



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1997**

**Addendum**

**LITHUANIA\***

[18 December 2002]

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\* The information submitted by Lithuania in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.97 (1 October 1998).

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## I. GENERAL INFORMATION

### A. Introduction

1. The Republic of Lithuania acceded to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by resolution No. I-1772 of 10 September 1991 of the Supreme Council of the Republic of Lithuania. For Lithuania, the Convention entered into force on 20 March 1996.
2. The Republic of Lithuania presents this initial report pursuant to the general guidelines of the Committee against Torture adopted at the 85th meeting of the Committee on 30 April 1991 and revised on 18 May 1998 (CAT/C/14/Rev.1).

### B. General legal framework

3. The fundamental human rights are enshrined in chapter II of the Constitution of the Republic of Lithuania (hereinafter “the Constitution”). Prohibition of torture or other inhuman or degrading treatment is also stipulated in chapter II; article 21 of the Constitution reads:

“The person shall be inviolable. Human dignity shall be protected by law. It shall be prohibited to torture, injure, degrade, or maltreat a person, as well as to establish such punishments. No person may be subjected to scientific or medical testing without his or her knowledge thereof and consent thereto.”

4. Article 30 of the Constitution guarantees any person whose constitutional rights or freedoms are violated the right to appeal to court; article 29 provides that all people shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions.
5. Chapter IX of the Constitution regulates the system of courts. Article 109 stipulates that the courts shall have the exclusive right to administer justice. While administering justice, judges and courts shall be independent. While investigating cases, judges shall obey only the law.
6. In pursuance of the reform of the legal system, which started back in 1994, the Seimas (historical name of Parliament) of the Republic of Lithuania (hereinafter “the Seimas”) approved by Law No. VIII-1968 of 26 September 2000 the new Criminal Code of the Republic of Lithuania.<sup>1</sup> This Code, as compared with the previous Code, includes a new notion of a dangerous criminal act - a misdemeanour, which can only be punishable by non-custodial penalties or by short-term imprisonment (up to 45 days). In addition, the Code also provides for the imposition of non-custodial sentences for more frequent crimes; it also sets forth new types of punishment: deprivation of public rights, restriction of liberty, arrest (short-term imprisonment from 15 to 90 days).
7. The new Code of Criminal Procedure<sup>2</sup> was adopted by Law No. IX-785 of 14 March 2002. Article 11 of this Code provides for a prohibition analogous to the one stipulated in article 18 of the current Code of Criminal Procedure, which prohibits resort to violence, intimidation, degrading treatment or treatment impairing a person’s health.

8. Book Six of the Civil Code, “Law on Obligations”, which was enacted by Law No. VIII-1864 of 18 July 2000 regulates responsibility for damage arising from illegal actions of public authorities as well as responsibility for damage arising from illegal actions of pre-trial investigation officials, prosecutors, judges and courts.

9. The new Penal Code of the Republic of Lithuania<sup>3</sup> regulating the principles, procedure and conditions of the enforcement of all types of punishment as well as the legal status of persons sentenced was adopted on 27 June 2002. This Code also provides for a new procedure and basis for the classification of persons sentenced to imprisonment.

### **C. Other contractual obligations**

10. On 21 December 1998, the Seimas adopted Law No. VIII-984 which abolished the death penalty. On 22 June 1999, the Seimas ratified by Law No. VIII-1251 Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates the abolition of the death penalty. The 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well as Protocols No. 1 and No. 2 to the Convention were ratified by Law No. VIII-861 of 15 September 1998.

11. Lithuania has acceded to the main universal and regional documents relating to human rights as well as to the majority of international criminal conventions, i.e:

The 1957 European Convention on Extradition and its Additional Protocols of 1975 and 1978;

The 1959 European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol of 1978;

The 1972 European Convention on the Transfer of Criminal Proceedings;

The 1983 European Convention on the Transfer of Sentenced Persons and its Additional Protocol 1997;

The 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;

The 1970 European Convention on the International Validity of Criminal Judgements;

The 1977 European Convention on the Suppression of Terrorism;

The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

The 2000 United Nations Convention Against International Organized Crime.

12. International agreements of the Republic of Lithuania, the Code of Criminal Procedure and the Criminal Code constitute the basis for judicial cooperation in criminal matters with foreign States.

13. Considering the place of international agreements of Lithuania within the domestic law as well as the provisions of the Code of Criminal Procedure, the implementation of individual measures pertaining to the legal cooperation in criminal matters takes place solely in observance of the provisions of international agreements of Lithuania (transfer of sentenced persons to serve the remainder of the sentence, extradition of persons who committed offences, recognition of foreign criminal judgements).

14. Articles 21-22<sup>5</sup> of the current Code of Criminal Procedure also regulate legal cooperation in criminal matters (the notification procedure between courts, prosecutor's offices, pre-trial investigation and interrogation bodies with the respective foreign institutions, the procedure for discharging letters rogatory or requests of legal assistance from foreign institutions, extradition of individuals, grounds for refusing extradition of individuals from Lithuania, limits of criminal liability of an individual extradited by a foreign State).

15. Article 7<sup>1</sup> of the new Criminal Code regulates the extradition of individuals who have committed offences (grounds for granting and refusing extradition).

16. Legal cooperation in criminal matters takes place also through usual diplomatic channels. This particular form of cooperation is also followed in cases where there is no international agreement regulating legal cooperation in criminal matters.

#### **D. Relation between international and national law**

17. Part 3 of article 138 of the Constitution stipulates that "international agreements which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania". The system of harmonization of international and national law chosen by Lithuania is based on the provision that international agreements are incorporated in the country's legal system.

18. The Law on International Agreements of the Republic of Lithuania (No. VIII-1248, 22 June 1999) provides that where an international agreement of Lithuania, which has been ratified and entered into force, contains different provisions from those contained in laws or other legal acts of Lithuania which are valid at the time of concluding that agreement or which entered into force after the date of the coming into force of that agreement, the provisions of the international agreement of Lithuania shall apply.

19. Article 1.13 of the Civil Code provides that in cases where international agreements of Lithuania lay down regulations different from those stipulated by the Code and other laws of Lithuania, the provisions of international agreements shall apply. International agreements of Lithuania are applied directly in respect of civil relations, with the exception of cases, where an international agreement provides that a national legal act of Lithuania is necessary for its application.

#### **E. Legal remedies**

20. Article 109 of the Constitution reads: "The courts shall have the exclusive right to administer justice. While administering justice, judges and courts shall be independent. While

investigating cases, judges shall obey only the law.” The Lithuanian system of courts is regulated by article 111 of the Constitution and the Law on Courts (No. IX-788 of 14 March 2002).

21. The entire court system of Lithuania is composed of courts of the general competence and specialized courts. Courts of the general competence which hear civil and criminal cases are the Supreme Court, the Court of Appeals and County and District Courts. District courts also hear administrative cases assigned to their competence by law. In hearing a civil case, a court of the general competence may at the same time decide on the legitimacy of an individual administrative act. The High Administrative Court and County Administrative courts are specialized courts hearing cases in respect of the disputes arising from administrative legal relations. Other specialized courts can be established for the hearing of labour, family, juvenile, bankruptcy and other cases. Courts with special powers cannot be established in Lithuania in peacetime.

22. In Lithuania, all citizens as well as foreign citizens and stateless persons have a right to judicial defence from encroaching upon their life and health, personal freedom, property, honour and dignity, as well as other rights and freedoms guaranteed to them by the Constitution and other laws; they also have a right to judicial defence from actions or omissions of State government and administration institutions and officials. Pursuant to law, each person concerned has a right, in accordance with the procedure established by laws, to apply to court in order to defend an infringed or disputed right or an interest protected by laws.

23. The Seimas Ombudsmen’s Office investigates complaints concerning the abuse of officials of State government and administration institutions, local self-government institutions, military institutions and institutions ranking as such.

24. The Office of the Equal Opportunities Ombudsman set up in 1998 supervises the implementation of the Law on Equal Opportunities (No. VIII-947, 1 December 1998). The purpose of which is to ensure implementation of equal rights of women and men guaranteed in the Constitution.

25. The Office of the Ombudsman for the Protection of the Rights of the Child, set up in 2000 investigates complaints of natural and legal persons about actions and omission of State and local self-government institutions or agencies and officials thereof as well as other natural and legal persons, which result or may result in violations of the rights or legitimate interests of the child.

26. The fundamental principles, procedure and restrictions pertaining to the implementation of the right of citizens of Lithuania and media to obtain information from State and local self-government institutions are set out in the Law on the Right to Obtain Information from State or Municipal Institutions (No. VIII-1524, 11 January 2000) as well as in some of the other legal acts.

27. State and municipal institutions have to provide information about their activities. Refusal to provide information is only possible where this is necessary for a democratic society and is more important than the right of a person to obtain information.

## II. INFORMATION ACCORDING TO ARTICLES OF THE CONVENTION

### A. Article 2

28. The requirement to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment, as stipulated in the Convention, is enshrined in Chapter II of the Constitution. Article 21 of the Constitution prohibits any acts of torture in all territories under the jurisdiction of the State and stipulates that “it shall be prohibited to torture, injure, degrade, or maltreat a person, as well as to establish such punishments”. This article also contains a prohibition to subject a person to scientific or medical testing without his or her knowledge thereof and consent thereto.

29. It has to be noted that some of the rights and freedoms enshrined in the Constitution can be subjected to temporal restrictions; however, such restrictions shall be related with martial law or a state of emergency (art. 145). The Constitution contains a finite list of rights and freedoms which can be restricted; article 21 is not included in this list.

30. Constitutional provisions prohibiting acts of torture and other cruel, inhuman and degrading treatment or punishment are also transposed into the criminal statutes of Lithuania. As stipulated by article 21 of the Criminal Code, a punishment is not intended to cause physical torment or to degrade human dignity.

31. Articles 2 and 41 of the new Criminal Code stipulate that a punishment, as a measure of compulsion applied by the State, shall be imposed only on an offender as defined by laws. One of the purposes of a punishment is to ensure the implementation of the principle of justice and to affect the persons who have served their sentence inasmuch that they abide by laws and do not commit any new crimes.

32. As already mentioned, the Seimas passed the law abolishing the death penalty in 1998 and ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in 1999. Lithuania has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well as its additional Protocols.

33. Chapter thirteen of the Criminal Code, “Crimes to the Public Service”, encompasses all crimes encroaching on the principles of honest discharge of public service or duties, or public interests. In addition to the general elements relating to the subject of a crime, the subject of such crimes has a special element - a public official or public servant. Article 287 of this chapter, “Abuse of authority”, is relevant to the Convention. By this provision, the legislator provides for criminal liability for public officials and public servants, who in the performance of their duties or while in service, obviously exceed the rights pertaining to their office conferred to them by laws and thereby cause serious damage to the persons concerned. Damage might be material, physical or moral. (Crimes to the public service will be discussed in greater detail below together with article 4 of the Convention).

### **B. Article 3**

34. The Law on the Legal Status of Aliens (No. VIII-978, 17 December 1998) regulates the arrival and departure, temporary or permanent residence, employment, legal responsibility and other issues relating to the legal status of aliens in Lithuania. Article 36 provides that the expulsion of an alien shall be postponed provided there may be a real threat to his life or health in the country to which he is being deported or where he may be subject to prosecution for his political convictions or any other reasons.

35. Government resolution No. 335 of 23 March 2000 approved the procedure for the implementation of decisions pertaining to the requirement for aliens to depart or to be expelled from Lithuania. This text also provides that a decision cannot be taken to expel an alien from Lithuania to a State where he will be prosecuted on the grounds of his sex, race, nationality, language, origin, beliefs, political or any other convictions, national or social origin and subsequently will be deprived of the opportunity to use the defence of this state.

36. The Law on Refugee Status (No. I-1004, 4 July 1995) also provides for the prohibition to expel an alien, who has filed an application for refugee status, from Lithuania and to return him to the state where his life or health is in danger, which means that such person can be deported solely to a safe country of origin or a third country. A safe country of origin is defined as a country of origin of a person where the legal system, the legal norms applied and political relations do not result in persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, where nobody is submitted to cruel, inhuman or degrading treatment and is not punished in like manner, and where human rights and fundamental freedoms are not violated. An alien, who in accordance with this law cannot enjoy asylum and to obtain refugee status, can be expelled from Lithuania solely according to the procedure prescribed by laws.

37. The Migration Department under the Ministry of the Interior is the authority responsible for the adoption of decisions relating to the expulsion of aliens. Decisions to expel an alien are executed in writing, the alien is familiarized with the decision in his native language or in a language that he knows best. The decision also stipulates the right and procedure for lodging an appeal. In adopting the decision to expel an alien, the Migration Department has to ascertain whether the life or health of the said alien in the State whereto he is deported will not be in real danger, or he will not be subject to persecution on the grounds of political convictions or other reasons. Pursuant to article 19 of the Law on the Legal Status of Aliens, such aliens may be issued a temporary residence permit in Lithuania for reasons of humanitarian nature.

38. Aliens, who arrived in Lithuania with a view to seeking asylum from persecution, have the right to apply for refugee status pursuant to the Law on Refugee Status. If the Migration Department establishes that the alien who applied for refugee status does not conform to the definition of a refugee, but is in danger in his State of origin or any other State, to which he can be deported, the Migration Department issues the said alien with a temporary residence permit in Lithuania for humanitarian reasons. Decisions are executed in writing and aliens are familiarized with the decisions in their native language or in a language that they know best. Decisions specify the appeals procedure and aliens are given a copy thereof. Asylum-seekers are entitled to legal assistance by the State in the course of the asylum procedure.

39. Reasons for the application of the non-refoulement principle in respect of an alien shall be established by the Migration Department. To this end, reports on the situation in foreign countries, prepared by foreign countries, international and non-governmental organizations, information presented in the mass media and other sources of information shall be used. The decision shall be taken in each individual case.

40. Aliens shall be entitled to appeal against the decisions of the Migration Department to the Vilnius County Administrative Court.

41. Within the period of 2000-2002, 1,135 aliens were expelled from Lithuania through border crossing points, of which 40 after serving their sentence.

#### **Aliens expelled from Lithuania in 2000-2002**

	2000	2001	In 5 months of 2002
Total number of aliens expelled	459	541	135
Of which:			
having served the sentence	25	13	2
According to their nationality:			
Russian	175	154	29
Belarusian	100	150	43
Ukrainian	30	29	13
Latvian	26	41	9
Azerbaijani	23	23	7
Moldavian	16	17	5
Vietnamese	15	36	-
Armenian	8	16	2
Afghan	8	12	2
Pakistani	6	5	2
Indian	4	7	-
Other States	18	51	23

#### **Aliens deported to Lithuania from foreign countries in 2000-2002**

	2000	2001	In 5 months of 2002
Total number of aliens deported	3 636	4 083	1 721
Of which:			
Aliens who have committed a crime or any other violation of law	232	321	138
Aliens who have submitted a false or somebody else's travel document	50	48	20
According to the country from which the persons have been deported:			
Great Britain	1 372	1 275	638
Germany	717	946	345
Sweden	412	288	137

**Table (continued)**

	2000	2001	In 5 months of 2002
Belarus	161	172	26
Denmark	159	237	59
Norway	152	255	71
The Netherlands	129	177	71
Latvia	122	100	33
Russia	64	37	9
Finland	47	48	8
Spain	11	63	40
Switzerland	24	71	22
France	13	29	15
Israel	8	78	31
Other States	245	307	216

**C. Article 4****1. Torture-related crimes provided for in the Criminal Code**

42. *Article 72<sup>1</sup>. Incitement against national, racial, ethnic, religious or other group of people:*

(a) Oral or written public statements or statements published in the mass media that ridicule, express contempt towards, incite hatred against or encourage discrimination against a group of people or against an individual person on account of their sex, race, nationality, language, origin, religion, convictions or opinions shall be punished by imprisonment for a term of up to two years or by a fine and the deprivation of the right to hold a certain position or to do a certain job or to be engaged in certain activities up to five years;

(b) Public incitement of violence or the use of deadly physical force against a group of people or an individual person on account of their sex, race, nationality, language, origin, religion, convictions or opinions, or the payment for or provision of other financial aid for such acts shall be punished by imprisonment for a term of up to five years and the deprivation of the right to hold a certain position or to do a certain job, or to be engaged in certain activities up to five years; or by imprisonment without the deprivation of such right;

(c) The act specified in paragraph 2 of article 72 resulting in severe consequences shall be punished by imprisonment for a term of up to 10 years.

43. *Article 104. Intentional homicide:* Intentional homicide shall be punished by imprisonment for a term from 5 to 12 years.

44. *Article 105. Homicide with aggravated circumstances:* Intentional homicide of the following persons or for the following purposes shall be punished by a 10 to 20 year life imprisonment: (a) of mother or father; (b) of two or more people; (c) of a pregnant woman; (d) by acting in a manner endangering the lives of many people; (e) committed in an especially cruel way; (f) in committing another serious crime; (g) with the purpose of concealing another

serious crime; (h) for personal gain; (i) for the purposes of hooliganism; (j) because the victim is performing his official duties or his duties as a citizen; (k) if committed by a specially dangerous recidivist (except for articles 106 and 107); (l) if committed by a person previously guilty of premeditated murder; (m) of a young child or a person in a helpless state.

45. *Article 110. Promoting suicide or aiding and abetting suicide:* Any person who causes a human being, who is dependent on the perpetrator financially or otherwise, to commit suicide or through cruel or similar behaviour aids and abets a human being to commit suicide shall be punished by imprisonment for a term of up to five years.

46. *Article 111. Intentional serious bodily harm, infecting with a disease or causing any other ailment:*

(a) Intentional serious bodily harm, infecting with a disease or causing any other ailment, which is dangerous to the life of a person or results in the victim's loss of sight, hearing or any other organ or functions thereof, a mental disease, termination of pregnancy, infection with HIV, also any other health impairment related with the permanent loss of at least one third of the general working capacity, or irretrievable disfigurement of the face shall be punished by imprisonment for a term from two to seven years;

(b) The same act committed by a specially dangerous recidivist or by cruel torturing, or grievous bodily harm in relation with the discharge by the victim of his public or civic duty, and infliction of grievous bodily harm to a young child or a person in a helpless state shall be punished by imprisonment for a term from 5 to 10 years.

47. *Article 112. Intentional minor bodily harm, infecting with a disease or causing any other ailment:*

(a) Intentional bodily harm, infecting with a disease or causing any other ailment, which is not dangerous to one's life and does not develop the after-effects specified in article 111 of this Code, but results in long-term derangement of the functions of any organ or any other long-term disintegration of one's health or substantial permanent loss of less than one third of the general working capacity shall be punished by imprisonment for a term of up to four years or corrective labour works up to two years;

(b) The same act, committed in relation with the discharge by the victim of his public or civic duty or by a specially dangerous recidivist or by cruel torturing, or infliction of minor bodily harm to a young child or a person in a helpless state shall be punished by imprisonment for a term of up to five years.

48. *Article 117. Criminal battery and cruel torturing:*

(a) Intentional battery or any other act of torture causing physical pain shall be punished by imprisonment for a term of up to six months or a fine;

(b) The same act towards a minor shall be punished by imprisonment for a term of up to one year or a fine;

(c) Systematic battery or any other acts of violence of cruel torturing shall be punished by imprisonment for a term of up to one year or a fine;

(d) The acts specified in paragraph 3 of this article committed against a young child shall be punished by imprisonment for a term of up to two years or a fine.

49. *Article 129. Failure to provide medical assistance to a patient:*

(a) Failure to provide medical assistance to a patient without any important reason if committed by a person, who, according to the law or any special regulation, has to provide medical assistance, shall be punished by correctional labour for a term of up to one year or a fine, or shall incur the application of public effect measures;

(b) The commission of the same act which resulted or knowingly could have resulted in the death of the patient or in any other grievous consequences to the patient shall be punished by imprisonment for a term of up to two years with the deprivation of the right to do professional work up to three years.

50. *Article 131. Illegal deprivation of liberty:*

(a) Illegal deprivation of liberty of an individual shall be punished by imprisonment for a term of up to five years;

(b) The same acts committed repeatedly or towards a minor by a group of individuals with prior agreement or by a specially dangerous recidivist shall be punished by imprisonment for a term from four to eight years.

51. *Article 131<sup>1</sup>. Taking of hostages:*

(a) Taking or keeping a person hostage, related with a threat to kill, inflict a bodily injury or to further keep the person hostage for the purpose of making the State, an international organization, a natural or legal person or a group of persons perform any act or refuse from performing such act as a condition for releasing the hostage shall be punished by imprisonment for a term of up to 10 years;

(b) The same acts resulting in serious consequences shall be punished by imprisonment for a term from 5 to 15 years.

52. *Article 131<sup>2</sup>. Illegal committing of a person to a psychiatric hospital:* Committing of a knowingly healthy person to a psychiatric hospital shall be punished by imprisonment for a term of up to two years or by correctional labour for the same period of time with the deprivation of the right to hold a certain position or to do a certain job or to be engaged in certain activities from one to three years, or without the deprivation of such a right.

53. *Article 132. Libel:*

(a) Spreading of knowingly false stories humiliating another person shall be punished by imprisonment for a term of up to one year, or correctional labour for the same period of time, or a fine, or shall incur the application of public effect measures;

(b) The same act, if committed in a publication or a writing disseminated in any other way, an anonymous letter or by a person with previous conviction for libel shall be punished by imprisonment for a term of up to two years or correctional labour for the same period of time, or a fine;

(c) Libel related to accusing a person of the commission of a serious crime shall be punished by imprisonment for a term of up to five years.

54. *Article 132<sup>1</sup>. Blackmailing of a person:* Requiring a person to perform illegal actions or to restrain from performing legal actions, or to act in any other way according to directions of the perpetrator by direct or intimated threatening to a person or his relatives of violence, destruction of property or causing an injury or divulging of discreditable information shall be punished by imprisonment for a term of up to three years.

55. *Article 133. Insult:*

(a) Intentional humiliation of a person's dignity by the written or spoken word or by an offensive act shall be punished by correctional labour up to one year or a fine, or shall incur the application of public effect measures;

(b) Insult in a publication or a written work disseminated otherwise, also insult by a person with previous conviction for insulting shall be punished by imprisonment for a term of up to one year or correctional labour for the same period of time, or a fine;

56. *Article 201<sup>1</sup>. Resistance to a police officer or a police supporter:* Resistance to a police officer or a police supporter who is discharging his duties of keeping public order, if the act of resistance is related with violence or threat to use violence, also, forcing the said persons by violence or threat to use violence to perform obviously illegal actions shall be punished by imprisonment for a term of up to five years or correctional labour up to two years, or a fine.

57. *Article 203. Threatening or violence against an official, a public worker or a citizen discharging public functions:*

(a) Threatening to kill, inflict grievous bodily harm or to destruct property of an official or public worker, with a view to terminating their official or public activities or to change the character thereof for the benefit of the person threatening, also such threatening to a citizen in relation to his participation in warning, preventing a crime or antisocial offence shall be punished by imprisonment for a term of up to two years, or correctional labour up to one year;

(b) Inflicting a minor bodily harm, battery or any other acts of violence against an official or public worker in relation with his official activities or discharge of a public duty, also, against a citizen in relation to his participation in warning, preventing a crime or antisocial offence shall be punished by imprisonment for a term of up to three years or correctional labour up to two years.

58. *Article 203<sup>1</sup>. Attempt on the life of a police officer or police supporter:* Attempt on the life of a police officer or police supporter in relation to their official activities or public duties of keeping public order shall be punished by imprisonment for a term from 5 to 15 years.

59. *Article 214. Arbitrariness:*

(a) Arbitrary exercise, without observing the procedures established by law, of one's own or another person's disputed or recognized yet unrealized real or alleged right, thereby causing major harm to the lawful interests of a person, enterprise, office or organization, or intimidation to use physical violence against the victim or his relatives or to destroy or damage their property (arbitrariness) shall be punished by imprisonment for a term of up to three years and a fine, or only a fine;

(b) Arbitrariness, if committed by a group of persons with prior agreement or by a person with previous conviction of arbitrariness shall be punished by imprisonment for a term of up to five years and a fine.

**2. Crimes against public safety and public order provided for in chapter 10 of the Criminal Code**

60. *Article 225. Hooliganism:*

(a) Hooliganism, i.e. intentional acts constituting gross violation of public order and demonstrating obvious disrespect for the society shall be punished by imprisonment for a term of up to one year, or correctional labour for the same period of time, or by a fine;

(b) Malignant hooliganism, i.e. the same acts characterized by extreme cynicism or extreme impertinence or related with the resistance to a representative of the authorities or a public representative discharging the duties of keeping public order or other citizens who prevent hooligan acts, also if committed by a person with previous conviction of hooliganism, shall be punished by imprisonment for a term of up to five years;

(c) Acts specified in paragraphs 1 and 2 of this article, if committed by using or by trying to use firearms, knives, knuckledusters or any other steel objects, also other items adjusted specifically for incurring bodily harm shall be punished by imprisonment for a term from two to seven years.

61. *Article 227<sup>2</sup>. Terrorizing a person:* Intimidation of a person by threatening him with an explosion, arson or any other act dangerous to human life, health or property, also systematic intimidation of a person by using any other mental coercive measure shall be punished by imprisonment for a term of up to five years and a fine or without a fine.

62. *Article 227<sup>3</sup>. Acts of Terrorism:* Planting of explosives with a view to causing an explosion, also explosion or arson, if committed in a residential, work, assembly area or a public place, shall be punished by imprisonment for a term of up to 10 years. The same act which caused bodily harm, or as a result of which a vehicle or a building, or equipment within a building was destroyed or damaged, or an act of terrorism committed by an organized group shall be punished by imprisonment for a term from 3 to 12 years. An act of terrorism which caused moderate or serious bodily harm to three or more persons, or death of the victim, also explosion or arson, directed against a state authority or administrative institution or an enterprise or a facility of strategic importance to national security shall be punished by imprisonment for a term from 10 to 20 years or life imprisonment.

63. *Article 242<sup>1</sup>. Manufacturing or distribution of works propagating the cult of violence and cruelty:* Manufacturing, distribution, demonstration or keeping of motion-pictures and video films or any other works propagating the cult of violence and cruelty for the purposes of distributing or demonstrating them shall be punished by imprisonment for a term of up to two years or correctional labour for the same period of time, or by a fine.

### **3. Public Service related crimes regulated by chapter 13 of the Criminal Code**

64. *Article 285. Abuse of office:*

(a) Intentional abuse of office by a public official or a civil servant in the interests contrary to the office, where this is committed for personal benefit, or where this causes great damage to the State or other persons shall be punished by imprisonment for a term of up to four years and a fine or by a fine with the deprivation of the right to hold a certain position or to work in a certain job or engage in certain activities up to five years;

(b) Intentional abuse of office by a public official or a civil servant in the interests contrary to the office, where this is committed for personal benefit and caused great damage to the interests of the State or other persons, shall be punished by imprisonment for a term from three to five years and the deprivation of the right to hold a certain position, or to work in a certain job or engage in certain activities up to five years.

65. *Article 287. Abuse of authority:*

(a) A public official or a civil servant, who exceeds his authority at law for personal benefit, or where this causes great damage to the interests of the State or to other persons shall be punished by imprisonment for a term of up to five years and a fine or by a fine and the deprivation of the right to hold a certain position or to work in a certain job or engage in certain activities for up to five years;

(b) A public official or a civil servant, who exceeds his authority at law for personal benefit, and where this causes great damage to the interests of the State or to other persons shall be punished by imprisonment from three to six years and the deprivation of the right to hold a certain position, to work in a certain job or to engage in certain activities for up to five years.

66. *Article 288. Failure to discharge duties of the office:* Failure to perform by a public official or a civil servant of his duties or improper performance thereof through carelessness, where this causes great damage to the interests of the State or other persons shall be punished by imprisonment for a term of up to four years or a fine with the deprivation of the right to hold a certain position, to work in a certain job or to engage in certain activities for up to five years, or without the deprivation of such right.

67. *Article 289. Official forgery:*

(a) Entering of knowingly false information by a public official or a civil servant into an official document or drawing up or issuing of a forged document, or endorsing of a knowingly forged document with a seal (stamp) and (or) signature, or any other forgery of an official

document shall be punished by imprisonment for a term of up to four years or by a fine with the deprivation of the right to hold a certain position, to work in a certain job or to engage in certain activities for up to five years, or without the deprivation of such a right;

(b) The same acts committed with respect to a customs declaration, a document certifying payment of a tax or any other especially important official document, or where this caused great damage to the interests of the State shall be punished by imprisonment from three to six years or by a fine with the deprivation of the right to hold a certain position, to work in a certain job or to engage in certain activities for up to five years.

68. According to the data of the Information Technology and Communication Department under the Ministry of the Interior of Lithuania, the number of registered and detected crimes during the following periods according to article 287 of the Criminal Code "Abuse of authority" is as follows: in 2000, 13 crimes were registered, of which 10 were detected; in 2001, 14 were registered, of which 6 detected; within the period of four months of 2002, 2 were registered, of which 1 detected.

#### **4. Rights and duties of individual categories of officials**

69. The Law on Police Activities (No. VIII-2048, 17 October 2000) regulates the activities of police officers; the activities of individual police services are regulated by instructions. The Law on the Prosecutor's Office (No. I-599, 13 October 1994) and the Statute of Prosecution (No. I-780, 31 January 1995) regulate the activities of prosecutors and officials of equivalent status, etc. Thus, where authority specified in the said laws and other regulatory enactments is exceeded, the acts of an official or a civil servant shall be qualified in accordance with article 287 of the Criminal Code. Where an official or a public servant, as a result of exceeding his authority, caused the person's death or a different-degree bodily harm, encroached upon the person's freedom, honour and dignity, the official or the public servant incurs criminal liability, and his acts shall be qualified not only according to article 287 of the Criminal Code but also according to those articles of the Criminal Code which prescribe criminal liability for homicide, bodily harm, violations of a person's freedom, honour and dignity.

70. Article 21 of the Law on Police Activities provides that a police officer shall respect and protect human dignity, ensure and safeguard human rights and freedoms, guarantee the rights and legal interests of the persons arrested or brought to the police establishment, provide first aid to victims of law violations and to persons who are in a helpless state. The provisions of this law (arts. 23, 24, 25 and 26) also lay down the conditions and basis for the use of firearms, physical coercion and any other coercive measures. The said provisions prescribe that coercion which might cause bodily injuries or death may be used to the extent which is necessary for the fulfilment of the official duty, and only after all possible measures of persuasion or other measures have been used with no effect.

71. Internal Regulations of Correctional Labour Establishments, approved by Order No. 172 of 16 August 2000 of the Minister of Justice, also contain individual chapters stipulating the basic requirements for the relations between the personnel of correctional labour establishment and the convicts. One of the said requirements is that the personnel of a correctional labour establishment do not have the right to use force against the convicts, except in cases of self-defence or attempts of escape and active or passive physical resistance, and only in

observance of laws. Article 84 of the Code of Correctional Labour, regulating the purposes, basis and procedure for using a firearm, also stipulates that firearms in correctional labour establishments can be used when all the other possible ways and measures have been used or when the use thereof is not possible due to the shortage of time.

72. Article 2 of the Law on the State Security Department of Lithuania (20 January 1994, No. I-380) stipulates that the activities of the State Security Department shall be based on the principles of legality, respect for human rights and freedoms, publicity and confidentiality; article 5 provides that the State Security Department shall strictly adhere to the principle of inviolability of human rights and freedoms. Human rights and freedoms can only be restricted in cases provided for by laws.

73. The Law on the Prosecutor's Office stipulates that officers of the prosecutor's office shall make decisions with undivided authority, adhering to the principle of presumption of innocence and citizens' equality before law, irrespective of their social and property status, official duties, party membership, origin, race and nationality, language, education, religion and occupation.

#### **5. Criminal liability for crimes against justice prescribed in chapter 14 of the Criminal Code**

74. *Article 291. False reporting about a crime:* Making a false report about a knowingly non-existent crime with interrogation, investigation or prosecution institutions, or with the court shall be punished by imprisonment for a term of up to one year with a fine or without a fine.

75. *Article 292. False denunciation of a person:*

(a) False denunciation to an institution or an officer, who has the right to initiate criminal or administrative prosecution, that a person has committed a criminal act or an administrative offence shall be punished by imprisonment for a term of up to two years with a fine or without a fine, or by a fine;

(b) The same acts committed for personal gains or by fabricating evidence or in accusing a person of the commission of a serious crime, also, when such acts have resulted in grievous consequences shall be punished by imprisonment for a term of up to five years.

76. *Article 293. False evidence, conclusions, explanations and interpretations:*

(a) Any person who, during the interrogation, pre-trial investigation or during the trial, being a witness or the victim, gives false evidence, or being an expert or a specialist, gives false conclusions or a false explanation, or, being an interpreter, makes a false or deliberately misleading interpretation shall be punished by imprisonment for a term of up to two years with a fine or without a fine, or by a fine;

(b) The same acts committed for personal gain or by artificially creating evidence, also, when such acts resulted in unlawful arrest, conviction or acquittal of a person, or where the person suffered substantial property damage, also, when such acts resulted in other grievous consequences shall be punished by imprisonment for a term of up to four years with a fine or without a fine.

77. *Article 294. Misprision:* Any person who, without any good reason, within the shortest time possible fails to report to the institutions of interrogation, investigation, the prosecutor's office or to the court about illegal transportation of foreigners across the State border of Lithuania or about concealment or transportation of foreigners who have illegally crossed the State border of Lithuania (paragraphs 2 and 3 of article 82-1), intentional homicide (arts. 104 and 105), and hijacking of an airplane (art. 249<sup>2</sup>), of which he has knowledge, either in preparation, in progress or already committed shall be punished by imprisonment for a term of up to two years with a fine or without a fine, or by a fine.

78. *Article 295. Concealment of a crime:* Concealment without a prior promise of intentional homicide (arts. 104 and 105), intentional serious bodily harm in aggravating circumstances (paragraph 2 of article 111), rape in aggravating circumstances (paragraphs 3 and 4 of article 118), killing of persons protected under international humanitarian law (art. 333), exiling of civilians of an occupied State (art. 334), injury, torture or other inhuman treatment of persons protected under international humanitarian law (art. 335), violation of the norms of international humanitarian law concerning civilians and the protection of their rights (art. 336), concealment, destruction or tampering with the instruments or means of a crime, traces of a crime, objects obtained in a criminal way and documents which have evidential value shall be punished by imprisonment for a term of up to four years with a fine or without a fine, or by a fine.

79. *Article 296. Harboursing of the offender:*

(a) Harboursing without a prior promise the person who has committed a major crime with a view to aiding him avoid criminal prosecution or avoid serving a custodial sentence shall be punished by imprisonment for a term of up to five years with a fine or without a fine;

(b) The person shall not be held liable under this article, if he harboured a member of his family or a close relative.

80. *Article 297. Influencing a witness, a victim, an expert, a specialist, an inspector or an interpreter:*

(a) Seeking to influence in any way the said persons so that they give false evidence in the course of interrogation, pre-trial investigation or trial shall be punished by correctional labour for a term of up to two years or a fine;

(b) The same acts done by suborning the said persons or by the use of physical violence against them, also by threatening to use physical violence, to destroy or damage their property or by blackmailing otherwise shall be punished by imprisonment for a term of up to four years with a fine or without a fine, or by a fine.

81. *Article 297<sup>1</sup>. Seeking to influence the victim to make his peace with the guilty party:* if this is done by suborning or by the use of physical violence against the said persons, their family members, or close relatives, or by threatening to use physical violence, or by blackmailing otherwise shall be punished by imprisonment for a term of up to four years with a fine or without a fine, or by a fine.

82. *Article 303. Disrupting the work of penal institutions:* Any person who, while held in custody, held under arrest, or serving a penalty of imprisonment terrorizes another person confined in a penal institution shall be punished by imprisonment for a term of up to six years.

83. Preparations for a crime means the finding or adaptation of instruments or means of a crime or any other intentional creation of conditions to commit a crime. An attempt to commit a crime means an intentional act which would have resulted in the completion of the act if not prevented by circumstances beyond the control of the perpetrator. The penalty for the preparations for a crime and for an attempt to commit a crime shall be imposed in accordance with the law prescribing liability for the said crime. When determining the penalty the court shall take into account the nature and extent of dangerousness of the acts committed by the perpetrator, the degree of completing the criminal intention and the reasons for which the crime has not been completed.

84. Complicity means intentional participation of two or more persons in the commission of the crime. In addition to perpetrators, accomplices in a crime are organizers, instigators and abettors. A perpetrator means the person who commits a crime. An organizer means the person who organizes and commands the commission of a crime. An instigator means the person who incites another person to commit a crime. An abettor means the person who aids the commission of a crime by counselling, instructing, providing with the means of the crime or removing obstacles, also the person who promises in advance to harbour the offender or to hide the instruments or means of the crime, the traces of the act or the objects obtained in a criminal way. When determining the penalty the court shall consider the extent and nature of participation of each accomplice in the commission of the crime.

85. Article 41 of the Criminal Code provides that when determining the penalty the following shall be considered as aggravating circumstances: the act is committed by a person who has previously committed a crime; the act is committed by an organized group; the act is committed for personal gain or out of other base motives; the committed act caused grave consequences; the act is committed against a young child or against an old person, a person in a helpless state, or against a person who is materially or by relations in service dependent on the perpetrators; juveniles were instigated to commit the crime; the act is committed with extreme cruelty or subjecting the victim to degrading treatment; the act is committed taking advantage of a community disaster; the crime is committed by endangering the society or by using explosives, firearms, or gas firearms; the act is committed by a person in a state of alcoholic intoxication or under the influence of narcotic, or toxic substances; the act is committed for the purpose of concealing another crime or facilitating the commission thereof.

#### **D. Article 5**

86. Article 4 of the Criminal Code provides that any person who commits criminal acts within the territory of the State of Lithuania shall be liable under the criminal laws of Lithuania. The territory of the State of Lithuania comprises the land territory, the underground within the State borders, the territorial waters and the air space above these. Any person who commits criminal acts on aircraft, sea and river vessels flying the flag of Lithuania or carrying its distinctive symbols while being outside the territory of Lithuania shall also be liable under the criminal statutes of Lithuania.

87. Article 6 of the Criminal Code provides that citizens of Lithuania and other permanent residents of Lithuania without citizenship shall be held liable for crimes committed abroad under the criminal statutes of Lithuania. Other persons who commit a crime abroad may be prosecuted under the criminal statutes of Lithuania provided that the committed act is recognized as a crime and is punishable under the laws of the place of commission of the crime and of Lithuania.

88. A citizen of Lithuania or an alien, who commits a criminal act, may be extradited to a foreign State in accordance with international agreements to which Lithuania is party. The conditions and procedure for the extradition of citizens of Lithuania or foreign nationals, who have committed a crime, are established by international agreements to which Lithuania is party and by the Code of Criminal Procedure. Individuals who have been granted asylum according to laws of Lithuania shall not be punishable under the laws of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign States.

89. Lithuania has acceded to the 1971 Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation.

#### **E. Article 6**

90. Lithuania has acceded to the European Convention on Mutual Assistance in Criminal Matters regulating legal assistance of the contracting parties in criminal matters, also to the European Convention on the Transfer of Criminal Proceedings.

91. Article 20 of the Constitution says:

“Personal freedom shall be inviolable. No person may be arbitrarily arrested or detained. No person may be deprived of freedom except on the bases, and according to the procedures, which have been established in laws.”

The provisions of the said article of the Constitution are being implemented in accordance with the currently existing national laws. When the person is caught red-handed or immediately afterwards, the interrogator, investigator or the prosecutor may detain the said person on the grounds that he may escape, or where it is impossible instantly to establish his identity, and also in other cases in the presence of conditions and the basis for the application of remand detention (arrest). A person may be held in custody for no longer than 48 hours. Where the detainee has to be put under arrest, he has to be brought before the judge within 48 hours at the latest, who shall decide on arrest.

92. Article 122 of the new Code of Criminal Procedure establishes the basis and conditions for imposing arrest - the basis for arrest is a well-founded assumption that a suspect:

- (a) Might escape or go into hiding from the pre-trial investigation officers, a prosecutor or the court;
- (b) Might obstruct the course of the proceedings;
- (c) Might commit new offences indicated in paragraph 4 of this article.

93. When there are reasons to believe that a suspect might obstruct the course of proceedings, an arrest might be employed where there is evidence that the suspect himself or through other persons might make an attempt:

- (a) To tamper with the victims, witnesses, experts, other suspects or the convicted persons;
- (b) To destroy, conceal or forge tangible objects and documents relevant for the case.

94. In addition, a request to extradite the person or to transfer him to the International Criminal Court shall also constitute the basis for arrest. (For more details on the extradition procedure, see article 8, section G, paragraphs 113-120.)

95. Article 104 of the Code of Criminal Procedure provides that in ordering arrest the grounds and motives for the imposition thereof have to be indicated. Arrest may only be ordered in the investigation or examination of cases regarding those crimes the penalties for which, as prescribed by the criminal statute, are more severe than one year of imprisonment.

96. Article 4 of the Criminal Code stipulates that any person who commits criminal acts within the territory of Lithuania shall be liable under the criminal statutes of Lithuania. The same procedure and means are applied also to stateless persons and aliens, who have committed a crime in Lithuania.

97. Lithuania having acceded to the Vienna Convention on Diplomatic Relations, individuals enjoying the right of diplomatic immunity may be subjected to procedural actions specified in this Code of Criminal Procedure only upon request or consent of such individuals. Consent is granted via the Ministry of Foreign Affairs of Lithuania. Individuals enjoying the right of diplomatic immunity in no cases can be detained or arrested (article 20 of the Code of Criminal Procedure).

98. Paragraph 1 of article 18 of the Code of Criminal Procedure stipulates that the court, prosecutor, investigator and interrogator shall take all measures as set in the laws to ensure “thorough and impartial examination of the circumstances of the case within a reasonable time”. For the purposes of this article, “examination” means both pre-trial examination (interrogation and pre-trial investigation), and examination of the case in different instance courts. The conclusion is that all the versions to be examined in the case relating to all circumstances have to be examined in a thorough way. Moreover, where there are grounds to assume that the official can be biased in the case, he has to disqualify himself or may be disqualified.

99. Article 138 of chapter 12 of the Code of Criminal Procedure regulating interrogation provides that a suspect shall be questioned within the first 24 hours at the latest from the moment of detention. Before the questioning the suspect has to be notified of his rights and the crime of the commission of which he is suspected, which is entered into the record of the questioning.

100. Article 139 of the same chapter regulating the period of interrogation provides that in cases where pre-trial investigation is required, interrogation shall be concluded within one month from the moment of instituting criminal proceedings, the time limit can be extended, but by no longer than one month.

101. Article 21<sup>2</sup> of the Code of Criminal Procedure provides that where an alien commits a crime in Lithuania and leaves for his State thereafter, the Prosecutor General's Office shall decide whether the material collected in respect of the said person has to be transmitted to a respective foreign institution with a request to punish the perpetrator.

102. Paragraph 3 of article 6 of the Convention is transposed into article 107 of the Code of Criminal Procedure which stipulates that the prosecutor, who was present in imposing remand detention (arrest), shall notify the fact of the arrest to one of the relatives chosen by the arrested person. Where the person under arrest does not indicate any person, the prosecutor shall notify at his discretion one of the relatives of the person under arrest, if such person can be identified. The prosecutor may refuse to notify if the person under arrest has given a motivated explanation that such notification may affect the safety of his relatives. The accused himself may be provided with a possibility to notify the fact of the imposition of remand detention (arrest) upon him.

103. On the imposition of arrest upon a foreign national, the prosecutor shall notify the Ministry of Foreign Affairs of Lithuania and, if requested by the arrested person - a diplomatic mission or a consular office of his State. In this case, the arrested person shall be guaranteed the rights specified in paragraph 3 of article 6 of the Convention.

104. The implementation of this provision is also ensured by article 128 of the new Code of Criminal Procedure, which stipulates that the prosecutor present in ordering arrest must notify a member of the family or a close relative chosen by the arrested person. If the arrested person does not indicate any person, the prosecutor must notify, at his own discretion, one of the family members or close relatives of the arrested person if he manages to identify one. The prosecutor may refuse to give notification if the arrested person gives a reasoned explanation that such a notification may endanger safety of his relatives. The arrested person himself must also be given a possibility to inform his relatives about his arrest. If arrest is imposed upon a national of another State, the prosecutor shall forthwith notify the Ministry of Foreign Affairs of Lithuania and, if requested by the arrested person, a diplomatic mission or a consular office of his State.

#### **F. Article 7**

105. In cases provided for by laws, Lithuania may refuse the extradition of persons to foreign States upon request from foreign States. There is a general rule which provides that a person may be extradited from Lithuania on the basis of and in accordance with the procedure of international agreements. One of the grounds for extradition, as enshrined in bilateral and multilateral agreements of Lithuania, is the principle of double or analogous criminality, i.e. extradition is granted for acts, which under the laws of both contracting parties are considered as crimes and which incur a penalty - imprisonment for more than one year or a more severe penalty.

106. Article 22<sup>2</sup> of the Code of Criminal Procedure specifies the cases where extradition shall be refused. A citizen of Lithuania or a foreign national shall not be extradited, if:

(a) The committed act for which extradition is requested is not regarded as a crime under the Criminal Code of Lithuania;

- (b) The crime for which extradition is requested has been committed within Lithuania;
- (c) The person is being prosecuted for a crime of a political nature;
- (d) The person has been convicted for the criminal act, acquitted or relieved from criminal liability or penalty;
- (e) The crime committed by a person is punishable by death in another State;
- (f) The requested person has by reason of lapse of time become immune from prosecution or execution of the judgement of conviction;
- (g) The person is released from penalty in accordance with the law on amnesty or an act of clemency.

107. Article 22<sup>3</sup> of the Code of Criminal Procedure specifies the features of the application of remand detention (arrest) to persons whose extradition to law-enforcement institutions of another State is requested. This article also stipulates that the application and duration of such remand detention (arrest) shall be specified by international agreements of Lithuania.

108. In case extradition of a Lithuanian citizen is refused, the said person, at the request of the competent foreign authorities, may be prosecuted for the crimes committed abroad in Lithuania, i.e. the Prosecutor General's Office would take over criminal prosecution of the said person in accordance with the Code of Criminal Procedure. Article 21<sup>2</sup> of the Code of Criminal Procedure contains a provision that a letter rogatory by a foreign institution to institute criminal proceedings against a Lithuanian citizen who has committed a crime abroad and who has returned to Lithuania shall be examined by the Prosecutor General's Office of Lithuania, verifying the validity of the request to institute criminal proceedings. Verification results shall be notified to the requesting institution.

109. It is noteworthy that agreements on legal assistance of Lithuania with foreign States contain the provisions according to which Lithuania assumes an obligation to start or take over criminal prosecution in the cases where extradition of a person is refused as well as to notify the requesting State about the ultimate decision in the proceedings. Analogous obligations are also provided for in the European Convention of the Transfer of Criminal Proceedings to which Lithuania is party.

110. After Lithuania takes over criminal prosecution of a person, the person will be prosecuted according to the criminal statutes of Lithuania and shall acquire all the rights enjoyed by the parties to the proceedings as specified in the Code of Criminal Procedure. For example, article 2 of this Code stipulates that the accused shall be entitled (a) to be informed as to what he is accused of and to provide explanations as to the accusation, (b) to present evidence, (c) to make motions, (d) to familiarize himself with all case material after pre-trial investigation, (e) to have defence, (f) to be present during the examination of the case in the first instance court, (g) to make challenges, (h) to appeal the actions and decisions of the interrogator, investigator, prosecutor and the court.

111. In cases where criminal prosecution is taken over, the collection of evidence as well the assessment thereof shall also be carried out in observance of the provisions of the Code of Criminal Procedure, which provide that all evidence collected in the case shall be verified by the interrogator, investigator, prosecutor and the court in a thorough, comprehensive and impartial manner. The court, prosecutor, investigator and interrogator shall assess the evidence according to their inner conviction based on a scrupulous and impartial review of the circumstances of the case, in observance of laws and legal consciousness. No evidence shall have a pre-determined value for the court, prosecutor, investigator and interrogator.

112. Moreover, article 3 of the Code of Criminal Procedure provides that the court, prosecutor or interrogation body shall, within the limits of their competence, institute criminal proceedings each time when the elements of a crime become apparent and shall take all measures prescribed by law so as to establish the event of a criminal act, to establish the guilty persons and to ensure the punishment of such persons.

### **G. Article 8**

113. Extradition of offenders from Lithuania is regulated by the Criminal Code, the Code of Criminal Procedure as well as by bilateral and multilateral international agreements of Lithuania.

114. Article 7<sup>1</sup> of the Criminal Code stipulates that:

(a) A citizen of Lithuania or a foreign national who commits a criminal act may be extradited only pursuant to an international agreement of Lithuania;

(b) The conditions and procedure for the extradition of citizens of Lithuania or foreign nationals who commit a crime are established by international agreements to which Lithuania is party and the Code of Criminal Procedure of Lithuania;

(c) Individuals who have been granted asylum in accordance with the laws of Lithuania shall not be punishable under the laws of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign States.

115. Analogous provisions are also contained in article 22<sup>2</sup> of the Code of Criminal Procedure which specifies that extradition of a person from Lithuania to foreign law-enforcement institutions shall be carried out only on the grounds and following the procedure specified by international agreements. Cases when extradition from Lithuania is refused have been enumerated in discussing article 7 of the Convention (see paragraphs 105-112).

116. Article 22<sup>4</sup> of the Code of Criminal Procedure regulates the procedure for extradition from Lithuania and stipulates that in the presence of the ground specified in an international agreement a prosecutor of the Prosecutor General's Office under the Supreme Court of Lithuania shall apply with a request to the Vilnius County Court. The judge shall hold a hearing within five days, to which the extraditable person, his counsel for the defence and prosecutor shall be summoned. The presence of the prosecutor and the counsel for the defence in the hearing is mandatory.

117. Article 22<sup>5</sup> of the Code of Criminal Procedure regulates the procedure for lodging an appeal against the order of extradition and stipulates that a person with regard to which an order has been issued, or his counsel for the defence objecting to the order of extradition, and the prosecutor objecting to the order not to extradite the person shall be entitled, within the period of seven days, to lodge an appeal with the Court of Appeals of Lithuania. A judge of the Court of Appeals must examine the appeal within a fortnight from the date of lodging the appeal. The participation of the prosecutor in the hearing shall be obligatory. The decision of the judge of the Court of Appeals shall be definitive and shall not be subjected to appeal by cassation.

118. The Seimas ratified the European Convention on Extradition and its additional protocols by Law No. I-839 of 4 April 1995. Pursuant to the provisions of this Convention, Lithuania has assumed an obligation to grant extradition of persons for crimes which are punished by imprisonment for more than one year or a more severe punishment and also in accordance with the laws of the requesting and requested States. Moreover, in ratifying the aforementioned Convention, Lithuania made a reservation which grants the right to Lithuania not to apply extradition if the accused would suffer particularly grave consequences in the requesting State as a result of his age, health or personal reasons.

119. Analogous provisions are contained in bilateral agreements on legal assistance, which Lithuania has concluded with Latvia, Estonia, Belarus, Russia, Poland, Kazakhstan, Ukraine, Uzbekistan, Azerbaijan, Moldova and the United States.

120. In observance of the aforementioned Convention and on the basis of bilateral agreements, in 2001 the Prosecutor General's Office received 16 extradition requests, of which 10 requests were satisfied. One hundred and forty-eight extradition requests were sent to foreign States, of which 78 were satisfied.

#### **H. Article 9**

121. Article 21 of the Code of Criminal Procedure regulates the notification procedure between the Lithuanian courts, prosecutors' offices, pre-trial and interrogation bodies and the respective foreign institutions.

122. The procedure for the execution of letters rogatory of the said institutions is established in the Criminal Code, the Code of Criminal Procedure and international agreements on legal assistance concluded between Lithuania and other States. In cases of contradicting provisions, priority shall be given to the provisions of international agreements which define the scope of mutual legal assistance and the procedure for the execution thereof.

123. Courts, prosecutors' offices, pre-trial and interrogation bodies of Lithuania transmit letters rogatory to foreign institutions through the Ministry of Justice or the Ministry of the Interior, or the Prosecutor General's Office.

124. In executing letters rogatory from foreign institutions, the courts, pre-trial and interrogation bodies of the Republic of Lithuania carry out procedural actions specified in article 21<sup>1</sup> of the Code of Criminal Procedure.

125. Lithuania has signed bilateral agreements with foreign States on legal assistance and legal relations in civil, family and criminal matters. On the basis of these agreements, Lithuania assumes an obligation to render legal assistance to another Contracting Party in the aforementioned cases. The scope of legal assistance also includes assistance provided for in article 9 of the Convention.

126. The Republic of Lithuania has also acceded to the European Convention on Mutual Assistance in Criminal Matters.

### **I. Article 10**

127. Training in human rights is included into the programmes for the training of persons who may be involved in the custody, interrogation or treatment of any individual subjected to arrest, detention or imprisonment. Information regarding the prohibition against torture constitutes a composite element of the said training.

128. Top-ranking and minor officials for police, customs, remand and imprisonment establishments are trained by police faculties, the training programmes of which ensure that students are informed about prohibition of any act of torture or inhuman treatment and the responsibility for the breach of the said prohibition.

129. In the year 2000, a training programme for the improvement of qualifications of the personnel of watch units in police detention centres and police establishments was prepared. Pursuant to this programme, lectures on the topics "Human rights and the police" and "Inspection of the detainees and their belongings, search of detention premises" were organized for the officials of police establishments in 2001; officials were introduced to the international legal acts which enshrine human rights and freedoms and the protection thereof. Special attention focused on human rights and practical application of international and domestic legislation pertaining thereto. In April 2002, a second stage of the courses took place, during which attention focused on ensuring the rights and legitimate interests of individuals who have been detained, brought to the watch unit and placed in detention facilities.

130. In the year 2001, the Lithuanian Police Training Centre together with the Lithuanian Public Police Bureau organized a four-day training for the heads and officials of detention centres and convoy divisions focusing on the topic "The application of international legislation on human rights in the police". Emphasis was placed on the fact that ill-treatment or degrading treatment of individuals held in custody or individuals moved in convoy by the officials of both detention centres and convoy divisions shall not be tolerated and shall be subject to severe punishment. Also, participants were instructed to take all necessary measures to ensure respect of dignity of the said persons during their detention in detention centres or convoy.

131. In 2002, the Lithuanian Police Training Centre organized courses for the upgrading of qualifications of police officers on the topic "Legal regulation of coercion in police activities" during which police officers were familiarized with the principles of using coercive measures in their official activities and responsibility for their actions, as well as an introductory programme on human rights during which police officers were introduced to the principal international instruments on human rights, international agreements and other legal acts, which regulate police activities.

132. At the beginning of 2002, the Directorate General of Human Rights of the Council of Europe approved the funding of a joint 2002 project "Human rights and police activities" between the Lithuanian police and the Council of Europe. Public and criminal police officers will be invited to attend these seminars dedicated to the protection of human rights in ensuring public order and safety, solving the problems related with individuals facing social problems, violators of laws, conflicts within families, also, in detaining and arresting persons, using measures of coercion against them, etc.

133. For the purpose of ensuring efficient and impartial investigation as regards physical coercion used by police officers as well as for the purpose of assessing the lawfulness of the said coercion, paragraph 8 of article 23 of the Law on Police Activities stipulates that in cases when coercion used by police officers results in the person's death or injury, the prosecutor shall be informed immediately.

134. With a view to ensuring prosecutorial control in the investigation of cases regarding the use of firearms by police officers, the Prosecutor General obligated, by Order No. 122 of 19 September 2001, chief county and district prosecutors to ensure that in each case when, as a result of using a firearm by a police officer individuals were injured or their property was damaged, inspection shall be carried out and one of the decisions specified in article 128 of the Code of Criminal Procedure shall be taken. There is also an obligation to ensure comprehensive inspections, the examination of all the circumstances related with the incident and the assessment of the legitimacy of the actions taken by police officers.

135. The Training Centre of the Prison Department under the Ministry of Justice (hereinafter "the Prison Department"), which was established in 1999, also organizes courses for the improvement of qualifications of officials and other institutional personnel. Point 29 of the Internal Regulations of Remand Establishments and Point 65 of the Internal Regulations of Correctional Labour Establishments provide that the training programme for the entire staff of remand or correctional labour establishments shall include the requirements and principles of the application of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well as the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 12 February 1987 (Recommendation No. R(87)3).

136. The training programmes of the Centre, approved by the Director of the Prison Department, are prepared so as to ensure that at least 1/5 of the training time is devoted to the training of positive treatment of the inmates by the personnel. For example, 30 hours are devoted to general psychology, 24 hours to language usage, 22 hours to professional ethics, 22 hours to the elucidation of international standards of treatment of prison inmates. In teaching the principles of criminal and penitentiary law, attendants receive detailed explanation of the liability for ill-treatment of prison inmates.

137. Following the Regulations of Institutions Subordinate to the Prison Department under the Ministry of Justice, approved by Order No. 264 of 27 December 2000 of the Minister of Justice, the institution's administration has to take care of the introductory professional and physical training of the officials and of the upgrading of qualifications of the employees.

138. Internal Regulations of Remand Detention and Internal Regulations of Correctional Labour Establishments also provide that all personnel during their service have to constantly improve their knowledge and professional skills by attending specialized training courses organized periodically by the administrations of the remand and correctional labour establishments.

139. Article 8 of the Law on Remand Detention (18 January 1996, No. I-1175) and Internal Regulations of Remand Detention also provide that it shall be prohibited to subject persons held in remand detention or convicts to torture, to maim them or subject them to any degrading or cruel treatment. No person held in remand detention or convict shall, even with his consent, be subjected to any scientific or medical experimentation.

140. Moreover, the aforementioned regulations provide that the personnel of the remand establishment or correctional labour establishment do not have the right to use coercion against persons held in remand detention or convicts, except for cases of self-defence or in cases of attempted escape or resistance, and only in observance of the relevant laws. Employees who have to use coercion will use it only to the extent which is necessary, and will forthwith notify the administration of the use of coercion.

141. The new Penal Code to enter into force together with the new Criminal Code and the Code of Criminal Procedure on 1 May 2003 establishes that the enforcement of punishments shall be based on the principles of lawfulness, equality of convicts in respect of the laws on the enforcement of sentences, humanism, individualization of the enforcement of punishments, justice and progressive serving of sentences.

#### **J. Article 11**

142. With the help of the Lithuanian scientific community, research is continuously conducted in the area of criminal procedure. The methods of pre-trial investigation are subject to a constant review, and certain amendments to the laws or other legal acts, ensuring the rights and freedoms of the detained or arrested individuals and preventing their ill-treatment are recommended to the legislator in this area.

143. The provisions of this article are implemented by the domestic legislation: the Law on Remand Detention, the Code of Correctional Labour and the new Penal Code.

144. With a view to ensuring control over the legitimacy of activity of police officers, the Commissioner General of the Police instructed police officers by Directive No. 16 of 22 March 2001 to strictly adhere to the provisions of the Constitution, the Law on Police Activities and to the requirements of other legal acts as well as to respect human rights and freedoms enshrined in the European Convention on Human Rights as well as other international instruments when effecting an apprehension of persons and taking them to a police establishment, as well as when conducting their interrogation. Each case of physical coercion shall be immediately notified in the form of an official report to the head of the police establishment. When releasing an offender from a police establishment, in cases when there is a written statement of the said person about the coercion used against him by a police officer, he

has to be taken to the medical staff for examination, and, upon establishing any bodily injuries, measures have to be taken to record this in an appropriate way. When there are grounds for assuming that police officers have acted illegally, an official inspection has to be carried out, and upon discerning elements of a crime in the actions of the police officers, the material has to be referred to the Prosecutor's office.

145. Order No. 215 of 17 May 2002 of the Minister of Health approved the Lithuanian hygiene norm HN 37:2002 "Detention centres. Regulations for equipment and maintenance". On the basis of this norm, adjustments to the draft programme for the renovation of detention centres and humanization of detention conditions is being prepared; the programme has to be drafted before the end of 2002.

146. Order No. 96 of 8 June 2001 of the Prosecutor General on the Control in Ensuring Protection of the Detained and Arrested Persons Against Torture and Inhuman or Degrading Treatment or Punishment stipulates that chief prosecutors of county and district prosecutors' offices have to ensure that prosecutors, upon receiving information regarding each case of torture or inhuman or degrading treatment or punishment of a detained or arrested person, initiate examination and adoption of one of the procedural decisions envisaged in article 128 of the Code of Criminal Procedure. In respect of the received application or report, one of the following decisions has to be taken: (a) to institute criminal proceedings, (b) to dismiss the criminal case, (c) to transfer the application or report within investigatory or judicial jurisdiction.

147. In Lithuania, custodial sentences are currently being enforced in observance of the 1971 Code of Correctional Labour approved by the Supreme Council. However, within the period of 1990-2001, most articles (approximately 80 per cent) were amended and supplemented, alongside with the renouncement of purposeless restrictions. The essence of the amendments and supplements is humanization of conditions while serving custodial sentences.

148. By Law No. VIII-1631 of 18 April 2000 the Seimas approved the Statute on Service in the Prison Department under the Ministry of Justice and the Law on the Implementation of the Statute. Under the aforementioned laws, since 1 September 2000, the system of enforcement of criminal punishments has been transferred from the Ministry of the Interior to the Ministry of Justice. With due regard to this, the principal legal acts regulating the enforcement of punishments or influencing the policy of the enforcement of punishments were newly developed and approved. The development of the legal framework was continued. The aforementioned legal acts, drafted in 2001 and afterwards, were developed in accordance with the European Prison Rules and following the recommendations of the experts of the Council of Europe following their visits to the Lithuanian imprisonment institutions carried out in 1995 and 1999, the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Standard Minimum Rules for the Treatment of Prisoners and other international documents as well as foreign practice, which directly or indirectly influence and help to design a modern policy of the enforcement of punishments and remand detention.

149. The Code of Correctional Labour of Lithuania stipulates that:

(a) The enforcement of a punishment shall not be aimed at inflicting physical suffering or degrading human dignity (art. 1);

(b) Persons serving the punishment of imprisonment and the punishment of correctional labour without deprivation of freedom have the rights and freedoms specified by the laws to the citizens of Lithuania with restrictions specified by the laws to convicted persons and also arising from the court judgement or regime, which is prescribed by this Code for the serving of a respective type of punishment (art. 8).

150. Article 8 of the Law on Remand Detention stipulates that:

(a) Persons kept in places of remand detention shall have the rights, liberties and duties established by law to the citizens of Lithuania with those restrictions as provided for by the Code of Criminal Procedure, this Law and imprisonment conditions;

(b) It shall be prohibited to subject an untried prisoner to torture, to maim him or subject him to any degrading or cruel treatment; no untried prisoner shall, even with his consent, be subjected to any scientific or medical experimentation.

151. The Internal Regulations of Remand Detention, approved by Order No. 178 of 7 September 2001 of the Minister of Justice, include individual sections: "Requirements for the personnel of remand establishments" and "Relations of the personnel of remand establishments with the persons held in detention or convicts", which set the basic requirements for the personnel of remand establishments and their relations with the persons held in detention or with convicts.

#### **K. Article 12**

152. Article 31 of the Constitution says that every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence. Every indicted person shall have the right to a fair and public hearing by an independent and impartial court.

153. Article 3 of the Code of Criminal Procedure stipulates that the court, prosecutor, interrogator or interrogation body, each within its competence, shall institute criminal proceedings each time when the elements of the crime become apparent, shall take all measures as specified in the law to establish that a criminal act has been committed, to establish the guilty persons and to ensure that the guilty persons are prosecuted. If within the territory of the application of the Lithuanian jurisdiction it is established that torture was used as defined by articles 1 and 4 of the Convention, the law-enforcement institutions authorized for that shall carry out an impartial, thorough and comprehensive investigation into the acts of torture or any other acts of a similar nature.

154. Without prejudice to this provision, article 2 of the approved new Code of Criminal Procedure stipulates that every time when elements of a criminal offence are discovered, the prosecutor and the institutions of pre-trial investigation must, within the limits of their competence, take all measures provided by legislation to conduct an investigation, and establish that a criminal act has been committed, and that the case is heard within a reasonable time.

155. Article 125 of the Code of Criminal Procedure (Grounds for the institution of criminal proceedings) prescribes that the grounds to institute criminal proceedings shall be as follows:

- (a) Oral and written statements of the citizens;
- (b) Written reports of state and public enterprises, institutions, organizations and officials;
- (c) The offender's coming and confessing to having committed a crime; and
- (d) The elements of a crime directly identified by the interrogation body, interrogator, prosecutor, judge or the court.

Criminal proceedings can be instituted only in cases where there are sufficient data indicating the existence of elements of the crime.

156. Moreover, article 128 of the Criminal Code provides that a prosecutor, investigator, interrogation body or the judge must accept applications and reports about any crime committed or contemplated and, no later than within 3 days since the receipt of the said application or report, and, in exceptional cases, within no later than 10 days take the relevant decision.

157. Thus, in the presence of a person's complaint or of information received in any other way, also in conducting interrogation, carrying out investigation and interrogation control, in sustaining the State accusation, and having noticed that the suspect (accused) can be a victim of ill-treatment, prosecutors, in pursuance of the procedure established by the Code of Criminal Procedure, shall ensure the necessary examination. Forensic medical examination is ordered to persons in respect of whom violence could have been used. The judge (court), upon receiving a complaint or upon noticing in the course of judicial examination that the person can be a victim of ill-treatment, in accordance with the procedure established by the Code of Criminal Procedure, shall institute criminal proceedings and refer the proceedings to the prosecutor for pre-trial investigation or shall obligate the prosecutor to carry out the necessary examination.

158. Moreover, Order No. 96 of 8 June 2001 of the Prosecutor General on the Control in Ensuring Protection of the Detained and Arrested Persons Against Torture and Inhuman or Degrading Treatment or Punishment is applicable (see paragraph 146 above).

159. In practice, there are internal control units set up within law-enforcement and law-and-order institutions; prosecutorial control during criminal proceedings is stipulated in article 24 of the Code of Criminal Procedure.

160. The Internal Investigation Service of the Police Department under the Ministry of the Interior carries out the functions of the prevention of offences and the investigation of misconduct in office by officers and public servants of police establishments. Upon receiving information that police officers violate the constitutional rights of persons, inflict injuries, torture or perform any other illegal actions against them, officials of the Internal Investigation Service conduct official investigation in respect of such police officers. If the information that police detainees sustain injuries, are tortured or suffer any other discriminatory actions proves correct, the material collected is transmitted to the prosecutor's office for the adoption of a decision.

161. The keeping of the detainees or arrested persons in police stations is regulated by the Regulations of the Activities of Police Station Detention Centres approved by Order No. 88 of 17 February 2000 of the Minister of the Interior. Point 267 of the Regulations prescribes that control over the activities of police station detention centres shall be conducted by the Seimas Ombudsmen, prosecutors, who investigate the appeals of persons held in police custody, as well as by the officials of the Police Department under the Ministry of the Interior in accordance with the procedure established by law. Point 171.3 of the Regulations provides that prosecutors exercising control over the pre-trial investigation shall be allowed to visit police detention facilities 24 hours a day. Pursuant to the requirements of the Regulations, the control of the activities of the police station detention facilities conducted by prosecutors shall not be obstructed in any way.

162. According to the requirements of article 24 of the Code of Criminal Procedure, at the stages of institution of criminal proceedings and preliminary investigation, the prosecutor shall take all measures as provided for by laws to eliminate any violations of the law.

163. Individual complaints as regards the abuse or bureaucracy of the officials of the Prison Department and the institutions subordinate thereto shall be examined by the Seimas Ombudsman.

164. Paragraph 1 of article 5 of the Law on Administrative Proceedings (4 January 1999, No. VIII-1029) prescribes that all entities concerned, including persons held in imprisonment institutions, have the right, in accordance with the procedure established by law, to apply to the court in order to defend their rights that have been violated or contested or their interests protected by laws.

165. It also has to be noted that on the basis of each complaint of an imprisoned person as regards ill-treatment by the personnel of imprisonment institutions, an official investigation is conducted, and if elements of criminal acts are discovered in the actions of the personnel, the material is referred to the territorial prosecutor's office. In 1999, 48 cases were registered when prison inmates complained of ill-treatment by the staff of imprisonment institutions (physical violence or verbal abuses). In 2000 there were 36 cases. In 1999 disciplinary sanctions were imposed on two officers of imprisonment institutions, and in 2000 disciplinary sanctions were imposed on one officer. During 2001 and January-March of 2002, no criminal proceedings for unlawful actions or omissions, which are manifested in the form of torture or any other cruel, inhuman or degrading treatment or punishment, were instituted against officials of imprisonment institutions.

#### **L. Article 13**

166. Any act of torture shall be considered as a crime according to the criminal statutes. The Code of Criminal Procedure guarantees the right to every person, who maintains that he is a victim of a crime, to file a statement thereto to the police or prosecution officials. These officials, according to article 128 of the Code of Criminal Procedure, shall examine the statement within three days at the latest. In the event there are grounds to believe that a crime has been committed, the said officials shall commence preliminary investigation and, after collecting sufficient evidence, shall refer the case to the court.

167. In respect of this article of the Convention, the Order of the Prosecutor General on the Control in Ensuring Protection of the Detained and Arrested Persons Against Torture and Inhuman or Degrading Treatment or Punishment, mentioned above in paragraphs 146 and 158 is of major importance since it stipulates that prosecutors, upon receiving information regarding each case of torture or inhuman or degrading treatment or punishment of a detained or arrested person, shall initiate examination.

168. Provisions of the new Code of Criminal Procedure ensure the right of all detainees, arrested individuals, suspects or the accused to file requests, to make challenges, to appeal against the actions of a pre-trial investigation official or the court, as well as the right to the compensation for damage in accordance with the procedure established by laws. The provision of chapter 35 of this Code regulates the reopening of the criminal case because of the decision of the European Court of Human Rights, and article 457 prescribes that the person in whose respect there have been violations of the Convention for the Protection of Human Rights or its additional protocols can file an application to reopen the criminal case on the ground specified by article 456. The same right, in addition to the individual himself, is enjoyed by the assignee of his rights, the representative authorized by these persons or the Prosecutor General of Lithuania.

169. The Code of Correctional Labour stipulates that:

(a) The rights of persons sentenced to imprisonment, which have been violated in the course of serving the sentence, and the State's legitimate civil interests in cases prescribed by laws shall be protected by the Prosecutor General of Lithuania and prosecutors subordinate to him (art. 11);

(b) There shall be no restrictions for the counsel for the defence to visit the convict (art. 46);

(c) Convicts shall have the right to apply with proposals, applications (statements) and complaints to the State and municipal officials and servants, international institutions, the jurisdiction of which to accept individual applications has been recognized by Lithuania, as well as to public organizations (art. 50); such applications or complaints shall not be subjected to any censure and they shall be dispatched within one working day from the moment of receiving them;

(d) Convicts shall have the right to apply directly to the President of the Republic, the Seimas or a member of the Government, the Seimas Ombudsman, a prosecutor or a representative of the Ministry of Justice during their visits to imprisonment institutions (art. 50).

170. As mentioned in paragraph 165, the Prison Department registered 36 cases of complaints by the prison inmates about ill-treatment of the personnel of imprisonment institutions (physical violence or verbal abuses) in 2000. In 2001, 239 such cases were registered, and during January-March of 2002 there were 137 cases. The number of such complaints increased due to the amended procedure for the filing and examination of the inmates' proposals, applications and complaints, the amendments to which were introduced in 2001. Prior to this, applications or complaints in unsealed envelopes could be reviewed by the institution's administration, and the issues raised therein could be subject to examination in situ, within the limits of competence. Now the institution's administration has to dispatch all complaints of persons held in custody

and convicts to the addressees, except for complaints which are addressed to the administration of that imprisonment institution. Frequently complaints of inmates as regards ill-treatment by the personnel are ungrounded. Often inmates complain about ill-treatment by the personnel expecting to mitigate their liability for their misdemeanours and even crimes. For example, in 2000 only one case was recognised as an obvious violation of human rights. The official who ill-treated the inmates was punished in accordance with the disciplinary procedure.

171. Within the second half of 2001, the Ministry of Justice received 183 proposals, applications (statements) and complaints of persons held in custody, convicts, public organizations dealing with the issues of imprisonment and other individuals, who addressed the Ministry as regards malfeasance of the duties of the office or negligence in discharging the duties of the office by the officials working in imprisonment institutions. On examining the cases on the basis of the complaints (applications) of convicts or persons held in custody as regards unlawful actions or omissions by the officials of imprisonment institutions, administrative courts dismissed the said complaints (applications).

172. In the implementation of the provisions of article 13 of the Convention, Lithuania has established a specialized police institution - the Witness and Victim Protection Service of the Criminal Police Bureau which organizes and performs complex implementation of the measures for the protection against criminal influence. The measures for the protection against criminal influence are aimed at protecting the life, health, property, constitutional rights and freedoms of the participants of operational activities, witnesses, victims and other individuals related with the criminal case, as well as at ensuring a comprehensive and impartial examination of the circumstances of the case. In discharging the tasks and functions assigned to its competence, the Protection Service follows Law No I-1202 of 13 February 1996 on the Protection of Participants of Criminal Proceedings and Operational Activities as well as Law-Enforcement Officials against Criminal Influence, the Provisional Regulations on the Protection against Criminal Influence approved by Government Resolution No. 119 of 13 February 1997, the Agreement between the Government of the Republic of Lithuania, the Government of the Republic of Estonia and the Government of the Republic of Latvia on Cooperation in Carrying out the Protection of Witnesses and Victims ratified by Law No IX-342 of 24 May 2001 of the Seimas.

173. Article 156<sup>1</sup> of the Code of Criminal Procedure stipulates that the prosecutor, and with the consent of the prosecutor, the investigator, in cases of serious crimes, for the purposes of ensuring the safety of the witness or victim, have the right to make anonymous their surname and other data establishing their identity. To this end, a decision is drawn up, which is kept separately from the case together with a special annex to the investigation record. Article 118<sup>1</sup> of the same Code provides that the witness or the victim whose identity documents have been made anonymous shall be entered by a pseudonym into the investigation and court trial records, also in all other documents of the criminal case. The actual personal data are entered into a special annex to the investigation record, which is kept separately from the case file.

174. Anonymous data establishing the identity of a person constitutes a State secret. The right to get familiarized with the actual data establishing personal identity shall only be granted to the investigators, prosecutors and judges in the proceedings. The said officials shall be held liable for the disclosure of anonymous data according to article 73 of the Criminal Code (Disclosure of a State secret).

#### **M. Article 14**

175. Article 30 of the Constitution provides that the law shall establish the procedure for compensating material and moral damage inflicted on a person. Article 6.271 of the Civil Code establishes liability for damage caused by unlawful actions of institutions of public authority. Damage caused by unlawful acts of institutions of public authority must be compensated by the State from the means of the State budget, irrespective of the fault of a concrete public servant or other employee of public authority institutions. Damage caused by unlawful actions of municipal authority institutions must be redressed by the municipality from its own budget, irrespective of its employee's fault. "An institution of public authority" means any subject of the public law (state or municipal institution, official, public servant or any other employee of these institutions, etc.), as well as a private person executing functions of public authority. "An action" means any action (active or passive) of an institution of public authority or its employees, that directly affects the rights, liberties and interests of persons (legal acts or individual acts adopted by the institutions of State and municipal authority, administrative acts, physical acts, etc., with the exception of court judgements - verdicts in criminal cases, decisions in civil and administrative cases and orders).

176. Article 6.272 of the Civil Code also prescribes liability for damage caused by unlawful actions of preliminary investigation officials, prosecutors, judges and the court. Damage resulting either from unlawful conviction, or unlawful arrest, as a measure of suppression, as well as from unlawful detention, or application of unlawful procedural measures of enforcement, or unlawful infliction of administrative penalty - arrest - shall be compensated fully by the State irrespective of the fault of the officials of preliminary investigation, prosecution or court. The State shall be liable to full compensation for the damage caused by unlawful actions of a judge or the court trying a civil case, where the damage is caused through the fault of the judge himself or that of any other court official. In addition to pecuniary compensation, the aggrieved person shall be entitled to non-pecuniary compensation. Where the damage arises from intentional fault on the part of officials of preliminary investigation, prosecution, court officials or judges, the State, after the damage has been compensated, shall acquire the right of recourse against the officials concerned for recovery, within the procedure established by laws, of the sums in the amount provided for by laws.

177. Having regard to the afore-mentioned provisions of the Civil Code, the Seimas adopted the Law on Compensation of Damage Resulting from Unlawful Actions of Institutions of Public Authority (21 May 2002, No. IX-895), which provides for budgetary appropriations for the compensation for such damage as well as for the use of such appropriations. The Law also provides for a possibility to compensate the damage caused by unlawful actions of preliminary investigation officials, prosecutors, judges or the court, as specified in paragraph 1 of article 6.272 of the Civil Code, pursuant to extra-judicial procedures. The person concerned shall have the right to apply for compensation for the damage following extra-judicial procedures within a period of three years at the latest from the moment when he became aware or had to be notified of the fact that the conviction, application of remand detention (arrest), detention, application of procedural measures of enforcement or imposition of an administrative penalty - arrest was unlawful in accordance with the procedure prescribed by laws. The amount

of the damage compensated following judicial procedures shall be established by the Civil Code, while the limits of the damage paid pursuant to extra-judicial procedures shall be as follows: the amount of the pecuniary damage may not exceed LTL 10,000, and the amount of non-pecuniary damage may not exceed LTL 5,000.

178. Moreover, article 64<sup>1</sup> of the Code of Criminal Procedure provides that the interrogation body, investigator, prosecutor and the court must explain to the person concerned the procedure for the realization of the right to recover damages for unlawful detention, unlawful arrest or unlawful conviction.

179. The Code of Criminal Procedure stipulates that every person to whom damage has been caused by a criminal act may file a claim for compensation for such damage, including the funds necessary for his rehabilitation. Article 70 of the Code of Criminal Procedure provides that, in the presence of sufficient data testifying to the damage caused by a criminal act, the interrogation body, the investigator, the prosecutor or the court must take measures to secure a claim which has been lodged or may be lodged in future. The Code of Criminal Procedure grants rather extensive rights to a civil plaintiff for the protection of his interests. If a civil claim is not lodged in the criminal case, the law provides for a possibility to lodge this claim in accordance with the procedure set by the Code of Civil Procedure.

180. The provision of the Convention with regard to entitlement by the dependants to compensation in the event of the death of the victim as a result of an act of torture is stipulated in article 6.284 of the Civil Code which provides that in the event of the death of the natural person, dependent persons of the decedent or those entitled to maintenance on the day of his death (children who have not yet reached the age of adulthood, the spouse, parents incapable of working or any other actual dependants incapable of working), also the child of the decedent born after his death shall be entitled to compensation for damages. These persons shall also have the right to compensation for the non-pecuniary damage. After the loss of the breadwinner, the persons entitled to compensation for damage shall receive that part of the decedent's income, which they used to receive or were entitled to receive when the decedent was still alive.

#### **N. Article 15**

181. Paragraph 3 of article 18 of the Code of Criminal Procedure states that the use of any acts of violence, intimidation or other unlawful means for the purpose of obtaining evidence from the accused and other parties to the proceedings shall be prohibited. Evidence obtained in violation of this provision, i.e. by torture, cruel treatment or any other methods prohibited by laws may not be used as evidence at any stage of judicial examination, such evidence cannot serve as a basis for the adoption of any decision in a criminal, civil or administrative case. If it transpires in the course of proceedings that the evidence has been collected by unlawful methods, this shall be considered as a violation of the statute of criminal procedure, and any decision adopted on the basis of such evidence shall be repealed.

182. Officials, who have attempted to obtain evidence with the use of such measures, shall be liable to criminal proceedings for the criminal acts provided for in the relevant articles of the Criminal Code. The evidence obtained by the person accused of torture or other unlawful treatment of the parties to the proceedings may be used as evidence against the accused.

**O. Article 16**

183. The articles of the Criminal Code indicated in the Report prescribe criminal liability not only for torture, as defined in article 1 of the Convention, but also for other acts of cruel, inhuman or degrading treatment or punishment. Officials may be held criminally liable not only for the commission of such acts, but also for the incitement of such acts or for the failure to prevent the commission thereof, if these acts were committed with the awareness or silent consent by the said officials. In the event of the commission of the acts of cruel, inhuman or degrading treatment or punishment, the provisions of articles 10, 11, 12 and 13 of the Convention shall apply.

**Notes**

- <sup>1</sup> The Criminal Code is projected to enter into force on 1 May 2003.
- <sup>2</sup> The Code of Criminal Procedure is projected to enter into force on 1 May 2003.
- <sup>3</sup> The Penal Code is projected to enter into force on 1 May 2003.

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