



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Mr. Andrius KUBILIUS
Prime Minister of Lithuania

Strasbourg, 9 December 2009

Dear Prime Minister;

Further to our meeting in Vilnius on 19 October, I should like to take this opportunity to follow up on the constructive dialogue that I had with you and the other authorities during my visit to Lithuania from 19 to 20 October.

The discussions focused mainly on two issues: the fight against intolerance and discrimination faced by minority groups – mostly ethnic and sexual minorities – and the need to investigate the alleged existence in Lithuania of a secret detention centre for terrorism suspects.

As I told you and my other interlocutors in Vilnius, I am very concerned about the xenophobic and homophobic tendencies that seem to be on the rise all over Europe against the background of the economic crisis. Now, more than ever, there should be measures aimed at increasing public awareness of the situation of groups which are subjected to discrimination or intolerance, and encouraging respect for everyone's human rights.

During my visit, I expressed my concerns to parliamentarians and government representatives regarding the draft amendments to the 2002 "Law on the Protection of Minors against the Detrimental Effect of Public Information". Those amendments include provisions which stipulate that information which "agitates for homosexual, bisexual and polygamous relations" causes a detrimental effect upon the mental health, as well as the physical, intellectual or moral development of minors. At the time of my visit, I learned of the initiative of the President of Lithuania, who presented proposals prepared by her expert group to the Seimas, with a view to changing the wording of the amendments to the law. I understood these proposals to be improvements, and it was my understanding that they would be accepted by the Seimas. Despite this promising initiative, I was disappointed to learn that the plenary of the Seimas approved in the first reading additional amendments to the law which once again include public information "that encourages homosexual and bisexual relations [...]" among the information that has a detrimental effect on minors.

I am also concerned about proposed amendments to the Penal Code and Administrative Code which are scheduled to be discussed by Parliament and which would make the "promotion of homosexual relations in public places" a criminal offence punishable with a fine or arrest. If adopted, these amendments would potentially prohibit a wide range of activities, such as public demonstrations, speeches, events on LGBT (lesbian, gay, bisexual, transgender) human rights, as well as provision of information about or to LGBT people. I believe that these provisions will violate the European Convention on Human Rights (ECHR), in particular the right to the freedom of assembly and association, the right to freedom of expression, including the right to seek, receive and impart information, and the right to be free from discrimination.

On several occasions the European Court of Human Rights underlined that the concept of sexual orientation is undoubtedly covered by Article 14 of the Convention (prohibition of discrimination), reiterating in that connection that the list set out in that provision is illustrative and not exhaustive (e.g. in the case of *Salgueiro da Silva Mouta v. Portugal*, 21 December 1999).

I call upon your Government to look into the above issues as a matter of priority and adopt all necessary measures in order to respect Lithuania's obligations under the ECHR not to discriminate on the ground of sexual orientation.

Another issue that we discussed was the use of minority languages, in particular in relations with administrative authorities. In this respect, I noted with concern that no solution has yet been found on the modalities of transcribing the surnames and first names of persons belonging to national minorities (in particular the Poles) in passports.

I should like to recall that the right for persons belonging to national minorities to use their surname and first name in the minority language and the right to receive official recognition of them, according to modalities provided for in their legal system, are guaranteed by Article 11 § 1 of the Council of Europe's Framework Convention for the Protection of National Minorities, ratified by Lithuania in 2000.

In its first Opinion on Lithuania of February 2003, the Advisory Committee on the Framework Convention found that the issue of the arrangements for transcribing surnames and first names of persons belonging to minorities in identity documents was not satisfactory. The authorities were encouraged to identify appropriate solutions to meet the requests of national minorities, in conformity with the Framework Convention and in co-operation with the interested parties.

In addition, the European Court of Human Rights has, on several occasions, recognised the applicability of Article 8 of the European Convention on Human Rights – in relation to both “private life” and “family life” – to disputes concerning people's surnames and forenames (more recently in *Bulgakov v. Ukraine*, Application No. 59894/00, 11 September 2007, and *Güzel Erdagöz v. Turkey*, Application No. 37483/02, 21 October 2008). In this respect, the Court has stressed that the name is not only an important element of self-identification; it is a crucial means of personal identification in society at large.

Following my visit, I have been made aware of the decision, dated 6 November 2009, of the Lithuanian Constitutional Court on the writing of surnames and first names in identity documents in languages other than Lithuanian. I have noted that pursuant to this decision, there is now the possibility of specifying the surname and first name of an individual in identity documents in “other, non-Lithuanian, graphic signs of writing” (letters) in addition to the Lithuanian-spelling version of the name. I consider this to be a positive step and I trust that the decision of the Constitutional Court will be implemented in practice.

Another issue which we discussed related to the use of minority languages for bilingual topographical indications. In its first Opinion of February 2003, the Advisory Committee concluded that the situation in Lithuania was incompatible with the Framework Convention as, in practice, the Law on the State Language did not allow such use of minority languages and was regarded by certain authorities as taking precedence over those provisions of the Law on National Minorities which did allow such indications. According to information I received, the situation is still not in conformity with Article 11 § 3 of the Framework Convention.

In the context of the legislative processes under way, I hope that an acceptable solution will be found by the parties concerned, in line with the principles laid down in Article 11 of the Framework Convention.

I would also like to take this opportunity to encourage ratification by Lithuania of the European Charter for Regional or Minority Languages, which contains specific provisions on the use of minority languages in relations with administrative authorities and public services.

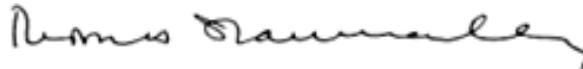
Another subject we discussed during my visit related to the allegations concerning the existence of a CIA secret prison in the outskirts of Vilnius, where terrorism suspects were said to have been detained in 2004-2005. In this regard, I welcome the steps taken by the Seimas committee to investigate whether the CIA detained terrorism suspects on Lithuanian territory. In the course of my meetings, I recommended that the authorities should carry out a full and impartial investigation and step up their efforts to shed full light on this matter. Under the ECHR, States are required to investigate serious allegations of human rights violations. In the event it appears that such violations have occurred, the breaches of the ECHR must be addressed, the victims granted reparation and decisions taken to ensure that these violations will not be repeated.

Finally, I should like to take this opportunity to recommend the signature and ratification by Lithuania of Protocol N° 12 to the European Convention on Human Rights, containing a general prohibition of discrimination, and the acceptance of the collective complaints procedure under the European Social Charter. Both these treaties constitute invaluable instruments for the fight against discrimination in Europe.

Due to the urgent and serious nature of the issues regarding the “Law on the Protection of Minors against the Detrimental Effect of Public Information” and the amendments proposed to the Administrative and Penal Code, I shall also inform the Speaker of the Seimas, Ms Irena Degutienė, about my concerns.

I look forward to receiving your reply and to continuing my constructive dialogue on the above questions with the Lithuanian authorities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Thomas Hammarberg', written in a cursive style.

Thomas Hammarberg