

# National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies

LITHUANIA

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Lithuanian Social Research Centre  
Institute for Ethnic Studies  
Karolis Liutkevičius

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# Summary

## 1. The legal framework of surveillance in Lithuania

- [1]. The main legal act governing surveillance activities by national intelligence authorities in Lithuania is the Law on Intelligence (*Žvalgybos įstatymas*).<sup>1</sup> Surveillance activities by law enforcement institutions, including intelligence authorities, are also regulated by the Law on Criminal Intelligence (*Kriminalinės žvalgybos įstatymas*).<sup>2</sup> However, this law only covers activities of intelligence authorities related to the prevention and investigation of national security-related crimes.

### a. Types of security authorities involved

- [2]. Under Article 8 of the Law on Intelligence there are two intelligence institutions in Lithuania - the State Security Department (*Valstybės Saugumo Departamentas*) and the Second Investigation Department under the Ministry of National Defence (*Antrasis operatyvinių tarnybų departamentas prie Kašto apsaugos ministerijos*).
- [3]. The State Security Department is tasked with ensuring national security and carries out intelligence activities in the public political, economic, scientific and technological areas, and in the area of security of the state diplomatic services abroad.
- [4]. The Second Investigation Department is a military intelligence institution which carries out intelligence activities in the area of defence, and the military political, economic, scientific and technological areas, as well as in the area of national defence institutions' activities abroad.

### b. The extent of the intelligence authorities' surveillance powers

- [5]. Both the State Security Department and the Second Investigation Department can conduct the following surveillance activities:<sup>3</sup>
- monitor and record the content of information transmitted via electronic communication networks, correspondence and other personal communication;
  - enter a person's residence and/or other premises, as well as vehicles, inspect and document them;
  - seize documents and other items or carry out their covert inspection and documentation;
  - obtain information on electronic communications and personal data flows from the service providers;
  - monitor and record funds, monetary flows, securities, electronic and other forms of payment, as well as any other financial operations;
  - obtain the data needed for their activities from state and departmental registers, information systems and databases (this does not include private registers and databases).
- [6]. Other forms of intelligence information collection, through the application of special intelligence activities, are classified.<sup>4</sup> However, this cannot legally cover large-scale communication surveillance, as Lithuanian laws do not provide for mass surveillance and under Article 22 of the Constitution of the Republic of Lithuania all personal communication may only be monitored under a court decision.

### c. Control/oversight mechanisms

- [7]. The State Security Department is accountable to the Seimas (Parliament) of the Republic of Lithuania, as well as to the President of the Republic of Lithuania. The Second Investigation Department is subordinate to the Minister of National Defence (*Krašto apsaugos ministras*).

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<sup>1</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence (*Lietuvos Respublikos žvalgybos įstatymas*), No. XI-2289, 17 October 2012 (as amended).

<sup>2</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence (*Lietuvos Respublikos žvalgybos įstatymas*), No. XI-2234, 2 October 2012 (as amended).

<sup>3</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Articles 13, 14, 15.

Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Articles 9, 10, 11.

<sup>4</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 5.

- [8]. Both the State Security Department and the Second Investigation Department are supervised by the Seimas Committee on National Security and Defence (*Nacionalinio saugumo ir gynybos komitetas*).<sup>5</sup> The Committee on National Security and Defence carries out parliamentary control of intelligence authorities, which includes determining whether the intelligence authorities carry out their activities in accordance with the laws of the Republic of Lithuania, examining complaints of persons regarding actions of intelligence authorities' officers, suggesting and preparing amendments to the legal acts regulating the activities of the intelligence authorities, as well as determining deficiencies in activities of the intelligence authorities and preparing recommendations for their elimination. The Committee has the right to receive intelligence authorities' reports, as well as oral and written explanations from the heads and officers of intelligence authorities, however it does not have the power to carry out inspections and audits.
- [9]. The activities of the intelligence authorities under the Law on Criminal Intelligence, i.e. activities related to prevention and investigation of crimes, are subject to oversight by the Commission for Parliamentary Scrutiny of Criminal Intelligence (*Kriminalinės žvalgybos parlamentinės kontrolės komisija*).<sup>6</sup>

#### **d. Geographical scope of surveillance**

- [10]. The Law on Intelligence does not indicate specifically whether surveillance activities may be conducted abroad by the intelligence authorities. However, under the law, the intelligence authorities, while seeking to carry out their objectives, may be required to act both in Lithuania and in foreign states to predict and identify foreign and domestic threats.<sup>7</sup> Intelligence authorities are specifically tasked with control of the protection of classified information within institutions of the Republic of Lithuania abroad.

#### **e. Conditions and purposes for surveillance**

- [11]. The intelligence authorities can conduct surveillance activities for the following purposes:<sup>8</sup>
- to predict and identify foreign threats to national security<sup>9</sup>;
  - to predict, identify and eliminate domestic threats to national security;
  - to prevent and investigate national security-related crimes.

#### **f. Stages of surveillance procedure**

- [12]. The Law on Intelligence is vague on the processing of intelligence information, i.e. information collected via surveillance in order to tackle foreign and domestic threats to national security. Under the Law on Intelligence, the information must be processed solely for the purposes specified in the law and only to carry out the objectives the intelligence authorities were tasked with.<sup>10</sup> The detailed procedure for processing intelligence information is regulated by the intelligence authority's internal rules that are adopted by the head of the intelligence authority and are not publicized.

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<sup>5</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 21. Lithuanian Seimas (1994), Seimas of the Republic of Lithuania Statute (*Lietuvos Respublikos Seimo statutas*), No. I-399, 17 February 1994 (as amended). Article 63.

<sup>6</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Article 24. Seimas of the Republic of Lithuania Statute, Article 80<sup>1</sup>.

<sup>7</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 7.

<sup>8</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Articles 7, 9.

Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Articles 4, 8.

<sup>9</sup> Lithuania, Seimas (1996), The Law of the Republic of Lithuania on the Basics of National Security (*Lietuvos Respublikos nacionalinio saugumo pagrindų įstatymas*), No. VIII-49, 19 December 1996 (as amended), Article 1 section 2 defines national security as follows:

"Ensuring the national security of Lithuania shall mean the provision of conditions for a free and democratic development of the Nation and the State, protection and defence of the independence of the State of Lithuania, territorial integrity and constitutional order thereof."

<sup>10</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 16.

[13]. The Law on Criminal Intelligence provides no information on the procedure for the processing of criminal intelligence information, i.e. the information collected via surveillance to prevent and investigate national security-related crimes.

## 2. Safeguards

[14]. Intelligence authorities need a court approval to conduct the following actions:<sup>11</sup>

- monitor and record the content of information transmitted via electronic communication networks, correspondence and other personal communication;
- enter a person's residence and other premises or vehicles, inspect and document them;
- seize documents and other items or carry out their covert inspection and documentation;
- monitor and record funds, monetary flows, securities, electronic and other forms of payment, as well as any other financial operations.

[15]. In cases where intelligence information about a person is gathered in order to prevent or investigate a national security-related crime, and the information fails to confirm that the crime has been committed by the person, the surveillance activities must be immediately ceased and the collected information destroyed. If the rights of the person were violated in the course of the surveillance, the authority which has conducted the surveillance must inform the person of the violations committed against her or him and compensated the damages caused by such violations.<sup>12</sup> This obligation to inform only applies if there was a violation of a person's rights.

[16]. It is unclear whether data protection safeguards under the Law on Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*)<sup>13</sup> could be applied to the intelligence authorities' surveillance activities: this law applies to the area of state security and defence to the extent that other law do not provide otherwise, however, intelligence authorities' surveillance activities are covered by the Law on Intelligence and the Law on Criminal Intelligence. As the wording of the laws does not provide a clear solution, and the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) and the courts have not ruled on this matter, it remains uncertain whether any part of the intelligence authorities' surveillance activities is covered by the data protection safeguards.

## 3. Remedies

[17]. Individuals whose rights have been violated by actions of the intelligence authorities may submit complaints to the Seimas Ombudsmen of the Republic of Lithuania (*Lietuvos Respublikos Seimo kontrolieriai*).<sup>14</sup> However, it must be noted that the decisions of the Seimas Ombudsmen are recommendatory and non-binding.

[18]. Individuals may also complain about actions of the intelligence authorities to the Seimas Committee on National Security and Defence.<sup>15</sup> However, no formalized procedure on examining such complaints exists.

[19]. It is unclear whether complaints can be lodged with the State Data Protection Inspectorate successfully, as it is uncertain whether the Law on Legal Protection of Personal Data applies to the surveillance activities of the intelligence authorities, and thus whether the State Data Protection Inspectorate has jurisdiction (please also see para. 16).

[20]. Individuals whose rights have been violated by actions of the intelligence authorities, when surveillance is conducted for prevention or investigation of a national security-related crime, may appeal such actions either to the head of the intelligence authority in question or the prosecutor. The

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<sup>11</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 13.

Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Articles 9, 10, 11.

<sup>12</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Article 5.

<sup>13</sup> Lithuania, Seimas (2008), The Law of the Republic of Lithuania on Legal Protection of Personal Data (*Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*), No. X-1444, 1 February 2008 (as amended).

<sup>14</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 23.

<sup>15</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence, Article 21.

decision of the head of the intelligence authority or the prosecutor can then be appealed to the court.<sup>16</sup>

[21]. Finally, all individuals whose constitutional rights or freedoms have been violated, including by actions of intelligence authorities, have the right to appeal such actions to the court as well as to request compensation for damages under Article 30 of the Constitution of the Republic of Lithuania.

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<sup>16</sup> Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence, Article 5.

## Annex 1 – Legal Framework relating to mass surveillance

### A- Details on legal basis providing for mass surveillance<sup>17</sup>

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence ( <i>Lietuvos Respublikos žvalgybos įstatymas</i> ), No. XI-2289, 17 October 2012 (as amended).  (a law adopted by the parliament)	The following persons may be subjected to surveillance: 1) persons whose actions may pose a threat to national security; 2) persons whose surveillance is necessary to evaluate external threats to	Intelligence authorities may conduct surveillance when it is necessary to predict and identify foreign and domestic threats to national security.	Intelligence authorities may conduct surveillance for national security purposes: protection of sovereignty of the State, inviolability and integrity of its territory, constitutional order, interests of the State and its defence and	A prior judicial permission to conduct surveillance is required.	The Law on Intelligence does not indicate specific steps to be followed in the course of surveillance. Under the law, the detailed procedure for processing gathered intelligence information is regulated by the intelligence authority's internal rules which are not	The Law on Intelligence does not set out any nationality limits, other than the requirement that each person under surveillance be specifically identified in the court permission. The geographic scope of surveillance is not specified by	The Law on Intelligence does not provide for mass surveillance, nor does it specifically provide for surveillance in any other country.

<sup>17</sup> Lithuanian laws do not provide for mass surveillance; the person whose communication is to be placed under surveillance must be individually identified in the court's permission to do so.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
	<p>national security.</p> <p>Each person, both natural person or legal person, to be subjected to surveillance must be individually identified.</p>		economic power.		publicized.	the law. Time limits: permission to conduct surveillance can initially be granted for up to 6 months. After that time runs out, the court may extend the permission for up to 3 months. The number of such permissions for extension is unlimited.	
Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence ( <i>Lietuvos Respublikos</i> )	<p>The following persons may be subjected to surveillance:</p> <p>1) persons who are potentially preparing to commit, are</p>	Intelligence authorities may conduct surveillance when they receive information about a national	<p>Intelligence authorities may conduct surveillance for the following purposes:</p> <p>1) prevention of national</p>	A prior judicial permission to conduct surveillance is required. In urgent cases, when there is a threat to human life, health,	The Law on Criminal Intelligence does not indicate specific steps to be followed in the course of surveillance. Under the law, the detailed	The Law on Criminal Intelligence does not set out any nationality, geographical or scope limits, other than the	The Law on Criminal Intelligence does not provide for mass surveillance, nor does it specifically

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>kriminalinės įstatymas</i>), No. XI-2234, 2 October 2012 (as amended).</p> <p>(a law adopted by the parliament)</p>	<p>committing or have committed a crime;</p> <p>2) other persons related to national security.</p>	<p>security-related crime or a person who is preparing to commit, is committing or has committed such a crime.</p>	<p>security-related crimes;</p> <p>2) investigation of national security-related crimes.</p>	<p>property, public or national security, surveillance can be initiated immediately and the judicial permission must be sought within 24 hours.</p> <p>However, if only information on the ownership of an email address, telephone number, bank account number or a communication device is sought, not judicial permission is required.</p>	<p>procedure of surveillance is regulated by the intelligence authority's internal rules which are not publicized.</p>	<p>requirement that each person under surveillance be specifically identified in the court permission.</p> <p>Time limits: permission to conduct surveillance can initially be granted for up to 3 months. After that time runs out, the court may extend the permission for up to 3 months. The maximum number of such permissions for extension is unlimited, but the overall period of</p>	<p>provide for surveillance in any other country.</p>

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
						surveillance cannot be longer than 12 months. However, the 12 month overall limit does not apply when surveillance concerns the most serious crimes (crimes punishable by more than 6 years imprisonment).	

B- Details on the law providing privacy and data protection safeguards against mass surveillance

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
<p>Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence (<i>Lietuvos Respublikos kriminalinės įstatymas</i>), No. XI-2234, 2 October 2012 (as amended), Article 5.</p>	<p>In cases where intelligence information about a person is gathered in order to prevent or investigate a national security-related crime, and the information fails to confirm that the crime has been committed by the person, the surveillance activities must be immediately ceased and the collected information destroyed.</p> <p>If the rights of the person were violated in the course of the surveillance, the authority which has conducted the surveillance must inform the person of the violations committed against her or him and compensate the damages caused by such violations.</p>	<p>This rule applies to any person who has been subjected to a violation of her or his rights by the Lithuanian intelligence authorities, regardless of nationality.</p>	<p>This rule applies to any person who has been subjected to a violation of her or his rights by the Lithuanian intelligence authorities, regardless of territory.</p>

	<p>A person who believes she or he has been subjected to a violation of her or his rights by an intelligence authority, including by surveillance activities, may appeal the actions of the authority either to the head of the intelligence authority in question or the prosecutor. The decision of the head of the intelligence authority or the prosecutor can then be appealed to the regional court.</p>		
<p>Lithuania, Seimas (2008), The Law of the Republic of Lithuania on Legal Protection of Personal Data (<i>Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas</i>), No. X-1444, 1 February 2008 (as amended), Article 1, Article 3.</p>	<p>The Law on Legal Protection of Personal Data sets out general data processing-related requirements, under which data must be:</p> <ol style="list-style-type: none"> <li>1) collected for specified and legitimate purposes, and it may not later be used for purposes incompatible with the purposes for which the data was originally collected;</li> <li>2) processed fairly and lawfully;</li> <li>3) accurate and, where necessary for purposes of personal data processing, kept up to date;</li> <li>4) adequate and not excessive in relation to the purposes for which they are collected and further processed;</li> <li>5) kept in a form which permits</li> </ol>	<p>These rules apply to nationals and EU citizens, as well as third country nationals.</p>	<p>These rules apply inside Lithuania and outside Lithuania when data are processed by a data controller which is established in the territory other than Lithuania but which is bound by the laws of the Republic of Lithuania by virtue of international public law (including diplomatic missions and consular posts).</p>

	<p>identification of data subjects for no longer than it is necessary for the purposes for which the data were collected and processed.</p> <p>It must be noted that it is unclear whether the safeguards provided in the Law on Legal Protection of Personal Data apply to surveillance activities conducted by the intelligence authorities. This is because this law only applies to the area of state security and defence to the extent that other laws do not provide otherwise. Surveillance activities conducted by the intelligence authorities are regulated by the Law on Intelligence and the Law on Criminal Intelligence. As the wording of the laws does not provide a clear solution, and the State Data Protection Inspectorate (<i>Valstybinė duomenų apsaugos inspekcija</i>) and the courts have not ruled on this matter, it remains uncertain whether any part of the intelligence authorities' surveillance activities is covered by the data protection safeguards.</p>		
The Constitution of the Republic of Lithuania,	Article 22 of the Constitution establishes that a person's private life and all personal communication	These rules apply to all persons within Lithuania's jurisdiction, i.e. nationals as well as EU citizens	These rules apply inside Lithuania, however Lithuanian intelligence authorities acting outside Lithuania

Article 22, Article 30.	<p>is inviolable. Information about a person's private life may only be collected under a reasoned court decision.</p> <p>Article 30 establishes that any person whose constitutional rights or freedoms have been violated has the right to apply to the court.</p>	and third country nationals.	would still be bound by these rules, as they are subject to Lithuania's jurisdiction.
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## Annex 2 – Oversight bodies and mechanisms<sup>18</sup>

<b>Name of the body/mechanism</b>	<b>Type of the body/mechanism</b>	<b>Legal basis</b>	<b>Type of oversight</b>	<b>Staff</b>	<b>Powers</b>
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<sup>18</sup> The 2012 Law on Intelligence and Law on Criminal Intelligence introduced many changes to the regulation of intelligence authorities, and established a new specialized oversight body – the Commission for Parliamentary Scrutiny of Criminal Intelligence. Thus, the amendments of 2012 brought significant change to the state of affairs as described in the 2011 European Parliament study “Parliamentary oversight of security and intelligence agencies in the European Union”, available at: <http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>

<p>Committee on National Security and Defence (<i>Nacionalinio saugumo ir gynybos komitetas</i>)</p>	<p>Permanent parliamentary committee</p>	<p>Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence (<i>Lietuvos Respublikos žvalgybos įstatymas</i>), No. XI-2289, 17 October 2012 (as amended), Article 24.</p> <p>Lithuanian Seimas (1994), Seimas of the Republic of Lithuania Statute (<i>Lietuvos Respublikos Seimo statutas</i>), No. I-399, 17 February 1994 (as amended), Articles 49, 63, 206.</p>	<p>The Committee carries out parliamentary control of intelligence authorities. This includes:</p> <ol style="list-style-type: none"> <li>1) controlling how intelligence authorities follow the laws of the Republic of Lithuania;</li> <li>2) examining complains of persons regarding the acts of intelligence authorities' officers.</li> </ol> <p>The Committee carries out the majority of its oversight functions yearly, when it reviews the intelligence authority's annual report. Other functions, such as complaints examination, are carried out on an ad hoc basis.</p>	<p>The Committee is comprised of 12 members of parliament. The members of the Committee are appointed by parliamentary vote; the chair of the Committee is elected by the Committee members, and then must approved by the parliament. If the parliaments refuses to approve the elected chair, a new candidate has to be selected by the members of the Committee.</p> <p>The Office of the Committee on National Security and Defence is comprised of 5 members of staff, who carry out support and management functions.<sup>19</sup></p>	<p>The Committee may prepare non-binding recommendations for the removal of deficiencies in the activities of intelligences authorities. The Committee may also suggest or prepare amendments to legal acts regulating the activities of intelligence authorities.</p> <p>After reviewing the annual report of the intelligence authority, the Committee prepares its findings and adopts a draft resolution to either approve or not to approve the annual report. Both of these documents are submitted to the parliament to vote on. If the parliament passes a resolution to not to approve the report, the parliament then votes on the dismissal of the head of the intelligence authority.</p>
<p>Commission for Parliamentary Scrutiny of Criminal Intelligence (<i>Kriminalinės žvalgybos</i>)</p>	<p>Permanent parliamentary commission</p>	<p>Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Criminal Intelligence (<i>Lietuvos Respublikos</i></p>	<p>The Commission carries out parliamentary control of intelligence authorities' actions under the Law on Criminal Intelligence, i.e., activities related to prevention and</p>	<p>The Commission is comprised of 7 members of parliament. The members of the Commission are appointed by parliamentary vote; the</p>	<p>The Commission submits proposals to the parliament, the Government (<i>Vyriausybė</i>) and other institutions for the adoption of legal acts or amendments thereof, regulating criminal intelligence activities.</p>

<sup>19</sup> Committee on National Security and Defence web page, available at: [http://www3.lrs.lt/pls/inter/w5\\_show?p\\_r=8878&p\\_k=2](http://www3.lrs.lt/pls/inter/w5_show?p_r=8878&p_k=2)

<p><i>parlamentinės kontrolės komisija</i></p>		<p><i>žvalgybos įstatymas</i>), No. XI-2234, 2 October 2012 (as amended), Article 24.</p> <p>Lithuanian Seimas (1994), Seimas of the Republic of Lithuania Statute (<i>Lietuvos Respublikos Seimo statutas</i>), No. I-399, 17 February 1994 (as amended), Article 80<sup>1</sup>.</p>	<p>investigation of crimes. This includes:</p> <ol style="list-style-type: none"> <li>1) controlling of the protection of constitutional rights and freedoms in the course of criminal intelligence activities;</li> <li>2) analyzing the effectiveness and rationality of the use of financial resources by intelligence authorities;</li> <li>3) analyzing the state of legal acts regulating criminal intelligence activities;</li> <li>4) examining possible violations of the Law on Criminal Intelligence and abuses of power by intelligence authorities.</li> </ol>	<p>chair of the Commission is elected by the Commission members and then must be approved by the parliament. If the parliament refuses to approve the elected chair, a new candidate has to be selected by the members of the Commission.</p>	<p>The Commission may draw attention of intelligence authorities' officers and civil servants to criminal intelligence activities-related violations and request their removal. The Commission may also request that disciplinary measures be taken against offending intelligence authorities.</p>
<p>The President of the Republic of Lithuania (<i>Lietuvos Respublikos Prezidentas</i>)</p>	<p>Executive government</p>	<p>Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence (<i>Lietuvos Respublikos</i></p>	<p>The State Security Department (<i>Valstybės saugumo departamentas</i>) has a general duty of accountability to the President of the Republic of Lithuania under the</p>	<p>The President of the Republic of Lithuania is elected under universal, equal, and direct suffrage by secret ballot.</p>	<p>The President of the Republic of Lithuania appoints and dismisses the Director and Deputy Directors of the State Security Department (<i>Valstybės saugumo departamentas</i>), subject to the approval of the</p>

		žvalgybos įstatymas), No. XI-2289, 17 October 2012 (as amended), Articles 8, 31.	Law on Intelligence.		parliament.
The Government of the Republic of Lithuania ( <i>Lietuvos Respublikos Vyriausybė</i> )	Executive government	Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence ( <i>Lietuvos Respublikos žvalgybos įstatymas</i> ), No. XI-2289, 17 October 2012 (as amended), Articles 8, 31.	The Government: 1) provides the intelligence authorities with the requirements of intelligence information needed to ensure national security; 2) obtains information on risks, dangers and threats to national security from the intelligence institutions.	The Government of the Republic of Lithuania is comprised of the Prime Minister, appointed by the President, and ministers (there are currently 14 ministries and corresponding ministers).	The Government has no specific direct powers vis-à-vis the intelligence authorities defined in the legal acts.
The Minister of National Defence ( <i>Krašto apsaugos ministras</i> )	Executive government	Lithuania, Seimas (2012), The Law of the Republic of Lithuania on Intelligence ( <i>Lietuvos Respublikos žvalgybos įstatymas</i> ), No. XI-2289, 17 October 2012 (as amended), Articles 8, 31.	The Second Investigation Department under the Ministry of National Defence ( <i>Antrasis operatyvinių tarnybų departamentas prie Kašto apsaugos ministerijos</i> ) is subordinate to the Minister of National Defence.	The Minister of National Defence is appointed by the President upon the submission of the Prime Minister.	The Minister of National Defence appoints and dismisses the Director and Deputy Directors of the Second Investigation Department under the Ministry of National Defence ( <i>Antrasis operatyvinių tarnybų departamentas prie Kašto apsaugos ministerijos</i> ).

## Annex 3 – Remedies<sup>20</sup>

The Law of the Republic of Lithuania on Intelligence ( <i>Lietuvos Respublikos žvalgybos įstatymas</i> )				
Stages of surveillance process	Is the subject informed?	Does the subject have a right of access to the data collected on him/her?	List remedies available to an individual concerned	Legal basis for using the available remedies
<b>Collection*</b>	No	No	<p>The following measures are available at any stage:</p> <p>1) Complaint to the parliamentary Committee on National Security and Defence (<i>Nacionalinio saugumo ir gynybos komitetas</i>) – an oversight body for national intelligence authorities;</p> <p>2) Complaint to the Seimas Ombudsmen of the Republic of Lithuania (<i>Lietuvos Respublikos Seimo kontrolieriai</i>) – the national ombudsman’s office;</p> <p>3) Claim lodged with a regional administrative court for injunction, or a district court of general</p>	<p>The legal basis for using the listed remedies is respectively:</p> <p>1) violation of the Law on Intelligence or legal acts by the intelligence authorities or their officers (Article 21 of the Law on Intelligence);</p> <p>2) violation of human rights or freedoms by the intelligence authorities or their officers (Article 23 of the Law on Intelligence);</p> <p>3) violation of constitutional rights or freedoms;</p> <p>4) Violation of the general</p>
<b>Analysis*</b>	No	No		
<b>Storing*</b>	No	No		
<b>Destruction*</b>	No	No		
<b>After the whole surveillance process has ended</b>	No	No		

<sup>20</sup> In case of different remedial procedures please replicate the table for each legal regime.

\* For the definitions of these terms, please refer to the FRA/CoE (2014), *Handbook on European data protection law*, Luxembourg, 2014, pp. 46-47, available at: <http://fra.europa.eu/en/news/2014/council-europe-and-eu-fundamental-rights-agency-launch-handbook-european-data-protection>

			<p>jurisdiction for damages;</p> <p>4) Complaint lodged with the State Data Protection Inspectorate (<i>Valstybinė duomenų apsaugos inspekcija</i>).</p> <p>It must be noted that it is unclear whether complaints can be lodged with the State Data Protection Inspectorate successfully, as it is uncertain whether the Law on Legal Protection of Personal Data applies to the surveillance activities of the intelligence authorities, and thus whether the State Data Protection Inspectorate has jurisdiction. The Inspectorate has not received any complaints on intelligence authorities' surveillance activities to date, and has not decided on the issue.</p>	<p>requirements for personal data processing laid out in Article 3 of the Law on Protection of Personal Data (<i>Asmens duomenų teisinės apsaugos įstatymas</i>).</p>
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<b>The Law of the Republic of Lithuania on Criminal Intelligence (<i>Lietuvos Respublikos kriminalinės žvalgybos įstatymas</i>)</b>				
<b>Stages of surveillance process</b>	<b>Is the subject informed?</b>	<b>Does the subject have a right of access to the data collected on him/her?</b>	<b>List remedies available to an individual concerned</b>	<b>Legal basis for using the available remedies</b>
<b>Collection*</b>	No	No	The following measures are available at any stage:  Complaint to either the head of the intelligence authority or the prosecutor. The decision of the head of the intelligence authority or the prosecutor can be appealed to the regional court of general jurisdiction.	Violation of the persons rights or freedoms by an intelligence authority (Article 5 of the Law on Criminal Intelligence).
<b>Analysis*</b>	(However, if the rights of a person were violated in the course of surveillance, the authority which has conducted the surveillance must inform the person of the violations committed against her or him.)	No		
<b>Storing*</b>		No		
<b>Destruction*</b>		No		
<b>After the whole surveillance process has ended</b>		Yes, if the gathered intelligence does not indicate that a crime has been committed and the rights of the person under surveillance were violated in the course of it; otherwise, no (Article 5 of the Law on Criminal Intelligence).		

\* For the definitions of these terms, please refer to the FRA/CoE (2014), *Handbook on European data protection law*, Luxembourg, 2014, pp. 46-47, available at: <http://fra.europa.eu/en/news/2014/council-europe-and-eu-fundamental-rights-agency-launch-handbook-european-data-protection>

## Annex 4 – Surveillance-related case law at national level

Please provide a maximum of three of the most important national cases relating to surveillance. Use the table template below and put each case in a separate table.

<b>Case title</b>	-
<b>Decision date</b>	9 November 2004
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	The Supreme Administrative Court of Lithuania ( <i>Lietuvos vyriausioji administracinis teismas</i> ), Case No. A <sup>3</sup> -750-2004
<b>Key facts of the case (max. 500 chars)</b>	The Commander of the State Border Guard Service ( <i>Valstybės sienos apsaugos tarnyba</i> ) was dismissed after an official service investigation for abuse of power. Some of the evidence against the Commander was surveillance information gathered by the State Security Department ( <i>Valstybės saugumo departamentas</i> ) under the Law on Operative Activities ( <i>Operatyvinių veiklos įstatymas</i> ), the now-expired predecessor of the Law on Criminal Intelligence ( <i>Kriminalinės žvalgybos įstatymas</i> ).
<b>Main reasoning/argumentation (max. 500 chars)</b>	The applicant (the former Commander) argued that the intelligence information was used as evidence for his dismissal unlawfully, as under the Law on Operative activities such intelligence information may only be used in criminal proceedings. Thus, the recognition and use of intelligence information as evidence against him was in contravention to the Law on Operative Activities, right to privacy under the Constitution and Article 8 of the European Convention of Human Rights.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	The Court held that the use of surveillance measures is an exercise of particularly strong state powers and amounts to a restriction of human rights. Thus, when interpreting the provisions of the law regulating the use of such powers, they must be read in such a way as to favour the individual, and not the state. In light of this, intelligence information could not be considered evidence

	in service investigations and disciplinary action, as this was not specifically provided for in the laws.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<ul style="list-style-type: none"> <li>- The Court refused to consider the intelligence information evidence in the case.</li> <li>- Intelligence information gathered by the use of surveillance can only be considered evidence in court proceedings when this is specifically allowed by the laws regulating the use of such information.</li> <li>- The Law on Operative Activities was amended in 2011 to allow the use of intelligence information in investigations of service offences. This provision was also transferred to the Law on Criminal Intelligence.</li> </ul>

## Annex 5 – Key stakeholders at national level

Please list all the key stakeholders in your country working in the area of surveillance and divide them according to their type (i.e. public authorities, civil society organisations, academia, government, courts, parliament, other). Please provide name, website and contact details.

<b>Name of stakeholder</b> (in English as well as your national language)	<b>Type of stakeholder</b> (i.e. public authorities, civil society organisations, academia, government, courts, parliament, other)	<b>Contact details</b>	<b>Website</b>
State Security Department ( <i>Valstybės saugumo departamentas</i> )	Intelligence authority	Vytenio st. 1, LT-03113, Vilnius, Lithuania  Phone: +370 5 231 2602 Fax: +370 5 231 2602 E-mail: <a href="mailto:trt@vsd.lt">trt@vsd.lt</a>	<a href="http://www.vsd.lt/DefaultEN.aspx">http://www.vsd.lt/DefaultEN.aspx</a>
Second Investigation Department under the Ministry of National Defence ( <i>Antrasis operatyvinių tarnybų departamentas prie Kašto apsaugos ministerijos</i> )	Intelligence authority	Jankiškių st. 25, LT-02300 Vilnius, Lithuania  Phone: +370 5 264 1292 Fax: +370 5 264 0984 Email: <a href="mailto:info@aotd.kam.lt">info@aotd.kam.lt</a>	<a href="http://www.kam.lt/en/structure_and_contacts/kontaktai_eng/11.html">http://www.kam.lt/en/structure_and_contacts/kontaktai_eng/11.html</a>
Committee on National Security	Permanent parliamentary	Seimas of the Republic of Lithuania,	<a href="http://www3.lrs.lt/pls/inter/w5_show?p_r=8878&amp;p_k">http://www3.lrs.lt/pls/inter/w5_show?p_r=8878&amp;p_k</a>

and Defence ( <i>Nacionalinio saugumo ir gynybos komitetas</i> )	committee	Gedimino av. 53, LT-01109 Vilnius, Lithuania Email: <a href="mailto:nacsaukt@lrs.lt">nacsaukt@lrs.lt</a> Fax: +370 5 239 6429	<a href="#">=2</a>
Commission for Parliamentary Scrutiny of Criminal Intelligence ( <i>Kriminalinės žvalgybos parlamentinės kontrolės komisija</i> )	Permanent parliamentary commission	Seimas of the Republic of Lithuania, Gedimino av. 53, LT-01109 Vilnius, Lithuania  (contacts of individual Commission members available at website)	<a href="http://www3.lrs.lt/pls/inter/w5_show?p_r=9066&amp;p_k=2">http://www3.lrs.lt/pls/inter/w5_show?p_r=9066&amp;p_k=2</a>
“Classified” (“ <i>Slaptai</i> ”)	News website dedicated to the activities of Lithuanian and foreign secret services, including surveillance activities.	Chief Editor Gintaras Visockis Email: <a href="mailto:gilanis.gintaras@gmail.com">gilanis.gintaras@gmail.com</a> Phone: +370 687 90497	<a href="http://www.slaptai.lt">www.slaptai.lt</a>
The Seimas Ombudsmen’s Office ( <i>Seimo kontrolierių įstaiga</i> )	Ombudsman office	Gedimino av. 56, LT-01110 Vilnius, Lithuania Phone: +370 706 65105 Fax: +370 706 65138 Email: <a href="mailto:ombuds@lrs.lt">ombuds@lrs.lt</a>	<a href="http://www.lrski.lt/en/">http://www.lrski.lt/en/</a>
The Law Institute of Lithuania ( <i>Lietuvos teisės institutas</i> )	Government-funded think tank	Ankštoji st. 1A, LT-01109 Vilnius, Lithuania Phone/Fax: +370 5 249 7591 Email: <a href="mailto:info@teise.org">info@teise.org</a>	<a href="http://teise.org/About_us.html">http://teise.org/About_us.html</a>
State Data Protection Inspectorate ( <i>Valstybinė duomenų</i>	National data protection authority	A. Juozapaviciaus st. 6, Vilnius, Lithuania Phone: +370 5 271 2804, +370 5	<a href="https://www.ada.lt/go.php/lit/English">https://www.ada.lt/go.php/lit/English</a>

<i>apsaugos inspekcija)</i>		279 1445 Fax: +370 5 261 9494 Email: ada@ada.lt	
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## Annex 6 – Indicative bibliography

Please list relevant reports, articles, studies, speeches and statements divided by the following type of **sources** (*in accordance with FRA style guide*):

### 1. Government/ministries/public authorities in charge of surveillance

- 1) State Security Department (*Valstybės saugumo departamentas*) (2014), *State Security Department activities report 2013* (*Valstybės saugumo departamento 2013 m. veiklos ataskaita*), Vilnius, available at: <http://www.vsd.lt/Files/Documents/635379269798281250.pdf>
- 2) State Security Department (*Valstybės saugumo departamentas*) (2013), *State Security Department activities report to the public 2012* (*Valstybės saugumo departamento 2012 m. veiklos ataskaita visuomenei*), Vilnius, available at: <http://www.vsd.lt/Files/Documents/635254857035937500.pdf>
- 3) State Security Department (*Valstybės saugumo departamentas*) (2012), *State Security Department activities overview 2011* (*Valstybės saugumo departamento 2011 m. veiklos apžvalga*), Vilnius, available at: <http://www.vsd.lt/Files/Documents/635322165254335000.pdf>
- 4) Commission for Parliamentary Scrutiny of Criminal Intelligence (*Kriminalinės žvalgybos parlamentinės kontrolės komisija*) (2014), *Commission's 2014 III (autumn) session's activities report* (*Komisijos 2014 metų III (rudens) sesijos veiklos ataskaita*), Vilnius, available at: [http://www3.lrs.lt/pls/inter/w5\\_show?p\\_r=9070&p\\_d=146267&p\\_k=1](http://www3.lrs.lt/pls/inter/w5_show?p_r=9070&p_d=146267&p_k=1)
- 5) Commission for Parliamentary Scrutiny of Criminal Intelligence (*Kriminalinės žvalgybos parlamentinės kontrolės komisija*) (2014), *Commission's 2013 II (spring) session's activities report* (*Komisijos 2013 metų II (pavasario) sesijos veiklos ataskaita*), Vilnius, available at: [http://www3.lrs.lt/pls/inter/w5\\_show?p\\_r=9070&p\\_d=140190&p\\_k=1](http://www3.lrs.lt/pls/inter/w5_show?p_r=9070&p_d=140190&p_k=1)

### 2. National human rights institutions, ombudsperson institutions, national data protection authorities and other national non-judicial bodies/authorities monitoring or supervising implementation of human rights with a particular interest in surveillance

Not available.

Lithuania does not have a national human rights institution. The State Data Protection Inspectorate (the national data protection authority) and the relevant ombudsperson institution (The Seimas Ombudsmen's Office) have issued no reports or similar documents on the activities of intelligence authorities. This was confirmed by desk research through all of their published materials, which are available at their respective websites, and verified by phone calls with representatives of each of the two authorities on 7 August 2014.

As far as the parliamentary oversight bodies are concerned, the available information is very limited. The Commission for Parliamentary Scrutiny of Criminal Intelligence is a fairly new body, which was established by the Law on Intelligence (adopted on 2 October 2012; came into force 1 January 2013), and only two of its activities reports have been published so far. The parliamentary Committee on National Security and Defence, on the other hand, has published no reports on the activities on intelligence authorities of Lithuania, nor any activities reports on their own. This was confirmed by desk research through all of the materials available at the Committee's webpage, and verified by a phone call with a representative of the Committee's office on 4 September 2014.

### 3. Non-governmental organisations (NGOs)

- 1) Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2007), *Human Rights in Lithuania 2006: Overview (Žmogaus teisių įgyvendinimas Lietuvoje 2006: Apžvalga)*, Vilnius, pp. 9-11, available at: [https://www.hrmi.lt/uploaded/PDF%20dokai/ZT\\_Apžvalga\\_2006\\_Visas\\_Tekstas\\_Pataisyta\\_20070724.pdf](https://www.hrmi.lt/uploaded/PDF%20dokai/ZT_Apžvalga_2006_Visas_Tekstas_Pataisyta_20070724.pdf).

### 4. Academic and research institutes, think tanks, investigative media report.

- 1) Lankauskas, M., Mulevičius, M., Zaksaitė, S., Law Institute of Lithuania (*Lietuvos teisės institutas*) (2013), *The problems of guaranteeing the right to privacy, freedom of thought, conscience, religion and expression (Teisės į privatumą, minties, sąžinės, religijos laisvę ir saviraišką užtikrinimo problemos)*, Vilnius, available at: [http://www.teise.org/data/Teises\\_i\\_privatumu\\_uztikrinimo\\_problemos.pdf](http://www.teise.org/data/Teises_i_privatumu_uztikrinimo_problemos.pdf);
- 2) Panomariovas, A. (2009), 'Intelligence activities and the use of intelligence information in investigation of criminal acts: *de lege lata – de lege ferenda*' ('Žvalgybinė veikla ir žvalgybinės informacijos panaudojimas tiriant nusikalstamas veikas: *de lege lata – de lege ferenda*'), *Socialinių mokslų studijos*, No. 4(4);

- 3) Goda, G. (2006), 'The problems and prospects of operative activities' legal regulation' (*'Operatyvinės veiklos teisinio reguliavimo problemos ir perspektyvos'*), *Teisė*, Vol. 58.
- 4) Jovaišas, K. (2005), *Right to respect for private life. Human rights in Lithuania (Teisė į privataus gyvenimo neliečiamumą. Žmogaus teisės Lietuvoje)*, Vilnius, Naujos sistemos.
- 5) Petrošius, D. (2004), 'The development of the Law on Operative Activities in the context of human rights protection' (*'Operatyvinės veiklos įstatymo raida žmogaus teisių apsaugos kontekste'*), *Jurisprudencija*, No. 63 (55).
- 6) Šimkus, K., Tarasevičius P. (2002), 'The theoretical identity of operative activities' (*'Operatyvinės veiklos teorinis identitetas'*), *Jurisprudencija*, No. 27 (19).
- 7) Panomariovas, A., Rudzkis, T. (2000), 'The interaction between criminal proceedings and operative activities' (*'Baudžiamojo proceso ir operatyvinės veiklos sąveika'*), *Jurisprudencija*, No. 17(9).