



**LIETUVOS RESPUBLIKOS NUOLATINĖ ATSTOVYBĖ PRIE
JUNGTINIŲ TAUTŲ BIURO IR KITŲ TARPTAUTINIŲ
ORGANIZACIJŲ ŽENEVOJE**

**MISSION PERMANENTE DE LA LITUANIE AUPRÈS DE
L'OFFICE DES NATIONS UNIES ET DES AUTRES
ORGANISATIONS INTERNATIONALES À GENÈVE**

No. SN-80-101/2015

The Permanent Mission of the Republic of Lithuania to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the latter's note of 9 September 2015, has the honour to submit the Replies of the Republic of Lithuania to the joint communication sent by the Special Rapporteur on the situation of human rights defenders Mr. Michel Forst and the Special Rapporteur on minority issues Ms. Rita Izsák, regarding the alleged denial of entry of human rights and minority rights defender, Mr Aleksandrs Kuzmins, as well as two other conference participants, Mr. Aleksandrs Rzavinst and Mr. Joseph Koren, to enter Lithuania to attend an international roundtable on minority rights.

The Permanent Mission of the Republic of Lithuania to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 17 December 2015

**Office of the United Nations
High Commissioner for Human Rights
GENEVA**

In reply to the joint communication sent by the Special Rapporteur on the situation of human rights defenders Mr. Michel Forst and the Special Rapporteur on minority issues Ms. Rita Izsák dated 9 September 2015, the Republic of Lithuania would like to provide the following information with regard to the questions raised in the communication:

1. Are the above facts accurate? Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Officials of the State Border Guard Service under the Ministry of the Interior (hereinafter – SBGS) carrying out the control of aliens in the country according to Article 4(1) of the Law on the Legal Status of Aliens (hereinafter – Law), on 24 August 2015 identified Mr. Aleksandrs Kuzmins, Mr. Aleksandrs Ržavins and Mr. Josifs Korens in the city of Klaipėda. According to the provisions of Article 133(2¹) of the Law these aliens were banned entry to the Republic of Lithuania on the basis of the decision of the Migration Department under the Ministry of the Interior. Accordingly, SBGS officers handed in notifications to the said persons concerning the decisions adopted with their respect and notified them that they had to leave the Republic of Lithuania immediately, because their presence in the territory of the Republic of Lithuania was illegal.

2. Please indicate the legal basis of the denial of entry of Mr. Aleksandrs Kuzmins, Mr. Aleksandrs Ržavins and Mr. Josifs Korens to Lithuania, and how such a measure is compatible with international human rights norms?

The decision to ban/not to ban an alien's entry into the Republic of Lithuania is taken in accordance with Article 133 of the Law on the Legal Status of Aliens of the Republic of Lithuania (hereinafter – Law). According to Article 133(2¹) of the Law, a citizen of an EU Member State and/or his family member or another person who enjoys the right of free movement under legal acts of the European Union may be the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years solely in the case where his entry into and stay in the Republic of Lithuania may represent a threat to national security or public policy. An alien (any person other than a citizen of the Republic of Lithuania irrespective of whether he is a national of a foreign state or a stateless person) may be the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years where he may represent a threat to national security or public policy (Article 133[3] of the Law). According to Article 133(4) of the Law, the national no-entry list shall be drawn up and managed by the Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter – Migration Department), which shall also forward the data from this list to the Central Schengen Information System in accordance with the procedure established by the Government of the Republic of Lithuania (i.e. in accordance with the Rules for Drawing up and Administration of the National List of Aliens Refused Entry to the Republic of Lithuania approved by Resolution No. 436 of 20 April 2005 of the Government of the Republic of Lithuania). A decision to ban/not to ban an alien's entry into the Republic of Lithuania is taken by the Migration Department. The length of the entry ban shall be determined on a case-to-case basis with due regard to all relevant circumstances of an individual case (Article 133[5] of the Law).

According to Article 4(2) of the Law, assessment of a threat posed by an alien to national security is carried out by the State Security Department of the Republic of Lithuania (hereinafter – State Security Department). The information provided by the State Security Department about the persons specified in the letter is sensitive according to the procedure established by legal acts and is not disclosed.

We hereby confirm that the reasons for the ban of an alien's entry into the Republic of Lithuania are not related to their belonging to ethnic minorities or their activities in protecting minority rights.

We would like to draw your attention to the fact that the provisions of the Law are in line with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. According to Article 27 of this Directive, EU Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health.

We would also like to note that on many occasions it has been stated in the case law of the European Court of Human Rights (hereinafter – ECHR) that the European Convention for the Protection of Human Rights and Fundamental Freedoms does not guarantee an alien's right to enter and live in the territory of a specific country as his/her fundamental right (e.g. judgment of 12 June 2012 *Bajisultanov v Austria*). The right of the state to control entry of aliens into its territory or their life is recognised both by the Supreme Administrative Court of Lithuania (e.g. administrative case No A858-1810/2010) and ECHR case law (e.g. judgment of 18 October 2006 *Üner v the Netherlands*).

3. Please indicate what measures have been taken to ensure that the views of minorities, and those working on minority rights, are being protected in Lithuania.

Statistical data

The population census carried out by Statistics Lithuania in 2011 provided data on 154 nationalities living in Lithuania (in year 2001 – 115), comprising about 14.7 percent of the total population in Lithuania. 1.1 per cent has not indicated the nationality. According to Statistics Lithuania, over 2001-2011, a slight decrease was observed for all ethnic groups residing in Lithuania.

According to Statistics Lithuania, the counties of Vilnius, Klaipėda and Utena are marked by the major concentration of national minority representatives. Vilnius was inhabited by people of 128, Kaunas – 85, Klaipėda – 77, Šiauliai and Panevėžys – more than 50 different ethnicities.

Legislation

National rebirth, which started in 1988, laid the foundation for a new stage in the national policy of the Lithuanian State. Lithuania was the first country in Central and Eastern Europe to adopt a *Law on National Minorities* (1989) and to establish an institution dealing with issues of national minorities called Committee for Nationalities. In 1990 it was reorganized into the Department of Nationalities under the Government of the Republic of Lithuania. Since 1 January, 2010 the Department was dissolved and the issues related with national minority affairs were transferred to the respective institutions. The Department of National Minorities has been restored in July, 2015 by the

Government Decision. It took over the functions of the Ministry of Culture of the Republic of Lithuania.

It is noteworthy, that representatives of national minorities expressed general satisfaction with Law on National Minorities as it guaranteed the possibility to the persons belonging to national minorities to develop their ethnic identity, preserve the continuity of their culture, to foster ethnic consciousness and self-expression, to use national minority language in addition to the Lithuanian language in offices and organisations located in areas inhabited by substantial numbers of a minority, to obtain secondary education in the minority language. The Law on National Minorities has become invalid since January 1, 2010. The new draft Law on National Minorities has been registered and is due to be discussed in the Parliament in the spring session in 2016. The cultural rights of national minorities are guaranteed by *the Constitution of the Republic of Lithuania*. In addition, *the Law on Education, Law on Equal Treatment, the Law on Associations* and others also guarantee the protection of rights of persons belonging to national minorities (although fragmentally).

In addition to national legislation, the rights of ethnic minorities are protected by the international agreements and conventions. Lithuania ratified all basic international agreements adopted by the United Nations and the Council of Europe. In 1995 the Republic of Lithuania signed *the Council of Europe Framework Convention for the Protection of National Minorities* (hereinafter: Framework Convention) and in 2000 the Seimas of the Republic of Lithuania passed Law on the Ratification of the Framework Convention. Until now, the Republic of Lithuania has submitted 3 reports on the implementation of the provisions of the Framework Convention in Lithuania.

After the gain of independence, Lithuania chose a liberal form of gaining Lithuanian citizenship. All the people living in Lithuania irrespective of their ethnicity, knowledge of state language and duration of residence in the country were able to gain Lithuanian citizenship.

Education of national minorities

Education of national minorities is an integral part of the education system in Lithuania. The main objective is to ensure the right and access to education in the mother tongue for persons belonging to national minorities. On the other hand, Lithuania undertakes to strengthen the linguistic integration of national minorities (in other words, our state takes measures that persons belonging to national minorities have adequate opportunities for learning the state language).

At present, the model of education of national minorities that prevailed as a relict from the Soviet times has been reoriented towards a modern education model that meets the EU standards. This model seeks to provide equal opportunities for access to education at all levels for persons belonging to national minorities, including the introduction of a uniform Lithuanian/state language standard to all educational institutions operating in Lithuania.

From academic year 2011/2012 onward, more classes of the Lithuanian language in the Lithuanian schools of national minorities have been allocated to develop skills of the state language. Mandatory subjects such as civic education, Lithuania's history, geography and natural sciences were introduced in Lithuanian. The decision to equalize the content of the Lithuanian language graduation exams has been taken, with 2 years transition period to help to implement it. All these measures are aimed at providing more favourable conditions to the younger generation of ethnic minorities, facilitating the mastery of the state language, a better integration into the societal and public activities, a more successful professional career as well as acquisition of a higher level education, which is of topical relevance both in Europe and the global world, with cooperation becoming increasingly closer.

The Lithuanian model could be regarded as a unique case both in the European and global context, when national minorities are entitled to receive education in their mother tongue from the first grade through the high school. Following to national legislation, nearly all subjects in educational institutions of national minorities are taught in the native language, which accounts for about 85 percent of all the learning time. In practical terms, the model of education is constructed in such a way that there is an equal amount of lessons for teaching the state and native languages at schools with the national language of instruction.

The network of the educational institutions in Lithuania is one of the biggest in the EU member states. During the academic year 2014-2015, there were 91 general education schools functioning in Lithuania with non-Lithuanian language of instruction. Additionally, there were 42 general education schools where more than one language of instruction is used.

The funds allocated by the Lithuanian state to maintain one pupil (the so-called “pupil’s basket“) in a national minority school were 20 percent higher than those allocated to the needs of a pupil receiving education in Lithuanian schools.

The above mentioned facts present sufficient evidence that the conditions for educating members of ethnic minorities in Lithuania are among the best in Europe.

It is significant to note, that Lithuania provides the opportunity for persons on social assistance belonging to national minorities to learn the state language.

The use of national minority language

The provisions of Article 14 of the Constitution of the Republic of Lithuania enshrine the Lithuanian language as the state language (using Lithuanian in public life is an absolute requirement whereas in private life persons belonging to a national minority may use, whether orally or in writing, any language that they find acceptable). The existing laws of the Republic of Lithuania do not provide opportunity to use the language of national minority alongside the official state language in official names of traditional places. However, it should be noted, that all citizens of Lithuania, regardless of their command of the state language, have all the facilities to exercise their cultural and political rights and opportunities.

Since July 30, 2015 Vilnius City Municipal Government Administration began providing services to applicants not only in the state language, but also in the mutually acceptable languages: English, Russian and Polish.

Cultural activities

To meet the cultural and educational needs of Lithuanian national minorities, cultural centres of national minorities were established in the major towns of Lithuania. The Ministry of Culture funds centres for national minorities (The House of National Minorities in Vilnius, The Roma Community Centre (Vilnius), The Ethnography and Folklore Centre of the Lithuania National Minorities (Vilnius), The Kaunas Cultural Centre of Various Nations (Kaunas). These centres carry out activities, ensuring access to culture to different national, cultural and linguistic groups and that promote traditions, heritage and cultural self-expressions of national minorities at the local, regional and national levels.

Another group of events is aimed at guaranteeing sustainable integration of national minorities into society of Lithuania, ensuring their equal opportunities to be educated, to find a job and to participate

in public life on equal grounds with other citizens of the Republic of Lithuania. For this purpose, the Lithuanian language courses, management courses, computer literacy courses, courses on administration of projects are organised. There is also support allocated for publication of a periodic information bulletin about national minorities in Lithuania. It is noteworthy, that cultural centres for national minorities also exist in Klaipėda, Visaginas, Druskininkai, Alytus, Kėdainiai, Švenčionėliai and Eišiškės.

National minorities representatives (leaders and members of officially registered national minority NGOs), students of different education establishments and pupils, interested in issues on national minorities, have a free access to computers, printers, the Internet as well as to printed material available at the Information Centre of the House of National Communities. Similar services are also provided at the Kaunas Cultural Centre of Various Nations and the Roma Community Centre. The House of National Communities also provides free-of-charge premises to 10 national minority NGOs, equipped with modern furniture and office equipment (computers, the Internet access point, land telephones, etc.).

With a view to foster the cultural identity of national minorities and to support the diversity of cultural expressions, a partial support was allocated to projects submitted by national minority NGOs. Until 2015 the competition for projects which promote dissemination of national minorities culture in Lithuania, promote cultural activities of children and youth from national minorities, aim to preserve cultural heritage of national minorities, fight against national and cultural discrimination, contribute to integrating Roma national minority and those organising activities of Sunday schools of national minorities was organised by the Ministry of Culture. In 2015 the Department of National Minorities has also provided partial financial support projects submitted by national minority NGOs.

4. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

There is no specific legal act regulating the status of human rights defenders. However, within the context of the joint communication of the Special Rapporteurs, general constitutional human rights protection guarantees entrenched in the legal system of the Republic of Lithuania as well as certain provisions of national legislation relevant the activities of human rights defenders might be indicated.

Article 25 of the Constitution of the Republic of Lithuania (hereinafter – Constitution) could be mentioned, which provides that individuals have the right to have their own convictions and freely express them. Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas. Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than that established by law, where it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of the constitutional order. This article also states that freedom to express convictions or impart information is incompatible with criminal actions – the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation.

Article 29 of the Constitution stipulates that all people shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way, or be

granted any privileges, on the basis of his/her sex, race, nationality, language, origin, social status, religion, convictions, or opinions. Article 33 of the Constitution guarantees citizens the right to criticize the work of State institutions and their officers, and to appeal against their decisions. It shall be prohibited to persecute people for criticism. Article 35 of the Constitution guarantees citizens the right to freely form societies, political parties, and associations, provided that the aims and activities thereof do not contradict the Constitution and laws. Article 36 of the Constitution guarantees citizens the right to peaceful assembly. Article 30 of the Constitution guarantees every person whose constitutional rights or freedoms are violated the right to appeal to court. The above guarantees stipulated in the Constitution are further detailed in individual laws.

For example, Article 4 of the Law on Provision of Information to the Public of the Republic of Lithuania provides that every person has the right to freely express his ideas and convictions. This right encompasses freedom to maintain one's opinion, to seek, receive and disseminate information and ideas in accordance with the conditions and procedure set out in the laws. The right to receive and impart information may not be restricted in any way other than that established by law, where it is necessary for the protection of the constitutional order, human health, honor and dignity, private life and morals. It also provides for the right of every individual to seek information and publicise it in the media. Article 6 of this law stipulates that each person is entitled to receive from state and municipal institutions and agencies as well as other budgetary institutions public information relating to their activities, their official documents (copies thereof) as well as information held by the aforementioned institutions about the requesting person. Meanwhile Article 10 guarantees every person's the right to appeal in court against the decisions and actions of state and municipal institutions, agencies and officials if they violate or illegally restrict a person's right to receive, collect or disseminate information. The right of individuals to obtain information from state and municipal institutions and agencies is also ensured by the Law of the Republic of Lithuania on the Right to Obtain Information from State and Municipal Institutions and Agencies, which specifies in detail the procedure for exercising this right and regulates actions of the state and municipal institutions and agencies when providing information to individuals.

Article 5 of the Law of the Republic of Lithuania on Non-governmental Organisations governs the cooperation between state and municipal institutions and agencies and non-governmental organisations. This cooperation is implemented by providing information to non-governmental organisations about planned activities and cooperation policies of the state and municipal institutions and agencies in order to coordinate them with non-governmental organisations working in this area; in consultation with non-governmental organisations and, where appropriate, establishing joint working groups for dealing with specific issues; and by financing programmes, projects and initiatives of non-governmental organisations. Furthermore, the same article states that after the receipt of written request from a non-governmental organisation to coordinate the drafting of various legal acts, state and municipal institutions and agencies must perform the drafting of these legal acts in consultation with the organisation that has provided the request according to the procedure stipulated in legal acts of the Republic of Lithuania. According to Article 3 of the Law on the Legislative Framework of the Republic of Lithuania, one of the legislative principles of the Republic of Lithuania is openness and transparency, which means that the legislation is public; legislative decisions concerning common interests cannot be made without the knowledge of the public or without the opportunity to participate; the aims of the state policy, regulatory needs and parties participating in legislation must be known to the public; and the public and interest groups must be provided conditions to make proposals concerning legal regulation in all legislative stages.

The Law on Associations of the Republic of Lithuania implements Article 35 of the Constitution and regulates the formation, management, activities, and specific features of restructuring and termination of legal entities whose legal form is an association. Article 2(1) of this law provides that an association is a public legal entity of limited civil liability which has its name and the aim of which is to coordinate activities of the members of the association, to represent interests of the members of the association and to defend them or to meet other public interests. Article 15 of the law stipulates that state and municipal institutions and officials in the cases and procedure which are not laid down by law, political parties and political organisations, other organisations and persons shall be prohibited from interfering in activities of an association and in its internal affairs, while Article 16 provides the right of an association to join international organisations in the manner prescribed by the statutes, provided the aims and activities of these organisations are in compliance with the Constitution and other laws of the Republic of Lithuania.

The Law on Assemblies of the Republic of Lithuania governs the conditions of ensuring the constitutional right to assembly unarmed in peaceful meetings and the procedure for protecting national and public security, public order, human health and moral principles embedded in legal acts, other rights and freedoms of individuals when organising meetings or carrying out an individual action, as well as the liability for violations of this law. According to Article 2 of this law, the meeting is defined as a peaceful gathering of persons with the aim of expressing their views and opinions publicly and freely and ensuring the expression of the individual's civic engagement in society and the State. Forms of a meeting are meetings, pickets, demonstrations, processions, parades, other peaceful unarmed meetings. A single-person action is also distinguished.

Article 5 of the Code of Civil Procedure of the Republic of Lithuania guarantees each and every person concerned the right to appeal to court according to the procedure prescribed by laws to defend their violated or contested right or interest protected by laws and that the waiver to appeal to court is not valid. Article 5 of the Law on Administrative Proceedings of the Republic of Lithuania also guarantees that each interested person/entity has the right according to the procedure prescribed by laws to appeal to court so that his/its violated or contested right or interest is protected by laws and that the waiver to appeal to court is not valid. Article 22 of this law provides that every person who believes that his rights or interests protected by laws has been violated shall have the right to file a complaint (request) regarding an administrative deed or action (omission) of a subject of public administration and to specify the procedure for filing and examining the complaint. Article 6 of the Code of Civil Procedure of the Republic of Lithuania, Article 6 of the the Lithuanian Republic Law on Administrative Proceedings, and Article 6 of the Criminal Law of the Republic of Lithuania establish the principle that justice shall be administered by courts only following the principle of persons' equality before the law and courts, irrespective of persons' gender, race, nationality, language, ethnicity, background, social status, religion, beliefs or outlook, type and way of activities and other circumstances.

To the extent this is related to the regulation of financial and other support, it should be noted that the Law on Charity and Sponsorship of the Republic of Lithuania establishes a framework for providing and receiving charity and sponsorship, the purposes of providing and receiving charity and sponsorship, and also the providers and recipients of charity and sponsorship; it also regulates charity and sponsorship accounting and control. According to Article 3 of this law, sponsorship items (money, other assets or services) shall be provided to sponsorship recipients for the purposes of public benefit stipulated in their articles of association or regulations. The following purposes shall be presumed to be for the public benefit: activities for the purpose of international cooperation,

protection of human rights, integration of minorities, promotion of cultural, religious and ethical values, educational, scientific and vocational development, non-formal and civic education, sports, social security and labour, health care, national security and defence, law and order, crime prevention, adjustment of living environment and development of housing, protection of copyright and related rights, environmental protection as well as any activities in other fields recognised as selfless and beneficial to society. Among other entities, beneficiaries of sponsorship may be associations, divisions of international public organisations, other legal entities whose activities are regulated by special laws and which participate in not-for-profit activity, while the profit received may not be allocated to their participants. Sponsorship under this law is recognised if it is provided by: 1) private individuals or legal entities of the Republic of Lithuania, with the exception of political parties, political organisations, state and municipal enterprises, budgetary institutions, state and municipal authorities and the Bank of Lithuania; 2) foreign states, foreign private individuals or legal entities, and international organisations.

Law on the Legal Status of Aliens of the Republic of Lithuania

Article 4. Control of Stay and Residence of Aliens in the Republic of Lithuania

1. The stay and residence of aliens in the Republic of Lithuania shall be controlled by the police, the Migration Department under the Ministry of the Interior (hereinafter – Migration Department), the State Border Guard Service under the Ministry of the Interior (hereinafter – State Border Guard Service) in association with state and municipal institutions and agencies of the Republic of Lithuania.

2. Assessment of a threat posed by an alien to national security shall be carried out by the State Security Department of the Republic of Lithuania (hereinafter – State Security Department), while assessment of a threat to public policy or the community shall be carried out by the Police Department under the Ministry of the Interior of the Republic of Lithuania or the State Border Guard Service.

Article 133. Prohibition to enter into the Republic of Lithuania

1. An alien who has been refused a visa or it has been annulled or who has been refused a residence permit or it has been withdrawn, an alien who has been refused admission to the Republic of Lithuania, has been imposed an obligation to leave the Republic of Lithuania, has been returned to a foreign state or attempted to leave the Republic of Lithuania, or left it, unlawfully or an alien who does not have the right to reside in the Republic of Lithuania and fails to comply with obligations to the customs or has failed to pay a fine/fines imposed in accordance with the procedure laid down by laws of the Republic of Lithuania may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years.

2. An alien who has been expelled from the Republic of Lithuania shall be the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years.

2¹. A citizen of an EU Member State and/or his family member or another person who enjoys the right of free movement under legal acts of the European Union may be the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years solely in the case when his entry into and stay in the Republic of Lithuania may represent a threat to national security or public policy.

2². An entry ban shall not apply to an alien who has been expelled from the Republic of Lithuania on grounds of his failure to comply with the obligation to leave from the Republic of Lithuania within the specified time limit or his failure to voluntarily leave from the Republic of Lithuania within a time limit specified in a decision to return him to a foreign state, where he was issued a temporary residence permit on the ground specified in Article 40(1)(12) of this Law as a victim of trafficking in human beings and where he does not represent a threat to national security or the community.

3. An alien may be the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years where he may represent a threat to national security or public policy.

4. The national no-entry list shall be drawn up and managed by the Migration Department, which shall also forward the data from this list to the Central Schengen Information System in accordance with the procedure established by the Government of the Republic of Lithuania.

5. A decision to ban/not to ban an alien's entry into the Republic of Lithuania shall be taken by the Migration Department. The length of the entry ban shall be determined on a case-to-case basis with due regard to all relevant circumstances of an individual case.