

## LIMITING OF THE RIGHT TO PRIVACY IN THE CONTEXT OF PROTECTION OF NATIONAL SECURITY

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Received 21 September 2011; accepted 17 November 2011

**Abstract.** *For the last several decades, ensuring human rights and national security have remained an important goal and a condition for existence of every state. The interests of national security often presuppose the need to narrow some natural rights, such as, for example, the right to privacy, the right to secrecy of communication, etc.*

*Traditional concept of security is related to ensuring national security. According to the traditional concept of security, the state is considered the main object of security; therefore, the states mainly focus on external threats. It is stated that the most important thing is to protect the state from external aggression, ensure protection of state borders and institutions. Protection of human rights is ensured simultaneously. It is, however, observed that a secure state does not necessarily mean that the citizens of the state are secure. Security of a person is under threat due to limitations imposed on human rights while seeking to ensure national security.*

*An issue related to protection of human rights is presented in the article, when limitations on a person's right to privacy are foreseen for the purposes of protection of national security.*

**Keywords:** *right to privacy, national security, human rights.*

## Introduction

*Relevance of the topic.* It is universally accepted in modern democratic states that human rights are the highest virtue, and their protection is a priority of internal and external policies of the states. Human rights became a universal virtue, for ensuring and protection of which national and international instruments were created by the states. The past age has been extremely significant in the light of the human rights institute – a number of international documents devoted to the rights of the persons were adopted: the Universal Declaration of Human Rights<sup>1</sup> adopted by the United Nations in 1948, Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup> adopted by the Council of Europe in 1953, the European Social Charter<sup>3</sup> adopted by the Council of Europe in 1961, the International Covenant on Civil and Political Rights<sup>4</sup> and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations<sup>5</sup> in 1966, and numerous other international documents.

At least in the Western legal systems, the notion and scope of human rights becomes unite. The United Nations Global Conference on Human Rights of 1993 stated that ‘all human rights are universal, indivisible, interdependent and interrelated. The international community shall ensure human rights on a global level, based on integrity and equality, on the same background and method’<sup>6</sup>. However, it should be noted that interests of national security frequently presuppose the need to narrow some human rights, such as, for example, the right to privacy, the right to secrecy of communication, etc. And even though human rights are perceived as integral and universal, at the same time, modern society acknowledges the importance of national security as one of the main conditions for the existence of each state.

*Core of the topic.* Traditional concept of security is related to ensuring national security. According to the traditional concept of security, the state is considered the main object of security; therefore, the states are mainly focused on external threats. It is stated that the most important thing is to protect the state from external aggression; ensure security of state borders and institutions. Supposedly, human rights are ensured simultaneously. However, it is noted that secure state does not necessarily mean secure citizens of the state, especially in cases where narrowing of human rights is legitimised on behalf of the state. Speaking of narrowing of the right to privacy, it is noted that

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- 1 The Universal Declaration of Human Rights [interactive]. [accessed 20-08-2011]. <<http://www.un.org/en/documents/udhr>>.
  - 2 Convention for the Protection of Human Rights and Fundamental Freedoms [interactive]. [accessed 20-08-2011]. <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)>.
  - 3 The European Social Charter [interactive]. [accessed 20-08-2011]. <<http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>>.
  - 4 International Covenant on Civil and Political Rights [interactive]. [accessed 20-08-2011]. <<http://www2.ohchr.org/english/law/ccpr.htm>>.
  - 5 International Covenant on Economic, Social and Cultural Rights. *Official Gazette*. 2002, No. 77-3290.
  - 6 Hunt, P. *Reclaiming Social Rights: International and Comparative Perspectives*. Aldershot: Dartmouth Publ., 1996, p. 2.

‘Whenever an invasion of privacy is claimed, there are usually competing values at stake. Privacy may seem paramount to a person who has lost it, but that right often clashes with other rights and responsibilities that we as a society deem important’.<sup>7</sup> The past decades have seen enormous changes in the system of threats to privacy and in the perception of ‘security’, the causes of insecurity and the measures adopted to address them. Therefore, it is worth evaluating, whether the limitations of the right to privacy are reasonable and necessary in a state, in order to achieve certain national security aims.

*The object of the research* is the system of legal regulation of the right to privacy and national security.

*The aim of the article* is to present problematic aspects of protection of the human right to privacy, arising due to limitations of human rights in order to ensure national security.

In order to achieve the determined aim, the following *tasks* will be settled:

To reveal the essence of the human right to privacy and the basis of legal protection of privacy;

To analyse Lithuanian laws, by bringing up cases of limitations of the human right to privacy based on the interest of ensuring national security.

*Methodology of the research.* In the course of reaching the objective of the research, methods of systemic, analytical-critical, and documentary analysis were employed.

## 1. The Essence and Meaning of the Right to Privacy in the System of Human Rights

The United Nations and other international organisations have adopted numerous significant multilateral international agreements regulating various spheres of human rights and embedding mechanisms of protection of human rights. The right to privacy is an integral part of the human rights system and is related to many human rights, such as the right to immunity of property; freedom of thought, consciousness and religion, secrecy of communication, immunity of a person, dignity, etc. The system of human rights has historically changed and expanded. Traditionally, in order to systemize or catalogue human rights, they are divided into human rights of three generations, resembling the historical development of human rights. Civil and political rights are referred to as the first generation human rights (the right to life, the right to dignity, the right to freedom and equality, the right to immunity, etc.). The rights referred to as the first generation rights are not granted by the state or ‘given’ in any other way. The states are only delegated to protect these rights and to ensure their implementation. Emergence of the second generation human rights is linked to the beginning of the 20th century. They refer to economic, social and cultural human rights (the right to work, the right to entrepreneurship, the right to be supported in case of unemployment, illness, disability and the like, the right to education, etc.). These rights are intended to guarantee at least

<sup>7</sup> Alderman, E.; Kennedy, C. *The Right to Privacy*. New York, 1997, p. 14.

minimum social security to a person. The second generation rights help maintaining social stability in the state. Third generation rights are so-called solidarity rights. Those are referred to as the right to healthy environment, the right to peace, minority rights, etc.<sup>8</sup>

All the rights mentioned above are interrelated and very important when seeking to ensure human existence. According to Jack Donnelly, the term ‘human rights’ itself indicates both the nature of these rights as well as their source: these are the rights that the individual possesses simply because he is a human being<sup>9</sup>. It is worth noting that over the past several decades human rights were embedded into the main laws of many states – constitutions, international agreements, etc. The Constitution of the Republic of Lithuania, Article 18 of which states that ‘Human rights and freedoms are innate’<sup>10</sup>, and Article 22 states that ‘The private life of a human being shall be inviolable’,<sup>11</sup> is no exception.

The vast majority of nations protect privacy in their constitutions. For example, German Basic Law states that ‘The privacy of correspondence, posts and telecommunications shall be inviolable’<sup>12</sup>; the Spanish Constitution states that ‘The right to honor, to personal and family privacy and to the own image is guaranteed’<sup>13</sup>; the Brazilian Constitution states that ‘the privacy, private life, honor and image of persons are inviolable’<sup>14</sup>; the Constitution of South Africa states that ‘Everyone has the right to privacy, which includes the right not to have: a) their person or home searched; b) their property searched; c) their possessions seized; or d) the privacy of their communications infringed.’<sup>15</sup>, etc.

In addition, thousands of laws protect privacy around the world. Multinational privacy guidelines, directives and frameworks have influenced the passage of privacy laws in a vast number of nations. In 1980, the Organisation for Economic Cooperation and Development (OECD) issued its Privacy Guidelines.<sup>16</sup> In 1995, the European Union Directive on Data Protection specified fundamental principles for privacy protection in

8 See more at Birmontienė, T.; Jarašiūnas, E., *et al.*, *Konstitucinė teisė* [Constitutional Law]. Vilnius, 2002.

9 Donnelly, J. *International Human Rights. Dilemmas in World Politics*. University of Denver: Westview Press, Oxford, 1993, p. 20.

10 Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, 18 Article.

11 *Ibid.*, 22 Article.

12 The Basic Law of German Federal Republic, Article 10 [interactive]. [accessed 20-08-2011]. <<http://www.iuscomp.org/gla/statutes/GG.htm>>.

13 Spanish Constitution, Article 18 [interactive]. [accessed 20-08-2011]. <[http://www.senado.es/constitu\\_i/indices/consti\\_ing.pdf](http://www.senado.es/constitu_i/indices/consti_ing.pdf)>.

14 Brazilian Constitution, Article 5 [interactive]. [accessed 20-08-2011]. <<http://web.mit.edu/12.000/www/m2006/teams/willr3/const.htm>>.

15 Constitution of the Republic of South Africa, Article 14 [interactive]. [accessed 20-08-2011]. <<http://www.info.gov.za/documents/constitution/1996/index.htm>>.

16 OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data [interactive]. [accessed 20-08-2011]. <[http://www.oecd.org/document/18/0,3746,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1,00&&en-USS\\_01DBC.html](http://www.oecd.org/document/18/0,3746,en_2649_34255_1815186_1_1_1_1,00&&en-USS_01DBC.html)>.

Europe.<sup>17</sup> The Asia-Pacific Economic Cooperation (APEC), with over twenty member nations, set forth a Privacy Framework in 2004.<sup>18</sup>

In order to protect personal right to private life, with regard to the automatic processing of personal data, the Council of Europe adopted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.<sup>19</sup>

Thus there appears to be worldwide consensus about the importance of privacy and the need for its protection. Privacy is recognised as a fundamental human right. ‘Privacy is an issue of profound importance around the world. In nearly every nation, numerous statutes, constitutional rights, and judicial decisions seek to protect privacy.’<sup>20</sup> The U.S. Supreme Court Justice L. Brandeis pronounced that privacy was ‘the most comprehensive of rights and the right most valued by civilized man’.<sup>21</sup>

Privacy covers many things, however, no one can comprehensively define the notion of privacy. ‘Privacy is a sweeping concept, encompassing (among other things) freedom of thought, control over one’s body, solitude in one’s home, control over personal information, freedom from surveillance, protection of one’s reputation and its protection from searches and interrogations’.<sup>22</sup> As Charles Fried writes, ‘Privacy is not simply an absence of information about us in the minds of others, rather it is the control we have over information about ourselves’.<sup>23</sup> According to Alan Westin, ‘Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others’.<sup>24</sup> Numerous other scholars have presented similar theories: ‘The essence of privacy is no more and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behaviour and opinions are to be shared with or withheld from others’<sup>25</sup>; ‘We built our own definition of privacy on what we consider the most elegant definition, ‘informational self-determination’, which refers to a person’s ability to control the flow of his own personal information’<sup>26</sup>; ‘Freedom of private life – is a universally useful

17 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [interactive]. [accessed 20-08-2011]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>>.

18 APEC Privacy Framework [interactive]. [accessed 20-08-2011]. <[http://www.ag.gov.au/www/agd/rw-pattach.nsf/VAP/\(03995EABC73F94816C2AF4AA2645824B\)~APEC+Privacy+Framework.pdf/\\$file/APEC+Privacy+Framework.pdf](http://www.ag.gov.au/www/agd/rw-pattach.nsf/VAP/(03995EABC73F94816C2AF4AA2645824B)~APEC+Privacy+Framework.pdf/$file/APEC+Privacy+Framework.pdf)>.

19 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [interactive]. [accessed 20-08-2011]. <<http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>>.

20 Solove, D. J. *Understanding Privacy*. Harvard University Press, 2009, p. 2.

21 *Olmstead v. United States*, 277 U.S. 438, 478 (1928) [interactive]. [accessed 20-08-2011]. <<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=277&invol=438>>.

22 Solove, D. J., *supra* note 20, p. 1.

23 Fried, Ch. Privacy: A Moral Analysis. *Yale Law Journal*. 1968, 77(1): 482.

24 Westin, A. *Privacy and Freedom*. New York: Atheneum, 1967, p. 7.

25 Ruebhausen, O. M.; Brim, O. G. Privacy and Behavioral Research. *Columbia Law Review*. 1965, 65: 1184.

26 Goldberg, I.; Hill, A.; Shostack, A. Trust, Ethics and Privacy. *Boston University Law Review*. 2001, 81: 407.

recognition, that there is a space for existence, that belongs solely to the individual and others may not be permitted to trespass it'.<sup>27</sup>

According to Anita Allen's definition, privacy is compromised when, for example, control over information is diminished, or when a person's solitude is broken. 'Privacy involves three dimensions: physical privacy, characterised as 'Special seclusions and solitude', informational privacy, characterised as 'confidentiality, secrecy, data protection and control over personal information' and proprietary privacy, characterised as 'control over names, likenesses and repositories of personal information'.<sup>28</sup>

During the last decades information technology is considered as a major threat to privacy, because it enables pervasive surveillance, massive databases, and lightning-speed distribution of information across the globe. People go somewhere, they buy something, they apply for a job, persons pay their bills, etc., in other words, people live and at each of those moments of their life, their personal information is used, collected and processed. The extent of radical transformations of the technologies have yielded the remarkable range of today's systems, including distributed networking, the World Wide Web, mobile devices, video, audio, and biometric surveillance, global positioning, ubiquitous computing, social networks, sensor networks, databases of compiled information, data mining and more. Associated with each of these developments is a set of worries about privacy.<sup>29</sup>

However, even if there are dozens of laws that protect the right to privacy, we have to admit that this right is not absolute, this means that it could be narrowed under certain conditions in order to achieve certain goals. Article 8 the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'<sup>30</sup>

## 2. Problems of Limiting Human Rights by Ensuring National Security

According to the traditional notion of security, the state is considered as the object of security. In the literature, it is often referred to as national security or security of the state. Traditional policy of security is based on the idea that all the members of the society or individual interests are subordinate to the interest of the state. Therefore, it is

27 *Lietuvos Respublikos konstitucijos komentaras* [Commentary of the Constitution of the Republic of Lithuania]. Jovaišas, K. (ed.). Vilnius: Teisės institutas, 2000, p. 163.

28 Allen-Castellitto, A. Coercing Privacy. *William and Mary Law Review*. 1999, 40: 723.

29 Nissenbaum, H. *Privacy in Context California*. Stanford: Stanford University Press, 2010, p. 1–51.

30 Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 2, Article 8.

most important to secure state borders, institutions, values, and people. The main object is to protect the state from external aggression, maintain integrity of the state.

The traditional concept of security perceives the state as the main subject, responsible for ensuring its own security and survival. Creation of security strategies is usually concentrated at the institutions of the state, and the implementation of the above-mentioned strategies rarely involves the society. Yet it is worth noting that a secure state does not necessarily mean secure citizens. It is assumed that securing citizens from foreign military aggression is a necessary, yet not a sufficient condition guaranteeing the security of citizens.

Over the last few decades it has been accepted that subjective and objective level of security depends on the level of implementation and protection of human rights. It is presumed that individuals agree to give up an interest that is less important, in the name of securing a more important interest. Sacrificing values in order to protect higher values is related to processes of human socialisation, individual experience, conditional reflexes (stereotypes), results of education of social communities, social control, etc. If individuals were able to maintain all of their interests self-substantially, they would hardly 'sacrifice' any of their less important interests. Therefore, it could be said that to some extent individuals are forced to choose greater values, by way of agreeing to renounce certain things having less impact on their existence, in the name of securing the great values.

Some scientists refer to the greatest values, in favour of which individuals enter in to social contract, as natural human rights, such as, the right to life, property right, the right to privacy, immunity right, dignity, etc. In the opinion of other authors, when discussing the grounds for necessity of the state, a value of security could be distinguished that encompasses all of the abovementioned rights inseparable from the individual, and without which human existence could not be considered humane. As B. Buzan has observed, 'a notion of security is a lot easier applied to objects than individuals. For example, security of money at a bank is dependent on a specific threat of unsanctioned takeover or devaluation'.<sup>31</sup> However, security of individuals cannot be defined as easily. Various values of individual importance (for example, life, health, status, wellbeing, freedom, private life) are difficult to restore, or, in case of loss, cannot be restored at all (life, bodily parts, status). Besides, 'different aspects of individual security are often conflicting (crime prevention or limitation of civil rights) and restrained by distinction obstacles between objective and subjective assessments (real or imaginary threats?)'.<sup>32</sup>

On the one hand, society helps individuals and has to protect them, ensure their security in the broad sense; however, on the other hand, the same society may become and becomes threatening to the individual. The majority of threats arise due to the fact that individuals live in social environment which generates certain social, economic and political pressure. Therefore, 'the state at the same time is both a solution and source of security issues'.<sup>33</sup>

31 Buzan, B. *Žmonės, valstybės ir baimė* [Individuals, the State and Fear]. Vilnius: Eugrimas, 1997, p. 69.

32 *Ibid.*, p. 70.

33 Messari, N. The State and Dilemmas of Security: the Middle East and the Balkans. *Security Dialogue*, SAGE publications. 2002, 33(4): 416.

Individuals may start feeling insecure and vulnerable if individual rights become too restrained by foreseeing a possibility to limit them in laws. According to Alan Dershowitz, ‘Today there are powerful forces that pose grave dangers to rights that we have long taken for granted.... The debate has become polemical, with one side arguing that the new reality of global terrorism changes everything, while the other argues that it changes nothing’<sup>34</sup>. For example, in the recent years, when the threat of terrorism has increased, the states have foreseen various means to fight against terrorism, by way of setting up obstacles to terrorism financing. A Law on Money Laundering and Prevention of Terrorist Financing of the Republic of Lithuania was adopted<sup>35</sup>, according to which, a number of governmental as well as nongovernmental institutions (e.g. attorneys, notaries, auditors) are obligated to collect information about persons in order to prevent possible cases of money laundering. Order of the Director of the Financial Crime Investigation Service under the Lithuanian Ministry of the Interior on the provisions to prevent money laundering, dedicated to notaries and other persons entitled to carry out notary actions provides that the Financial Crime Investigation Service shall be informed about suspicious dealings, the amount of which exceeds fifty thousand litas.<sup>36</sup>

Credit institutions operating in the country have to adopt similar measures in order to prevent terrorist financing.<sup>37</sup> Credit institutions have to adopt measures, determine and check the identity of the client and benefactor in the following cases:

1. Before entering into a business relationship, i.e., before concluding contracts for opening a bank or savings account, providing safe-keeping services of valuables, concluding any other contracts with the client;
2. Before executing single or multiple interrelated monetary transactions or concluding contracts, the amount of which exceeds the sum of EUR 15 000 or its equivalent in a foreign currency, except cases where the identity of the client has already been determined;
3. Before exchanging cash, if the amount to be exchanged exceeds EUR 6000 or its equivalent in foreign currency.

Other legal acts also impose an obligation to collect information about persons and their transactions: by Order of 9 February 2010 of the Director of Cultural Heritage Department under the Ministry of Culture the provisions applicable to individuals engaged in economic commercial activity related to trading in movables having the value of cultural heritage were confirmed. The purpose of the abovementioned provisions is to

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34 Dershowitz, A. *Rights from wrongs. A secular theory of the origins of rights*. New York: Basic Books, 2004, p. 1.

35 Law on Money Laundering and Prevention of Terrorist Financing of the Republic of Lithuania. *Official Gazette*. 1997, No. 64-1502; *Official Gazette*. 2008, No. 10-335.

36 Order of the Director of the Financial Crime Investigation Service under the Lithuanian Ministry of the Interior Regarding the provisions to prevent money laundering, dedicated to notaries and other persons entitled to carry out notary actions. *Official Gazette*. 2005, No. 83-309, Articles 9 and 13.

37 Decision of the Board of the Bank of Lithuania on the provisions for credit institutions intended to prevent money laundering and/or terrorist financing. *Official Gazette*. 2008, No. 62-2374.



prevent money laundering and/or financing of terrorists<sup>38</sup>. According to those provisions, individuals are obliged to take measures in order to determine and examine the identity of the client and benefactor in the following cases:

1. Before entering into a business relationship;
2. Before executing single or multiple interrelated monetary transactions or concluding contracts for the amount exceeding EUR 15 000 or its equivalent in a foreign currency, except cases when the identity of the client has already been determined;
3. When doubts regarding the legality and authenticity of the previously received identity information of the client and benefactor arise;
4. In any other case, when doubts arise that an act of money laundering and/or terrorist financing is, was or will be carried out, without any exception to the amounts of money or fields of activity.

If at the time of a monetary transaction or conclusion of a contract the final amount of the monetary transaction or the contract is unknown, individuals are obligated to determine the identity of the client and the benefactor right after discovering that the amount of money transferred or the sum of the contract exceeds EUR 15 000 or its equivalent in any other foreign currency. In case of several interrelated monetary transactions the identity of the client and the benefactor has to be determined right after discovering that several monetary transactions are interrelated.

In addition, according to those rules, individuals engaged in economic commercial activities related to trading in movables having the value of cultural heritage and/or antique items are obligated to permanently observe business relations and determine cases when several interrelated transactions are carried out. Several monetary transactions are considered interrelated where:

1. Within a period of one day several cash deposits are made, the amount of which exceeds EUR 15 000 or its equivalent in any other foreign currency;
2. Within a period of one working day several cash withdrawals from the account are made, the amount of which exceeds EUR 15 000 or its equivalent in any other foreign currency;
3. Within a period of one working day other cash transactions are made and they are interrelated according to the information obtained by an individual and the amount of which exceeds EUR 15 000 or its equivalent in any other foreign currency.

According to these rules, when determining the identity of the client or the benefactor, individuals are also obligated to make a copy or a scanned copy of the page of the document containing a picture, provided by an individual in support of their identity; in addition, when determining the identity of a foreigner, an individual is obliged to make a copy or a scanned copy of the document supporting the identity of the client or a substitute travel document containing a picture.

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38 By Order of 9 February 2010 of the Director of Cultural Heritage Department under the Ministry of Culture, the provisions for individuals engaged in economic commercial activities related to trading in movables having the value of cultural heritage and/or antique items were confirmed; the purpose of the above mentioned provisions is to prevent money laundering and/or financing of terrorists. *Official Gazette*. 2010, No. 18-854.

An individual engaged in economic commercial activity related to trade in movables having the value of cultural heritage and/or antique items is obliged to carry out permanent observation of business relations, including contracts in order to ensure that the contracts so carried out correspond to the information possessed by an individual regarding the client's business (type, business partners, area of activity, etc.) and the level of risk involved, as well as knowledge of the source of finance, where necessary (for example, if the legal background of monetary resources is dubious, if the monetary transaction does not disclose the true financial standing of the client).

An individual has to ensure that when assessing the risk of money laundering and/or terrorist financing the most up to date and accurate information is used. An individual has to constantly review and update the data regarding the identity of the client and the benefactor. This provision applies to new, but also to already existing clients.

An individual has to notify the Financial Crime Investigation Service about a single cash transaction, if the amount paid or received exceeds EUR 15 000 or its equivalent in any other foreign currency.

In addition, an individual engaged in economic commercial activity related to trading in movables having the value of cultural heritage and/or antique items is obliged to fill out a register where the following information should be recorded: data supporting the identity of the client; data supporting the identity of the representative of the client, if a monetary transaction is carried out or a contract is concluded through the representative; information about the monetary transaction or contract (date, amounts, currency in which the monetary transaction is executed or the contract is formed, method of monetary transaction or contract); data about the beneficiary.

Every individual engaged in economic commercial activity related to trading in movables having the value of cultural heritage value and/or antique items is bound to keep the records of the register, documents supporting identity of the client, documents supporting financial transactions or contracts or other documents having legal force and related to execution of financial transactions or contracts for 10 years from the last day of final financial transaction or completion of the contract.

Therefore, numerous subjects collect information about individuals in order to prevent money laundering or terrorist financing; hence, to a certain extent they intrude into private life of individuals. Article 22 of the Lithuanian Constitution encompasses the right of immunity of the private life of an individual. Private life in a general sense is considered as a sphere of an individual into which no one is allowed to interfere without the individual's consent. Evolution of the right to private life into a self-sufficient virtue protected by the law was motivated by need of a human as a social being to be protected from unjustified interference into private matters by other individuals. 'Privacy is the main fundamental right, the essential guarantee of freedom, democracy, psychological wellbeing, individuality and creativity.'<sup>39</sup> Therefore, while reviewing legal acts dedicated to prevention of terrorism as well as ensuring national security, several questions arise in the light of constitutional law:

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39 Solove, D. J., *supra* note 20, p. 5.

Is it truly necessary that so many subjects collect this amount of information? Are the means foreseen truly adequate to the objective pursued? Both governmental and non-governmental institutions are bound by an obligation to collect information about other individuals, their transactions, family ties, concluded contracts, money exchanges, etc., and implementation of this obligation has put a heavy burden of costs both for governmental and non-governmental institutions. The means for storage, use and destruction of collected information and the persons responsible for its improper storage resulting in the risk of disclosure of such information to third parties are not determined in a sufficiently clear manner.

It must be noted that by now there has been no research carried out as to the necessity to limit the immunity of private life of an individual, by foreseeing an obligation for various subjects to collect information about contracts, family ties, currency exchanges, deposits, etc. No research has also been carried out with regard to the possible involvement of the Lithuanian citizens in terrorist activities, and the reality of possibility of financing terrorists from Lithuania. In addition, no research has been carried out as to the level of unsafety experienced by the Lithuanian people due to the fact that numerous subjects collect, store and transfer information about their private life to others.

Certain restrictions are possible in order to achieve certain goals, however, they may not limit the rights of an individual to the extent greater than necessary to achieve a particular goal and these restrictions need to be proportionate.

## Conclusions

Natural human rights, including the right to privacy, are encompassed in the main documents of numerous states – constitutions as well as international agreements. The state is not only to provide, but is bound to protect human rights that belong to human beings as naturally equal and free.

The state is the main guarantor of implementation of human rights, as it plays a vital role in ensuring human rights. However, it is noticed that a state with its power and institutional system might become a source of a threat to human rights.

Both levels of subjective and objective security depend on the level of implementation and protection of human rights. Ensuring natural rights, such as the right to life, the right to property, the right to privacy, the right to immunity, dignity etc., is directly linked to the virtue of security. In order to ensure security, individuals are prone to limit certain natural rights. However, a threat to ‘fetish’ security arises, which, in turn, may lead to overly and disproportionate limitations of human rights in the light of ensuring the goal of security.

The state is considered an object of national security, therefore, a notion dominates that the interests of the society or separate individuals are subordinate to those of the state. Therefore, a state, and not an individual, becomes the main goal of security policy. Diminishing importance of human rights is especially visible within the context of fight against terrorism or its financing.

Numerous subjects collect information about individuals in order to prevent the financing of terrorism, hence, by interfering into the private lives of these individuals. Therefore, the conclusion is that the necessity for so many subjects to collect this amount of information is not reasoned, as it is not clear whether the means foreseen are proportionate to the objective pursued.

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## TEISĖS Į PRIVATUMĄ RIBOJIMAS NACIONALINIO SAUGUMO APSAUGOS KONTEKSTE

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**Santrauka.** Pastaraisiais dešimtmečiais žmogaus teisių įgyvendinimo ir apsaugos klausimas yra tapęs demokratinių valstybių prioritetu. Žmogaus teisės įtvirtintos tiek nacionaliniu, tiek tarptautiniu lygmeniu, jų apsaugai sukurtos institucinės sistemos. Kita vertus, nacionalinio saugumo užtikrinimas, kaip ir žmogaus teisių apsauga, yra labai svarbus kiekvienos valstybės uždavinys ir egzistavimo sąlyga. Neretai nacionalinio saugumo interesai suponuoja poreikį susiaurinti kai kurias prigimtines žmogaus teises, pavyzdžiui, teisę į privataus gyvenimo neliečiamumą, teisę į asmens susirašinėjimo slaptumą ir kitas.

Tradicinė saugumo koncepcija yra siejama su nacionalinio saugumo užtikrinimu. Pagal tradicinę saugumo sampratą, saugumo objektu laikoma valstybė, todėl pagrindinis valstybių

dėmesys sutelkiamas į išorės grėsmes. Teigiama, jog svarbiausia yra apsaugoti valstybę nuo išorės agresijos, užtikrinti valstybės sienų bei institucijų apsaugą. Kartu užtikrinama ir žmogaus teisių apsauga. Tačiau pažymima, kad saugi valstybė nebūtinai reiškia ir saugius jos piliečius. Todėl žmogaus teisių apsaugos klausimas, siekiant užtikrinti nacionalinį saugumą, yra labai aktualus klausimas.

Straipsnyje pristatoma problema, susijusi su žmogaus teisių apsauga, kai nacionalinio saugumo užtikrinimo tikslais valstybėse numatomas žmogaus teisės į privatumą apribojimas.

Straipsnį sudaro dvi dalys. Pirmoje aptariama teisės į privatumą esmė, reikšmingumas ir santykis su kitomis žmogaus teisėmis. Pristatomi nacionaliniai ir tarptautiniai teisės aktai, skirti žmogaus teisių, tarp jų ir teisės į privatumą, apsaugai. Atkreipiamas dėmesys, jog iki šiol nėra pateiktos išsamios visa apimančios privatumo sąvokos. Taip pat nurodoma, jog keičiantis gyvenimo sąlygoms, vystantis technologijoms, atsiranda vis naujų grėsmių privatumui. Pristatomas mokslininkų požiūris į tris privatumo aspektus: fizinį, informacijos ir nuosavybės. Pažymima, kad teisė į privatumą nėra absoliuti ir gali būti teisėtai ribojama, siekiant tam tikrų, reikšmingų visuomenei tikslų.

Antroje straipsnio dalyje pristatoma teisės į privatumą ribojimo poreikis ir nacionalinio saugumo užtikrinimo būtinybė. Pagal tradicinę saugumo sampratą, saugumo objektu yra laikoma valstybė, todėl svarbiausia yra apsaugoti valstybės sienas, institucijas, vertybes, žmones. Pastaraisiais dešimtmečiais vyraujant nuomonei, kad nacionaliniam ir netgi tarptautiniam saugumui didžiausią pavojų kelia terorizmo grėsmė, valstybės ėmėsi legalizuoti prigimtinių žmogaus teisių apribojimą. Pristatoma teisės aktų analizė liudija, jog Lietuva numatė įvairių priemonių kovoti su terorizmu, ypač numatydama kliūtis terorizmo finansavimui. Teisės aktai numato pareigą daugeliui valstybinių, taip pat ir nevalstybinių institucijų (pvz., advokatai, notarai, auditoriai) pareigą rinkti informaciją apie asmenis, siekiant užkirsti kelią galimam pinigų plovimui, o tuo pat metu jie turi teisę tam tikra prasme išiveržti į tų asmenų privataus gyvenimo erdvę. Pažymima, jog iki šiol Lietuvoje nebuvo atlikti tyrimai, kiek tikslinga suvaržyti asmens privataus gyvenimo neliečiamumą numatant pareigą įvairiems subjektams rinkti informaciją apie asmenų sudaromus sandorius, giminytės ryšius, keičiamą valiutą, turimus indėlius ir kita. Iki šiol taip pat nebuvo atlikti ir tyrimai, kiek Lietuvos gyventojai gali dalyvauti teroristinėje veikloje, kiek realus teroristų finansavimo iš Lietuvos pavojus. Be to, taip pat nėra tyrinėta, kiek Lietuvos žmonės jaučiasi nesaugūs dėl tos aplinkybės, kad daugybė subjektų renka, saugoja ir perduoda kitiems informaciją apie jų privatų gyvenimą. Prieinama prie išvados, jog nėra pagrįsta būtinybė tokiai daugybei subjektų rinkti tokį kiekį informacijos, nes nėra aišku, ar numatytos priemonės yra proporcingos siekiamam tikslui.

**Reikšminiai žodžiai:** teisė į privatumą, nacionalinis saugumas, žmogaus teisės.

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