



## **THE RIGHT TO PRIVACY AND PRIVATE DETECTIVE ACTIVITIES IN LITHUANIA**

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### **ABSTRACT**

Private detectives have been providing their services in Lithuania for about a decade; however, only now has the Seimas of the Republic of Lithuania started to discuss whether it is expedient and necessary to regulate the activities of private detectives by means of a separate law. One of the goals of a separate legal regulation of private detective activities is the protection of human rights, particularly the right to privacy. This article examines the provisions of national and international legislative acts related to the private life of a person, and assesses the opportunities of a private detective to provide private detective services without prejudice to the provisions of applicable legislative acts. The article concludes that a private detective is not an authorized (public) authority and there is no possibility to assess in each case whether the interests of a person using the services of private detectives are more important than those of other persons, which would allow for violating their rights to private life. The limits of an individual's right to privacy can only be narrowed by a particular person, giving consent to making public the details of his/her private life. It is the only opportunity for a private detective to gather information related to the private life of a citizen. Currently applicable legislative acts in Lithuania do not provide for opportunities for

private subjects to collect personal data without that person's consent. This right is granted only to public authorities and with the court's permission.

**KEYWORDS**

Right to privacy, private detective, private detective services, personal data

## INTRODUCTION

Usually when we hear the words “private detective”, we immediately think of film or literary characters, rather than persons actually practicing the profession. In some countries the profession of private detective has a long tradition; however, in other cultures this profession is entirely absent, or private detectives have only just recently begun offering their services. Lithuania belongs to the latter category.

The emergence of private detectives has occurred for a variety of reasons. The inability of state government to meet all the public safety needs may have created an environment in which private entities seek to fill the resulting niche. Variety and expansion of threats to the public or its assets results in a situation where public authorities are unable to respond to the changes, because their capacities are not sufficient; therefore, persons are forced to go to private actors, whose professional activities are related to meeting the safety needs of the public. One of the types of commercial services provided by these private entities, related to meeting the safety needs of the public, is private detective activities.

The activities related to meeting the safety needs of a person should not be treated narrowly. Security services are not limited to protection from crimes. Security services are also associated with the protection from unethical or unfair treatment, protection against a variety of events, errors, misappropriation, the loss of commercial or technological secrets. Similar services are offered by private detectives operating in Lithuania;<sup>1</sup> however, there are no legislative acts in Lithuania governing the activities of private detectives, their status or peculiarities of their activities. Companies providing private detective services act as limited liability companies or sole proprietorships, and the detective activities fall within the range of legal services provided by these companies. This situation raises questions as to whether provision of private detective services that are not regulated by legislative acts may pose a threat to human rights or other values protected by the law; whether it is possible to carry out such activities without prejudice to legislative acts related to the protection of private life of individuals.

With this in mind, the purpose of this article is to analyse the concept of private life and to evaluate the possible authorization(s) and ability(s) of a private detective to collect information related to the private life of a person.

The situation in various European Union countries differs radically in terms of the regulation of private detective activities: in some countries, legislative acts set

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<sup>1</sup> Websites of private detectives: UAB “Privačių detektyvų biuras”, IĮ “Temidės žiedas”, UAB “Privačių detektyvų agentūra”, UAB “Quantitas” and others. Advertisement of a private person: <http://www.paslauga.lt/?show=showFull&id=1939> (accessed March 15, 2009).

out particularly stringent requirements for private detective activities;<sup>2</sup> in other countries, the requirements exist only at the level of organizations uniting private detectives.<sup>3</sup> The diversity of legal regulations for private detective activities and the limits of such regulation in individual countries raise a number of concerns for the operation of private detective activities in the current globalization process. Instead of appropriate use of private detectives in order to ensure more efficient meeting of public interests, a situation can be observed where some countries seek liberalization of private detective activities and others that tighten the legal regulation of such activities. As modern technologies develop and information becomes a valuable commodity in the market, the methods of obtaining such information constitute a threat to human rights; therefore, this leads to causes encouraging the countries to change the existing legal regulation in the area of private detective activities. Moreover, as a country's legislative process fails to respond to market changes on time, the demand for legal regulation arises only after determining a trend that certain unregulated activities of economic operators cause violations of legislative acts. The shifting approach of individual countries to the legal regulation of private detective activities, following the assessment of violations occurring in the sector, when private detective services are provided by a relatively large number of persons,<sup>4</sup> has led to the increase of number of organizations uniting private detectives.<sup>5</sup> While most of these organizations claim to be acting on the international level, the competition among them leads to the fact that, in the author's opinion, each of these organizations undertakes individual lobbying. Accordingly, some of the organizations uniting private detectives direct their activities towards making contacts and strengthening professional connections,<sup>6</sup> while others focus more on the raising of qualifications of private detectives and issues of legal regulation.<sup>7</sup> In the absence of a unified regulatory policy in the area of private detective activities at both national and public levels, each country has to make an individual decision whether there should be a

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<sup>2</sup> For example, in Spain.

<sup>3</sup> For example, in Germany.

<sup>4</sup> According to the data of the World Association of Professional Investigators, in the United Kingdom alone there are about 10,000 persons providing services of private detectives. This Association was founded in 2000, when the Government of the United Kingdom announced its intention to regulate the sector of private detective activities (see <http://www.wapi.com/> (accessed March 7, 2012)).

<sup>5</sup> For example, World Association of Professional Investigators was established in 2000 (see <http://www.wapi.com> (accessed March 7, 2012)), International Federation of Associations of Private Detectives was established in 2004 (see <http://www.i-k-d.com/index.php?page=archive> (accessed March 7, 2012)).

<sup>6</sup> For example, International Association of Private Detectives (see <http://forum.detective-agency.info/en/> (accessed March 7, 2012)), Council of International Investigations (see <http://www.cii2.org/our-history> (accessed March 7, 2012)), World Association of Detectives (see [www.wad.net](http://www.wad.net) (accessed March 7, 2012)), World Investigators Network (see <http://www.worldinvestigatorsnetwork.com/> (accessed March 7, 2012)), Investigations Worldwide Association (see <http://iwwa.euro-detectives.org/world3> (accessed March 7, 2012)).

separately legally regulated private detective activities, and if so, what are the legal measures that would help protect the rights of consumers, reduce the number of violations, and, at the same time, would not cause unreasonable constraints for those carrying out private detective activities.

Private detective activities are the type of services provided by private individuals, characterized by the fact that the nature of the provided services is mostly investigative, when information on natural and legal persons is collected, and certain information may be collected by means of surveillance of persons or observation of certain places. Article 22 of the Constitution of the Republic of Lithuania states that "[i]nformation concerning the private life of a person may be collected only upon a justified court decision and only according to the law."<sup>8</sup> Moreover, both operational surveillance and secret surveillance can be carried out only by specially authorized state officials.<sup>9</sup> Therefore, the aforementioned provisions of legislative acts give reasonable doubt whether the provision of private detective services is possible in Lithuania without prejudice to the right to private life of an individual.

## **1. THE CONCEPT OF AN INDIVIDUAL'S RIGHT TO PRIVACY IN INTERNATIONAL AND NATIONAL LEGISLATIVE ACTS**

Over the past few decades, with the development of a modern information society, people have increasingly felt the need for security. However, meeting the security needs includes not only the desire to obtain the necessary information that could help protect one's assets (e.g. find out the location of a debtor and possibilities to recover debts), but also the need to limit the access of others to one's personal information. Convenience of obtaining information in modern society has a negative side – it is just as easy for other persons to find information about one another and use it at their discretion. In private detective activities, the collection of information is one of the key aspects. The limits of the collection of information are primarily associated with a private life of a person. Thus, in the assessment of a private detective's ability to provide services related to the collection of information, it is expedient to analyze the concept of private life and to assess whether, in the absence of a separate legal regulation, it would be possible

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<sup>7</sup> For example, International Federation of Associations of Private Detectives (see <http://www.i-k-d.com> (accessed March 7, 2012)), World Association of Professional Investigators (see <http://www.wapi.com/> (accessed March 7, 2012)).

<sup>8</sup> *The Constitution of the Republic of Lithuania*, Official Gazette (1992, no. 33-1014).

<sup>9</sup> *Law on Operational Activities of the Republic of Lithuania*, Official Gazette (2002, no.IX-965) (as amended on June 30, 2010), Article 3.

to provide private detective services without prejudice to the right to private life of an individual.<sup>10</sup>

Although the requirements for the protection of a private life of a person are set out in legislative acts, it should be noted that there is no single or universal definition as to what should be deemed the private life of a person and what possible exceptions could be applied.<sup>11</sup> Over the years of its practice, the European Court of Human Rights (hereinafter – ECHR) has not formulated a definition of private life. In the case *Niemietz v. Germany* of 1992, the ECHR claimed it did not believe that it was possible or necessary to come up with a comprehensive definition of private life.<sup>12</sup> The Constitution of the Republic of Lithuania provides that a person's private life is inviolable.<sup>13</sup> However, another article provides for the right to seek, receive and impart information and ideas. This right may be limited for the purposes of protection of private life.<sup>14</sup> Guarantees for the inviolability of private life can be found in the Universal Declaration of Human Rights, which states that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the respect for his private and family life, his home and his correspondence."<sup>15</sup> Similar provisions can be found in the European Convention on Human Rights and Fundamental Freedoms, which states that "everyone has the right to the respect for his private and family life, his home and his correspondence".<sup>16</sup> The theory of law states that:

Placing the right to privacy at the constitutional level clearly shows its exceptional recognition and particular significance among other objects protected by law. The provisions of Article 22 of the Constitution are among the most important safeguards of respect for private life of a person. These constitutional provisions provide for the legislator's obligation to set up the

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<sup>10</sup> By the Decision No. SV-S-1355 of October 28, 2011 of the Board of the Seimas of the Republic of Lithuania, a working group for the preparation of the Law on Private Detective Activity, which included the author of this thesis, was set up. While working in this group together with the representative of the State Data Protection Inspectorate Ž.Babičiūtė and the representative of the Ministry of Justice of the Republic of Lithuania K.Deviatnikovaitė, a private detective's ability to collect information about private life of an individual was analyzed. Some of the findings of this working group are presented in this article.

<sup>11</sup> More about the privacy of persons see Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* Vol. IV, No. 5 (December, 1890) // [http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy\\_brand\\_warr2.html](http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html)4 (accessed May 9, 2011).

<sup>12</sup> *Niemietz v. Federal Republic of Germany*, Eur. Ct. H.R., 1992, Series A, No. 251.

<sup>13</sup> The private life of a human being shall be inviolable. Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable. Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law. The law and the court shall protect everyone from arbitrary or unlawful interference in his private and family life, from encroachment upon his honour and dignity (*The Constitution of the Republic of Lithuania*, *supra* note 8, Article 22).

<sup>14</sup> *Ibid.*, Article 25.

<sup>15</sup> *The Universal Declaration of Human Rights*, Official Gazette (2006, no. 68-2497), Article 12.

<sup>16</sup> *European Convention on Human Rights and Fundamental Freedoms*, Official Gazette (1995, no. 40-987), Article 8 § 1.

procedure for collecting information about private life of a person by law which would establish the imperative of a reasoned judgement of a court.<sup>17</sup>

Collecting such information, i.e. information about the private life of an individual, is justified if "it is done in accordance with the law; the restrictions are necessary in a democratic society for the protection of rights and freedoms of other individuals as well as values enshrined in the Constitution and constitutionally important objectives; the restrictions do not contradict to the nature and essence of the rights and freedoms; the constitutional principle of proportionality is observed."<sup>18</sup>

In its rulings, the Constitutional Court has more than once held that freedom of information is not absolute, and that the Constitution does not allow for legal regulation, which, by "establishing guarantees for the implementation of freedom of information, would create preconditions for violations of other constitutional values and their balance".<sup>19</sup> The Constitutional Court has moreover held that "the content of Article 25 of the Constitution makes it clear that limiting a person's right to seek, receive and impart information requires compliance with the following two conditions: these rights can only be limited by law, and only when it is necessary to protect values listed in paragraph 3 of Article 25 of the Constitution."<sup>20</sup> Especially important to note is the constitutional obligation to uphold the right to respect for private life.<sup>21</sup> In its ruling of 9 June 2011, the Constitutional Court noted that

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<sup>17</sup> Danutė Jočienė and Kęstutis Čilinskas, *Žmogaus teisių apsaugos problemos tarptautinėje ir Lietuvos Respublikos teisėje* (The problems of the protection of human rights in the international and Lithuanian law) (Vilnius: Teisės projektų ir tyrimų centras, 2005), p.72.

<sup>18</sup> On the compliance of paragraph 2 of article 27 of the Republic of Lithuania law on telecommunications (wording of 11 July 2000), paragraph 1 of article 2 of the Republic of Lithuania law on the amendment of article 27 of the law on telecommunications, paragraph 4 of article 57 of the Republic of Lithuania law on telecommunications (wording of 5 July 2002), item 4 of paragraph 3 of article 7 of the Republic of Lithuania law on operational activities (wording of 22 May 1997), item 6 of paragraph 3 of article 7 of the Republic of Lithuania law on operational activities (wording of 20 June 2002), paragraph 1 of article 48 (wording of 26 June 1961) and paragraph 1 of article 75 (wording of 29 January 1975) of the code of criminal procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania, Ruling of the Constitutional Court of the Republic of Lithuania (September 19, 2002), Official Gazette (2002, no. 93-4000).

<sup>19</sup> On the compliance of paragraph 3 (wording of 19 September 2000) of article 57 of the Republic of Lithuania law on the proceedings of administrative cases, paragraph 4 (wording of 25 November 1999) of article 10 and paragraphs 1 and 2 of article 11 (wording of 25 November 1999) of the Republic of Lithuania law on state secrets and official secrets with the Constitution of the Republic of Lithuania, Ruling of the Constitutional Court of the Republic of Lithuania (May 15, 2007), Official Gazette (2007, no. 54-2097).

<sup>20</sup> On the compliance of Articles 5 and 10 of the Law of the Republic of Lithuania on State Secrets and their Protection with the Constitution of the Republic of Lithuania as well as on the compliance of the 6 March 1996 Resolutions No. 309 and 310 of the Government of the Republic of Lithuania with the Constitution of the Republic of Lithuania and the norms of the Republic of Lithuania Code of Civil Proceedings, Ruling of the Constitutional Court of the Republic of Lithuania (December 19, 1996), Official Gazette (1996, no. 126-2962).

<sup>21</sup> On the compliance of items 12, 14 and 16 of the procedure for control of information not to be divulged to the public and dissemination of limited public information stored in public use computer networks as confirmed by resolution of the government of the Republic of Lithuania no. 290 "on the confirmation of the procedure for control of information not to be divulged to the public and dissemination of limited public information stored in public use computer networks" of 5 March 2003 with the Constitution of the Republic of Lithuania and paragraph 1 (wording of 29 August 2000) of article 53 of the Republic of Lithuania law on the provision of information to the public, Ruling of the



"paragraph 3 of Article 25 of the Constitution, which inter alia provides that freedom to receive information may be limited by law, if this is necessary to protect private life of an individual, is closely related to the provisions of Article 22 of the Constitution, which provides for inviolability of private life of an individual."<sup>22</sup> Inviolability of the private life of an individual established by the provisions of Article 22 of the Constitution implies the individual's right to privacy. The right to privacy includes "the inviolability of personal, family and home life, honour and reputation, physical and mental integrity of an individual, confidentiality of personal facts, prohibition to publish received or collected confidential information, etc."<sup>23</sup> The Constitutional Court noted that "the Constitution, inter alia, the provisions of its Article 22 and paragraph 3 of Article 25, imposes upon the legislator an obligation to establish such a legal regulation which would ensure the respect for private life of an individual as well as other values protected by the Constitution in the provision of the available information."<sup>24</sup>

Protection of the private lives of individuals is also provided for in the Civil Code of the Republic of Lithuania. The Code provides that "unlawful invasion of a person's dwelling or other private premises as well as a fenced private territory, unlawful observation of a person, unlawful search of the person or his property, intentional interception of the person's telephone, post or other private

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Constitutional Court of the Republic of Lithuania (September 19, 2005), Official Gazette (2005, no. 113-4131).

<sup>22</sup> *On the compliance of article 42 of the Republic of Lithuania law on the real property register (wording of 21 June 2001) with the Constitution of the Republic of Lithuania and on the compliance of item 88 (wording of 27 February 2007) and item 97 (wordings of 27 February 2007, 22 October 2008, 3 March 2010, and 4 May 2011) of the regulations of the real property register approved by resolution of the government of the Republic of Lithuania No. 1129 "On the approval of the regulations of the real property register" of 12 July 2002 with the Constitution of the Republic of Lithuania*, Ruling of the Constitutional Court of the Republic of Lithuania (June 9, 2011), Case no.12/2008-45/2009.

<sup>23</sup> *On the compliance of the 31 January 1991 Supreme Council of the Republic of Lithuania resolution "On writing of names and family names in passports of citizens of the Republic of Lithuania" with the Constitution of the Republic of Lithuania*. Ruling of the Constitutional Court of the Republic of Lithuania (October 21, 1999), Official Gazette (1999, no. 90-2662). *On the compliance of part 12 of article 2, item 3 of part 2 of article 7, part 1 of article 11 of the Republic of Lithuania law on operational activities and parts 1 and 2 of article 1981 of the Republic of Lithuania code of criminal procedure with the Constitution of the Republic of Lithuania*. Ruling of the Constitutional Court of the Republic of Lithuania (May 8, 2000), Official Gazette (2000, no.30-1105). *On the compliance of paragraph 2 of article 27 of the Republic of Lithuania law on telecommunications (wording of 11 July 2000), paragraph 1 of article 2 of the Republic of Lithuania law on the amendment of article 27 of the law on telecommunications, paragraph 4 of article 57 of the Republic of Lithuania law on telecommunications (wording of 5 July 2002), item 4 of paragraph 3 of article 7 of the Republic of Lithuania law on operational activities (wording of 22 May 1997), item 6 of paragraph 3 of article 7 of the Republic of Lithuania law on operational activities (wording of 20 June 2002), paragraph 1 of article 48 (wording of 26 June 1961) and paragraph 1 of article 75 (wording of 29 January 1975) of the code of criminal procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania on the compliance of article 8 and paragraph 3 of article 14 of the Republic of Lithuania law on the provision of information to the public with the Constitution of the Republic of Lithuania*. Ruling of the Constitutional Court of the Republic of Lithuania (September 19, 2002), Official Gazette (2002, no. 93-4000). *On the compliance of article 3 (wording of 26 June 2001), article 4 (wordings of 26 June 2001 and 3 April 2003), paragraph 3 of article 6 (wording of 26 June 2001) and paragraph 1 of article 8 (wording of 26 June 2001) of the Republic of Lithuania law on the restraint of organised crime with the Constitution of the Republic of Lithuania*, Ruling of the Constitutional Court of the Republic of Lithuania (October 23, 2002), Official Gazette (2002, no. 104-4675).

<sup>24</sup> Ruling of the Constitutional Court of the Republic of Lithuania (June 9, 2011), *supra* note 22.



communications is deemed to violate the person's private life."<sup>25</sup> A person's consent is not required when the "person is photographed in public places"; however, the image may not be published, if it would "abase the person's honour, dignity or damage his professional reputation".<sup>26</sup> It should be noted that in all countries the use of recording equipment to record conversations between individuals without permission of a court or similar competent authority is prohibited. However, in some countries, it is permitted to record one's own conversations, regardless of whether the other party is notified about the recording or not. It is illegal not only to record, but also to distribute the contents of such conversations. It goes without saying that recording will not be deemed illegal, if the parties are aware of it.

In each case, when determining whether the boundaries of private life have been overstepped, and whether the inviolability of a person has been infringed, it is important to determine all the circumstances, the situation at hand, importance and relevance of disseminated information, and the limit of the person's individuality. According to V. Mikelėnas, "what should be considered a private life of an individual is often a matter of fact, inasmuch as this concept is a phenomenon based on evaluative criteria: qualification of privacy and publicity depends on many factors."<sup>27</sup> As K. Jovaišas states "[p]ersonal data may have a different character. Data providing publicly sensitive knowledge is attributed to information about the private life. Education, profession or a person's gender are data that can be published publicly, but in certain cases may be deemed an information about a person's private life. Home address, telephone number, e-mail address are considered to be personal data that are subject to the protection of private life."<sup>28</sup> In modern society, a person's right to the respect for private life is one of the most important values ensured in a democratic state. In the legal doctrine, *privacy* is defined as "a person's interest to maintain his personal space free from any outside interference"<sup>29</sup> or a "legally protected interest"<sup>30</sup> that includes "the protection of individual, family (intimate) and home life, a person's physical and mental inviolability, state of health, dignity, honour and reputation, communication (correspondence), restriction of access to personal facts, prohibition of arbitrary

<sup>25</sup> *Civil Code of the Republic of Lithuania*, Official Gazette (2000, no. VIII-1864), Article 2.23.

<sup>26</sup> *Ibid.*, Article 2.22 § 2.

<sup>27</sup> Valentinas Mikelėnas, "Teisė į privatų gyvenimą ir jos gynimas" (The right to private life and its protection): 101; in Danutė Petrauskienė, ed., *Asmeninės neturtinės teisės ir jų gynimas (Personal Non-property Rights and Their Protection)* (Vilnius: Justitia, 2001).

<sup>28</sup> Karolis Jovaišas, "Informacijos apie privatų žmogaus gyvenimą rinkimo teisėtumo kriterijai" (The criteria of the legality of the collection of information about the private life of a person), *Teisės problemos* T. 44, No. 2 (2004): 50-51.

<sup>29</sup> Mindaugas Civilka, *Asmens duomenų apsauga Tarptautinėje ir EB teisėje* (The protection of personal data in the international and EU Law) (Vilnius: Vilniaus universiteto Teisės fakultetas, 2001), p. 9. // [http://www.teisininkas.lt/downloads/ADA\\_1.12.pdf](http://www.teisininkas.lt/downloads/ADA_1.12.pdf) (accessed April 20, 2011).

<sup>30</sup> Danutė Jočienė, Kęstutis Čilinskas, *Žmogaus teisių apsaugos problemos tarptautinėje ir Lietuvos Respublikos teisėje* (The problems of the protection of human rights in the international and Lithuanian law) (Vilnius: UAB "Petro ofsetas", 2004), p. 58.

collection, storage and publication of both confidential and other information which is unnecessary to be disclosed to third parties, etc.”<sup>31</sup>

Privacy can be viewed from different, but related points of view: *information privacy*, on the basis of which legislative acts regulating the collection and use of personal data are drawn up. It is also known as “data protection”; *physical privacy* by means of which physical body of an individual is protected against invasive procedures; *communications privacy* which includes the protection of mail, telephone conversations, e-mail and other forms of communications; and *territorial privacy* aimed at determining the limits of intrusion into a home, workplace and other environments. Territorial privacy covers search, surveillance and identification.<sup>32</sup>

Article 8(2) of the European Convention on the Protection of Human Rights and Fundamental Freedoms provides for an opportunity to limit the right to private life under certain conditions, by defining the relation of the restriction of this right as follows: “cases of legitimate restrictions must be proportional to the aim pursued, in accordance with the law and applied only when necessary in a democratic society, where the state seeks lawful objectives.”<sup>33</sup> The legal literature also lists requirements for a law limiting a person’s right to privacy: the law must be accessible, clear, explicit, and publicly available.

The law needs to be clear and unambiguous with regard to: 1) the objectives to be achieved by limiting the right; 2) the circumstances under which this right is to be limited; 3) persons in respect of whom these measures can be applied; 4) the rules and procedures that are necessary to limit the right to privacy; 5) protective measures against unauthorized limitation of the right; 6) liability in the event of violations of rules and procedures for the limitation of the right to privacy.<sup>34</sup>

Agreeably to the ruling of the Constitutional Court of the Republic of Lithuania and in terms of the assessment of whether the principle of proportionality has been violated, the limitation of the rights of an individual should take into account whether the measures provided for in the law meet legitimate objectives that are of importance to the society, whether the measures are necessary to achieve the objectives, as well as whether these measures restrict the rights and freedoms of

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<sup>31</sup> *Ibid.*

<sup>32</sup> “An international survey of privacy laws and developments. Privacy & Human Rights 2002” // <http://www.privacyinternational.org/survey/phr2002/phr2002-part1.pdf> (accessed April 29, 2011).

<sup>33</sup> Danutė Jočienė, Kęstutis Čilinskas, *supra* note 30, p. 74.

<sup>34</sup> Žmogaus teisių stebėjimo institutas, *Privataus gyvenimo ribojimas elektroninių ryšių srityje nusikaltimų tyrimo tikslais: problemos ir galimi sprendimai (The restraints of privacy in the area of electronic communications for the purpose of crime investigation: problems and decisions)* (2005), p. 2 // [http://www.hrmi.lt/uploaded/PDF%20dokai/Priv\\_gyvenimo\\_ribojimas\\_el\\_rysiu\\_srityje\\_tiriant\\_nus20050227\\_web.pdf](http://www.hrmi.lt/uploaded/PDF%20dokai/Priv_gyvenimo_ribojimas_el_rysiu_srityje_tiriant_nus20050227_web.pdf) (accessed May 9, 2011).

individuals visibly more than it is necessary to achieve the objectives pursued.<sup>35</sup> The Constitutional Court has also held that a person cannot expect privacy when "committing a crime or other acts contrary to the law"<sup>36</sup>, and found that the right to privacy of an individual also ends when "the individual by his own actions criminally or otherwise unlawfully violates interests protected by the law, harms individuals, society and the state."<sup>37</sup>

It should be noted that the Lithuanian legislative acts and case law have shaped different limits for the collection and dissemination of information about private life of an individual. It depends on whether the individual is considered to be a public or private person. However, these provisions apply to entities preparing, disseminating public information, their members and journalists. Information about private life of a public person can be collected and disseminated to the extent that the person's qualities, features, actions or other information about the private life of the public person can have public significance.<sup>38</sup> Note that family members of public persons are considered to be public persons, even though they do not meet the criteria of the definition of a public person.<sup>39</sup>

As can be seen from the above analysis, there is no universal definition of a person's private life. Thus, when determining whether the right to private life of individuals has been violated, specific factual circumstances must be taken into account. The right to privacy is not absolute, therefore restrictions of this right are justified if rights and freedoms of other persons are to be protected and the principle of proportionality is observed. For these reasons it can be concluded that, in provision of private detective services, a private detective could violate the inviolability of a person's private life, if the aim is to protect the rights and freedoms of other persons. However, this hypothesis should be tested with regard to legislative acts currently applicable in Lithuania.

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<sup>35</sup> *On the compliance of article 3 (wording of 26 June 2001), article 4 (wordings of 26 June 2001 and 3 April 2003), paragraph 3 of article 6 (wording of 26 June 2001) and paragraph 1 of article 8 (wording of 26 June 2001) of the Republic of Lithuania law on the restraint of organised crime with the Constitution of the Republic of Lithuania*, Ruling of the Constitutional Court of the Republic of Lithuania (December 29, 2004), Official Gazette (2005, no. 1-7).

<sup>36</sup> *On the compliance of part 12 of article 2, item 3 of part 2 of article 7, part 1 of article 11 of the Republic of Lithuania Law on operational activities and parts 1 and 2 of article 1981 of the Republic of Lithuania code of criminal procedure with the Constitution of the Republic of Lithuania*, Ruling of the Constitutional Court of the Republic of Lithuania (May 8, 2005), Official Gazette (2000, no. 39-1105).

<sup>37</sup> *Ibid.*

<sup>38</sup> Ruling of the Constitutional Court of the Republic of Lithuania (October 23, 2002), *supra* note 23.

<sup>39</sup> *UAB "Lietuvos rytas", G.Vainauskas v. A.Sabonis, UAB "Respublikos leidiniai"*, Vilnius regional court, 2005, No. 2-114-45/05.

## 2. THE POSSIBILITY FOR PRIVATE DETECTIVES TO COLLECT INFORMATION RELATED TO THE PRIVATE LIFE OF A PERSON IN LIGHT OF CURRENT LEGAL REGULATION IN LITHUANIA

As seen in the above provisions, issues related to respect for the private life of a person are regulated at both national and international levels. One of the key legislative acts in Lithuania governing the collection of information related to personal data of individuals is the Law on Legal Protection of Personal Data. According to Article 2(1) of the Law on Legal Protection of Personal Data of the Republic of Lithuania, personal data is “any information relating to a natural person – the data subject who is identified or who can be identified directly or indirectly by reference to such data as a personal identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.”<sup>40</sup> When assessing the provisions of this legislative act, it could be concluded that, in carrying out their activities, private detectives can collect certain data in accordance with Article 5 of the Law on Legal Protection of Personal Data, agreeably to which, one of the grounds to collect personal data is when private detective activities are regulated by laws.<sup>41</sup> Moreover, under the Law on Legal Protection of Personal Data, one of the grounds for data collection<sup>42</sup> can also be the consent of a person.<sup>43</sup> The latter provision suggests that it is possible to collect personal data when a person gives his or her consent legalizing the right of a private detective to collect such data. Yet another ground – the statutory one – requires further analysis, assessing whether legislative acts currently applicable in Lithuania and a separate law (if such is to be adopted) that will govern private detective activities provide for a possibility for private detectives to collect information related to private lives of individuals.

In private detective activities, even in public places, certain data may be collected by means of surveillance of persons or observation of certain places. If laws were to entitle private detectives to follow persons or objects in public places (which in this case does not constitute a violation of the Civil Code), it should be noted that, in accordance with the Law on Operational Activities of the Republic of Lithuania, both operational surveillance and covert surveillance,<sup>44</sup> or other methods

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<sup>40</sup> *Law on Legal Protection of Personal Data of the Republic of Lithuania*, Official Gazette (1996, No. 63-1479; 2008, No. 22-804).

<sup>41</sup> *Ibid.*, Article 5. Note that law is one of the 6 grounds to collect personal data provided for in this article.

<sup>42</sup> Even that related to private life of a person.

<sup>43</sup> *Law on Legal Protection of Personal Data of the Republic of Lithuania*, *supra* note 40, Article 5 § 1 item 1 and Article 5 §2 item 1.

<sup>44</sup> Operational surveillance – a method of operational activities where information is obtained covertly through a direct observation of an object (*Law on Operational Activities of the Republic of Lithuania*, *supra* note 9, Article 1, item 17). Having received a prosecutor's request, a pre-trial judge may authorize the surveillance of a person or a vehicle or an object. Official who has performed the surveillance may be

of operational activities can be carried out only by officials authorized by the state, if information related to the objects of operational activities is collected<sup>45</sup>. Private detectives cannot be treated as officials authorized by the state, inasmuch as no country (including Lithuania) provides for the right of commercial operators to address the court and ask for authorization of the performance of certain actions. Such right is granted only to public authorities. Therefore, private detectives cannot collect any data that constitutes the secret of the private life of a person, inasmuch as they do not have the right to address the court for the authorization of the performance of actions to be taken. Following the assessment of provisions of the Law on Operational Activities and the Constitution, it can be concluded that persons other than public officials are not allowed to collect information in public places, when it is not associated with crimes being planned, being or having been committed. Such a regulation of the use of methods of operational activities is primarily related to the fact that information about private lives of individuals is collected. Common law countries do not prohibit taking pictures, inspecting buildings in public places or observing other activities, if this does not exceed the standards of reasonableness (unreasonable interference)<sup>46</sup>. There have been cases where surveillance had been deemed unlawful, when a person had been observing a building in a public place.<sup>47</sup> Thus, the aforementioned provisions of legislative acts severely restrict the possibilities for private detectives to carry out investigative activities. This is further confirmed by some Lithuanian court decisions, where it was stated that non-public authority (the case refers to the Lithuanian Anti-Piracy Association):

Has been observing potentially committed violation and collected the data covertly, without the knowledge of this fact of persons committing the violation. Such covert surveillance and collection of information satisfies the criteria characteristic to operational activities; however, it should be noted that laws impose specific requirements on operational activities (legitimacy, ensuring human and civil rights and freedoms, etc.). Furthermore, such activities are delegated to special subjects.<sup>48</sup>

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questioned as a witness (*Criminal Procedure Code of the Republic of Lithuania*, Official Gazette (2002, no. 37-1341, no. 46), Article 160).

<sup>45</sup> Targets of operational activities – criminal acts being planned, being or having been committed, the persons planning, committing or having committed the criminal acts, active actions of these persons in neutralising operational activities or infiltrating members of criminal structures in law enforcement, national defence or other state governmental and administration institutions, activities of foreign special services as well as other persons and events related to state security (*Law on Operational Activities of the Republic of Lithuania*, *supra* note 9, Article 3, item 2).

<sup>46</sup> *Raciti v. Hughes*, 1995, 7 BPR 14,837, SC(NSW) (Australian case); *Bathurst City Council v. Saban*, Supreme Court of New South Wales, 1985, 2 NSWLR 704 (Australian case).

<sup>47</sup> *Bernstein of Leigh v. Skyviews & General Ltd.*, 1978, 1 QB 479 (UK case).

<sup>48</sup> Decision of the Supreme Administrative Court of Lithuania, 2011, No. N62-902/2011. The court also stated: "For these reasons, it must be concluded that data in the case were collected by unauthorized person and the court has no basis to make reference to them".

However, this court decision narrows the limits of evidence discovery and admission as evidence set out in Article 256 of the Administrative Code of the Republic of Lithuania, inasmuch as it establishes that factual data about administrative offence committed cannot be based on "other documents", as provided for by the aforesaid article.<sup>49</sup> Therefore, it can be concluded that cases regarding administrative offences cannot be based on data collected by a private detective. Unlike in Lithuania, procedural rules applicable in other European countries provide all types of evidence with equal power. Courts are free to evaluate the reliability and importance of evidence, regardless of whether it is a testimony of a witness or objects, documents. For example, in its case the Constitutional Court of Spain found that "it bears no importance which party hired a private detective and this, on and of itself, does not make data collected by the private detective unlawful; such data should be treated like any other data of the case that have relevance on resolving the case properly."<sup>50</sup>

When assessing the possibility for private detectives to provide assistance in investigating criminal cases, it should be noted that private detectives can participate in criminal proceedings by the status of an authorized representative.<sup>51</sup> However, according to the provisions of the Code of Criminal Procedure (hereinafter referred to as CCP), only the victim, civil plaintiff and civil defendant are entitled to have authorized representatives, and only if a private detective has higher legal education and this is permitted by an official. Since authorized representatives have the same rights as participants of the process represented by them, they can

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<sup>49</sup> *Administrative Code of the Republic of Lithuania*, Official Gazette (1985, no. 1-1), Article 256: "Evidence.

In cases considering administrative offences, evidence are any factual data, based on which authorities (officials) determine whether or not the administrative offence has been committed, whether particular person is guilty of committing the offence as well as other circumstances that have relevance in solving the case properly.

These data are determined by means of: administrative offence protocol, photographs, audio or video recordings, witness statements, information provided by the victim and person subject to administrative liability, expert opinion, specialist explanations, physical evidence, protocol of collection of objects and documents as well as other documents.

Evidence shall be collected and, if necessary, an expert or specialist shall be appointed by officials authorized to draw up an administrative offence protocol as well as authority (officer) dealing with a case considering administrative offence."

<sup>50</sup> Auto nº 262/1988 de Tribunal Constitucional, Sección 2ª, 29 de Febrero de 1988 (Spanish case).

<sup>51</sup> *Criminal Procedure Code of the Republic of Lithuania*, *supra* note 44, Article 55: "Authorized representatives.

1. Representative of the victim, civil plaintiff or civil defendant shall be a person who provides legal assistance to these participants of the process, defends their rights and legitimate interests.

2. Representative of the victim, civil plaintiff or civil defendant can be a lawyer or, by order of the lawyer, lawyer's assistant, and, with the permission of a pre-trial investigation official, prosecutor or judge, any other person who has higher legal education and is authorized by the participant of the process to represent his interests. Representative of a legal person can be head manager or authorized employee of the legal person or a lawyer.

3. Representative of the victim, civil plaintiff or civil defendant shall be entitled to participate in the process from the moment of a person's recognition as the victim, civil plaintiff or civil defendant, when a pre-trial investigation official or prosecutor passes a resolution, and the court – a decision, on the participation of the representative in the process. The representative can participate in the process together with the represented person or in his stead. The victim, civil plaintiff or civil defendant may at any time refuse the services of the representative or to choose another representative."

submit objects or documents that have relevance in investigating and examining criminal acts. The provisions of Article 98 of the CCP enable all persons, even those who do not have any procedural status in the case, to submit any objects or documents that have relevance in investigating and examining the criminal act, and that are to be recognized as evidence by the court in accordance with the requirements of relevancy and admissibility.<sup>52</sup> It can therefore be concluded that private detectives can submit data in the investigation of criminal cases, if such data is related to the case at hand and were obtained in accordance with the requirements of legislative acts.

When assessing the possibility for private detectives to carry out other activities, it should be noted that, according to the provisions of the Law on Legal Protection of Personal Data, data may be collected and processed without the consent of a person, if it is necessary to ensure public interest, or protect the rights of other persons.<sup>53</sup> Thus, it is presumed that a private detective could collect information in order to protect violated rights of other persons. Although it seems obvious that the collection of information on violation of equal rights of men and women, sexual harassment, monitoring of asocial members of a family, checking credibility of client's employees, as far as it concerns public activities of the latter, may be a violation of Article 22 of the Constitution of the Republic of Lithuania which protects the right to private life<sup>54</sup>; however, a person subjected to sexual harassment or discrimination, i.e. whose rights have been violated, has the right to defend them and, thus, collect information. Therefore, if the person is unable to collect the information, he or she could be assisted by a private detective. For example, the right to complain and provide evidence of sexual harassment or discrimination is set up by the Law on Equal Opportunities for Women and Men of the Republic of Lithuania<sup>55</sup>, Article 19(2)(2) of which states that "the complaint may be accompanied by available evidence", and Article 21(1)(1) of the same Law provides for an opportunity to refuse to examine the complaint due to the lack of data.

When assessing the possibility for private detectives to obtain information from various institutions, legal regulation similar to that of advocate activities could be applied. Private detective activities, as well as advocate activities, are performed by a private subject who does not have a state authorization requiring to perform certain actions or give instructions to non-subordinate subjects (as opposed to notary or bailiff). In its ruling of 9 June 2011 (case No. 12/2008-45/2009), the Constitutional Court noted that "an advocate representing an interested person by

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<sup>52</sup> *Ibid.*, Article 98.

<sup>53</sup> *Law on Legal Protection of Personal Data of the Republic of Lithuania*, *supra* note 40, Article 5, §1.

<sup>54</sup> *The Constitution of the Republic of Lithuania*, *supra* note 8, Article 22.



assignment and performing actions necessary for carrying out the assignment may receive copies of the documents where the person represented by him has the right to receive copies of such documents ... . ... [A]n advocate does not have the right to receive copies of those documents ... if the person represented by him does not have the right to receive such copies.”<sup>56</sup> However, the Constitutional Court also noted that “advocates, assisting in implementing the right of a person to judicial defence, must in certain situations refer to information held by state and municipal institutions, inter alia the information which cannot be obtained by the person whom the advocate is representing, nor by the advocate as the representative of such person” (eg. when applying *Actio Pauliana* institute, an advocate must unavoidably be able to obtain some necessary information about the transactions, without which the right to access the courts cannot be implemented)<sup>57</sup>. Thus, it is held that, when providing his services aimed at protecting the rights and freedoms of persons, a private detective can refer to examples of legal regulation applied to members of other professions, including advocates.

It should be noted that in employment relationships the employer’s interests may outweigh the right to private life. Private detectives can be hired by employers seeking to investigate activities related to their employees. In fact, employees carrying out their duties at the workplace do not lose their right to privacy and data protection. Employees can reasonably expect a certain level of privacy in the workplace, inasmuch as they exercise a significant part of their relationships with other persons at work. However, this right must be balanced with other rights and legitimate interests. These rights and interests constitute legitimate grounds, justifying certain measures that restrict the employee’s right to privacy. Therefore, the employee’s right to privacy must be balanced with the employer’s interest in effective control of the company’s activities and business organization; moreover, the employer seeks to reduce the risk associated with his liability for the faulty actions of the employees.<sup>58</sup> Thus, in accordance with the provisions of the Directive on the Protection of Personal Data<sup>59</sup>, the provisions of the Law on Legal Protection of Personal Data<sup>60</sup>, any form, measures of employee surveillance must be necessary to achieve a specific, pre-planned objective (the principle of necessity), the data collected can be used only for a specific, pre-planned objective (the principle of expediency), and the employer must notify the employees of certain

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<sup>55</sup> *Law of the Republic of Lithuania on Equal Opportunities*, Official Gazette (1998, no. 112-3100).

<sup>56</sup> Ruling of the Constitutional Court of the Republic of Lithuania (June 9, 2011), *supra* note 22.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Civil Code of the Republic of Lithuania*, *supra* note 25, Article 6.264.

<sup>59</sup> *On the protection of individuals with regard to the processing of personal data and on the free movement of such data*, Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995.

<sup>60</sup> *Law on Legal Protection of Personal Data of the Republic of Lithuania*, *supra* note 40.

actions undertaken in the company (the principle of transparency).<sup>61</sup> Surveillance measures undertaken by the employer must be carried out only if they are aimed at a legitimate objective (the principle of legitimacy), and the data collected during the surveillance operations must be adequate and proportionate in the light of purposes of the processing of such data (the principle of proportionality).<sup>62</sup> Accordingly, the data collected must be protected from any unauthorized use, loss, etc. (the principle of security).<sup>63</sup> The International Labour Organization Code of Practice also provides for the protection of personal data of employees, where Article 6.14(1) states that, "[i]f workers are monitored they should be informed in advance of the reasons for monitoring, the time schedule, the methods and techniques used and the data to be collected, and the employer must minimize the intrusion on the privacy of workers".<sup>64</sup> The U.S. courts are even more liberal on the issue and state that employees do not have expectations of privacy in the workplace,<sup>65</sup> even if the employer indicates that communication of employees with customers will not be monitored, since the interest in preventing the dissemination of inappropriate information or illegal activities by means of the company's resources outweighs the privacy interests of employees.<sup>66</sup>

The analysis of the possibility for private detectives to collect various data under the current legal regulation in Lithuania leads to the conclusion that collection of such data should not interfere with the principle of respect for private lives of individuals. The possibilities to regulate private detective activities by law, where the detectives are enabled to collect information about private lives of individuals, i.e. the right to private life is restricted, are only possible if this is necessary to protect the rights and freedoms of other persons and values enshrined in the Constitution. However, in terms of private detective activities, it is unclear on what grounds interests of a person who uses private detective services are more important than the right to private life of a person or persons subject to such activities. Thus, there is no reason to believe that private detective activities can be carried out by collecting information about the private life of a person as well.

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<sup>61</sup> *Dėl elektroninės komunikacijos sekimo darbo vietoje (On the surveillance of electronic communications in the workplace)*, Darbo grupės darbinis dokumentas (Workgroup document) (May 29, 2002), No. 5401/01/EN/Galutinis, WP 55 // <http://www.ada.lt/images/cms/File/wp%2055.pdf> (accessed April 14, 2011).

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *International Labour Organization Code of Practice "Protection of workers' personal data"* (January 1, 1997) // [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/normativeinstrument/wcms\\_107797.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107797.pdf) (accessed December 9, 2011).

<sup>65</sup> Such a conclusion was made by courts in cases involving monitoring of employee e-mail.

<sup>66</sup> The U.S. Court Cases: *Michael A. Smyth v. The Pillsbury Company*, United States District Court for the Eastern District of Pennsylvania, 1996, C.A. NO. 95-5712; *Bourke v. Nissan Motor Corp.*, Cal. Ct. App., 1993, No. B068705; *Alana Shoars v. Epson America, Inc.*, United States Court of Appeal of the State of California Second Appellate District Division, 1994, No. B073234; *Flanagan v. Epson America, Inc.*, Cal. Super. Ct., 1990, No. BC 007036.

### 3. THE NEED TO REGULATE PRIVATE DETECTIVE ACTIVITIES IN LITHUANIA

In the absence of a unified regulatory policy in the area of private detective activities, each nation-state must make an individual decision as to whether private detective activities should be legally regulated separately from other services, and if so – what are the legal measures that would help protect consumer rights, reduce the number of violations of law, and at the same time would not cause unreasonable constraints to those seeking to undertake private detective activities.

Private detective activities cannot be treated as a typical commercial service. Private detective activities differ from the usual provision of services and are characterized by attributes specific to them only,<sup>67</sup> inasmuch as investigative services provided are related to the collection of information, and the information collected can often transcend the boundaries of private lives of individuals. Private detective activities are characterized by the fact that, when providing the service, an investigation aimed at obtaining information of interest to the client is carried out upon the client's request. Similar services can be provided by public authorities as well; however, in this case, private detective activities are characterized by the fact that a subject providing this service is a private person, whose activities are aimed at profit. Investigation on behalf of another person makes private detective activities different from activities involving employment relations, where investigation can be carried out for the benefit of an employer; however, the results are not provided to third parties for a fee. Moreover, private detective activities are major commercial activities undertaken by a person. The primary aim of providing investigatory services to clients is to protect rights and property interests of these persons. Thus, individuals undertaking private detective activities should have certain skills that would enable them to provide services to clients properly, without prejudice to the rights of others. Private detective activities are also characterized by the fact that the main control of these activities is carried out by a consumer; however, ways in which information that is of interest to the client is collected are usually uncontrolled.<sup>68</sup> Global practice shows that most private detectives have worked in the public law enforcement sector, and services provided by them are related to the area of law enforcement; therefore, to make proper use of the assistance provided by such individuals in ensuring public safety and crime prevention, it is expedient to provide for the proper forms and ways of use of services of private detectives in meeting the needs of both individuals and the

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<sup>67</sup> The data collected can be used in various legal disputes, some services are not provided by any other private subjects, ways in which information is collected are not normally open to the public, etc.

state. These arguments must be taken into account when providing for regulatory guidelines for private detective activities in Lithuania. It should be noted that, in the absence of legal regulation of private detective activities, anybody, including former police officers, members of organized criminal groups or any other person who does not have similar work experience, will be able to carry out an investigation, orders of banks, insurance companies, financial institutions, corporate entities without any control, regardless of the nature, ethical aspects of the order, and without any assessment of legitimacy of the provision of services.

The country has established various ways to regulate private relationships. Broadly speaking, such regulation can be understood as the establishment of certain prohibitions to carry out activities without a permit or license, or a requirement to carry out activities in accordance with the relevant legislative acts. Such activities of the government are regarded as the state's intervention in the economics. Usually, those who are subjected to regulation tend to raise questions as to additional burden on business and the lack of accountability of those who regulate the relationships; whereas, the latter ground the necessity of legal regulation on the purposes of reduction of violations of law. Therefore, when establishing guidelines for private detective activities in Lithuania, it is necessary to provide for such requirements, the stringency of which would be based in proportion to the attainability of the objectives pursued. The most economically beneficial way requiring the least intervention from the state is possible when the issues of private detective activities are left for self-regulation. Although self-regulation is generally more operative than the usual legal regulation, it is not formalized in detail: rules are changed with expedition, market changes are adapted to. However, it is assumed that this method is currently not suitable in Lithuania for several reasons. First of all, the number of private detectives working in Lithuania is rather small, their competency is not known. Second, in case of self-regulation, the content of decisions can be affected by the existing commercial interests, anti-competitive agreements are possible. Thus, it is believed that private detective activities in Lithuania should be regulated by means of an interference of the state, where legislative acts would establish the capacity of private detectives and provide for supervision of such activities.

State intervention aimed at regulating private detective activities by means of separate legislative act is necessary for several reasons. First, private detectives working in Lithuania today offer services, the provision of which is impossible

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<sup>68</sup> General provisions of legislative acts regulate the liability for violations of civil, administrative or criminal law; however, the author believes that these general provisions are not sufficient to argue that human rights are protected merely because liability is provided for in the legislation.

without violations of human rights.<sup>69</sup> Thus, the adopted law would set out the list of services that can be provided by private detectives, which would allow for avoiding the provision of services that are in conflict with legislative acts. Accordingly, private detective activities can be undertaken by any person, regardless of education or knowledge of the law. In this case, it would be erroneous to think that in provision of private detective services these persons will follow the requirements of legislative acts, in particular those that govern the issues of respect for private life. Legal regulation of private detective activities is moreover necessary for the protection of consumer rights, so that a client applying to a private detective for his services could be sure that private detective has at least the minimum competencies necessary to perform the task. Accordingly, when applying to a private detective for the provision of services, he may be entrusted with important or personal data; therefore, granting the access to such data for persons related to criminal groups or those who have previous convictions for certain crimes, may lead to the use of data for criminal purposes. To obtain assistance from private detectives in the fight against crime or in the prevention of crime, it is necessary to deal with the issues of mutual cooperation of private detectives and public officials by law, in order to avoid situations, where, in collecting evidence for a case, private detectives may interfere with pre-trial investigation. For all of already stated reasons, private detective activities should be regulated by means of a separate law.

## **CONCLUSIONS**

The existing situation in Lithuania, where private detective activities can be provided by any person, raises the question of whether such activities should be subject to a separate legal regulation due to the potential threat of violations of human rights, particularly the right to private life. Unlike usual commercial activities, private detective activities pose a greater threat to human rights for a variety of reasons: private detective services are closely related to the collection of information that is of interest to the client of a private detective. The collection of information involves a great risk that such information can be related to private lives of individuals protected by both national and international legislative acts. In Lithuania, private detectives can provide a variety of services, including the assistance to persons in various legal disputes; however, the collection of information related to private lives of individuals is rather restricted. Inasmuch as it is impossible to give an accurate definition of a private life of an individual,

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<sup>69</sup> For example, investigations of matrimonial infidelity, when the collection of information about one of the spouses violates his right to private life.

determining a violation of respect for a private life of an individual in each case requires the assessment of specific factual circumstances.

The right of an individual to private life is not absolute. This right may be interfered with in order to protect other rights. However, in regard to private detective activities, private detectives are not authorized persons and it is impossible to determine in each case, whether the interests of a person using the services of the private detective are more important than those of other persons, which could lead to violations of their right to private life. The limits of an individual's right to private life can be narrowed only by a specific person, by way of giving consent or making the circumstances of his private life publicly available. This is the only possibility for a private detective to collect information related to an individual's private life. The existing legislative acts in Lithuania do not provide for a possibility for private subjects to collect personal data without the consent of the relevant person. Such right is granted only to public authorities and with the court's permission.

The lack of an accurate definition of a private life requires private detectives to have appropriate knowledge in this area, in order to avoid violations of this right due to improper education or competency of a private detective. At the same time, the state has a duty to take measures to ensure respect for and protection of human rights. Accordingly, the development of modern technologies, allowing for the use of various methods and means for the collection of information, encourages governments to amend the existing regulation in this area. Lithuania is no exception. It aims at adopting a law governing private detective activities. This is to be regarded as a timely and positive step, inasmuch as the country takes action prior to the occurrence of a number of violations of legislative acts caused by the unregulated private detective activities.

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