler, by neo-Nazi sympathisers.

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<sup>5</sup> See also ECRI's GPR No. 7, § 25.

<sup>6</sup> This section covers racist and homo/transphobic speech. For a definition of "hate speech" see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on "hate speech", adopted on 30.10.1997.

<sup>7</sup> Human Rights Monitoring Institute 2013: 9.

<sup>8</sup> Ibid.

<sup>9</sup> Baltic Times 2014.

<sup>10</sup> JTA 2015.

20. On 6 May 2014, a demonstration took place against a legislative initiative that would allow Polish to be used in official Lithuanian identity documents. It was organised by the Vilnija society, the Lithuanian Union of Freedom Fighters and the Lithuanian Movement. During the demonstration the leader of the Nationalist Union, Julius Panka, carried a banner with the words “You could write a W on your tombstones” – referring to the Polish spelling of the city’s name Wilno.<sup>11</sup> Polish minority human rights activists informed ECRI about 200 incidents of anti-Polish hate speech in 2012, some 70 such cases in 2013, and three in 2014. Not all of these cases, however, were reported to the law enforcement authorities.
21. Members of the Roma community met by ECRI’s delegation also complained that they are often victims of day-to-day insults by members of the general public, on public transport, in shops or in the streets. Roma organisations report that most of the victims do not trust the police sufficiently to report relevant cases.
- **Homo- / transphobic hate speech**
22. In 2012, out of the 263 recorded incidents of hate speech, 47 were of a homo-/transphobic nature. In 2011, there had been 208 such incidents.<sup>12</sup> According to human rights organisations met by ECRI’s delegation, homo- and transphobic hate speech, verbal harassment and inappropriate comments are common amongst the general public, as well as in the media and political discourse, resulting in LGBT persons feeling constantly discriminated against and excluded in day-to-day life. LGBT NGOs report a general atmosphere of intimidation, which results in LGBT persons not feeling confident to be open about their identity. Homo- /transphobic hate speech has also been described by civil society organisations as creating an atmosphere in which violence against LGBT persons becomes increasingly accepted.
23. Lithuanian NGOs compiled examples of various homo- and transphobic slogans which were employed during the campaign of election to the European Parliament in 2014. The report shows the magnitude of the phenomenon.<sup>13</sup> It includes campaign slogans such as Don’t like faggot parades? Vote for Nationalist Union!<sup>14</sup>
24. There have been a number of examples of offensive political discourse targeting LGBT persons. One such aggressive statement was made by Petras Gražulis, a Member of Parliament from the Order and Justice Party, who in May 2012 declared that he considered homosexuals to be no better than necrophiliacs or paedophiles. Unfortunately, the Seimas’ Permanent Commission on Ethics has not imposed any sanctions on MPs for such statements, in spite of ECRI’s previous recommendation to enforce the Parliament’s code of ethics more vigorously.<sup>15</sup> Mr Gražulis was also actively involved in numerous other homophobic incidents. In September 2013, he led a homophobic chant among the Lithuanian basketball fans in the course of the Eurobasket championship. In November 2013, he delivered a hateful “gift” (a pair of jeans with a zip on the backside) to a local LGBT NGO.<sup>16</sup>

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<sup>11</sup> Sodonis / Urbonaitė 2014: 7.

<sup>12</sup> Human Rights Monitoring Institute 2013: 9.

<sup>13</sup> Sodonis / Urbonaitė 2014: 4-8.

<sup>14</sup> Sodonis / Urbonaitė 2014: 7.

<sup>15</sup> § 79 of ECRI’s 4<sup>th</sup> report on Lithuania.

<sup>16</sup> ILGA-Europe 2013: 141. See also: Delfi -The Lithuania Tribune 2012.

- **Hate speech on the Internet**

25. In Lithuania, hatred is often incited in cyberspace through online comments, blogs, social networks and other fora. Some 90% of reported hate speech cases (see § 17) are occurring in this sphere.<sup>17</sup> Human rights activists monitoring hate speech in Lithuania noticed a trend towards creating web-pages hosted on US servers to post hate speech and attempt to circumvent Lithuanian anti-hate speech legislation. The sites are usually not restricted or shut down and remain available to be viewed also by Lithuanian Internet users.<sup>18</sup>
26. Homo- and transphobic hate speech is widespread on the Internet, in particular in online fora and in comments sections of newsportals, rather than the articles themselves. Online hate speech goes largely unchecked and unpunished. In November 2009, a woman posted homophobic comments on the news website www.lrytas.lt following reports about a pro-LGBT protest Kisses against Homophobia in front of the Seimas (see also § 31). The comments included statements such as “Those who sympathise...with the excess by those homosexuals are themselves perverts and mentally ill people. ...They should have been urgently collected and taken to a psychiatric hospital. Their place is there.”<sup>19</sup>
27. The Internet is also used to make threats of violence. There have been several cases of threats against members of minorities, such as Poles and Jews. On numerous occasions, threats of violence were also made against LGBT persons or groups, especially through social networks.<sup>20</sup>

- **Measures taken by the authorities**

28. ECRI considers hate speech particularly worrying because it is often a first step in the process towards actual violence. Appropriate responses to hate speech include law enforcement channels (criminal and administrative law sanctions, civil law remedies) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech. The Lithuanian authorities have taken various measures to combat hate speech, but more needs to be done.

- *Criminal law, administrative law and civil law responses*

29. The Prosecutor General’s Office reported that out of the 36 pre-trial investigations under Article 170 of the Criminal Code on incitement against a national, racial, religious or other group carried out in 2010, 23 cases were transferred to the courts. 13 persons were found guilty and sentenced.<sup>21</sup> In 2014, out of 106 cases reported to the law enforcement authorities, 43 resulted in prosecution.<sup>22</sup>
30. The authorities informed ECRI, that in the 2011 cases of displaying swastika flags (see § 19), the perpetrators were fined and subsequently placed under observation by the security services.
31. In 2014, the Ombudsman identified and forwarded to the prosecution service two cases of homophobic election campaigning employed by nationalist political parties. So far, no outcomes are known. The woman, who in 2009 had posted homophobic comments on a news website following the pro-LGBT protest

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<sup>17</sup> Human Rights Monitoring Institute 2013: 7.

<sup>18</sup> Ibid.: 18.

<sup>19</sup> Supreme Court of Lithuania, case no. 2K-677/2012.

<sup>20</sup> WWN and Lithuanian Gay League (LGL), quoted in: OSCE/ODIHR 2013a.

<sup>21</sup> EU Fundamental Rights Agency (FRA) 2013a: 39.

<sup>22</sup> Human Rights Monitoring Institute 2013: 9.

“Kisses against Homophobia” in front of the Seimas (see § 26), was convicted by the Kaunas District Court on 9 March 2012 of incitement to hatred under Article 170(2) of the Criminal Code. However, on 18 December 2012, the Supreme Court overturned the verdict and found that her words had been merely inappropriate, but did not constitute incitement to hatred.<sup>23</sup> The Supreme Court was also of the opinion that the women’s homophobic comments were provoked by the nature of the pro-LGBT event in front of the Seimas and the “eccentric conduct” of the protesters which violated the constitutionally protected traditional family values. Moreover, the Supreme Court emphasised that, in its view, criminal prosecution of homophobic hate speech should only be a measure of last resort. In spite of the Supreme Court judgement mentioned above, a Vilnius district court, in January 2013, found a person guilty of encouraging mockery, defiance, discrimination and physical violence against a group of people because of their sexual orientation and ordered him to pay a fine of 1 560 Lithuanian Litas (about 450 Euros) for having posted on Facebook: “What we need is another Hitler to exterminate those fags because there’s just too many of them multiplying.”<sup>24</sup>

32. ECRI would like to point out to the Lithuanian authorities that in a general climate of homo-/transphobia, firm, proportionate and appropriate actions, including criminal prosecutions, need to be taken to combat hate speech.
33. A number of threats of violent attacks have been investigated by the prosecutorial authorities, but human rights defenders met by ECRI’s delegation criticise that some cases were dismissed by the courts on the basis that the threats did not appear sufficiently likely to be carried out.
34. Many human rights advocates criticise that the existing legislation, in particular the Law on Public Information and its restrictions to advocate for alternative family models (see also section II.2.2) indirectly encourage homo- and transphobic hate speech. Nevertheless, on 19 June 2014, the Seimas voted to consider a controversial amendment to the Criminal Code, which would remove criminal liability for homophobic hate speech. The proposed amendment states that the “criticism of sexual behaviour or sexual practices, convictions or beliefs, or persuasion to change this behaviour, practices, convictions or beliefs cannot be per se qualified as harassment, denigration, incitement to hatred, discrimination or incitement to discrimination.”<sup>25</sup> The amendment is still pending before the Seimas.
- *Training of law enforcement officials and members of the judiciary*
35. In 2012, 37 judges and 15 prosecutors were trained on legal and social aspects in the fight against discrimination. Furthermore, the Lithuanian authorities trained a total of 350 police officers on the fight against racism and on promoting tolerance in general, but have not yet carried out planned trainings for them on relevant provisions of the Criminal Code, notably Articles 60, 170, and 312, which had been part of one of ECRI’s priority recommendations in its fourth report.<sup>26</sup> However, the authorities informed ECRI that an agreement between the Ministry of Interior and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE to provide assistance for such trainings, was concluded.
36. ECRI recommends that the authorities fully investigate racist and/or homo- / transphobic threats and ensure that a lack of probability does not constitute an obstacle for convicting a perpetrator. Furthermore, the training programme for

<sup>23</sup> Supreme Court of Lithuania, case no. 2K-677/2012.

<sup>24</sup> ILGA-Europe 2013: 141.

<sup>25</sup> LGL 2014a.

<sup>26</sup> See also: ECRI 2014: 5-6.

police officers on the fight against racism and promotion of tolerance should be expanded and the planned training sessions on relevant provisions of the Criminal Code be conducted. ECRI also recommends that the authorities carry out an evaluation of the impact the trainings had with a view to ensuring that further elements necessary to enable law enforcement officials and members of the judiciary to fight racist and homo- /transphobic hate speech, including threats, more effectively are identified and included in future training programmes.

- *Monitoring and combatting online hate speech*
37. The previously existing Special Investigation Division within the General Prosecutor's office, which also dealt with hate crime, was dissolved in 2010, mainly due to lack of finance. The functions of this division have been allocated to two specialised prosecutors in the General Prosecutor's office and some 20 prosecutors at district level. The authorities also informed ECRI's delegation that cybercrime investigation units have been established at 10 district police headquarters. These units are tasked to investigate criminal offences committed on the Internet, including racist and homophobic hate speech. Furthermore, the Cybercrime Law came into effect on 1 January 2015 and is the new legal basis for being able to close websites and Internet fora in cases where criminal content is discovered.
38. Lithuania also participated in the EU programme Safer Internet, under which the Inspector for Journalist Ethics monitors online content. In 2014, 102 texts were reviewed and in 48 cases, expert advice was sought. Most of the investigated texts were not found in the news sections themselves, but in the readers' comments sections. The largest group concerned racist hate speech, followed by anti-LGBT hate speech. The Inspector also organised eight training sessions for journalists in 2014.
- *Regulating the media*
39. Lithuania does not have an effective journalistic self-regulation mechanism to counter the problem of hate speech. Under the Law on Provision of Information to the Public<sup>27</sup>, the Inspector of Journalist Ethics 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 impose a fine of up to 2 000 € for repeated acts and can order that the authors remove the information from a website. By contrast, it cannot order the closure of a website. Although the Inspector has the power to act ex officio, she usually only reacts to complaints. In 2011, ECRI recommended strengthening of capacities of the competent authorities to investigate incidents of hate speech on the Internet; as well as empowering the Inspector of Journalist Ethics to inflict greater sanctions.<sup>28</sup> This has not happened. Furthermore, the budget of the Inspector has been reduced by approximately 5% in 2014 compared to 2013. Furthermore, under the Law on the Provision of Information to the Public, the Radio and Television Commission of Lithuania can also impose fines on a broadcaster or provider of on-demand audio-visual media services for the publication of content that incites hatred.
40. While in 2011 ECRI commended the activities of the Inspectorate of Journalistic Ethics against racist hate speech, several civil society organisations criticised the Inspector for not taking the same strong position on the issue of anti-LGBT hate speech (see also section II.2.2 below on the controversy surrounding the book "Amber Heart").

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<sup>27</sup> Article 50.

<sup>28</sup> §§ 83 and 85 respectively of ECRI's 4<sup>th</sup> report on Lithuania.

41. ECRI recommends that the Lithuanian authorities take steps to ensure that the widespread phenomenon of homo-/ and transphobic hate speech is effectively tackled, including by i.) empowering the Inspector of Journalist Ethics to impose greater sanctions, as already recommended in ECRI's 2011 report, and encourage the Inspector to combat hate speech, and homo- /transphobic hate speech in particular, more vigorously; ii.) ensuring effective and proportionate prosecution of such acts; and iii.) preventing the notion of 'protecting public morals' from being used to justify or condone incitement of hatred against LGBT persons.

- *Condemnation of hate speech and counter speech*

42. In spite of previous ECRI recommendations, the Lithuanian authorities have not yet taken any effective steps to ban or dissolve ultra-nationalist events during which Nazi-collaborators are praised or related symbols displayed. The authorities indicated to ECRI that such events are unfortunate public expressions by a very small extremist minority, which should, nevertheless, be permitted within the context of diverging historical interpretations of the country's struggle for independence, consistent with freedom of expression and assembly. The authorities informed ECRI, however, that in the run up to Independence Day celebrations, several high-ranking state officials, including the President, the Prime Minister and the Speaker of Parliament, have made public speeches in which they rejected racism and promoted tolerance.

43. ECRI recommends that the Lithuanian authorities, while respecting the right to celebrate the country's national struggle for independence, take effective measures to prevent or punish any public praise for Nazi- collaborators and persons who engaged in genocide, war crimes or crimes against humanity, or the public display of symbols associated with such persons, organisations or crimes.

- *Activities to promote tolerance*

44. Concerning antisemitism, the Jewish community, while acknowledging the government's commitment to tackling this issue, points to a lack of clear guidelines and coordination between relevant ministries to promote respect for diversity through activities in the field of education.<sup>29</sup> Furthermore, there have been no awareness-raising activities conducted by the authorities in the context of property restitution to Jewish persons or organisations in order to avoid antisemitic sentiments, as recommended by ECRI in its last report.<sup>30</sup>

45. ECRI recommends that the authorities develop, jointly with the Jewish community, an awareness-raising strategy to combat antisemitism, in particular in the context of property restitution.

46. The authorities had adopted, but without real civil society involvement<sup>31</sup>, an Inter-Institutional Action Plan on the Promotion of Anti-discrimination for 2012-2014, which included various research and training activities<sup>32</sup> (including the training for police officers mentioned above). Civil society organisations, however, mentioned to ECRI that in their view the impact of the Action Plan has been very limited, also due to a lack of strong coordination and linkages

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<sup>29</sup> Baltic Times 2014. The Lithuanian authorities informed ECRI that in autumn 2014, the government and representatives of the Lithuanian Jewish Community, as well as the American Jewish Committee, decided to set up a commission for Lithuanian Jewish culture and history.

<sup>30</sup> § 141 of ECRI's 4<sup>th</sup> report on Lithuania. The Law on Good Will Compensation for the Immovable Property of Jewish Communities was adopted in 2011.

<sup>31</sup> Sabatauskaitė / Urbonaitė 2014: 34. – Cf. ECRI's previous recommendation to support civil society organisations in their efforts to raise public awareness of issues of racism and racial discrimination and to work more closely with them in this area (§§ 209 - 210 of ECRI's 4<sup>th</sup> report on Lithuania).

<sup>32</sup> Sabatauskaitė / Urbonaitė 2014: 34.

between the various activities. An evaluation of the Action Plan has not been carried out. In early 2015, the authorities adopted the new Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination<sup>33</sup>, which has two main components: to assess the current state of relevant groups, and to raise awareness about their situation. It remains unclear what lessons have been learnt from the implementation of the previous Action Plan and how civil society organisations, which were this time consulted during the preparation process, will be involved in the implementation, monitoring and evaluation of the new Plan. The activities include annual equality and diversity awards, seminars, information campaigns and other educational events aimed at promoting tolerance, but there is no provision for a comprehensive strategy or mechanism to deal with racist and homo-/transphobic hate speech.

47. ECRI recommends that the Lithuanian authorities, as part of the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination, set up an inter-institutional working group to develop a comprehensive strategy to tackle effectively the problem of racist and homo-/transphobic hate speech. This group should include the relevant authorities, as well as civil society organisations, including, amongst others, representatives of the LGBT community.

### **3. Racist and homo- / transphobic violence**

#### **- Data**

48. Information concerning racist and homo-/transphobic violence is collected by the law enforcement agencies under the Ministry of the Interior, the Prosecutor's Office and the courts. However, the system of data collection has some shortcomings. The Prosecution Office, for example, only records investigations of racist crime related to discrimination of persons and incitement of hatred (mostly acts covered by Articles 169 and 170 of the Criminal Code and not acts of racist violence). Therefore, the figure does not include other criminal acts, such as attacks, which were committed with a racist motivation, even if such a motivation was included in pre-trial investigations. Thus the real scale of racist violence cannot be deduced correctly from the available statistical information.<sup>34</sup> While some NGOs also record incidents of racist and/or homo-/transphobic violence, their monitoring work is not systematic enough to provide a full picture of the extent of such acts in Lithuania.<sup>35</sup>

#### **- Racist violence**

49. For 2011, the Lithuanian authorities reported five cases of racist violence to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). For 2012, they indicated seven cases of racist violence.<sup>36</sup> Out of these, five were directed against historical minorities and included one physical assault, one desecration of graves, two attacks against places of worship, and one case of breach of public order involving violence. The other two cases were against foreigners and included one physical assault and one case of breach of public order involving violence.<sup>37</sup>

50. It seems, however, that attacks against members of historical minorities are more frequent than official data suggests. While the registered cases for 2012

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<sup>33</sup> The plan's primary purpose is to reduce discrimination on the grounds listed in the Law on Equal Treatment. The Ministry of Social Security and Labour is the lead Ministry, but implementation also involves other government institutions. Approximately € 1 400 000 are allocated for the implementation of the plan in 2015-2017, with an additional € 724 000 coming from EU funds. – See also: Delfi -The Lithuania Tribune 2015; and LGL 2015: 14.

<sup>34</sup> Sabatauskaite 2011: 5.

<sup>35</sup> Ibid.: 16.

<sup>36</sup> OSCE/ODIHR 2013b: 117-118.

<sup>37</sup> Ibid.: 48.

include one attack against a member of a Polish-minority advocacy group, the European Foundation for Human Rights reported the physical assault by a group of persons against Polish schoolchildren, which was not included in the official statistics.<sup>38</sup> Similarly, in 2012 no cases of antisemitic violence were reported by the Lithuanian authorities.<sup>39</sup> However, the Coordination Forum for Countering Antisemitism reported an alleged attack on a young Jewish man wearing traditional clothing, who was severely beaten and injured by a group of youths in northwest Lithuania.<sup>40</sup>

51. Violence against Roma, committed by police officers in the exercise of their duties, has been alleged frequently. There are, however, almost no official complaints, as the relevant persons do not seem to have sufficient trust in the law enforcement authorities or fear reprisals. According to some NGOs, even in cases of severe injuries allegedly inflicted by police officers, Roma victims refused to lodge a complaint.<sup>41</sup>
52. Some refugees residing in reception centres outside of main urban areas reported aggressive behaviour towards them by local residents, including the throwing of stones. According to testimonies collected by UNHCR, the refugees' inability to communicate in the Lithuanian, English or Russian language was the main obstacle to informing the police about the incidents and increased the victims' sense of vulnerability. As a consequence, some refugees refrained from leaving the reception centres, or did so only during the day time and in groups.<sup>42</sup> However, refugees and service providers with whom the ECRI delegation met indicated that violence against refugees is not a common occurrence.

- **Homo-/transphobic violence**

53. All LGBT and human rights activists met by the ECRI delegation agreed that homo- and transphobic violence is a growing problem in Lithuania. There is, however, no full official data on such acts. According to LGBT representatives, this is mainly due to a fear of revealing one's LGBT identity and lack of trust in the willingness of the police to investigate such crimes. According to the 2013 EU LGBT Survey, 39% of the 821 respondents in Lithuania said they were physically/sexually attacked or threatened with violence, but only 16% reported incidents of hate-motivated violence to the police.<sup>43</sup> A monitoring report prepared by a local NGO reveals nine instances of violence against LGBT persons that occurred between January and November 2013, including one case of extreme physical violence, four cases of assault, and four cases of damage against property.<sup>44</sup> The authorities, on the other hand, did not record any cases for 2013.
54. The scale of the problem is also underestimated because of lack of awareness among police officers of the importance to register homo- /transphobic motivations as such. An example is the case of a young man who was beaten up in a bar in Vilnius, after having been approached by the perpetrator with the words "Are you gay?" When he reported the case, the police was unwilling to record it as a homophobic attack and in the course of collecting testimony from the victim an investigator allegedly implied that he had been attacked because he provoked the perpetrator with unwanted advances of a sexual nature.<sup>45</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid.: 64.

<sup>40</sup> Quoted in: FRA 2013a: 39.

<sup>41</sup> Sabatauskaite 2011: 17; see also: UN CERD 2006: 4.

<sup>42</sup> UNHCR 2014: 50.

<sup>43</sup> EU FRA 2013b.

<sup>44</sup> LGL 2013a: 17 – 28.

<sup>45</sup> LGL 2013b.

55. Fear of living openly with one's LGBT identity increases further as a result of violent attacks against public figures who do so, in particular if the bias-motivation is not formally acknowledged and the perpetrators are not apprehended and convicted. In 24 July 2014, for example, an explosive device was thrown at the openly homosexual singer Ruslanas Kirilkinas during a concert in the village of Linksmakalnis. This was not the first attack against the singer. In February 2013, eggs were thrown at him during a concert, hitting him in the face.<sup>46</sup> In early July 2014, the partner of a transsexual artist was severely beaten by two attackers who also burned his face. They used homophobic insults prior to the attack.<sup>47</sup>

- **Measures taken by the authorities**

56. According to the OSCE/ODHIR hate crime statistics, two cases were prosecuted per year in 2011, 2012 and 2013. These six court cases, with five convictions achieved, cover 40% of the 15 cases recorded by the police during this period.<sup>48</sup>

57. The authorities report that within the framework of the Inter-Institutional Action Plan on the Promotion of Anti-discrimination for 2012-2014, training courses were organised for police officers, prosecutors and judges on racist and homo-/transphobic violence.<sup>49</sup> Although an evaluation of these trainings is not available, there seems to be a growing trend to investigate incidents of racist violence more effectively, including attacks against property. In a case of vandalism against a synagogue, for example, the perpetrator was speedily identified, prosecuted and sentenced to payment of a fine. The same cannot be said, however, for homo-/transphobic acts of violence. The pre-trial investigation into the 2013 homophobic attack of a young man in Vilnius (see § 54) was terminated in early 2014 on grounds that it was impossible to identify the perpetrator. The Kaunas Police Department investigated the case of the 2014 attack against the homosexual musician Ruslanas Kirilkinas (see § 56), but the outcome is still pending. In the case of the 2013 egg-throwing attack against him, the perpetrator could also not be identified.<sup>50</sup>

58. The police service has an internal complaints mechanism, which also deals with complaints made by persons alleging to be victims of acts of racist and/or homo-/transphobic violence by police officers. There is, however, no independent specialised police complaints mechanism, which could be approached by individuals whose lack of trust in the police service prevents them from lodging a complaint.

59. ECRI recommends further training for police officers, prosecutors and judges on how to deal with racist, and in particular homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations, as well as confidence-building measures between the police and minority representatives and LGBT groups. ECRI also recommends the creation of an independent police complaints service that will be tasked to investigate, inter alia, allegations of racist and/or homo-/transphobic violence committed by law enforcement officials.

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<sup>46</sup> LGL 2014b.

<sup>47</sup> Ibid.

<sup>48</sup> OSCE/ODIHR 2013a.

<sup>49</sup> Follow-up to Recommendation CM/Rec(2010)05, contribution by Lithuania, section 2.1.

<sup>50</sup> LGL 2014b.

#### 4. Integration policies

60. Lithuania has adopted integration policies in respect of only two groups, namely Roma and beneficiaries of international protection, which include refugees and persons who have been granted subsidiary protection.

##### - Roma

61. The estimated number of Roma living in Lithuania ranges from 2 000 to 2 500, with the largest communities in and around Vilnius and Kaunas. Following the unsatisfactory achievements of previous programmes, including the 2012-2014 Action Plan for the Integration of Roma into Lithuanian Society, the authorities developed the new Action Plan for Roma Integration into the Lithuanian Society 2015 – 2020 (henceforth: Action Plan) which includes, *inter alia*, measures in the areas of housing, education, employment and health.<sup>51</sup>

62. The Action Plan includes three measures in the field of housing: to increase access to housing for vulnerable population groups, including Roma; to organise meetings between municipalities and Roma communities on new forms of social housing provisions; and to provide legal consultations on housing issues.<sup>52</sup> ECRI is pleased that housing is now included in the Action Plan. This area already required urgent attention several years ago, but was not included in the previous Action Plan 2012-2014, in spite of ECRI's recommendations made in 2011.<sup>53</sup> The European Committee of Social Rights also considered, in its 2011 Conclusions, that profound discrimination is faced by the Roma community in the field of housing, as many of its members live in isolated ghetto-like neighbourhoods in which living and housing conditions are poor.<sup>54</sup> Several hundred Roma are estimated to live in the Kirtimai settlement near Vilnius airport in difficult conditions, many in wooden shacks. It is the only settlement of this kind in the Baltic states.<sup>55</sup> Many residents continue to live in unregistered houses, lacking sanitary facilities or access to running water and electricity.<sup>56</sup> In recent years, the Municipality of Vilnius repeatedly informed Kirtimai residents of plans for their imminent evictions, without prior consultation or provision of adequate alternative housing.<sup>57</sup> Kirtimai residents and civil society organisations confirmed during the visit of the ECRI delegation in early 2015 that such threats continue to occur and remain a serious problem.

63. While the three measures included in the Action Plan touch upon the most salient points in the field of housing, they remain too vague. The first measure does not provide details of how access to housing will be improved for Roma. The corresponding evaluation criteria in the Action Plan state that the number of illegal buildings in Kirtimai should be reduced from 77 in 2015 to 55 by 2020 by legalising dwellings or by providing social housing.<sup>58</sup> This is a useful starting point, and also takes some of ECRI's 2011 recommendations into account, but it merely reduces the number of illegal dwellings in the settlement by about one third, while not providing any solutions to the remaining persons, neither with regard to the regularisation of their homes or the living conditions, for example

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<sup>51</sup> Lithuanian Ministry of Culture 2015. The authorities informed ECRI, that this new Action Plan was adopted to comply with the European Commission's Communication of 5 April 2011 on an EU Framework for National Roma Integration Strategies up to 2020 (COM (2011) 0173), according to which every EU member State should adopt a Roma integration document.

<sup>52</sup> Lithuanian Ministry of Culture 2015, Annex 1: 9-10.

<sup>53</sup> § 118 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>54</sup> European Committee of Social Rights 2012: 707 – 710.

<sup>55</sup> Šukevičiūtė / Bakker 2013: 3.

<sup>56</sup> *Ibid.*: 8.

<sup>57</sup> European Roma Rights Centre 2012.

<sup>58</sup> Lithuanian Ministry of Culture 2015, Annex 2: 6.

by improving access to water, sanitation, and electricity. Regarding the second measure, ECRI notes that there is a general shortage of social housing in Lithuania and that it is allocated by municipalities and can therefore not be easily steered by the inter-institutional working group on Roma issues at national level. This shows the importance of having the Municipality of Vilnius fully involved in this group, as was recommended by ECRI in its last report, but which has not happened so far.<sup>59</sup> Furthermore, although vulnerable persons can access a rental subsidy paid by the state to facilitate the renting of privately owned apartments, Roma met by ECRI's delegation report that they frequently experience high levels of discrimination when attempting to access accommodation in the private housing market. The third measure is not associated with a specified outcome to improve access to housing. The Action Plan only contains the target of providing 300 legal consultations on housing issues per year, but without stipulating a specific impact that these consultations should have, such as regularisation of existing dwellings or securing alternative accommodation. The mere provision of consultations alone can hardly be seen as an adequate response to the housing problem.

64. The area of health care was also not included in the previous Action Plan but is part of the new one. Measures include a vaccination coverage study and follow-up community seminars, as well as trainings on healthy living and hygiene.<sup>60</sup> Two main obstacles to equitable access to health care, however, are not addressed. The first one concerns the lack of health insurance coverage of many Roma. Based on the 2011 Census and data from the Health Insurance Register, it is estimated that nearly a quarter (24%) of Roma in Lithuania do not have health insurance, while the rate among the overall population is only 9%. According to the local clinic, nearly one third (32.5%) of Kirtimai residents were without health insurance in 2014. The fact that these aspects are not addressed in the Action Plan is especially surprising given that this information is contained in its situation analysis.<sup>61</sup> The second obstacle for Roma in the context of access to health care is a widespread perception of discriminatory behaviour towards them in health care settings. While ECRI cannot verify the levels of discrimination in the health care sector, it is obvious that already the perception that discrimination might occur, can be sufficient to dissuade Roma from attending health care facilities. The position of the Ministry of Health<sup>62</sup> that discrimination of Roma does not occur in the health care sector is therefore not an adequate response to this problem. Without (i) research into whether discrimination does occur in this field, (ii) adequate prevention mechanisms, such as trainings of staff and effective complaint mechanisms, and (iii) outreach activities in Roma communities, this obstacle to improving the health care of Roma cannot be overcome.
65. In the field of education, the Action Plan contains several measures concerning pre-school, school and adult education, including community outreach work, training of teachers and provisions of further support in education settings, such as assistant teachers.<sup>63</sup> The main focus of the previous Action Plan was already on reducing social exclusion and increasing participation of Roma in Lithuanian society through improved education of Roma children and adults. In this context, a review of the level of integration of Roma children in the education sector was carried out and specific education support activities for pre-school Roma children and adults were provided. Furthermore, teaching materials on

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<sup>59</sup> This was one aspect of ECRI's 2011 priority recommendations. See also § 69 below.

<sup>60</sup> Lithuanian Ministry of Culture 2015, Annex 1: 6.

<sup>61</sup> Lithuanian Ministry of Culture 2015: 5.

<sup>62</sup> As communicated verbally to the ECRI delegation during its visit in February 2015.

<sup>63</sup> Lithuanian Ministry of Culture 2015, Annex 1: 3.

Roma history and culture were prepared to combat stigmatisation.<sup>64</sup> These activities were good, but limited, starting points for a better integration of Roma in the field of education. ECRI welcomes the new measures which build on and expand the activities carried out under the previous Action Plan.

66. With regard to pre-school education, ECRI notes, however, that in 2013, 66.1% of Lithuanian children aged one to six years attended pre-school education institutions and 89.5% of children at the age of six years attended pre-primary education. The corresponding enrolment rates for Roma children in both categories were approximately 20%, of which some two thirds attended a facility which was only attended by Roma children.<sup>65</sup> The new Action Plan contains three measures to address this problem: outreach to Roma families; promoting the exercise of the right to pre-school education; and organising pre-school education in the Roma community centre in Vilnius.<sup>66</sup> The envisaged result of these activities, however, is to increase the pre-school enrolment rate among the Roma community to 50%, which would still be considerably lower than it is among the general population. Furthermore, although the first two measures cover important areas, they remain too vague and do not demonstrate any solutions. The third measure, on the other hand, builds on an established Roma community institution that has been very active in this field, but here it should be noted that it only provides services to Roma children, as it is located in Kirtimai. The need to increase possibilities for Roma children to attend non-segregated pre-school facilities is not part of the Action Plan.
67. In the field of adult education, which is also an important element for promoting the integration of Roma into the labour market, the Action Plan contains useful measures, such as Lithuanian language classes and IT- courses. However, these courses will only be offered in Vilnius and ECRI would like to draw the authorities' attention to its recommendation made in § 97 of its 2012 report on Lithuania, in which it recalled that the Action Plan should cover the whole Roma population in Lithuania. Furthermore, the important area of attaining primary and secondary education, and qualifications, is included, but left without specific actions geared to the mobilisation of Roma adults in particular.<sup>67</sup> Likewise, many of the measures in the field of integration of Roma into the labour market<sup>68</sup> do not appear to be specifically designed for the needs of the Roma community, but rather general activities offered to unemployed persons. Roma suffer from particularly high unemployment rates. Some sources put the number of Roma working in regular jobs in the formal economy at less than 10%.<sup>69</sup> ECRI made specific recommendations in this regard in its 2011 report<sup>70</sup>, such as the continuation and multiplication of vocational training programmes for Roma and the facilitation and promotion of their registration with the Labour Exchange, which were, however, neither included in the previous Roma Action Plan,<sup>71</sup> nor in the current one.
68. Several civil society organisations, and in particular Roma groups, mentioned to the ECRI delegation that although they were consulted as part of the preparation process of the new Action Plan for Roma Integration 2015-2020, their inputs were too often disregarded without discussion or explanation. In the

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<sup>64</sup> Ministry of Culture of the Republic of Lithuania 2012. - See also: European Commission 2014: 37.

<sup>65</sup> Lithuanian Ministry of Culture 2015: 3-4.

<sup>66</sup> Lithuanian Ministry of Culture 2015, Annex 1: 1-2.

<sup>67</sup> *Ibid.*: 5.

<sup>68</sup> *Ibid.*: 7-8.

<sup>69</sup> Šukevičiūtė / Bakker 2013: 6.

<sup>70</sup> § 123 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>71</sup> The previous Action Plan merely provided for the dissemination of information about existing general labour market integration measures. See: Ministry of Culture 2012, section II, measure 1.3.1.

view of several Roma community leaders, the lack of results of previous Plans was mainly caused by the inadequate involvement of Roma during the planning and implementation stages, which often meant that their needs were not sufficiently understood.<sup>72</sup>

69. One of ECRI's 2011 priority recommendations called for an inter-institutional body on Roma issues to 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 have been further enhanced.<sup>73</sup> The authorities set up an inter-institutional working group, which met regularly under the leadership of the Ministry of Culture to coordinate the activities of the participating public bodies in respect of Roma integration, but the Municipality of Vilnius did not participate in it. In its 2014 conclusions on the implementation of the recommendation, ECRI emphasised that it expected the national authorities to use their convening powers to bring the Municipality of Vilnius to the table in order to work jointly towards the better integration of Roma,<sup>74</sup> which has still not happened and there are no specific provisions to this end included in the Action Plan.
70. In 2011, ECRI also recommended that the authorities guarantee adequate funds for the Roma Integration Programme.<sup>75</sup> The funding for the Roma Action Plan 2012-2014 increased from 647 000 Lt (187 500 €) in 2012 to 1 400 000 Lt (406 000 €) in 2013. However, in 2013, only some 400 000 Lt (116 000 €), less than 30%, were contributions from the Lithuanian state budget. The balance was provided by EU funding mechanisms. These proportions were similar in 2012. In both years, around 10% of the annual Action Plan remained unfunded.<sup>76</sup> At the time of ECRI's visit, the authorities could not provide information as to the full funding levels for the new Action Plan 2015-2020. ECRI notes, however, that only some of the specified measures were allocated a budget. In the field of housing, for example, only the third measure is funded; while in the area of health care, only the vaccination coverage study is funded, but none of the outreach activities.
71. ECRI strongly recommends that the authorities, as part of the Action Plan for Roma Integration 2015-2020, resolve the difficult housing situation of Roma, inter alia by (i) co-operating more closely with and financially supporting relevant local authorities, in particular the Municipality of Vilnius, to provide sufficient social housing to vulnerable members of the Roma community; and (ii) working with rental agencies and associations of private landlords to overcome prejudices against Roma in the private-sector housing market. Furthermore, recalling its 2011 recommendation concerning the Kirtimai settlement and expressing concern that no steps have been taken to provide suitable accommodation since then, ECRI strongly recommends that the authorities take steps as soon as possible to provide proper accommodation for this community and, in the meantime, ensure that no evictions take place, and that all necessary public services are provided to the people in the Kirtimai settlement.
72. ECRI strongly recommends that the authorities take the shortcomings indicated in the preceding paragraphs into consideration when implementing and, if necessary, adjusting the Action Plan for Roma Integration into the Lithuanian Society 2015 – 2020. The authorities should, inter alia, commission an independent assessment of the level of discrimination of Roma in the health

<sup>72</sup> Sabatauskaitė / Urbonaitė 2014: 2.

<sup>73</sup> § 94 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>74</sup> ECRI 2014: 5.

<sup>75</sup> § 94 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>76</sup> ECRI 2014: 5.

care sector as a basis for future action, and reduce the number of Roma without health insurance coverage. They should also scale up the support for Roma education activities and aim at raising the level of enrolment of Roma children in pre-school education to that of the general population with a view of promoting non-segregated pre-school facilities. Furthermore, the authorities should take more specific measures to support the integration of Roma into the labour market (see § 123 of ECRI's 2011 report), such as the expansion of vocational training activities geared towards the Roma community and the facilitation and promotion of their registration with the Labour Exchange, but also the expansion of adult education courses for Roma beyond Vilnius. In addition, the authorities should ensure that the Action Plan is fully funded.

- **Refugees and beneficiaries of subsidiary protection**

73. According to UNHCR, Lithuania receives the highest number of asylum applications among the Baltic countries. In recent years, the main countries of origin of asylum-seekers were Afghanistan, Ukraine, Georgia and Russia. At the end of 2014, there were 1 007 refugees and persons who had been granted subsidiary protection residing in Lithuania.<sup>77</sup>
74. Recognised refugees, as well as persons who have been granted subsidiary protection<sup>78</sup>, are entitled to limited support as part of the state funded integration programme. It covers standard social welfare payments for basic subsistence, an allowance for the rent of apartments and utilities (water, electricity, gas), health care, Lithuanian language training, and assistance to find employment. The integration programme covers two stages – support for integration in the reception centres and support for integration in municipalities. Those who do not participate in the initial parts of the integration programme carried out in the reception centres may not benefit from the support for integration in municipalities afterwards.<sup>79</sup>
75. The Lithuanian authorities informed ECRI that they started a pilot scheme of placing refugees and persons who have been granted subsidiary protection directly into communities instead of insisting on an initial period in the reception centres, which are located in remote parts of the country and have often been criticised by refugee advocacy groups for hindering, rather than promoting integration efforts. Depending on the results of the initial pilot scheme, the authorities might consider abolishing the mandatory period of stay in the reception centres altogether. ECRI welcomes this move and would like to encourage the authorities to continue pursuing a policy of facilitating the integration of refugees and persons who have been granted subsidiary protection at community level.<sup>80</sup>
76. An important element of successful integration is education. ECRI notes that the children of refugees and of beneficiaries of subsidiary protection, or unaccompanied minors who have themselves been granted such a status, can access primary and secondary schooling free of charge along the same lines as Lithuanian children. They are also entitled to Lithuanian language courses, although there have been complaints from non-governmental organisations working with refugees that such classes are not always, or not sufficiently provided. Children of 16 years of age or above, however, no longer receive financial support to continue their schooling. Furthermore, when it comes to university studies, refugees and beneficiaries of subsidiary protection are not

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<sup>77</sup> UNHCR 2015.

<sup>78</sup> See also § 77 below.

<sup>79</sup> Ibid.

<sup>80</sup> The Lithuanian authorities informed ECRI that, according to the Law on the Legal Status of Aliens, under the decision of the Migration Department, an asylum applicant may be permitted to settle in the place of residence of his choice, if the asylum applicant so desires.

entitled to education grants available to Lithuanian students, while at the same time being charged the higher tuition and accommodation fees applicable to non-Lithuanian/non-EU students. These factors constitute serious obstacles for this group of persons to obtaining adequate levels of education, especially given their difficult socio-economic circumstances and the absence of extended support networks. Addressing these problems can not only facilitate better integration, but also enhance the contribution that this group can make to Lithuanian society.

77. Important progress has been made with regard to the situation of persons who have been granted subsidiary protection. This group was previously largely excluded from the mainstream social security system. They could only access social security benefits, such as income support payments, during their one-year stay at a reception centre.<sup>81</sup> Full health care was only available for certain categories of vulnerable persons, while all other beneficiaries of subsidiary protection could only access emergency medical care, both during their stay at a reception centre and afterwards.<sup>82</sup> In this respect, several important developments have occurred in recent years, namely the amendments to the Law on Health Insurance adopted on 1 October 2013, which implemented one of ECRI's priority recommendations made in its last report on Lithuania, and amendments to the Law on Cash Social Assistance for Low Income Families and Single Residents, adopted on 1 December 2011. These legislative initiatives have secured to beneficiaries of subsidiary protection access, on an equal footing with nationals of Lithuania, to full health care services and income support benefits available for individuals with low income. ECRI appreciates that substantial progress has been made with regard to integration support for beneficiaries of subsidiary protection. However, some benefits provided for by the social security legislation have not yet been made available for this group, in particular allowances and services aimed at providing support to persons with disabilities pursuant to the Law on State Social Assistance Benefits.
78. ECRI has always considered that social integration is also facilitated by improving the possibilities for family reunification. A positive development in this context was the amendment to the Law on the Legal Status of Aliens which extends from 1 March 2015 the right to family reunification to beneficiaries of subsidiary protection, who are now entitled to the same rights in this regard as refugees.
79. ECRI recommends that the Lithuanian authorities take steps to increase the support for children of refugees and beneficiaries of subsidiary protection, as well as unaccompanied minors, in the field of education by (i) providing sufficient Lithuanian language classes; (ii) extending the financial support for children to enable them to finish their secondary schooling; and (iii) aligning university-related fees and access to grants with those available to Lithuanian students. Furthermore, ECRI recommends that beneficiaries of subsidiary protection be entitled to the same range of social services and allowances, especially disability benefits, as recognised refugees.

- **Polish and Russian minorities**

80. Poles and Russians are the two largest historical ethnic minorities in the country, accounting for approximately 6.6% (some 200 000) and 5.8% (some 175 000) of the population respectively.<sup>83</sup> <sup>84</sup> According to the Lithuanian

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<sup>81</sup> § 176 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>82</sup> Ibid., §175.

<sup>83</sup> According to the 2011 census. Source: Statistics Lithuania 2013.

<sup>84</sup> There is currently no law on national minorities. The previous law was only valid until 2010 and the Seimas has not yet enacted a new law.

authorities, these minorities' main obstacle to social integration is the insufficient knowledge of the Lithuanian language. ECRI would like to recall that teaching of the national language and knowledge of the minority language are both legitimate goals that can be pursued as part of a minority education strategy.<sup>85</sup> However, there are doubts as to whether the steps taken by the Lithuanian authorities in this regard are facilitating the integration of these minorities.

81. In 2011, a unified language examination for leaving certificates in secondary schools was introduced, which abolished previously existing special provisions<sup>86</sup> for pupils with a mother tongue other than Lithuanian, particularly relevant to the Polish and Russian minorities. Concerns were raised about the very short time frame of the transition period towards introducing Lithuanian as the only examination language.<sup>87</sup> Instead of the originally envisaged seven to eight years, required to ensure fully adequate teaching of Lithuanian for children from a minority background throughout all secondary school years, the transition period was shortened to two years. The difference in the number of hours of Lithuanian language tuition that minority pupils, who so far were taught largely in Polish or Russian, benefited from compared to their Lithuanian mother-tongue peers is estimated to be up to 700. Concessions, in the form of different tasks in some parts of the exam papers of minority pupils (for example shorter essays), had been provided for the interim period, but were deemed to be in violation of the principle of equal treatment, and therefore unconstitutional, by the Supreme Administrative Court of Lithuania on 18 June 2013.<sup>88</sup>
82. ECRI recommends that the Lithuanian authorities take urgent measures, in consultation with all relevant stakeholders, to ensure that the lower number of accumulated Lithuanian language classes that non-Lithuanian mother tongue pupils benefited from during their schooling is fully taken into account when applying the unified language examination.

## **II. Topics specific to Lithuania**

### **1. Interim follow-up recommendations of the fourth round**

83. The three interim follow-up recommendations from ECRI's fourth round report are discussed in the relevant thematic sections above (see §§ 35, 69, 70 and 77).

### **2. Issues concerning the effectiveness of the independent authorities entrusted with the fight against racism and racial discrimination, as per ECRI's General Policy Recommendations Nos. 2 and 7**

84. The Equal Opportunities Ombudsperson (henceforth: Ombudsperson) is the national anti-discrimination body, monitoring the application of the Law on Equal Treatment and is appointed by Parliament for a term of five years. The Ombudsperson has the legal power to impose binding administrative sanctions for violations of the Law on Equal Treatment. In accordance with Article 41(6) of the Administrative Violations Code, a fine in the range of 28 € to 579 € can be imposed. If the same violation is committed repeatedly, the fine can go up to 1 158 €. In practice, however, the Ombudsperson usually issues a non-binding

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<sup>85</sup> In this regard, see also the work of the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, in particular its Third Opinion on Lithuania 2014.

<sup>86</sup> §§ 150 – 153 of ECRI's 4<sup>th</sup> report on Lithuania.

<sup>87</sup> ECRI considers that issues related to the right to education in a minority language can best be addressed in the context of the Framework Convention for the Protection of National Minorities (FCNM). See: Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities 2014.

<sup>88</sup> Cf. Advisory Committee on the Framework Convention for the Protection of National Minorities 2014: 7. - See also: Lithuania Tribune online 2014a. ECRI was informed by the authorities that, although the examination tasks are the same, at least a different marking scale with regard to literacy and linguistic expression will be applied to the exams of minority pupils until 2020.

recommendation to stop discriminatory actions, in spite of ECRI's recommendation in § 57 of its fourth report on Lithuania to consider using the full array of sanctions available, depending on the gravity of the offence.

85. The Ombudsperson does not have the right to initiate court cases, as recommended in ECRI's GPR No. 7, § 24 and in § 55 of ECRI's fourth report on Lithuania, with the exception that the institution, under the Law on Administrative Proceedings, Art. 110(1), has the right to apply to the administrative court for a review of the conformity of administrative acts with relevant legislation. The Ombudsperson can be involved as an expert witness, but cannot directly provide assistance to a victim of discrimination in order to bring a case to court. The Ombudsperson may refer relevant material to the public prosecution authorities, if there are indications that a criminal offence might have been committed.
86. The Law on Equal Treatment does not provide for measures to protect persons who report a discrimination case against retaliation, as recommended in ECRI's GPR No. 7, § 27.
87. ECRI recommends the Law on Equal Treatment be amended to include measures to protect persons who report discrimination cases, as well as witnesses; and to allow the Ombudsperson to bring cases of discrimination before the courts. ECRI furthermore recommends that the Ombudsperson consider using the full array of sanctions available, depending on the gravity of the offence.

### **3. Policies to combat discrimination and intolerance vis-à-vis LGBT persons<sup>89</sup>**

#### **- Data**

88. There is no official data on the number of LGBT persons in Lithuania. Article 5 of the Legal Protection of Personal Data Act prohibits the processing of data concerning health or sex life without the person's consent.<sup>90</sup> The Population and Household Census held in 2011 recorded only 24 self-reported same-sex families.<sup>91</sup> Local NGOs report that this is not an accurate number, since LGBT persons are often reluctant to report their actual family status to public authorities because of the strong prejudice in society against LGBT persons. According to a survey carried out by the local NGO House of Diversity and Education, 20% of same-sex families in Lithuania are raising children.<sup>92</sup> In ECRI's view, data collection on LGBT persons, on a voluntary basis and in line with Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers, can serve as a useful starting point for addressing discrimination and intolerance against this group.

#### **- Legislation**

##### ***Restrictions of public information and awareness-raising***

89. The Lithuanian Government announced that, following the 2012-14 Inter-institutional Action Plan to Promote Non-discrimination, the Ministry of Social Security and Labour would carry out a review on existing legislative and other measures which could result directly or indirectly in sexual orientation or gender

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<sup>89</sup> Concerning the definition of LGBT cf. Council of Europe, Commissioner for Human Rights, Discrimination based on sexual orientation and gender identity in Europe (2011).

<sup>90</sup> Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose.

<sup>91</sup> Valentinavičius / Irytas.lt 2013.

<sup>92</sup> House of Diversity and Education (no date).

identity discrimination. At the time of ECRI's visit, the results of this review were not yet available.

90. Current legislation limits some types of public activities of LGBT persons. Article 4, section 2 (16) of the 2002 Law on the Protection of Minors against the Detrimental Effect of Public Information (amended in 2011, from here on "Law on the Protection of Minors") bans "public defiance of family values", which includes public information which "expresses contempt for family values, (or) encourages the concept of entry into a marriage and creation of a family other than that stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania", which defines marriage as between a man and a woman.
91. This law has been applied on several occasions recently. In May 2014, following complaints from the Lithuanian Parents' Forum and a group of conservative MPs to the Ministry of Culture and the Lithuanian University of Educational Sciences (LEU), the children's book *Gintarinė širdis* (Amber Heart) by author Neringa Dangvyde, which had been published six months previously by the LEU, was withdrawn from bookshops. The book contains fairy tales featuring members of socially vulnerable groups, such as same-sex couples, Roma, and disabled people, and aims at promoting tolerance and respect for diversity among children. Following the complaints, the LEU explained the withdrawal of the book by suddenly describing it as "harmful, primitive and biased homosexual propaganda".<sup>93</sup> Furthermore, the Office of the Inspector of Journalist Ethics concluded that two fairy tales that promote tolerance for same-sex couples are harmful to minors.<sup>94</sup> The Inspectorate's experts deemed the stories in violation of the Law on the Protection of Minors because they encourage "the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania". The experts also considered the stories to be "harmful, invasive, direct and manipulative".<sup>95</sup>
92. In September 2014, fearing a potential violation of the Protection of Minors Act, Lithuanian TV stations refused to broadcast a TV spot promoting tolerance towards LGBT people which had been prepared by an NGO for the campaign Change It. Subsequently, this decision was confirmed by the Inspector of Journalists Ethics on the grounds that the TV spot seemed to portray a same-sex family model in a positive light, which the Inspectorate considered to have a negative impact on minors and to be in violation of the law.<sup>96</sup>
93. ECRI recommends that the Lithuanian authorities modify the Law on the Protection of Minors against the Detrimental Effect of Public Information to ensure that it does not prevent awareness-raising about LGBT issues and activities to promote tolerance. ECRI also recommends that the restrictions concerning the children's book *Gintarinė širdis* are urgently reviewed with a view of fully utilising its positive impact for promoting tolerance and diversity.

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<sup>93</sup> Human Rights Monitoring Institute 2014.

<sup>94</sup> One of these two stories is available in English at: <http://manoteises.lt/enciklopedija/a-fairytale-from-censored-children-book-amber-heart/>, accessed on 19.08.2015.

<sup>95</sup> Lithuania Tribune online 2014b.

<sup>96</sup> LGL 2014c.

### ***Same-sex partnerships***

94. Lithuanian legislation does not recognise same-sex registered partnerships.<sup>97</sup> Section XV of the Civil Code regulates the rights of unmarried couples, but these provisions apply only to heterosexual relationships.
95. ECRI believes that the absence of recognition of same-sex partnerships can lead to various forms of discrimination in the field of social rights. In this regard, ECRI draws the attention of the authorities to the Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.<sup>98</sup>
96. ECRI would also like to draw the Lithuanian authorities' attention to the judgment of the European Court of Human Rights in the case of *Oliari and Others v. Italy*, in which the Court found that although Article 12 of the European Convention on Human Rights did not impose an obligation on governments to grant a same-sex couple access to marriage, the absence of a legal framework allowing for recognition and protection of their relationship violated, in the case of the Italian legal order<sup>99</sup>, their rights under Article 8 of the Convention.<sup>100</sup>
97. ECRI recommends that the Lithuanian authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live. In this context, the provisions of Section XV of the Civil Code should also be extended to same-sex couples.

### ***Gender reassignment***

98. Article 2.27 of the Civil Code permits any unmarried person to change his/her legal gender, subject to medical surgery. The article states that the procedure for gender reassignment is to be regulated by a separate law. However, no such law has been enacted. Following a 2007 judgment by the European Court of Human Rights<sup>101</sup>, Lithuania is bound to enact a law regulating the procedure and conditions of gender reassignment.
99. In February 2009, the Parliamentary Ombudsperson of Lithuania issued a recommendation to the Ministry of Health and to the Human Rights Committee of the Lithuanian Parliament to take appropriate measures to eliminate the legal uncertainty in the field of gender reassignment. In July 2012, the Ministry of Justice proposed new draft legislation which would simplify the issuing of new identity cards to persons who have undergone gender reassignment surgery, but also envisaged the removal of the provision in the Civil Code that calls for a separate law on the procedure for gender reassignment.
100. In September 2014, the Council of Europe's Committee of Ministers urged the Lithuanian authorities to enact the necessary legislation relating to gender reassignment medical treatment and changes of gender identification in official

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<sup>97</sup> There is a legal vacuum concerning civil partnerships. The Civil Code provides that detailed regulation of civil partnerships should be outlined in subsidiary legislation, but a law on civil partnerships has not yet been enacted. See also: LGL 2014d.

<sup>98</sup> Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, in particular §§ 24 and 25.

<sup>99</sup> ECRI recalls that in *Vallianatos and Others v. Greece* the European Court of Human Rights (ECtHR) had found a violation of Article 14 of the European Convention on Human Rights taken in conjunction with Article 8 thereof because heterosexual couples were the only ones who could conclude civil partnerships provided for by national law. It also notes that the finding of violation of Article 8 in *Oliari and Others v. Italy* was not based on the fact that national law discriminated against same-sex couples.

<sup>100</sup> ECtHR (2015), *Oliari and Others v. Italy* (Applications nos. 18766/11 and 36030/11) Judgment.

<sup>101</sup> ECtHR (2007), *L. v. Lithuania*, (Application no. 27527/03) Judgment.

documents. In October 2014, the Seimas rejected proposed legislative amendments, which would have, inter alia, simplified the procedure for changing identity cards after gender reassignment surgery.<sup>102</sup>

101. The Ministry of Health affirmed that costs for hormonal or surgical treatment related to gender reassignment could not be covered without the adoption of a law laying down the conditions of gender reassignment.<sup>103</sup> Medical treatment related to gender reassignment is currently not covered by the national health system.
102. ECRI would like to encourage the Lithuanian authorities to make use of existing decisions and guidance developed by various bodies of the Council of Europe in order to establish criteria for regulating the procedures for gender reassignment.<sup>104</sup>
103. ECRI strongly recommends that the Lithuanian authorities comply without further delay with the judgment of the European Court of Human Rights on regulating the procedure and conditions of gender reassignment; as well as simplify the issuing of new identity cards to persons who have undergone gender reassignment surgery.

- **Discrimination against LGBT persons in key areas of social life**

104. There are numerous studies showing that discriminatory attitudes towards LGBT persons are wide spread in Lithuanian society. In the EU Fundamental Rights Agency's (FRA) 2013 LGBT survey, for example, 70% of the Lithuanian respondents said that discrimination on the grounds of sexual orientation is "very widespread" in their country and 61% of the participating LGBT persons in Lithuania mentioned that they had been discriminated against or harassed on the grounds of their sexual orientation or gender identity in the preceding twelve months (the highest percentage among all EU countries).<sup>105</sup> According to a 2006 study, 69% did not want homosexual persons to work in schools and 50% objected to them working in the police force.<sup>106</sup>
105. Although the problem of intolerance vis-à-vis LGBT persons is evident, there is no policy to combat this phenomenon. The new Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination only provides for an assessment of the general status of transgender people in Lithuania, and the protection of their privacy in particular. More far-reaching and comprehensive actions to promote non-discrimination of LGBT people, such as the involvement of NGOs in the decision-making process, development of concrete plans for assuring the non-discrimination of transgender people, and educational measures to promote institutional non-discrimination, as suggested by some LGBT representatives during the consultation process, were rejected by the authorities.<sup>107</sup>

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<sup>102</sup> See also: Follow-up to Recommendation CM/Rec(2010)05, contribution by Lithuania, section 1.6.

<sup>103</sup> Ministry of Health of the Republic of Lithuania, reply to the Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5".

<sup>104</sup> In particular: relevant judgments of the ECtHR, such as: ECtHR (2015), *Y.Y v. Turkey* (Application no.14793/08) Judgment; and ECtHR (2002), *Goodwin v. UK*, (Application no. 28957/95) Judgment [GC]; Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, §§ 21,22, and 23; Council of Europe, Sexual Orientation and Gender Identity unit (2015), *Protecting human rights of transgender persons - A short guide to legal gender recognition*; and Council of Europe, Commissioner for Human Rights (2009), *Human Rights and Gender Identity*.

<sup>105</sup> EU FRA 2013b.

<sup>106</sup> The Market and Opinion Research Centre Vilnius, quoted in: Council of Europe's Commissioner for Human Rights 2011: 28.

<sup>107</sup> LGL 2015: 14 - 15.

106. ECRI recommends that the Lithuanian authorities take urgent actions to combat the discrimination of LGBT persons by including, in consultation with the LGBT community, measures for the promotion of tolerance towards LGBT persons in the field of education as well as general public awareness-raising activities into the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination.



## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI strongly recommends that the authorities, as part of the Action Plan for Roma Integration 2015-2020, resolve the difficult housing situation of Roma, inter alia by (i) co-operating more closely with and financially supporting relevant local authorities, in particular the Municipality of Vilnius, to provide sufficient social housing to vulnerable members of the Roma community; and (ii) working with rental agencies and associations of private landlords to overcome prejudices against Roma in the private-sector housing market. Furthermore, recalling its 2011 recommendation concerning the Kirtimai settlement and expressing concern that no steps have been taken to provide suitable accommodation since then, ECRI strongly recommends that the authorities take steps as soon as possible to provide proper accommodation for this community and, in the meantime, ensure that no evictions take place, and that all necessary public services are provided to the people in the Kirtimai settlement.
- ECRI recommends that the Lithuanian authorities, as part of the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination, set up an inter-institutional working group to develop a comprehensive strategy to tackle effectively the problem of racist and homo-/transphobic hate speech. This group should include the relevant authorities, as well as civil society organisations, including, amongst others, representatives of the LGBT community.

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



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI once again recommends Lithuania to sign and ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 8) ECRI recommends that the authorities bring the Lithuanian Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) add colour and citizenship, as well as gender identity, to the list of enumerated grounds in Articles 60, 169 and 170; (ii) amend Article 170 in order to criminalise public defamation or threats, and the public expression, with a racist aim, of an ideology that claims superiority; and (iii) criminalise racial discrimination in the exercise of one's occupation or public office.
3. (§ 16) ECRI recommends that the authorities bring the Lithuanian civil and administrative law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs. They should, in particular, amend the Law on Equal Treatment with the aim of including citizenship and colour, as well as gender identity into the enumerated grounds. The Law should also include a possibility for associations that have a legitimate interest in combating racism and racial discrimination to bring civil cases and make criminal complaints even if a specific victim is not referred to. Furthermore, it should include an obligation on public authorities to promote equality and prevent discrimination and to ensure that contractors or partners they work with adhere to non-discrimination principles; as well as an obligation to amend or annul discriminatory provisions in existing contracts or agreements. In addition, ECRI recommends introducing legislation to suppress public funding for organisations, including political parties, which promote racism and to provide possibilities for their dissolution.
4. (§ 36) ECRI recommends that the authorities fully investigate racist and/or homo- / transphobic threats and ensure that a lack of probability does not constitute an obstacle for convicting a perpetrator. Furthermore, the training programme for police officers on the fight against racism and promotion of tolerance should be expanded and the planned training sessions on relevant provisions of the Criminal Code be conducted. ECRI also recommends that the authorities carry out an evaluation of the impact the trainings had with a view to ensuring that further elements necessary to enable law enforcement officials and members of the judiciary to fight racist and homo- /transphobic hate speech, including threats, more effectively are identified and included in future training programmes.
5. (§ 41) ECRI recommends that the Lithuanian authorities take steps to ensure that the widespread phenomenon of homo-/ and transphobic hate speech is effectively tackled, including by i.) empowering the Inspector of Journalist Ethics to impose greater sanctions, as already recommended in ECRI's 2011 report, and encourage the Inspector to combat hate speech, and homo- /transphobic hate speech in particular, more vigorously; ii.) ensuring effective and proportionate prosecution of such acts; and iii.) preventing the notion of 'protecting public morals' from being used to justify or condone incitement of hatred against LGBT persons.
6. (§ 43) ECRI recommends that the Lithuanian authorities, while respecting the right to celebrate the country's national struggle for independence, take effective measures to prevent or punish any public praise for Nazi- collaborators and persons who engaged in genocide, war crimes or crimes against humanity, or the public display of symbols associated with such persons, organisations or crimes.

7. (§ 45) ECRI recommends that the authorities develop, jointly with the Jewish community, an awareness-raising strategy to combat antisemitism, in particular in the context of property restitution.
8. (§ 47) ECRI recommends that the Lithuanian authorities, as part of the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination, set up an inter-institutional working group to develop a comprehensive strategy to tackle effectively the problem of racist and homo-/transphobic hate speech. This group should include the relevant authorities, as well as civil society organisations, including, amongst others, representatives of the LGBT community.
9. (§ 59) ECRI recommends further training for police officers, prosecutors and judges on how to deal with racist, and in particular homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations, as well as confidence-building measures between the police and minority representatives and LGBT groups. ECRI also recommends the creation of an independent police complaints service that will be tasked to investigate, inter alia, allegations of racist and/or homo-/transphobic violence committed by law enforcement officials.
10. (§ 71) ECRI strongly recommends that the authorities, as part of the Action Plan for Roma Integration 2015-2020, resolve the difficult housing situation of Roma, inter alia by (i) co-operating more closely with and financially supporting relevant local authorities, in particular the Municipality of Vilnius, to provide sufficient social housing to vulnerable members of the Roma community; and (ii) working with rental agencies and associations of private landlords to overcome prejudices against Roma in the private-sector housing market. Furthermore, recalling its 2011 recommendation concerning the Kirtimai settlement and expressing concern that no steps have been taken to provide suitable accommodation since then, ECRI strongly recommends that the authorities take steps as soon as possible to provide proper accommodation for this community and, in the meantime, ensure that no evictions take place, and that all necessary public services are provided to the people in the Kirtimai settlement.
11. (§ 72) ECRI strongly recommends that the authorities take the shortcomings indicated in the preceding paragraphs into consideration when implementing and, if necessary, adjusting the Action Plan for Roma Integration into the Lithuanian Society 2015 – 2020. The authorities should, inter alia, commission an independent assessment of the level of discrimination of Roma in the health care sector as a basis for future action, and reduce the number of Roma without health insurance coverage. They should also scale up the support for Roma education activities and aim at raising the level of enrolment of Roma children in pre-school education to that of the general population with a view of promoting non-segregated pre-school facilities. Furthermore, the authorities should take more specific measures to support the integration of Roma into the labour market (see § 123 of ECRI's 2011 report), such as the expansion of vocational training activities geared towards the Roma community and the facilitation and promotion of their registration with the Labour Exchange, but also the expansion of adult education courses for Roma beyond Vilnius. In addition, the authorities should ensure that the Action Plan is fully funded.
12. (§ 79) ECRI recommends that the Lithuanian authorities take steps to increase the support for children of refugees and beneficiaries of subsidiary protection, as well as unaccompanied minors, in the field of education by (i) providing sufficient Lithuanian language classes; (ii) extending the financial support for children to enable them to finish their secondary schooling; and (iii) aligning university-related fees and access to grants with those available to Lithuanian students. Furthermore, ECRI recommends that beneficiaries of subsidiary

protection be entitled to the same range of social services and allowances, especially disability benefits, as recognised refugees.

13. (§ 82) ECRI recommends that the Lithuanian authorities take urgent measures, in consultation with all relevant stakeholders, to ensure that the lower number of accumulated Lithuanian language classes that non-Lithuanian mother tongue pupils benefited from during their schooling is fully taken into account when applying the unified language examination.
14. (§ 87) ECRI recommends the Law on Equal Treatment be amended to include measures to protect persons who report discrimination cases, as well as witnesses; and to allow the Ombudsperson to bring cases of discrimination before the courts. ECRI furthermore recommends that the Ombudsperson consider using the full array of sanctions available, depending on the gravity of the offence.
15. (§ 93) ECRI recommends that the Lithuanian authorities modify the Law on the Protection of Minors against the Detrimental Effect of Public Information to ensure that it does not prevent awareness-raising about LGBT issues and activities to promote tolerance. ECRI also recommends that the restrictions concerning the children's book *Gintarinė širdis* are urgently reviewed with a view of fully utilising its positive impact for promoting tolerance and diversity.
16. (§ 97) ECRI recommends that the Lithuanian authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live. In this context, the provisions of Section XV of the Civil Code should also be extended to same-sex couples.
17. (§ 103) ECRI strongly recommends that the Lithuanian authorities comply without further delay with the judgment of the European Court of Human Rights on regulating the procedure and conditions of gender reassignment; as well as simplify the issuing of new identity cards to persons who have undergone gender reassignment surgery.
18. (§106) ECRI recommends that the Lithuanian authorities take urgent actions to combat the discrimination of LGBT persons by including, in consultation with the LGBT community, measures for the promotion of tolerance towards LGBT persons in the field of education as well as general public awareness-raising activities into the Inter-Institutional Action Plan for 2015-2020 on Non-Discrimination.



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