

LITHUANIA

**Homophobic legislation and
accountability for complicity in
US-led rendition and secret
detention programmes**

*Amnesty International
Submission to the UN Universal
Periodic Review, October 2011*

**AMNESTY
INTERNATIONAL**



CONTENTS

Introduction	3
Normative and institutional framework of the State	3
Homophobic legislation and restrictions TO freedom of expression	3
Promotion and protection of human rights on the ground	4
Accountability for complicity in the US-led rendition and secret detention programmes	4
Recommendations for action by the State under review	8
Endnotes	9
Annex	10

INTRODUCTION

In this submission, prepared for the Universal Periodic Review of Lithuania in October 2011, Amnesty International raises concerns about homophobic legislation, including the Law on the Protection of Minors against the Detrimental Effect of Public Information, amendments to the Code on Administrative Offences, and amendments to the Law on Provision of Information. Amnesty International also expresses concerns about Lithuania's accountability for complicity in the US-led rendition and secret detention programmes. On 14 January 2011 the investigation by the Lithuanian Prosecutor General to determine whether and when detainees may have been held in secret detention in Lithuania between 2003 and 2005 was prematurely terminated.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

HOMOPHOBIC LEGISLATION AND RESTRICTIONS TO FREEDOM OF EXPRESSION

The Law on the Protection of Minors against the Detrimental Effect of Public Information, in force since 1 March 2010, classifies as detrimental to children any information which "denigrates family values" or encourages a concept of marriage other than the union of a man and a woman, and consequently bans such information from places accessible to children. Amnesty International has repeatedly voiced concern that the law could be used to restrict freedom of expression of lesbian, gay, bisexual and transgender (LGBT) people, and advocates for their rights, and that it is directly discriminatory against people on account of their sexual orientation or gender identity.

Amendments to the Code on Administrative Offences: On 23 September 2010, the Lithuanian Parliament (Seimas) adopted its agenda for the autumn session, including legislative amendments to the Penal and Administrative Codes which would criminalize the "promotion of homosexual relations in public places".¹ In October 2010, the amendment to the Penal Code was withdrawn; however, the amendment to Article 214 of the Code on Administrative Offences,² stating that "public promotion of homosexual relations is to be punished by a fine from two thousand to ten thousand Litas" (about €580-2,900), entered the parliamentary process. The explanatory note accompanying the draft bill explains that these sanctions are aimed at implementing the "Law on the Protection of Minors against the Detrimental Effect of Public Information".

The amendment was approved in the first reading on 12 November 2010 and scheduled for consideration by the two competent parliamentary committees prior to adoption in the plenary session on 16 December 2010. However, most probably due to criticism by human rights organizations and at EU level, the amendments were not discussed in the relevant parliamentary committees and were subsequently taken off the agenda of the Seimas plenary session. Amnesty International remains deeply concerned that similar initiatives, which are blatantly discriminatory and would unlawfully restrict the right to freedom of expression of LGBT people in

violation of Lithuania's obligations under international human rights law, may be resumed in the near future. Should sanctions of this kind be introduced, any public expression or portrayal of, or information about, homosexuality would be banned. Such action includes, but is not limited to, campaigning on human rights issues relating to sexual orientation and gender identity, providing sexual health information to LGBT people and organizing events such as gay film festivals and Pride marches, the most recent of which was held in Vilnius in May 2010.

Amendments to the Law on Provision of Information: Following amendments which entered into force on 18 October 2010, article 39 of the Law on Provision of Information stated that advertising and audiovisual communication "must not contain any manifestation or promotion of sexual orientation" and hence prohibited any reference to the issue of sexual orientation in this domain. Furthermore, the law did not include "sexual orientation" among the prohibited grounds of discrimination. It also stated that advertising and audiovisual communication should not "be offensive to religious or political beliefs". Since this provision was incompatible with the prohibition of discrimination based on sexual orientation and the right to freedom of expression as enshrined in the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, both of which have been ratified by Lithuania, in February 2011 Amnesty International addressed Lithuanian authorities asking them to bring the law in line with international and European human rights standards.

In June 2011, the Lithuanian Parliament amended article 39 by deleting the ban on manifestation or promotion of sexual orientation and adding sexual orientation as one of the prohibited grounds of discrimination. However, the reference to religious or political beliefs was maintained in the article. Under international human rights law, the right to freedom of expression may only be subject to restrictions which meet all elements of a stringent three-part test: they must be prescribed by law; address a specific legitimate purpose permitted by international law, that is, ensuring respect for the rights of others or protecting certain public interests (national security, public safety, public order or health); and be demonstrably necessary and proportionate for that purpose. According to the case-law of the European Court of Human Rights, the permissible legitimate purposes must be narrowly interpreted and must not be used to impose restrictions on forms of expression because other people find them objectionable or offensive. Moreover, any restrictions must not be discriminatory. In light of the above, Amnesty International considers that the broad prohibition of advertising and audiovisual communication that is "offensive to religious or political beliefs" contained in article 39, violates the right to freedom of expression.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

ACCOUNTABILITY FOR COMPLICITY IN THE US-LED RENDITION AND SECRET DETENTION PROGRAMMES

Amnesty International is concerned about the premature termination on 14 January

2011 of the investigation by the Lithuanian Prosecutor General to determine whether and when detainees may have been held in secret detention in Lithuania between 2003 and 2005. The government acknowledged in December 2009 that aircraft operating in the context of the US-led rendition programme had landed in Lithuania and that two secret detention centres had been prepared for use by the US Central Intelligence Agency (CIA) to hold and interrogate so-called “high value” detainees. The sudden closure of the investigation has undermined attempts to ensure accountability for the creation of the facilities, and to determine whether detainees were transported to or from Lithuania, details about their treatment in secret detention, and whether Lithuanian state actors were directly involved or complicit in any human rights violations that may have occurred in the course of rendition and secret detention operations.³ Amnesty International is concerned that several lines of inquiry appear not to have been pursued in the investigation and calls on the Prosecutor General to reopen the investigation.⁴

On 19 November 2010, in a meeting with Amnesty International, the prosecutors responsible for the investigation assured the organization that the investigation would continue until all lines of inquiry were examined. On 14 January 2011, however, the Prosecutor General announced the termination of the pre-trial investigation of three former State Security Department (SSD) officials for “abuse of authority”. The written justification for the termination of the investigation stated the following:

- No information had been obtained indicating that the aircraft had been used to illegally transport any persons to or from Lithuania. Therefore, the SSD officials did not abuse their office or exceed the limits of their authority and there was consequently no basis for initiating criminal charges.
- The statute of limitations on the offence of “abuse of authority” under the Lithuanian Penal Code is five years and would have run from the beginning of 2003, when the construction of the sites was completed. Thus, the statute of limitations had expired by 2008.
- No data was received to suggest that one of the secret facilities, Project No. 2, was used for holding detainees and therefore no offence was committed. The decision further stated that “[t]he real purpose of the building cannot be revealed as it constitutes a state secret”.
- The Lithuanian Law on Intelligence does not require issues related to international cooperation to be “cleared” at any political level. Although SSD officials did not inform high-level state officials of the objectives and logistics of these projects, the Prosecutor General found no evidence of a criminal offence or abuse of authority on their part.
- The actions of the former SSD officials could possibly have given rise to disciplinary offences; however, as they were no longer SSD employees, no disciplinary sanctions could be applied to them. Moreover, under the SSD’s statute, disciplinary sanctions can only be applied within a year of the commission of the offence.
- Some of the materials examined in the course of the investigation constitute a state secret and an official secret.

Amnesty International considers that the Prosecutor General’s justification for terminating the investigation is inconsistent with evidence secured and analyzed by

the Special Procedures in the UN Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, issued in February 2010, which included independent evidence that Lithuania was incorporated into the CIA rendition programme.⁵ By analyzing “data strings”, the study confirmed that planes operating in the context of the CIA rendition and secret detention programmes had landed in Lithuania under cover of “dummy” flight plans.⁶

Moreover, the investigation by the Prosecutor General commenced in January 2010, well after the statutes of limitation had expired on the alleged “abuse of authority” charges and on the provision for disciplinary charges under the SSD statute. Amnesty International notes that, while the Prosecutor General must have been aware of this, staff from the Prosecutor General’s office, in a March 2010 letter to Amnesty International and again during the November 2010 meeting in Vilnius, assured the organization that the investigation would examine all relevant lines of inquiry, including of human rights violations that may have occurred as a result of the establishment and alleged operation of the secret sites. While statutes of limitations on some charges, criminal or disciplinary, may have expired, there is no statute of limitations for serious human rights violations, such as enforced disappearance and torture and other ill-treatment, under Lithuania’s obligations under customary international law, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention on Human Rights and Fundamental Freedoms. Having acknowledged the existence of secret detention facilities in Lithuania, it is incumbent on the government of Lithuania to ensure that a full, independent, impartial and effective investigation is conducted. The investigation by the Prosecutor General’s office from January 2010 to January 2011 cannot be considered to fulfil these requirements.

In February 2011, Amnesty International submitted a memorandum to the Prosecutor General indicating several lines of inquiry and contact persons that appeared not to have been pursued in the investigation. For example, it had come to Amnesty International’s attention that the Prosecutor General’s office had not communicated with the authors of the UN Joint Study on Secret Detention to discuss the evidence of Lithuania’s complicity in rendition alleged in that report. Moreover, no direct communication appeared to have been pursued by the Prosecutor General’s office with the government of Finland regarding an aircraft operating in the context of the CIA rendition programme that was spotted in Helsinki on the same day that the UN Joint Study alleged the plane had landed in Lithuania.⁷ In late February 2011, Amnesty International received a response from the Prosecutor General, stating that the organization had no standing in the investigation and therefore no right to information secured by his office and that the information gathered in the course of the investigation could not be made public under Lithuanian law as much of it was subject to national security classification.

Initial revelations by ABC News about a detention facility in Lithuania outside Vilnius for “high value” detainees held by the CIA until late 2005,⁸ based on unquoted CIA sources, have since been confirmed in investigations by the Council of Europe,⁹ by the report of the Lithuanian Parliamentary Committee on National Security and Defence published in December 2009,¹⁰ and in the visit to the two secret sites by the European Committee for the Prevention of Torture (CPT) in June 2010.¹¹

On 21 September 2010, the NGO Reprieve wrote to the Prosecutor General alleging that Zayn al-Abidin Muhammad Husayn – aka Abu Zubaydah – had been held in secret detention in Lithuania sometime between 2004 and 2006. The letter claimed that after being held in Thailand, Abu Zubaydah was transferred on 4 December 2002 to a secret detention site in Szymany, Poland. He was held at Szymany for almost 10 months, the letter alleged, and then transferred in September 2003 to Guantánamo Bay, from which he was subsequently transferred to Morocco in 2004. The letter further claimed that Reprieve had received information from an unspecified source that Abu Zubaydah had then been held in a secret CIA prison in Lithuania between spring 2004 and his second rendition to Guantánamo Bay in September 2006. Amnesty International cannot confirm this allegation, but urged the Prosecutor General to diligently pursue all relevant lines of inquiry before the investigation was suddenly closed in January 2011.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Lithuania:

On homophobic legislation

- To revise the Law on the Protection of Minors against the Detrimental Effect of Public Information to remove all possibilities of it being applied in a manner that stigmatises or discriminates against LGBT people or violates their rights to freedom of assembly and expression;
- To refrain from legislative initiatives which would criminalize homosexual relations or otherwise infringe the rights of LGBT people to freedom of expression and non-discrimination;
- To urgently review the Law on Provision of Information to ensure its compliance with the right to freedom of expression.

On accountability for complicity in the US-led rendition and secret detention programmes

- To reopen the investigation into the presence of secret detention sites on Lithuanian territory and to pursue all relevant lines of inquiry regarding the establishment of the sites, including whether and when detainees were transported to or from Lithuania, under what procedures and conditions they were transported, and their treatment in detention;
- To ensure that the terms of reference of the investigation explicitly include investigation of the direct commission by state actors or their complicity in possible human rights violations according to Lithuania's international human rights obligations;
- To respond fully to the allegations of Lithuanian complicity in the CIA rendition programme contained in the February 2010 UN Joint Study on Secret Detention and to open a direct line of communication with the Special Procedures involved in the study to pursue any available information regarding evidence of such collusion;
- To ensure that where there is credible evidence that serious human violations may have occurred, the prohibition against a statute of limitations on the investigation of certain violations, including torture and other ill-treatment, and enforced disappearance, be observed.

ENDNOTES

- ¹ See also “Lithuania: parliament moves to criminalize homosexuality”, update on homophobic legislation in Lithuania from Amnesty International European Institutions Office, September 2009
- ² Project of law No. XIP-2595 modifying Article 214(30) of the Code of Administrative Infringements
- ³ For a more detailed explanation of Amnesty International’s concerns please see: *Europe: Open secret: Mounting evidence of Europe’s complicity in rendition and secret detention*. 15 November 2010 (AI-Index: EUR 01/023/2010), <http://www.amnesty.org/en/library/asset/EUR01/023/2010/en/3a3fdac5-08da-4dfc-9f94-afa8b83c6848/eur010232010en.pdf>; Executive Summary (AI-Index: EUR 01/024/2010): <http://www.amnesty.org/en/library/asset/EUR01/024/2010/en/c70f5d23-cea3-48d3-a768-bc87092cddc8/eur010242010en.pdf>
- ⁴ Amnesty International, Public Statement “Lithuania must reopen CIA Secret Prison Investigation”, 18 January, <http://www.amnesty.org/en/news-and-updates/lithuania-must-reopen-cia-secret-prison-investigation-2011-01-18>
- ⁵ Joint Study on Global Practices in relation to Secret Detention in the context of Countering Terrorism, UN Doc A/HRC/13/42, 19 February 2010.
- ⁶ Paragraph 120 of the UN Joint Study on Secret Detention states: “Two flights from Afghanistan to Vilnius could be identified: the first, from Bagram, on 20 September 2004, the same day that 10 detainees previously held in secret detention, in a variety of countries, were flown to Guantanamo; the second, from Kabul, on 28 July 2005. The dummy flight plans filed for the flights into Vilnius customarily used airports of destination in different countries altogether, excluding any mention of a Lithuanian airport as an alternate or back-up landing point.”
- ⁷ Amnesty International, “Lithuania Must Re-Open CIA Secret Prison Investigation”, 18 January 2011, <http://www.amnesty.org/en/news-and-updates/lithuania-must-reopen-cia-secret-prison-investigation-2011-01-18>
- ⁸ Matthew Cole, “Officials: Lithuania Hosted Secret CIA Prison to Get ‘Our Ear’”, ABC News, 20 August 2009, <http://abcnews.go.com/Blotter/story?id=8373807>.
- ⁹ Dick Marty, “Time for Europe to Come Clean Once and for All over Secret Detentions”, 21 August 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2.
- ¹⁰ The parliamentary Committee on National Security and Defence concluded that two secret sites were prepared in collaboration with the CIA to receive terrorism suspects; one site was not used (Project No.1), and the committee stated that it could not establish on the information available to it whether another, at Antaviliai, outside Vilnius, had ever actually held prisoners (Project No. 2). The report noted, however, that although it could not be determined that persons were held in Project No. 2, “the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the SSD staff in the premises allowed for the performance of actions by officers of the partners [i.e. CIA] without the control of the SSD and use of the infrastructure at their discretion”. The inquiry committee recommended that the Prosecutor General’s Office investigate three former senior SSD officials for “abuse of authority” under Lithuanian law. In January 2010, the Lithuanian Prosecutor General’s Office opened a criminal investigation into those state actors’ alleged involvement in the establishment of the centres. (“Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania”, 22 December 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2.)
- ¹¹ European Committee for the Prevention of Torture news release, “Council of Europe Anti-Torture Committee Visits Lithuania, 23 June 2010, <http://www.cpt.coe.int/documents/ltu/2010-06-23-eng.htm>. The CPT’s landmark visit signified the first time that an independent monitoring body had visited a secret prison established by the CIA in Europe in the context of the US government’s global counter-terrorism operations post -11 September 2001 - and made that visit known to the public.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Lithuania: New move towards penalizing homosexuality, 26 November 2010, AI Index: EUR 53/008/2010

Current Evidence: European Complicity in the CIA Rendition and Secret Detention Programmes, 25 January 2011, AI Index: EUR 01/001/2011

European complicity in the CIA-led rendition and secret detention programmes: An update on progress toward accountability, 15 November 2010, AI Index: EUR 01/027/2010

Europe: Open secret: Mounting evidence of Europe's complicity in rendition and secret detention, 15 November 2010, AI Index: EUR 01/023/2010

Lithuania: Investigation of allegations of CIA secret prison must be effective and impartial, 28 August 2009, AI Index: EUR 53/007/2009

Lithuania admits existence of secret prison, 22 December 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuania-admits-existence-secret-prison-20091222>)

Lithuania: Parliament moves to criminalize homosexuality, 9 September 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-moves-criminalize-homosexuality-20090909>)

Lithuanian parliament passes homophobic law, 14 July 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-passes-homophobic-law-20090714>)

¹ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/lithuania>

**AMNESTY
INTERNATIONAL**



www.amnesty.org