

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **LITHUANIA**

IN 2005

submitted to the Network by **Edita ZIOBIENE**

on 15 December 2005

Reference: CFR-CDF/LT/2005



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union

EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX
CFR-CDF

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyses (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

Les documents du Réseau peuvent être consultés via :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice, Freedom and Security), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyses (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.

The documents of the Network may be consulted on :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

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CHAPTER I. DIGNITY**Article 1. Human dignity***Reasons for concern*

The Lithuanian Civil Code entered into force on 1 July 2001. The Article 3.154 of the Civil Code provides that the conditions, mode, procedures of artificial insemination as well as matters related to the paternity (maternity) of a child born from artificial insemination shall be regulated by other laws. But until today there are no laws issued for regulation of this area.

Under the Article 2.27 of the Civil Code which determines the right to the change of the designation of sex: “the conditions and the procedure for the change of designation of sex shall be prescribed by law”. Such law does not exist either.

The lack of law creates other legal problems. A person, who would change designation of sex abroad (it means legally), will be bothered by issuing personal documents. Even if a person will change his/her name, his former sex will be identified by the personal identity code. The personal identity codes in Lithuania consist of 13 digits, the first digit represents the sex of individual.

Article 2. Right to life**Article 3. Right to the integrity of the person**Rights of the patients*Legislative initiatives, national case law and practices of national authorities*

On 1 January 2005 enters into force a new version of the Law on Patients’ Rights and Compensation of the Damage to their Health.¹ The purpose of the Law is establish the rights of patients and the procedure of assessing and compensating the damage inflicted on the health thereof through the legitimate actions of a physician or nursing staff member.

In the case *Zdanys v. the Hospital of Marijampole town*² the Supreme Court has underlined that the material wellbeing of health care institution or the fact that defendant is supported by the budget of state cannot be the sufficient criterion for considering the amount of compensation of the damage to patient’s health. The sufficient criterion shall be subsequence of injury and moral damage.

Reasons for concern

Neither the new version of the Law on Patients’ Rights and Compensation of the Damage to their Health, nor Government’s resolution provide the mechanism for implementation of Law provisions and create practical problems in the hospitals. The Law regulates that a physician, nursing staff member, health care institution cannot provide medical assistance or treatment without patient’s consent.

¹ Pacientų teisių ir žalos sveikatai atlyginimo įstatymo pakeitimo įstatymas [a new version of Law on Patient’s Rights and Compensation of the Damage to their Health]. Valstybės žinios, 2004, Nr. 115-4284.

² The Supreme Court *Zdanys v. the Hospital of Marijampole town* (case N. 3K-7-255/2005), judgement 18 April 2005.

Article 6.736 of the Civil Code provides that information can be presented without a patient's consent to the extent that it does not cause damage to a patient's or another person's interests of private life. But the information about health is part of a patient's private life and that of his proximate people, therefore it could hardly be understood how information about health could not impair interests of private life. Thus, the notion Article 6.736 of the Civil Code requires amendment by the legislator.

Seeking to guarantee inviolability of patient's privacy is very important to broaden legal education of the staff of the health care institutions in the sphere of human rights and inviolability of the right to private life. Although the right to private life is under a detailed regulation, an insufficiently formed legal consciousness and inability to identify cases of violations of privacy prevents its implementation. Sometimes the staff of the health care institutions does not give information about a patient's health to close relatives, but sometimes gives such kind of information to the media.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

Conditions of detention and external supervision of the places of detention

Centres for the detention of foreigners

Legislative initiatives, national case law and practices of national authorities

According to Article 114 of the Law on Foreigners Legal Status³, foreigners are detained in the Foreigners Registration Center, where they are provided with food, necessary hygiene items and necessary health assistance. On 28 October 2005 Minister of Health Security issued the Order on Hygiene Provisions and Rules in the Foreigners Registration Center⁴, which clearly establishes hygiene requirements for the premises and services of the Foreigners Registration Center.

Positive aspects

28 October 2005 Minister of Health Security Order on Hygiene Provisions and Rules in the Foreigners Registration Center⁵ might be regarded as a positive development, because it establishes detailed hygiene requirements for the premises, the distribution of hygiene items to foreigners, the nutrition and the health assistance systems in the Center.

Good practices

Not having their own social staff the Foreigners Registration Center cooperates with NGOs and universities, and accepts volunteers and students-practitioners to provide social assistance on voluntary basis. In 2005 two volunteers from European Voluntary Service with International Cultural Youth Exchange provided social assistance in the Foreigners Registration Center.⁶

³ Įstatymas dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539

⁴ 2005 10 28 Sveikatos apsaugos ministro įsakymas Nr. V-836 "Užsieniečių registracijos centras. Higienos normos ir taisyklės" [28 October 2005 Minister of Health Security Order No. V-836 on Hygiene Provisions and Rules in the Foreigners Registration Center] Valstybės žinios, 2005, Nr. 135-4863

⁵ 2005 10 28 LR sveikatos apsaugos ministro įsakymas Nr. V-836 "Užsieniečių registracijos centras. Higienos normos ir taisyklės" [28 October 2005 Minister of Health Security Order No. V-836 on Hygiene Provisions and Rules in the Foreigners Registration Center] // Valstybės žinios, 2005, Nr. 135-4863

⁶ Projekto aprašymas [Description of the Project] // www.icye.org

Reasons for concern

Neither social nor psychological staff has been employed in the Foreigners Registration Center. The nutrition system is centralised in the Foreigners Registration Center, it does not always secure religious or cultural dietary requirements. The medical unit, located in the Foreigners Registration Center, provides only necessary health care services, while access to the hospitals and services of specialists is available only in emergency cases. Neither psychological, nor mental health services are available in the Center. Therefore foreigners sometimes are not able to satisfy their basic needs (e.g., proper food, health care, clothing, school necessities).

Fight against the impunity of persons guilty of acts of torture*Positive aspects*

Under a new version of the Law on the Seimas Ombudsman⁷ it is given power for the Seimas Ombudsmen to investigate complains on the actions of prosecutors, officers of pre-trial investigation violating human rights. The most important thing (what works in practice) is that if the Seimas Ombudsman establishes from the mass media or other sources the presence of elements of abuse of office by the officers, bureaucracy or instances of violation of human rights and freedoms, he may open investigation into the matter on his own initiative.

Article 5. Prohibition of slavery and forced laborFight against the prostitution of others*Legislative initiatives, national case law and practices of national authorities*

According the Code of Administrative Offences the prostitution is illegal, and qualified as pecuniary offence for these persons who are prostitutes (Article 182⁽¹⁾). On 16 June 2005 this Article of Code of Administrative Offences was amended⁸: This amendment settles the administrative responsibility and pecuniary offence not only for persons, who are prostitutes, but also for these persons, who are paying for that. The penalty amount is not changed, but the article sets some exceptions: the person can not be responsible according this law, if he/she was forced into or got involved in prostitution, using the violence or under the mentally compulsion, or he/she is juvenile and was a victim or injured person in the criminal case.

Trafficking in human beings*Legislative initiatives, national case law and practices of national authorities*

The Government of the Republic of Lithuania has resolved to approve The Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2008⁹. The Programme has the following tasks: to determine the scope of trafficking in human beings and prostitution in Lithuania, the dynamics and tendencies of this phenomenon; to create an information system of analysis which has the purpose of storing and analyzing information about traffic in human

⁷ Seimo kontrolierių įstatymo pakeitimo įstatymas [A new version of Law on Seimas Ombudsman], Valstybės žinios, 2004, Nr. 170-6238.

⁸ Administracinių teisės pažeidimų kodekso straipsnių pakeitimo įstatymas [The Law amending the Code of Administrative Offences] Valstybės žinios, 2005, No. 83-3040.

⁹ Vyriausybės nutarimas, 2005 m. gegužės 19 d., Nr. 558, Dėl prekybos žmonėmis prevencijos bei kontrolės 2005-2008 metų programos patvirtinimo, [Government of the Republic of Lithuania, 19 May 2005, Resolution, No. 558, On the Approval of the Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2008], Valstybės žinios, 2005, No. 65-2333.

beings and related processes; to develop and implement a national system of monitoring trafficking in human beings and prostitution, to develop and introduce a uniform system of data collection, to build a common (depersonalized) data base about the victims of trafficking in human beings; to develop and implement a system of early prevention measures which would not allow the involvement of new persons in trafficking in human beings and prostitution; to develop and introduce a system of measures reducing the demand for prostitution; to build a system of social assistance to victims of trafficking in human beings, in particular focusing on protective and social issues as well as reintegration into society; to develop cooperation among public (municipal), non-governmental and international organisations with a view to fighting trafficking in human beings; to strengthen Lithuania's specialised police units combating trafficking in human beings; to ensure effective cooperation between regional and international institutions and organisations with a view to combating trafficking in human beings.

The amendments of Criminal Code in 2005 were made according to these provisions of EU law: 2002/629/JHA Council Framework Decision of 19 July 2002 on combating trafficking in human beings, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence, 2002/946/JHA : Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence.

Article 147 (Trafficking in Human Beings, *Prekyba žmonėmis*) of Criminal Code was amended¹⁰. The sentences were tightened up: the person shall receive a sentence of 2-10 years of imprisonment. If there are two or more victims or it was an organized crime – sentence shall be 4-12 of imprisonment. The amendment also sets the responsibility for a legal person or a legal entity.

The new article 147⁽¹⁾ was added to the Criminal Code provisions – Exploitation for forced labour (*Išnaudojimas priverstiniam darbui*). This new article also sets the responsibility for a legal person or a legal entity. Sentences are till 3 years imprisonment, or until the 8 years imprisonment.

Reasons for concern

In the assessment of the situation (*citation from the Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2005*) is underlined, that trafficking in human beings is a latent (hidden) crime since not every victim appeals for help and, therefore, the information about the scope of trafficking in human beings is not accurate. The information supplied by various organisations providing help to victims of trafficking in human beings is fragmented, inconsistent and non-comparable. There is no accurate data in Lithuania on such forms of trafficking in human beings as the sale of human beings to cover debts, forced marriage, forced abortion, illegal transplantation or sale of human organs, and male prostitution.

Collected data¹¹ provides information concerning human trafficking in Lithuania after the accession to the EU: the most common age of victims appear to be between 18-23 years (64%), 52% of assisted women have only uncompleted secondary education, 72% were promised a job, not related to sexual services. The results of survey show that trafficking in Lithuania is not a problem of special region; it spreads all over the country.

¹⁰ Baudžiamojo kodekso straipsnių pakeitimo ir priedo pakeitimo bei papildymo ir Kodekso papildymo straipsniais įstatymas [The Law amending the Criminal Code] Valstybės žinios, 2005, No. 81-2945.

¹¹ International Organization for Migration (IOM) Vilnius office project "Counter-trafficking: Creation of the unified data base for social assistance providing organizations in Lithuania". Final report to Donors, 2005 November.

Protection of the child*Legislative initiatives, national case law and practices of national authorities*

Under amended Article 157 of Criminal Code the sale or purchase of a child is treated as a crime punishable of from 3 up to 12 years, the sale or purchase of two or more children – punishable to 5-15 years of imprisonment. (The previous amendment set up to 8 years). Not only action to sell or to purchase a child now is treated as a crime, but also the intention to do this. The amendment also sets the responsibility for a legal person or a legal entity.¹²

On 10 June of 2004 the Parliament has ratified the Optional Protocol to the Convention on the Rights of the Child of the Sale of Children¹³. Considering this act ratification the Government of Lithuania confirmed the *National Preventive Programme for Child Assistance and Against Violence*¹⁴. The programme is set for 2005-2007 years period. The aim of this programme is: to reduce the violence against the child, to develop public intolerance for violence against the child, to educate how to protect from the violence, to establish preventive measures and preventive system and etc.

¹² Baudžiamojo kodekso straipsnių pakeitimo ir priedo pakeitimo bei papildymo ir Kodekso papildymo straipsniais įstatymas [The Law amending the Criminal Code] Valstybės žinios, 2005, No. 81-2945.

¹³ Įstatymas Dėl Jungtinių Tautų vaiko teisių konvencijos fakultatyvinio protokolo dėl vaikų pardavimo, vaikų prostitucijos ir vaikų pornografijos ratifikavimo [The Law on the ratification of Optional Protocol to the Convention of the Rights of the Child of Sale of Children] Valstybės žinios, 2004, No. 108-4028.

¹⁴ Vyriausybės 2005 m. gegužės 4 d. nutarimas Nr. 491, Dėl nacionalinės smurto prieš vaikus prevencijos ir pagalbos vaikams 2005-2007 metų programos patvirtinimo [Government of the Republic of Lithuania, Resolution, 4 May 2005, No. 491] Valstybės žinios, 2005, No. 58-2021.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Deprivation of liberty for foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 17 March 2005 the European Court of Human Rights declared admissible the application by Pedro Katunda Kambangu concerning the breaches of Article 5 Para 1 and 4. The foreigner claimed that he had been detained in the Foreigners Registration Center from 12 March 1998 to 21 January 2000 with no legal basis and no judicial review.¹⁵

Legislative initiatives, national case law and practices of national authorities

On 18 March 2005 the Supreme Administrative Court in its decision¹⁶ stated that the foreigner can be detained on the ground of deportation even if the execution of his deportation is suspended.

On 6 May 2005 the Supreme Administrative Court in its decision¹⁷ stated that the foreigner granted temporary territorial asylum should not be detained on the ground of illegal stay in Lithuania.

On 13 July 2005 the Supreme Administrative Court in its decision¹⁸ stated that the foreigners' family with children should not be detained if their identities were established and they did not constitute threat to national security and public order in Lithuania.

Positive aspects

Courts normally do not detain foreigners granted temporary territorial asylum (i.e., asylum seekers)¹⁹ and foreigners' families with children²⁰.

Reasons for concern

The Law on Foreigners Legal Status²¹ does not establish maximum period of detention. In practice foreigners might be detained for quite a long period until their deportation is practically arranged. According to 18 March 2005 the Supreme Administrative Court decision²², foreigners can be detained on the ground of deportation even if the execution of their deportation is suspended. Such a practice might be not in compliance with Article 5 of ECHR if deportations were not executed with due diligence.

¹⁵ Eur. Ct. H.R., Kambangu v. Lithuania decision of 17 March 2005 (Appl. No. 59619/00)

¹⁶ 2005 03 18 Lietuvos Vyriausiojo administracinio teismo sprendimas Nr. N7-809-05 [18 March 2005 Lithuanian Supreme Administrative Court Decision No. N7-809-05] // www.lvat.lt

¹⁷ 2005 05 06 Lietuvos Vyriausiojo administracinio teismo sprendimas Nr. N62-962-05 [6 May 2005 Lithuanian Supreme Administrative Court Decision No. N62-962-05] // www.lvat.lt

¹⁸ 2005 07 13 Lietuvos Vyriausiojo administracinio teismo nutartis Nr. N6-1514-05 [13 July 2005 Lithuanian Supreme Administrative Court Decision No. N6-1514-05] // www.lvat.lt

¹⁹ 2005 05 06 Lietuvos Vyriausiojo administracinio teismo sprendimas Nr. N62-962-05 [6 May 2005 Lithuanian Supreme Administrative Court Decision No. N62-962-05] // www.lvat.lt

²⁰ 2005 07 13 Lietuvos Vyriausiojo administracinio teismo nutartis Nr. N6-1514-05 [13 July 2005 Lithuanian Supreme Administrative Court Decision No. N6-1514-05] // www.lvat.lt

²¹ Įstatymas "Dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539

²² 2005 03 18 Lietuvos Vyriausiojo administracinio teismo sprendimas Nr. N7-809-05 [18 March 2005 Lithuanian Supreme Administrative Court Decision No. N7-809-05] // www.lvat.lt

Article 7. Respect for private and family life*Private life*Criminal investigations and the use of special or particular methods of inquiry or research*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

The European Court of Human Rights has declared the application by E.Miliniienė against Lithuania admissible. The applicant stated that there had been a breach of her right to a fair trial in view of the authorisation and implementation of the model against her. She stated that the model had been used in breach of domestic law, and thus the secret recordings had been made and admitted as evidence unlawfully. She further stated that the initial information submitted by SŠ to the authorities on 16 June 1998 had not been sufficient to suspect her of being inclined to bribery. The authorisation of the model in her case had thus served to create evidence of a fresh offence, rather than to investigate an offence which she had been predisposed to commit. She stated that, as a result, she had been entrapped in the crimes set up by SŠ and the authorities. Furthermore, the applicant submitted that the domestic courts had not given an adequate answer to her complaints about the alleged incitement against her. In particular, she drew attention to the statement of the Supreme Court that an offer to accept a bribe could not be regarded as “active pressure” to commit an offence.²³ The European Court of Human Rights has declared admissibility of more applications in this field.

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court has underlined that the obligation of the state and its institutions is prevention of crime. The mode of conduct simulating a criminal act may only serve as one of the measures in detection of a crime prepared by a person or in that of a crime at an early stage of its commission. The state institutions may not establish such legal regulation which would permit state special services to incite or provoke a person to commit a crime so that after it there would appear grounds to prosecute the said person.²⁴

Voluntary termination of pregnancy*Legislative initiatives, national case law and practices of national authorities*

On 7 July 2005 in Parliament was proposed draft Law on Security of Life in Prenatal Phase (Gyvybės prenatalinėje fazėje apsaugos įstatymo projektas)²⁵. This project seeks to prohibit voluntary abortion.

Positive aspects

Sexual education in schools covers the development of communication skills; helps develop responsibility in this way forming an independent personality immune to external influences. The purpose of education in sexuality is achievement of internal maturity, preparedness for marriage, fatherhood and motherhood, whereas the objective of sexual education is to provide

²³ Eur. Ct. H. R. (2nd sect.) E.Miliniienė V. Lithuania (Appl. N. 74355/01) partial decision as to the admissibility.

²⁴ The Ruling of the Constitutional Court of the Republic of Lithuania On the Restraint of Organised Crime, 29 December 2004.

²⁵ Gyvybės prenatalinėje fazėje apsaugos įstatymo projektas [Draft Law on Security of Life in Prenatal Phase], 2005 07 07 XP-432(2)

children with knowledge about pregnancy, childbirth, AIDS, sexually transmitted diseases, spiritual and physical damage inflicted by abortion.

Reasons for concern

Currently, sex education in Lithuanian schools does not adequately address the needs of Lithuania's youth and there are no trained teachers who can provide modern sexuality education. This situation has left most youth with little knowledge and tools to protect themselves from unwanted pregnancy and sexually transmitted infections. This is a serious setback for Lithuanian youths and their parents who need support in ensuring that young women do not face unwanted pregnancies.

Other relevant developments

Reasons for concern

Under the Article 2.27 of the Civil Code which determines the right to the change of the designation of sex: "the conditions and the procedure for the change of designation of sex shall be prescribed by law". Such law does not exist either.

The lack of law creates other legal problems. A person, who would change designation of sex abroad (it means legally), will be bothered by issuing personal documents. Even if a person will change his/her name, his former sex will be identified by the personal identity code. The personal identity codes in Lithuania consist of 13 digits, the first digit represents the sex of individual.

Family life

Right to family reunification

Reasons for concern

Article 30 of the Law on Foreigners Legal Status²⁶ limits the right to family reunification for Convention refugees. Although Article 12 Para 2 of the Council Directive 2003/86/EC on the right to family reunification explicitly exempts the Convention refugees from the 2 year residence requirement term, the Law in fact requires the Convention refugees along side with other third country nationals to reside for at least 2 years in Lithuania before having their family members join them.

Private – and family life in the context of the expulsion of foreigners

Legislative initiatives, national case law and practices of national authorities

On 15 July 2005 Vilnius District Administrative Court in its decision²⁷ balanced the foreigner's family relations in Lithuania against his threat to national security and public order and concluded that the refusal to issue him residence permit was not necessary in a democratic society.

²⁶ Įstatymas "Dėl užsieniečių teisinės padėties" [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539

²⁷ 2005 07 15 Vilniaus apygardos administracinio teismo sprendimas Nr. III-27-20/2005 [15 July 2005 Vilnius District Administrative Court Decision No. III-27-20/2005]

Positive aspects

Courts apply the Article 8 of ECHR test in cases when foreigners' family life is interfered and decides whether interference is necessary in a democratic society²⁸.

Good practices

See under "Positive aspects".

Reasons for concern

Article 128 of the Law on Foreigners Legal Status²⁹ states that the foreigner's family relations in Lithuania shall be taken into account if the decision on his or her deportation is being examined. However, the Law fails to specify how foreigner's family relations might prevent deportation. In practice, if the foreigner, who is married to a Lithuanian national, is illegal in Lithuania, he or she is asked to leave Lithuania (or is deported) and suggested applying for the Lithuanian residence permit from abroad. Such practice might violate Article 8 of ECHR if due to objective reasons (e.g., impossibility to get travel documents, financial costs, health condition, etc.) the separated family did not have a chance to reunite legally and practically. Thus the Law probably should provide that in such cases residence permit should be granted in Lithuania without the requirement to leave Lithuania and apply for residence permit from abroad.

Article 8. Protection of personal dataIndependent control authority*Legislative initiatives, national case law and practices of national authorities*

The State Data Protection Inspectorate has concluded a lot of investigations in the private and public sector (including national archives) checking whether the collecting, processing or keeping of personal data are in accordance with the legal requirements, has investigated 53 complains, prepared 26 means for information of the public.³⁰

Protection of personal data*Reasons for concern*

Neither Law on Legal Protection of Personal Data, nor other law regulates the right to remedy. The Code of Administrative Offences provides only the responsibility for illegal collecting, processing or keeping of personal data or if this activity is done not in accordance with the legal requirements.

²⁸ 2005 07 15 Vilniaus apygardos administracinio teismo sprendimas Nr. III-27-20/2005 [15 July 2005 Vilnius District Administrative Court Decision No. III-27-20/2005]

²⁹ Įstatymas "Dėl užsieniečių teisinės padėties" [Law on Foreigners Legal Status] // Valstybės žinios, 2004, Nr. 73-2539

³⁰ Valstybinė duomenų apsaugos inspekcija [The State Data Protection Inspectorate] <http://www.ada.lt/index.php?lng=lt>

Article 9. Right to marry and right to found a family

Marriage and control of marriages suspect of being simulated

Reasons for concern

The provisions of Civil Code regulates the relations in property of a man and a woman who, after registering their partnership in the procedure laid down by the law, but until today there are no laws issued for regulation of this area.

The draft Law on Partnership (Bendro gyvenimo neiregistravus santuokos istatymo projektas)³¹ was not approved. The majority of Parliament members expressed its strict position against the establishment of an institute of partnership. The argument was that the provisions for the establishment of partnership would contradict with the Constitution, which provides that the State protects the family.

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

Article 3.7 of Civil Code provides that marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law. Article 3.12 of Civil Code prohibits marriage of persons of the same gender: marriage may be contracted only with a person of the opposite gender.

If the draft Law on Partnership (Bendro gyvenimo neiregistravus santuokos istatymo projektas)³² which was deliberated in Parliament, would have established that the registered partnership is legally adequate to marriage. The draft Law provides that the partnership would have been permitted to be concluded only between a woman and a man.

Article 10. Freedom of thought, conscience and religion

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Supreme Administrative Court in the case *Religious community of old believers in Vilnius v. the Ministry of Justice*³³ has stated that the religious communities and associations shall have the right to freely organise in accordance with their hierarchic and institutional structure, and manage their inner life according to its canons and statutes, as well as other norms. Religious communities and associations shall not fulfil state functions, while the state shall not fulfil the functions of religious communities and associations. Neither Ministry of Justice nor courts dealing with cases are not authorised to solve internal conflicts of religious communities and associations related with their consolidation, reorganisation or liquidation regulated by communities' canons and statutes. Court dealing with case is not authorised to solve which religious community had right to use the name of religious community based on its internal regulations.

³¹ Bendro gyvenimo neiregistravus santuokos projektas [Draft Law on Partnership], Nr. IXP-3272.

³² Bendro gyvenimo neiregistravus santuokos projektas [Draft Law on Partnership], Nr. IXP-3272.

³³ The Supreme Administrative Court case *Vilniaus sentikių religinė bendruomenė v. Teisingumo Ministerija* [Religious community of old believers in Vilnius v. the Ministry of Justice] (case N. A⁸ – 514 – 04) judgement 27 December 2004.

Article 11. Freedom of expression and of informationFreedom of expression and of information*Legislative initiatives, national case law and practices of national authorities*

Electronic communications and telecommunications are undergoing fast development. The opportunities to seek, obtain and disseminate information by making use of electronic information technologies, including the internet, are constantly expanding. Therefore, it is necessary that legislation not get behind with the progress of information technologies and with changes in respective social relations which objectively determine the necessity to differentiate their legal status.

The Constitutional Court has noted that the legal regulation established in laws at present is, to a high degree, of general character, it does not sufficiently take account of the specificity of the internet as a media for spreading of information. This can create preconditions for appearance of such legal situations in the future, where due to insufficient legislative legal regulation freedom of information will not be ensured on the one hand, and, on the other hand, society and/or its individual members will not be protected from influence of the information whose dissemination or whose dissemination limitations are provided for by the Constitution, and due to uncontrolled (not disabled immediately) dissemination of such information various values entrenched in the Constitution, inter alia human rights and freedoms, will not be protected and defended.³⁴

In 2005 Seimas started to deliberate on the draft law on Provision of Information to the Public. The draft Law³⁵ newly clarifies definitions of private life and its limits, private information about person's health, disinformation, differentiates an opinion and news and etc. The draft Law regulates the limits of authority of regulatory institutions and self-governance bodies of producers and disseminators of public information. The provisions of the draft Law is harmonized with EU directives and national legislation.

Good practices

Inspector of Journalist Ethics and Ethics Commission of Journalists and Publishers, who is responsible for the development of the professional ethics of journalists, have organised a number of conferences and seminar for journalists and publishers on such topics as the tolerance of minorities, the islamophobia in the media, the protection of minors against detrimental effects of the public information, dissemination of information about pre-trial investigation, and etc.

Media pluralism and fair treatment of the information by the media*Legislative initiatives, national case law and practices of national authorities*

The Supreme Court and other national courts have investigated a number of cases dealing with the violation of various human rights (human dignity, right to privacy, rights of juvenile, discrimination of minorities and etc.) done by media.

³⁴ The Ruling of the Constitutional Court of the Republic of Lithuania «On the Procedure for Dissemination of Information not to Be Divulged to the Public» 19 September 2005.

³⁵ Visuomenės informavimo įstatymo projektas [Draft Law on Provision of Information to the Public] 2005 June 9 N. XP-586.

Positive aspects

On 15 of April 2005 the representatives of the organizations of the journalists and publishers validated the new version of the Code of Journalists' and Publishers' Ethics³⁶.

Secrecy of journalistic sources*Legislative initiatives, national case law and practices of national authorities*

In 2005 Seimas started to deliberate on the draft law on Provision of Information to the Public. The draft Law³⁷ provides that the producer, disseminator of public information and the owner of the producer and (or) disseminator of information and journalist shall have the right to protect the source of information and not to disclose the source of information. But they shall disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, or when information is involved in state secret.

This notion of draft Law is an answer to the Constitutional Court. On 23 October 2002 the Constitutional Court³⁸ has underlined that it is not permitted to establish such legal regulation by laws whereby, while consolidating the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, preconditions would be created to violate the values entrenched in the Constitution.

The draft Law defines that in above mentioned situations source of information shall be disclosed to general prosecutor. This notion is doubtful, while 109 Article of the Constitution provides that in the Republic of Lithuania, justice shall be administered solely by courts.

The Constitutional Court in its Ruling has stated that the legislator, while establishing, by law, the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, has a duty to establish, by law, also that in every case it is only the court that can decide whether the journalist must disclose the source of information.³⁹

Article 12. Freedom of assembly and of association**Article 13. Freedom of the arts and sciences**Other relevant developments*Good practices*

Vilnius – European Capital of Culture 2009. Lithuania is the first country among the new member states to have its capital Vilnius nominated for the European Capital of Culture Status in 2009.

³⁶ Lietuvos žurnalistų ir leidėjų etikos kodeksas [the Code of Journalists' and Publishers' Ethics] <http://www3.lrs.lt/docs2/FDQOUEDY.PDF>

³⁷ Visuomenės informavimo įstatymo projektas [Draft Law on Provision of Information to the Public] 2005 June 9 N. XP-586.

³⁸ The Ruling of the Constitutional Court of the Republic of Lithuania « On the Protection of the Private Life of a Public Person and the Right of the Journalist not to Disclose the Source of Information » 23 October 2002.

³⁹ The Ruling of the Constitutional Court of the Republic of Lithuania « On the Protection of the Private Life of a Public Person and the Right of the Journalist not to Disclose the Source of Information » 23 October 2002.

Article 14. Right to education**Article 15. Freedom to choose an occupation and right to engage in work**

The right to engage in work and the right for nationals from other member States to seek an employment, to establish themselves or to provide services

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

During the period of scrutiny there was no international case law or concluding observations of international bodies.

Legislative initiatives, national case law and practices of national authorities

On 1 January 2005 enters into force the Law amending Law on Support of Unemployed.⁴⁰ The new provisions provide the employment programmes and additional guarantees and individuals to whom additional guarantees of employment are applicable.

The Law on Social Insurance of Unemployment entered into force since 1 January 2005⁴¹. The aim of this law is to integrate the system of the insurance of unemployment to the system of social insurance, to raise the level of unemployment benefits, to prolong their payment.

The prohibition of any form of discrimination in access to employment

Legislative initiatives, national case law and practices of national authorities

Law on Equal Treatment⁴² enters into force on 1 January 2005. Article 5 of this Law provides that when implementing equal treatment the employer, regardless of the person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, must apply equal recruitment criteria and employment conditions when employing or recruiting to public service except in the cases set forth in sub-paragraphs 1,2,3,4 and 5 of paragraph 3 of Article 2 of this Law. Article 7 provides that the acts of an employer shall be deemed as violating equal treatment, if due to a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs he applies less (more) favourable condition of employment or recruitment to public service.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

Neither the Law on Foreigners Legal Status⁴³, nor other Lithuanian legislation addresses the issue of asylum seekers' access to the labour market. They get the access to the labour market only if they are granted refugee status or subsidiary protection.

Positive aspects

Asylum seekers do not have a right to work until they are granted asylum. On the other hand, according to Article 81 of the Law on Foreigners Legal Status⁴⁴, asylum procedure in the first

⁴⁰ Bedarbių rėmimo įstatymo pakeitimo įstatymas [The Law Amending Law on Support of Unemployed] Valstybės žinios, 2005, No. 81-2941.

⁴¹ Nedarbo socialinio draudimo įstatymas, [The Law on Social Insurance of Unemployment] Valstybės žinios, 2004, No. 4-26.

⁴² Lygių galimybių įstatymas [Law on Equal Treatment] Valstybės žinios, 2003, No. 114-5115.

⁴³ Įstatymas dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] // Valstybės žinios, 2004, Nr. 73-2539.

instance normally takes only 3 months (in exceptional cases it might be prolonged up to 6 months). Such a short period of asylum procedure in the first instance is in compliance with the employment provisions in Article 11 para 2 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and might be regarded as a positive aspect.

Good practices

As a part of the EU initiative EQUAL in June 2005 the Ministry of Social Security and Labour in the partnership with the Foreigners Registration Center, the Refugees Reception Center, the Lithuanian Red Cross, the religious community “Caritas”, the public institution “Eupro”, the public institution “Institute of Social Economics” and Mykolas Romeris University started to implement the project “In Corpore”, which is aimed to prepare asylum seekers for professional integration into the Lithuanian labour market and increase their access to employment after they are granted asylum in Lithuania.⁴⁵

Reasons for concern

According to Article 79 of the Law on Foreigners Legal Status⁴⁶, during asylum procedure asylum seekers normally are accommodated in the Foreigners Registration Center where they are provided with food, necessary hygiene items, necessary health assistance and 25 Litas as a monthly allowance for minor expenses⁴⁷. Having regard that the nutrition system is centralised in the Foreigners Registration Center, it does not always secure religious or cultural dietary requirements. The medical unit, located in the Foreigners Registration Center, provides only necessary health care services, while access to the hospitals and services of specialists is available only in emergency cases. The amount of 25 Litas (approx. 7 Euro) is really modest, thus not having access to employment asylum seekers sometimes are not able to satisfy their basic needs (e.g., proper food, health care, clothing, school necessities) and are forced to look for illegal employment.

Article 16. Freedom to conduct a business

Article 17. Right to property

The right to property and the restrictions to this right

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the case *Užkurėlienė and others v. Lithuania* the European Court of Human Rights reiterated that the Convention did not guarantee, as such, the right to restitution of property. It was stated, that the hope that a long-extinguished property right might be revived could not be regarded as a „possession“ for the purposes of Article 1 of Protocol No. 1.⁴⁸

⁴⁴ Įstatymas dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] // Valstybės žinios, 2004, Nr. 73-2539.

⁴⁵ Projekto aprašymas [Description of the Project] // www.equal.lt

⁴⁶ Įstatymas dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] // Valstybės žinios, 2004, Nr. 73-2539.

⁴⁷ 2002 02 13 LR socialinės apsaugos ir darbo ministro įsakymas Nr. 20 “Užsieniečio teisės kas mėnesį gauti piniginę pašalpą smulkioms išlaidoms įgyvendinimo tvarka” [13 February 2002 Minister of Social Security and Labour Order No. 20 on Implementation of Foreigner’s Right to Receive Monthly Allowance for Minor Expenses] // Valstybės žinios, 2002, Nr. 17-702

⁴⁸ Eur. Ct. H. R. (3rd sect.) *Užkurėlienė and others v. Lithuania* (Appl. N. 62988/00) judgement of 7 April 2005 (Final 7 July 2005).

Legislative initiatives, national case law and practices of national authorities

In the case *J.Ramanauskienė v. M.Lekstutiene*⁴⁹ the Supreme Court has stated that despite the requirement to determine current market value of the asset, court bailiff took two years old book value. By this, the rights of the debtor have been violated as assets were sold almost twice cheaper. National courts investigate number of cases related with violations of debtors' rights to property during the enforcement procedure.

Reasons for concern

The society is confused by court bailiffs' disrespect to the debtors' rights to property. The Law on Bailiffs⁵⁰ provides that in carrying out their functions, bailiffs must adhere to the principles of lawfulness, co-operation and democracy of bailiffs' activities as well as to the principles of civil procedure. A bailiff must carry out his professional duties in good faith. In enforcing writs of execution, the bailiff must use all lawful remedies to protect adequately the interests of the plaintiff, without violating the rights and lawful interests of other parties to the enforcement procedure. The Code of Civil Procedure estimates the rank for the recovery from a debtor's property (in the first place – goods and chattels, than – realty and dwelling). But in practice the bailiffs often violate the Code of Civil Procedure and recover debts firstly from the realty, even if value of realty exceeds the debt more than ten times, or sell debtor's property under cost, or recover debts from the social allowances, even if allowance is paid for a debtor's child.

Human Rights Monitoring Institute has presented the Comprehensive Research on the Court Bailiffs' Activities in Lithuania⁵¹. The conclusion of this research is that the payment scheme for bailiffs' services does not motivate them to complete the enforcement process promptly - the longer it takes place the higher is bailiff's fee. The amount of the final payment to a bailiff often exceeds the debt more than two times. A weak protection from possible bailiffs' misuse of power is incommensurate with the significance of bailiffs' functions and high authority given to them.

Article 18. Right to asylumAsylum proceedings*Positive aspects*

According to Article 81 of the Law on Foreigners Legal Status⁵² asylum procedure in the first instance normally takes only 3 months (in exceptional cases it might be prolonged up to 6 months). During the reporting period no cases when the Migration Department missed 6 month period were observed. Such a short period might be regarded as a positive aspect.

Reasons for concern

The first problem relates to the limited access to the territory and the asylum procedure. In 2004 Human Rights Committee expressed concern about prevention of asylum requests at the border⁵³. The cases when asylum applications are received at the border check points are still extremely rare. Therefore this problem seems not to be solved.

⁴⁹ Supreme Court case *J.Ramanauskienė v. M.Lekstutiene* (case N. 3K-3-157/2005) judgement 9 March 2005.

⁵⁰ Antstolių įstatymas [Law on Bailiffs], Valstybės žinios, 2002, Nr. 53-2042.

⁵¹ Comprehensive Research on the Court Bailiffs' Activities in Lithuania by the Human Rights Monitoring Institute. 26 August 2005.

⁵² 2004 04 29 LR įstatymas "Dėl užsieniečių teisinės padėties" Nr. IX-2206 [29 April 2004 Law on Foreigners Legal Status No. IX-2206] // Valstybės žinios, 2004, Nr. 73-2539

⁵³ Human Rights Committee, 4 May 2004, CCPR/CO/80/LTU

The second problem relates to the appeals procedure. Article 138 of the Law on Foreigners Legal Status⁵⁴ gives only 7 day period for submitting appeal against negative decision on asylum. Such a short term makes the right to appeal less effective.

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

From 1 December 2004 till 1 November 2005 refugee status was granted to 5 asylum seekers⁵⁵.

Positive aspects

In 2005 there were first 3 cases when unaccompanied minors were granted refugee status in Lithuania.

Reasons for concern

The interpretation of refugee definition remained very restrictive, particularly regarding the cases of persecution in the context of wide spread human rights violations. Chechen asylum seekers are normally granted only subsidiary protection, although in most cases they have a well founded fear of being persecuted for the Convention reasons.

Unaccompanied minors seeking asylum

Legislative initiatives, national case law and practices of national authorities

On 2 February 2005 Minister of Internal Affairs and Minister of Social Security and Labour issued the Order on Accommodation of Unaccompanied Minors Asylum Seekers in the Refugee Reception Center⁵⁶, which empowers the Refugee Reception Center not only to accommodate unaccompanied minors, but also to act as their guardian.

On 28 April 2005 the Amendment of Article 6 of the Law on Health Insurance⁵⁷ was passed, which guarantees to unaccompanied minors health insurance paid by the State.

Positive aspects

According to 28 April 2005 the Amendment of Article 6 of the Law on Health Insurance⁵⁸, unaccompanied minors asylum seekers get health insurance paid by the State and can get all sorts of medical treatment.

Good practices

In 2005 there were first 3 cases when unaccompanied minors were granted refugee status in Lithuania.

⁵⁴ 2004 04 29 LR įstatymas "Dėl užsieniečių teisinės padėties" Nr. IX-2206 [29 April 2004 Law on Foreigners Legal Status No. IX-2206] // Valstybės žinios, 2004, Nr. 73-2539

⁵⁵ Migracijos departamento informacija [Information of Migration Department] // www.migracija.lt

⁵⁶ 2005 02 02 LR vidaus reikalų ministro ir LR socialinės apsaugos ir darbo ministro įsakymas Nr. 1V-31/A1-28 "Nelydymų nepilnamečių prieglobsčio prašytojų apgyvendinimo Pabėgėlių priėmimo centre taisyklės" [2 February 2005 Minister of Internal Affairs and Minister of Social Security and Labour Order No. 1V-31/A1-28 on Accommodation of Unaccompanied Minors Asylum Seekers in the Refugee Reception Center] // Valstybės žinios, 2005, Nr. 20-641

⁵⁷ 2005 04 28 LR sveikatos draudimo įstatymo 6 straipsnio pakeitimo įstatymas Nr. X-178 [28 April 2005 Amendment of Art. 6 of the Law on Health Insurance No. X-178] // Valstybės žinios, 2005, Nr. 61-2159

⁵⁸ 2005 04 28 LR sveikatos draudimo įstatymo 6 straipsnio pakeitimo įstatymas Nr. X-178 [28 April 2005 Amendment of Art. 6 of the Law on Health Insurance No. X-178] // Valstybės žinios, 2005, Nr. 61-2159

Reasons for concern

The Law on Foreigners Legal Status⁵⁹ does not recognise the right of a Convention refugee, who is an unaccompanied minor, to reunify with his parents in Lithuania, which might raise a serious concern with regard to the conformity of the Law with the Council Directive 2003/86/EC on the right to family reunification.

According to 2 February 2005 Minister of Internal Affairs and Minister of Social Security and Labour Order on Accommodation of Unaccompanied Minors Asylum Seekers in the Refugee Reception Center⁶⁰, the Refugee Reception Center is empowered to act as the guardian. This will naturally lead to *de facto* compulsory accommodation of such children in the Refugee Reception Centre till the age of majority and excludes them from access to the permanent guardianship system including placement of children in foster families. This arrangement might raise a concern regarding its compliance with the principle of the best interests of the child.

Article 19. Protection in the event of removal, expulsion or extraditionCollective expulsions*Legislative initiatives, national case law and practices of national authorities*

On 2 August 2005 Minister of Internal Affairs issued the Order on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania⁶¹, which regulates the procedure of such refusal.

Positive aspects

2 August 2005 Minister of Internal Affairs Order on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania⁶² should be regarded as a positive aspect, because it prevents collective expulsions, which usually happen when there is no formal procedure of refusal to enter and legal remedies are not available.

Reasons for concern

Article 138 of the Law on Foreigners Legal Status⁶³ gives only 7 day period for submitting appeal against the decision on removal. Such a short term makes the right to appeal less effective.

In addition, Article 139 of the Law foresees suspensive effect in case of appeal, but in case of refusal to enter it is executed immediately as there is no suspensive effect before the appeal is submitted. Therefore a right to appeal itself becomes practically not accessible.

⁵⁹ 2004 04 29 LR įstatymas “Dėl užsieniečių teisinės padėties” Nr. IX-2206 [29 April 2004 Law on Foreigners Legal Status No. IX-2206] // Valstybės žinios, 2004, Nr. 73-2539

⁶⁰ 2005 02 02 LR vidaus reikalų ministro ir LR socialinės apsaugos ir darbo ministro įsakymas Nr. 1V-31/A1-28 “Nelydymų nepilnamečių prieglobsčio prašytojų apgyvendinimo Pabėgėlių priėmimo centre taisyklės” [2 February 2005 Minister of Internal Affairs and Minister of Social Security and Labour Order No. 1V-31/A1-28 on Accommodation of Unaccompanied Minors Asylum Seekers in the Refugee Reception Center] // Valstybės žinios, 2005, Nr. 20-641

⁶¹ 2005 08 02 LR vidaus reikalų ministro įsakymas Nr. 1V-254 “Užsieniečių neįleidimo į Lietuvos Respublikos teritoriją taisyklės” [2 August 2005 Minister of Internal Affairs Order No. 1V-254 on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania] // Valstybės žinios, 2005, Nr. 96-3614

⁶² 2005 08 02 LR vidaus reikalų ministro įsakymas Nr. 1V-254 “Užsieniečių neįleidimo į Lietuvos Respublikos teritoriją taisyklės” [2 August 2005 Minister of Internal Affairs Order No. 1V-254 on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania] // Valstybės žinios, 2005, Nr. 96-3614

⁶³ 2004 04 29 LR įstatymas “Dėl užsieniečių teisinės padėties” Nr. IX-2206 [29 April 2004 Law on Foreigners Legal Status No. IX-2206] // Valstybės žinios, 2004, Nr. 73-2539

Subsidiary protection and prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In 2004 Human Rights Committee expressed concern about the draft of Lithuanian Law on Foreigners Legal Status, which allowed deportation of foreigners in danger to be tortured⁶⁴. In 2005 Lithuania submitted the information that those provisions of the draft were changed and the Law on Foreigners Legal Status⁶⁵ does not allow deportation of foreigners in danger to be tortured.⁶⁶

In 2005 European Committee of Social Rights published its conclusions on the situation in Lithuania⁶⁷. It was especially concerned about the social rights of foreign nationals temporary residing in Lithuania.

Legislative initiatives, national case law and practices of national authorities

From 1 December 2004 till 1 November 2005 subsidiary protection was granted to 304 asylum seekers (most of them were Chechens) and only 25 asylum seekers were rejected⁶⁸.

On 28 April 2005 the Amendment of Article 6 of the Law on Health Insurance⁶⁹ was passed. According to Article 6 of the Law on Health Insurance, after the period of social integration health insurance paid by the State is provided to all refugees granted refugee status, and to the part of refugees granted subsidiary protection, or temporary protection - working in Lithuania, children, single parents, pregnant women, particularly ill persons, and persons at the age retirement. Other refugees granted subsidiary protection, or temporary protection do not have the right to medical insurance. According to Article 6 of the Law on Health Insurance, it is foreseen to prepare special governmental order on providing medical services to refugees granted subsidiary protection, or temporary protection, but it has not been prepared yet.

On 27 September 2005 Minister of Social Security and Labour issued the List of Measures for the Years 2005-2006 in order to Implement the National Action Plan against Poverty and Social Exclusion of Republic of Lithuania⁷⁰, which includes the measures to improve integration of refugees, migrants and ethnic minorities.

Positive aspects

On 28 April 2005 the Amendment of Article 6 of the Law on Health Insurance⁷¹ was passed. According to Article 6 of the Law on Health Insurance, after the period of social integration health insurance paid by the State is provided to all refugees granted refugee status, and to the part of refugees granted subsidiary protection, or temporary protection - working in Lithuania,

⁶⁴ Human Rights Committee, 4 May 2004, CCPR/CO/80/LTU

⁶⁵ 2004 04 29 LR įstatymas "Dėl užsieniečių teisinės padėties" Nr. IX-2206 [29 April 2004 Law on Foreigners Legal Status No. IX-2206] // Valstybės žinios, 2004, Nr. 73-2539

⁶⁶ Human Rights Committee, 8 April 2005, CCPR/CO/80/LTU/Add.1

⁶⁷ European Committee of Social Rights, Conclusions 2005 (Lithuania)

⁶⁸ Migracijos departamento informacija [Information of Migration Department] // www.migracija.lt

⁶⁹ 2005 04 28 LR sveikatos draudimo įstatymo 6 straipsnio pakeitimo įstatymas Nr. X-178 [28 April 2005 Amendment of Art. 6 of the Law on Health Insurance No. X-178] // Valstybės žinios, 2005, Nr. 61-2159

⁷⁰ 2005 09 27 LR socialinės apsaugos ir darbo ministro įsakymas Nr. A1-254 "Konsoliduotas LR 2004-2006 m. nacionalinio kovos su skurdu ir socialine atskirtim veiksmų plano įgyvendinimo priemonių 2005-2006 m. sąrašas" [27 September 2005 Minister of Social Security and Labour Order No. A1-254 on the List of Measures for the Years 2005-2006 in order to Implement the National Action Plan against Poverty and Social Exclusion of Republic of Lithuania] // www.socmin.lt

⁷¹ Sveikatos draudimo įstatymo 6 straipsnio pakeitimo įstatymas [Amendment of Art. 6 of the Law on Health Insurance] Valstybės žinios, 2005, Nr. 61-2159.

children, single parents, pregnant women, particularly ill persons, and persons at the age retirement. Providing health insurance at least for the most vulnerable groups of foreigners should be regarded as a positive aspect.

Good practices

High granting rate of subsidiary protection should be considered as a good practice.

27 September 2005 Minister of Social Security and Labour List of Measures for the Years 2005-2006 in order to Implement the National Action Plan against Poverty and Social Exclusion of Republic of Lithuania⁷², which includes the measures to improve integration of refugees, migrants and ethnic minorities, should be regarded as a good practice.

Reasons for concern

Article 138 of the Law on Foreigners Legal Status⁷³ gives only 7 day period for submitting appeal against the decision on removal. Such a short term makes the right to appeal less effective.

In addition, Article 139 of the Law foresees suspensive effect in case of appeal, but in case of removal it is executed immediately as there is no suspensive effect before the appeal is submitted. Therefore a right to appeal itself becomes practically not accessible.

European Committee of Social Rights concluded that the situation in Lithuania was not in conformity with Article 14 para 1 of the Revised Charter due to the existence of a length of residence requirement for entitlement to social services.⁷⁴ In Lithuania most social rights are granted only to citizens and persons, who have a permanent residence permit. Even asylum seekers, who get subsidiary protection (i.e., a temporary residence permit), after the period of social integration are left without the rights to social assistance. Such a situation could be regarded as *de facto* expulsion of foreigners.

Foreigners under a life-saving medical treatment

Reasons for concern

Article 138 of the Law on Foreigners Legal Status⁷⁵ gives only 7 day period for submitting appeal against the decision on removal. Such a short term makes the right to appeal less effective.

In addition, Article 139 of the Law foresees suspensive effect in case of appeal, but in case of removal it is executed immediately as there is no suspensive effect before the appeal is submitted. Therefore a right to appeal itself becomes practically not accessible.

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

On 2 August 2005 Minister of Internal Affairs issued the Order on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania⁷⁶, which regulates the procedure of such refusal.

⁷² 2005 09 27 LR socialinės apsaugos ir darbo ministro įsakymas Nr. A1-254 “Konsoliduotas LR 2004-2006 m. nacionalinio kovos su skurdu ir socialine atskirtim veiksmų plano įgyvendinimo priemonių 2005-2006 m. sąrašas” [27 September 2005 Minister of Social Security and Labour Order No. A1-254 on the List of Measures for the Years 2005-2006 in order to Implement the National Action Plan against Poverty and Social Exclusion of Republic of Lithuania] // www.socmin.lt

⁷³ Įstatymas “Dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539.

⁷⁴ European Committee of Social Rights, Conclusions 2005 (Lithuania)

⁷⁵ Įstatymas “Dėl užsieniečių teisinės padėties [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539.

Positive aspects

2 August 2005 Minister of Internal Affairs Order on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania⁷⁷ should be regarded as a positive aspect, because without formal procedure and decision of refusal to enter legal remedies would be not available at all.

Reasons for concern

Article 138 of the Law on Foreigners Legal Status⁷⁸ gives only 7 day period for submitting appeal against the decision on removal. Such a short term makes the right to appeal less effective.

In addition, Article 139 of the Law foresees suspensive effect in case of appeal, but in case of refusal to enter it is executed immediately as there is no suspensive effect before the appeal is submitted. Therefore a right to appeal itself becomes practically not accessible.

⁷⁶ 2005 08 02 LR vidaus reikalų ministro įsakymas Nr. 1V-254 “Užsieniečių neįleidimo į Lietuvos Respublikos teritoriją taisyklės” [2 August 2005 Minister of Internal Affairs Order No. 1V-254 on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania] // Valstybės žinios, 2005, Nr. 96-3614

⁷⁷ 2005 08 02 LR vidaus reikalų ministro įsakymas Nr. 1V-254 “Užsieniečių neįleidimo į Lietuvos Respublikos teritoriją taisyklės” [2 August 2005 Minister of Internal Affairs Order No. 1V-254 on Refusal for Foreigners to Enter into the Territory of the Republic of Lithuania] // Valstybės žinios, 2005, Nr. 96-3614

⁷⁸ Įstatymas “Dėl užsieniečių teisinės padėties” [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539.

CHAPTER III. EQUALITY**Article 20. Equality before the law**Equality before the law

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the case *Rainys and Gasparavičius v. Lithuania* the European Court of Human Rights has analysed if the difference of treatment applied to the applicants when executing the Law on Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation⁷⁹ pursued the legitimate aims of the protection of national security, public order, the economic well-being of the country and the rights and freedoms of others. The Court concluded that the ban on the applicants seeking employment in private-sector constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. The Court consequently found a violation of Article 14 of the European Convention on Human Rights taken in conjunction with Article 8.⁸⁰

Legislative initiatives, national case law and practices of national authorities

Seeking for the absolute implementation of the principle of equality one of the most important goals is to ensure the qualified and available legal aid for every one. The new version of the Law on the State Guaranteed Legal Aid was adopted on 8 of February 2005 and entered into effect on 1 of May 2005 (few provisions entered into effect on 1 of July 2005). Since May 2005, after having improved the before mentioned law, Lithuania entered a qualitatively new level of rendering legal aid – primary legal aid became available to everybody⁸¹. This fact is an important evidence of implementing the general principle of equality in the State.

Primary legal aid is provision of legal information, legal consulting and drafting of legal documents intended for state and municipal institutions. Such legal aid includes advice on extrajudicial dispute settlement, actions on amicable settlement of disputes and drafting of agreements on amicable settlement. However, using this kind of legal aid a person can not expect his interests to be represented at court.

All citizens of the Republic of Lithuania, citizens of other states of the European Union as well as other natural persons legally residing in the Republic of Lithuania and other states of the European Union as well as other persons indicated in international agreements of the Republic of Lithuania have a right to receive primary legal aid for free.

In order to receive primary legal aid, a person does not have to declare his property and income. A person only has to address the administrative institution of the municipality according to the declared place of living.

Secondary legal aid is drafting of documents of legal nature, defense and representation in the court process including the process of execution, representation in case of hearing precedent dispute out of court, if such hearing is established by the law or a court decision. Besides, this legal aid also includes coverage of costs of litigation in cases examined in the order of the

⁷⁹ Įstatymas dėl SSRS valstybės saugumo komiteto (NKVD, NKGB, MGB, KGB) vertinimo ir šios organizacijos kadrių darbuotojų dabartinės veiklos [Law on Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation]. Valstybės žinios, 1998, Nr.65-1877.

⁸⁰ Eur. Ct. H. R. (3rd sect.) *Rainys and Gasparavičius v. Lithuania* (Appl. N. 70665/01 and 74345/01) judgement 7 July 2005.

⁸¹ Valstybės garantuojamos teisinės pagalbos įstatymo pakeitimo įstatymas [The Law amending the Law on the State Guaranteed Legal Aid] Valstybės žinios, 2005, Nr. 18-572.

civil procedure, costs related to litigation in administrative procedure as well as costs related to hearing of a civil case in the criminal procedure.

Persons shall receive secondary legal aid only if their property and annual income do not exceed the limits of property and income established by the Government for receiving legal aid under this Law. However, the Law also indicates persons who shall be provided secondary legal aid independent of their property and income (12 article of the Law on the State Guaranteed Legal Aid).

Positive aspects

Comparing both the new and the former editions of the Law on the State Guaranteed Legal Aid it impossible to overlook such an important fact that starting from may 2005 the free legal consultations (primary legal aid) is available for every member of society not only for persons who's property and annual income do not exceed the limits of property and income established by the Government for receiving legal aid. This innovation extends the circle of persons capable to defend them self better by taking use of professional, qualified legal consulting.

Reasons for concern

Human Rights Committee in the concluding observations of 4 May 2004 reiterated the concern that the registration process continued to make distinctions between different religions, and that this amounted to unequal treatment contrary to articles 18 and 26 of the ICCPR. It noted that religious communities that did not meet the registration criteria were disadvantaged in that they might not register as legal persons and, therefore, might face certain difficulties, inter alia with respect to the restitution of property. The Law on Religious Communities and Associations⁸² differentiates religious communities into traditional and non-traditional. The State maintains a positive attitude towards the nine traditional religions (State recognized religions), while it is neutral towards faiths that have been in Lithuania for less than 25 years (see more on Article 22).

Article 21. Non-discrimination

Protection against discrimination

Legislative initiatives, national case law and practices of national authorities

The Law on Equal Treatment, adopted on 18 November 2003, came into force on 1 January 2005.⁸³ The aim of the Law is to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. The Law widens the mandate of the Ombudsman of the equal possibilities of men and women towards the reviewing of cases of other forms of discrimination (on all grounds covered by the Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000).

The Law on the Equal Treatment establishes a duty to implement equal rights for State institutions, educational institutions, employers, and in the sphere of the protection of consumers' rights; it defines the violations of equal rights by employers, educational institutions, goods or service producers or providers, discriminating advertisements.

After the Law on Equal treatment entered into force the Equal Opportunities Ombudsperson received 124 complaints. Between January and November 2005 received 29 complaints on the ground of age, 14 complaints on the ground of ethnics, 25 complaints on the ground of

⁸² 1995 11 03; Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas [The Law on Religious Communities and Associations] Valstybės žinios, 1995, Nr.89-1985.

⁸³ Lygių galimybių įstatymas [Law on Equal Treatment], Valstybės žinios, 2003, Nr.114-5115.

gender, 12 complaints on the ground of disability, 1 complaint on the ground of religion, 2 complaints on the ground of sexual orientation, 3 complaints on the ground of offensive advertisements, 3 complaints on the ground of sexual harassment.

The Law amending the Code of Administrative Offences entered into force on 11 October 2005.⁸⁴ The new provisions of the Code of Administrative Offences provide for sanctions for violations of the Law of Equal Treatment by public servants, public and private sector employers. The new article 187⁽⁵⁾ of the Code of Administrative Offences provides that refusal of an Equal Opportunities Ombudsman's request for information, documents and material necessary to carry out the Ombudsman's functions, or obstruction of the Equal Opportunities Ombudsman in the exercise of his/her duties shall result in a fine for public servants, employers and their agents.

Positive aspects

The entering into force of the Law on Equal Treatment created a mechanism for investigation of complains of persons who suffers any form of discrimination.

Opportunities Ombudsperson may start investigation of discrimination having received the complaint or learned about the possible violations of the Law on Equal Treatment or the Law on Equal Opportunities of Women and Men from the mass media or other information sources. It often happens so that the journalists find out about the discrimination cases themselves and write about them or they contact the Ombudsperson providing information on certain wrongdoings. In this way the society can actively participate in the process of fighting against the violations of the equal rights.

Following the big debates regarding some advertisements, which were considered to be insulting the dignity of women (were women were represented in a humiliating manner), some advertising companies started showing bigger concern for business ethics. They started consulting the Office of the Equal Opportunities Office regarding the contents of their commercials. In the beginning of 2005, the Office received 3 letters and 1 time strongly recommended do not publicize a video clip, which would probably insult women. This new phenomenon suggests the rise in social responsibility of the private sector.

Good practices

. The office of the Equal Opportunities Ombudsperson is an active member of national coordination council a long – term Action programme for the integration of national minorities in the Lithuanian Society for 2005 to 2010. This institution is the observer member of Interministerial Commission on Equal Opportunities of Women and Men, the member of The Elderly woman activity centre, the member of the Advisory Committee of Equal Opportunities for Women and Men and the member of the Experts group of AGE PLATFORM, etc.

Reasons for concern

Before the adoption of The Law amending the Code of Administrative Offences, the Equal Opportunities Ombudsman could only issue a binding decision recognising a violation of equal treatment, but had no capacity to impose sanctions. The new article 247⁽⁶⁾ of the Code of Administrative Offences provides that the Equal Opportunities Ombudsman can investigate claims that administrative offences have been committed under the above-mentioned articles (41⁽⁶⁾ and 187⁽⁵⁾) of the Code of Administrative Offences and can impose sanctions in the event of a finding that they have been breached.

However, neither this law, nor other laws provide compensation as a remedy for victims.

⁸⁴ Administracinių teisės pažeidimų kodekso pakeitimo įstatymas [Law on Amending of Code of Administrative Offences], Valstybės žinios, 2005, Nr. 122-4359.

Despite of the suitably long list of the achievements of The Office of the Equal Opportunities Ombudsperson implementing the directives 2000/43/EC and 2000/78/EC the important provisions of these acts are not transferred into national legislation yet. One of the most important provisions is concerned with the shifting of the burden of the proof in civil matters in favour of the person who considers being victim discrimination (except the cases on the ground of gender discrimination). According to the mentioned directives the State must secure that the duty to prove the fact of discrimination will not lie on the shoulder of the person who suspect himself being discriminated. The existing system of proving the facts of discrimination can not ensure the protection of rights of the weaker part of the dispute. Discussing the implementation of the directives mentioned below it should be also marked that the State do not ensured yet the possibility for non-governmental organizations to represent the victim of discrimination in the court or administrative procedures.

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny the draft of the Strategy of Development of the National (Ethnic) Relationships Policy⁸⁵ was formulated. This strategy is the most important average term (till 2015) document of planning the national (ethnic) relationship policy. According to the draft of the strategy, despite of the equal rights and opportunities declared to every Lithuanian citizen, still there are certain social or economical differences between the groups of national (ethnic) minorities and the rest part of society. The strategy is an instrument to plan the creation of well-proportioned society.

The declarations of the strategy might be worthless without the certain institutional structure. The important role in implementation of this strategy will be set to The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania⁸⁶. This institution forms and implements the Government policy of national minorities residing in the territory of the Republic of Lithuania⁸⁷. In implementing that policy the Department investigates their needs, drafts international treaties on the protection of rights and the integration into the society of persons belonging to national minorities⁸⁸.

The next development is the confirming of the Shorted Strategy Plan of Activities of the Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania (validated by the government of the Republic of Lithuania on 24 January 2005⁸⁹). According this document the main goal of this institution is taking the measures to support the national minorities to integrate into Lithuanian society. In order to seek the mentioned goal the specific measures will be implemented. Some of them are closely connected with a fight against national (ethnic) discrimination (for example the program on the support of national minorities in the process of integration into Lithuanian society).

⁸⁵ Tautinių (etninių) santykių politikos plėtros iki 2015 metų strategijos projektas [The draft of the Strategy of development of the national (ethnic) relationships policy]

⁸⁶ Tautinių (etninių) santykių politikos plėtros iki 2015 metų strategijos projektas [The draft of the Strategy of development of the national (ethnic) relationships policy]

⁸⁷ 1989 11 23; Lietuvos Respublikos Tautinių mažumų įstatymas [Law on Ethnic Minorities] Valstybės žinios, 1989, Nr. 34-485.

⁸⁸ Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės informacija [Information of The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania] // http://www.tmid.lt/index.php?page_id=339

⁸⁹ 2005 01 24; Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės sutrumpintas veiklos planas [the Shorted Strategy Plan of activities of the Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania]// www.tmid.lt

Positive aspects

Active work of authorities helps to solve the problems what Lithuanian society is facing in the area of tolerance.

Good practices

Currently there are three cultural centers for national minorities established in Lithuania under the Department's of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania authority: The public institution The House of National Communities (it represents 21 communities of different nationalities, established in 1991), the public institution The Roma Community Centre (established in 2001), the public institution The Kaunas Cultural Centre of Different Nations (established in 2004). Plans are also underway to set up such a centre in Klaipėda⁹⁰. There are more than 330 non-governmental organizations of national (ethnic) minorities registered in the Republic of Lithuania⁹¹. Mentioned organizations under the authority of public institution or non-governmental ones solidify the national minorities inside the community and create a possibility to fight against racial, ethnic, national or religious discrimination successfully.

The Lithuanian Centre for Human Rights has organised a seminar "Mapping capacity of civil society dealing with anti-discrimination» for representatives of NGOs and has issued some books in this field: "Mutual Understanding: Inter-ethnic Tolerance: educational material », « Human Rights. Prohibition of Discrimination in National and International Law: educational material », « Rights of Minorities ».

Remedies available to the victims of discrimination*Legislative initiatives, national case law and practices of national authorities*

The decisions of the Ombudsperson of Equal Opportunities in cases of discrimination on grounds of sex, age, sexual orientation, disability, racial or ethnic origin, religion or beliefs include the right to refer the material of the complaints to pre-trial investigation bodies; and to address the institutions with a recommendation to discontinue the violations of the Law on Equal Opportunities for Women and Men and the Law on Equal Treatment. The Ombudsperson has been granted the right to investigate administrative cases and impose administrative sanctions for violations of the Law on Equal Opportunities of Women and Men, which is one of the most important and effective tools of the Lithuanian gender equality policy. The recommendations of the Ombudsperson have a binding character, and persons obstructing the ombudsperson to exercise his duties are held liable under the law and face administrative sanctions. The majority of the decisions of the Ombudsperson have been duly implemented by public institutions as well as private companies so far⁹². After the passing the law amending the Law on Equal Opportunities of Women and Men⁹³ the substantial changes of the procedure in discrimination cases were instituted. The 2¹ article of the Law described the concept of the burden of proof in the cases on the ground of discrimination. From the moment when the new amendments entered into effect investigation of person's complaints in

⁹⁰ Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės informacija [Information of The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania] // http://www.tmid.lt/index.php?page_id=366

⁹¹ Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės informacija [Information of The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania] // http://www.tmid.lt/index.php?page_id=366

⁹² Equal Opportunities for Men and Women. Monitoring law and practice in new member states and accession countries of the European union //2005

⁹³ Moterų ir vyrų lygių galimybių įstatymo 1 straipsnio papildymo, įstatymo papildymo 2¹ straipsniu ir priedu įstatymas [The law amending the Law on Equal Opportunities of Men and Women], Valstybės žinios, 2005, Nr. 115-4280.

various institutions or courts on the ground of discrimination the fact of discrimination will be presumed. The person or institution being suspected will have a duty to prove his innocence. Although the same burden of proof in regard to the discrimination on other grounds (not on the ground of gender) is not trusted yet. The person or institution being suspected do not have a duty to prove its innocence in the cases of discrimination on the grounds of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

On 9 of November 2004 the Parliament of the Republic of Lithuania passed the Law amending the Law on Equal Opportunities of Women and men. By these amendments the new article 24¹ was placed. According this provision person, who have suffered from discrimination on the ground of gender or sexual harassment, has a right to recover monetary compensation under the Civil Code of The Republic of Lithuania. The same right is trusted also for the person, who has suffered discrimination on the other grounds.

Excepting these differences associated with the right to monetary compensation, no specific procedure is applied during the discriminatory cases hearings.

Positive aspects

The latest amendments of the Law on Equal opportunities of Women and Men have changed the burden of proof in the cases of gender discrimination. This achievement has a positive character in regard to the victim of discrimination. The fact of discrimination henceforth will be presumption. In future the same changes should be implemented to the Law on Equal Treatment. The burden of proof must be changed also in cases of other forms of discrimination.

Reasons for concern

Ombudsman of the Equal Treatment is facing a lot of problems during process of gathering evidences. The suspected person has a passive role in the process and this fact creates an opportunity of incomplete recovering of situation. The question of representation victims in court is not solved already too.

Protection of Gypsies / Roms

Legislative initiatives, national case law and practices of national authorities

The Government on 24 of January 2005 validated the Shorted Strategy Plan of activities of the Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania⁹⁴. According to this document, one of the measures planned to implement is the programme on support of the integration of Roms into Lithuanian society (retaining their cultural and ethnical identification; invoking the measures connected with active educating of Roms children, adults). The attention also will be paid to the legal consulting of the Roms, financial supporting of the non-governmental organizations working in the field of retaining Rom's culture, etc.

Vilnius city municipality has formulated the Programme on the Observation of Vilnius city Roms community and next to the tabor situated territories, security and the reducing of Roms segregation⁹⁵. The main trends of this program is to observe the territories where Roms live better, to prevent the using and distributing of drugs, to reduce the segregation of Roms.

⁹⁴ 2005 01 24; Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės sutrumpintas veiklos planas [the Shorted Strategy Plan of activities of the Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania]// www.tmid.lt

⁹⁵ 2005 06 22; Vilniaus romų bendruomenės ir šalia taboro esančių teritorijų priežiūros ir saugumo užtikrinimo bei romų segregacijos mažinimo programa [The Programme on the observation of Vilnius city Roms community and next to the tabor situated territories, security and the reducing of Roms segregation]//Vilnius city municipality, 2005.

The Measures 2005-2006 of the Implementation of the Plan of Actions of National Fight against Poverty and Social Disjuncture for 2004-2006⁹⁶ intend the special measures for the social and professional integration of Roms. The main goal of the mentioned measures is to increase the working Roms number, to increase the accessibility of health care, education.

Positive aspects

The possibility to complain to the Equal Opportunities Ombudsperson created to the Roms the possibility to be heard. The integration of the Roms, as it can be noticed from the Shorted Strategy Plan of activities of the Department of National Minorities and Lithuanians Living Abroad, is important goal of the Government of the Republic of Lithuania.

Since 1 of January 2005 the Office of Equal Opportunities received 14 complaints from persons on the grounds of race and ethnicity. The Roms are quit active in the field of filling the complaints too. The Office of the Equal Opportunities Ombudsperson received a written complaint from the residents of the Vilnius Kirtimai Roma settlement indicating that at the beginning of December 2004 the Municipality of Vilnius City initiated a series of actions of the demolition of Roma property in the Roma Kirtimai settlement. The administration of the Municipality of Vilnius City, meanwhile, explained that these houses were of illegal constructions, thus, they were demolished. Investigating the case and communicating with Roma community members, it was found out that the basic house wares were carried out during the destruction of the houses. According to the data provided by the Municipality of Vilnius City in 2004 191 illegal constructions were registered, 3 complaints were submitted to the court concerning the enforcement of obligations to the constructors to demolish illegal constructions. However, pursuant the decision of the court there were not any demolished constructions. Meanwhile the administration of the Municipality of Vilnius City did not demolish construction on the willful grounds. The takedown of buildings was implemented by the initiative and funding of the Municipality of Vilnius City in regard to Roma property without the court's decision.

Having examined the above mentioned Roma complaint it was decided that the administration of the Municipality of Vilnius City under its own initiative and allocating its own finances for the demolishing Roma property has infringed the requirements enshrined in the Law on Equal Opportunities. The Ombudsperson warned the mayor of the Vilnius city for the infringement of the requirements enshrined in the Article 3, part 1 of the Law on Equal Opportunities⁹⁷.

Reasons for concern

In the discussed area there are a lot of reasons to concern. The rights of the Rom people and their integration are the problem to which are facing other countries too. Poverty, illiteracy, resettlement all questions are not solved yet. Most painful problem is the low level of the education of the Roms. Mostly half of Lithuanian Roms (46 percents) are children and youth under 20 years old⁹⁸. Of late years practically no roms juveniles have graduated secondary school. That means that education and professional integration are very important questions for the development of Roms society. In the Long term prospect education remains the one of the most actual problems for the Roms.

⁹⁶ 2005 09 13; Lietuvos Respublikos Vyriausybės nutartimas Nr. 1002 "Dėl Lietuvos Respublikos 2004-2005 metų nacionalinio kovos su skurdu ir soliacine atskirtimi veiksmų plano įgyvendinimo 2005-2006 metų priemonių patvirtinimo" [The resolution of the Government of The Republic of Lithuania No. 1002 "Concerning the measures 2005-2006 of the implementation of the plan of actions of national fight against poverty and social disjuncture for 2004-2006"]//Valstybės žinios, 2005, Nr. 112-4091.

⁹⁷ 2005 03 25; The decision of The Equal Opportunities Ombudsperson No. 05-SN-66

⁹⁸ Romų diskriminacija užimtumo srityje [Survey on the discrimination of roms in the area of work and employment]// Žmogaus teisių stebėjimo institutas, 2005.

In Vilnius settlement Kirtimai live 511 roms: 146 juveniles and 365 adults⁹⁹. They live in 99 illegally built houses. The biggest part of the roms people do not have job. The main means of support for roms people is fortune telling, selling goods in markets and criminal behavior. While guarantying the equal rights for everyone, the actual question is the placement and work, because it helps people accede to the rest of society, have the means of subsistence and materialize all the opportunities¹⁰⁰.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The first additional protocol to the convention on Cyber crime was signed by the Minister of Justice of The Republic of Lithuania on 7 April 2005 in Helsinki during the conference of the Ministers of justice of the Council of Europe¹⁰¹. The ratification of this additional protocol is foreseen in the 2004-2008 program's of Government of the Republic of Lithuania plan of the measures for implementation¹⁰². This additional Protocol is planned to be ratified at the beginning of 2006¹⁰³.

Legislative initiatives, national case law and practices of national authorities

On 15 of April 2005 the representatives of the organizations of the journalists and publishers validated the new edition of the Lithuanian journalists and publishers code of ethics¹⁰⁴. The 54 article of the Code declares that it is prohibited for the journalist or publisher to sneer at the persons surname, race, nationality, ethnicity, his religious believes, age, sex, sexual orientation, disability or physical defect even if that person is delinquent. It is also prohibited to humiliate the person because of the mentioned features. According to the article 55 it is prohibited for journalist or publisher directly or indirectly to stimulate disagreement or stoke anger against the group of persons or certain person on the mentioned grounds¹⁰⁵.

These changes could be conditioned by the anti-Semitic publications in the one of the leader newspaper of Lithuania. During the pretrial investigation of the publications, placed in the newspapers „Respublika“ and „Vakaro žinios“, the Prosecutor's office of the Republic of Lithuania ascertained the evidences of the breach of the article 214¹² part 1 of the Code of Administrative offences. To the persons involved into publication of the humiliating publications the legal proceeding were starting on the ground of producing and spreading of the printings, provoking the national, racial or religious disagreement. The cases were presented to the second court of circuit of Vilnius¹⁰⁶.

⁹⁹ 2005 06 22; Vilniaus romų bendruomenės ir šalia taboro esančių teritorijų priežiūros ir saugumo užtikrinimo bei romų segregacijos mažinimo programa [The Programme on the observation of Vilnius city Roms community and next to the tabor situated territories, security and the reducing of Roms segregation]//Vilnius city municipality, 2005.

¹⁰⁰ Romų diskriminacija užimtumo srityje [Survey on the discrimination of roms in the area of work and employment]// Žmogaus teisių stebėjimo institutas, 2005.

¹⁰¹ Lietuvos Respublikos Teisingumo ministerijos informacija [The information of the Ministry of Justice of the Republic of Lithuania]//<http://www.tm.lt/default.aspx?item=prsp&id=8998>

¹⁰² 2005 06 24; Draft third report on Lithuania// European Commission against racism and intolerance.

¹⁰³ 2005 06 24; Draft third report on Lithuania// European Commission against racism and intolerance.

¹⁰⁴ 2005 04 15; Lietuvos žurnalistų ir leidėjų etikos kodeksas [the Lithuanian journalists and publishers code of ethics]// <http://www3.lrs.lt/docs2/FDQOUEDY.PDF>

¹⁰⁵ 2005 04 15; Lietuvos žurnalistų ir leidėjų etikos kodeksas [the Lithuanian journalists and publishers code of ethics]// <http://www3.lrs.lt/docs2/FDQOUEDY.PDF>

¹⁰⁶ Lietuvos Respublikos generalinės prokuratūros informacija [Information of the prosecutor's office of the Republic of Lithuania]//<http://www.lrgp.lt/?item=prsp&id=9140>

Positive aspects

The new edition of Lithuanian journalists and publisher code of ethics is a substantial achievement in the sphere of protection of national, ethnic, racial, religious minorities rights. Considering the facts that the harmonious life of the minorities depend on the certain image created by the mass media the provisions on the prohibiting of sneering or humiliating on the mentioned grounds is the gain which shows the general tolerance of the journalist and publishers.

Good practices

As examples of the good practices in the field of relations of minorities with the mass media the social activities of few organizations must be mentioned. The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania in October 2005 organized the seminar named „The diversity and equality of the nations: the dialog with the mass media“. With the help of The American center and the Inspector of Ethics of the Journalists the participants of the seminar got a lot of important information regarding the relationship between the national minorities and mass media. The harmonious dialog between the national minorities and mass media is an important measure to ensure the absence of violations of the rights of national minorities in the sphere of mass media.

Article 22. Cultural, religious and linguistic diversityProtection of religious minorities*Legislative initiatives, national case law and practices of national authorities*

The Constitution of the Republic of Lithuania grants to everyone the right to freely choose any religion or belief and, either alone or in community with others, in public or private, to manifest his religion or faith in worship, observance, practice or teaching¹⁰⁷. Human Rights Committee in the concluding observations of 4 May 2004 reiterated the concern that the registration process continued to make distinctions between different religions, and that this amounted to unequal treatment contrary to articles 18 and 26 of the ICCPR. It noted that religious communities that did not meet the registration criteria were disadvantaged in that they might not register as legal persons and, therefore, might face certain difficulties, inter alia with respect to the restitution of property. The Law on Religious Communities and Associations¹⁰⁸ differentiates religious communities into traditional and non-traditional. The State maintains a positive attitude towards the nine traditional religions (State recognized religions), while it is neutral towards faiths that have been in Lithuania for less than 25 years. The differentiation of the religious communities in Lithuania is based on historical, cultural criteria rather than legal criteria. Such differentiation of religions composes the possibility for recognized religions to get advantages over non-traditional ones. The 3 Article of the Law on Religious Communities and Associations declares that all the people are equal before law despite of the fact which religion they confess. Following such an important declaration of the equality of people, the state creates a different attitude to the equality of religious communities. The fact that having the legal categories created just for the religious communities, and differentiating them according to those categories, leaves the door wide open for privileges and restrictions to be introduced later on in the process of law making.

¹⁰⁷ Lietuvos Respublikos Konstitucija [Constitution of the Republic of Lithuania] Valstybės žinios, 1992, Nr. 33-1014.

¹⁰⁸ 1995 11 03; Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas [The Law on Religious Communities and Associations]//Valstybės žinios, 1995, Nr.89-1985.

When the law was adopted in 1995, the only real difference between the traditional and other religious communities was the fact that traditional communities could have catechesis classes in the State-run schools. Now, the differences include in addition the possibility to have church marriages, VAT benefits for the traditional religious communities, State financial help to traditional communities, the ability to purchase land for non-agricultural use, the right to use of State mass media and the full State support for the confessional primary and secondary schools¹⁰⁹. Answering the concern of the Human Rights Committee the question of the equality of religions in Lithuania was widely discussed. Despite the fact that Lithuanian Parliament considers the question of adoption of new version of the Law on Religious Communities and Associations the equality of the different religious communities in Lithuania is unsolved yet.

Reasons for concern

The diverse status of traditional religions and other religions is often determined because of the specific impact of the traditional religions to the culture, national inheritance of Lithuania. Present ruling on the religious communities and Associations is liberal to the fundamental right to choose any religion or belief and, to practice it either alone or in community with others. The goal to unify religions and cultures isn't the only one way to solve the problems in the area of religion.

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

The main achievement in the national legislation on the question of protection of linguistic minorities is the formulation of the draft Law on the writing of the names and surnames in the documents. The project of this Law has already been adopted for the consideration in the Parliament¹¹⁰. The necessity of the new regulation in the field of writing names and surnames was born because of long discussions in society on the question of writing names and surnames of the linguistic minorities. Many representatives of linguistic minorities have had a wish to write their names and surnames in their born language. The present regulation on writing names and surnames defines that the names and surnames of the persons who are not Lithuanian nationality have to be written in Lithuanian character¹¹¹. On the written request of the citizen the name and the surname can be written agreeable to pronunciation. In this case it depends on person's wish to use Lithuanian endings or not. In accordance with the draft Law on the writing of the names and surnames in the documents this rules of writing are changed¹¹². The 5 article of the draft Law estimates that names and surnames of the members of national minorities can be transcribed also in the characters of Latin (without Lithuanian characters). In case when the names and surnames are written not in Latin characters, they will be transcribed into documents in Latin characters. The draft law preliminary shall enter into effect on the 1 of January 2007.

The Measures 2005-2006 of the implementation of the plan of actions of national fight against poverty and social disjuncture for 2004-2006¹¹³ intend the special measures for the level of

¹⁰⁹2005-07-01; Legislation on Religion and the Challenge of Pluralism in Lithuania; Donatas Glodenis www.religija.lt/en/showarticle.php?articID=17

¹¹⁰ 2005 09 27; Vardų ir pavardžių rašymo dokumentuose įstatymo [the draft Law on the writing of the names and surnames in the documents]//2005, XP-689A.

¹¹¹ 1991 01 31; Lietuvos Respublikos Aukščiausios tarybos nutarimas „Dėl vardų ir pavardžių rašymo Lietuvos Respublikos piliečio pase [The resolution of the Supreme Council of the Republic of Lithuania „Concerning the writing of names and surnames in the passport of the citizen of Lithuania“]//Valstybės žinios,1991, Nr.5-132

¹¹² 2005 09 27; Vardų ir pavardžių rašymo dokumentuose įstatymo [the Draft Law on the writing of the names and surnames in the documents]//2005, XP-689A.

¹¹³ 2005 09 13; Lietuvos Respublikos Vyriausybės nutartimas Nr. 1002 “Dėl Lietuvos Respublikos 2004-2005 metų nacionalinio kovos su skurdu ir socialine atskirtimi veiksmų plano įgyvendinimo 2005-2006 metų priemonių patvirtinimo“ [The resolution of the Government of The Republic of Lithuania No. 1002 “Concerning the

state language of the youth of national minorities. The main goal of the mentioned measures is to estimate the level of the state language knowledge of the youth of national minorities in order to secure that youth will have a right to study, to qualify as professionals with no stopping.

Positive aspects

The youth of linguistic minorities do have opportunities to graduate from school by learning in their native language. During the school years 2004-2005 in the territory of Lithuania 173 schools teaching in the languages of national minorities functioned¹¹⁴.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

The main goals of the Programme on the Equal Opportunities of Women and Men for the years 2005-2009 in the area of prohibition gender discrimination in work and employment¹¹⁵ are: to change the stereotypes of men and women in the economical activity, to compose certain equal conditions for men and women to match up the obligation for work and for family, to motivate the employers to estimate the same level of salaries for men and women, etc.

According to the information of Statistics Department on the first quarter of 2005 the occupation of women was 58.6 percent (men – 64.4 percent). To compare with year 2004 the occupation of women has increased (on 2004 occupation of women – 57.8, men – 64.6). It can be noticed too, that unemployment of men and women decreased as well as distinction between unemployment of men and women¹¹⁶. On the first quarter of 2005 unemployment of women was 10,3 percent, of men – 10.2 percent. On 2004 average unemployment of women was 11.8, of men – 11 percent. Average monthly salary of women on the first quarter of 2005 compounded 83.1 percent of average salary of men. The distinction of salaries to compare with year 2004 decreased.

Despite of the optimistically statistics still where are distinctions between the men and women in the labour market. The main reason of the weaker position of women in the area of work and employment traditionally is gestation period and pause in professional life because of the maternity leave. Although the men have equal rights as a women to take a maternity leave according to the statistic still men reluctantly are using such a right. According to the information of the fund of social insurance on the year 2004 18590 persons had used the right to maternity leave and only 0.952 percent of these numbers were men. On the first quarter of the year 2005 the right to maternity leave was used by 19612 persons, 1.228 percent of them were men.

According to the Programme on the Equal Opportunities of Women and Men for the years 2005-2009 a plan of measures to achieve the goals which are declared is proposed. The undertakers of the program are obliged to organize various seminars, to support programs of

measures 2005-2006 of the implementation of the plan of actions of national fight against poverty and social disjuncture for 2004-2006”]/Valstybės žinios, 2005, Nr. 112-4091.

¹¹⁴ Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės informacija [Information of The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania] // <http://www.tmid.lt>

¹¹⁵ 2005 09 26; LR Vyriausybės nutarimas Nr. 1042 Dėl Valstybinės moterų ir vyrų lygių galimybių 2005-2009 metų programos patvirtinimo“ [The resolution of the Government of the Republic of Lithuania No. 1042]/Valstybės žinios, 2005, Nr. 116-4202.

¹¹⁶ 2005 09 26; LR Vyriausybės nutarimas Nr. 1042 Dėl Valstybinės moterų ir vyrų lygių galimybių 2005-2009 metų prgramos patvirtinimo“ [The resolution of the Government of the Republic of Lithuania No. 1042]/Valstybės žinios, 2005, Nr. 116-4202

non-governmental organisations, to initiate the amendments of laws which are necessary to achieve the results in this area.

According to the Law on Equal Opportunities of Women and Men the Equal Opportunities Ombudsperson has a right to impose administrative sanctions. On 19 of April 2005 in the decision¹¹⁷ the Ombudsperson decided that advertisement of the tyres with a woman with a denuded breast and write – up „Fast and qualitative service“ is offensive for the women. The person who distributed such an advertisement was fined.

Reasons for concern

The divergent image of men and women block the implementation of the equal opportunities of men and women. Employers guided by stereotypes do not secure the same level of the salary, the same treatment in the career seeking process. Women still have more obligations in her family life. In order to care of home and family well, women resign the career. Women still are not informed enough about the possibilities to fight against their discrimination in all areas of life.

Also it must be noticed that in local governmental level of institutional structure implementing the equal rights of men and women is not active yet. In Lithuania still the different retirement ages are set for a men and women. Equal retirement ages should be set to fully implement the principle of gender equality.

Also there is a lack of techniques on evaluation jobs in term. A methodology should be developed to evaluate jobs in term of equal pay for equal work and work of equal value.

Remedies available to the victim of gender discrimination

Legislative initiatives, national case law and practices of national authorities

The recommendations of the Equal Opportunities Ombudsperson have a binding character, and persons obstructing the Ombudsperson to exercise his duties are held liable under the law and face administrative sanctions. The majority of the decisions of the Ombudsperson have been duly implemented by public institutions as well as private companies so far¹¹⁸.

After the passing the law amending the Law on Equal Opportunities of Women and Men¹¹⁹ the substantial changes of the procedure in discrimination cases were instituted. The 2¹ article of the Law described the concept of the burden of proof: when person applies to a court or other competent institution because of equal treatment it may be presumed that there has been direct or indirect discrimination, and the respondent shall prove that there has been no breach of the principle of equal treatment.

Reasons for concern

There still has nor been any single case decided by the court on the violations of the law. No case law in this situation reserved the space for uncertainty about the practice of applying innovations (burden of proof and monetary compensation) in the court proceedings.

In the field of prohibiting gender discrimination and the remedies available for a victim should be mentioned that still there is a need to improve the legal basis. Final amendments and supplements should be made to existing legal acts to fully harmonize them with the requirements of the European Union law in the field of gender equality.

¹¹⁷ 2005 04 19; The decision of the Equal opportunities Ombudsperson.

¹¹⁸ Equal Opportunities for Men and Women. Monitoring Law and Practice in New Member States and Accession Countries of the EU, 2005

¹¹⁹ Moterų ir Vyrų lygių galimybių įstatymo 1 straipsnio papildymo, įstatymo papildymo 2¹ straipsniu ir priedu įstatymas [The law amending the Law on Equal treatment of men and women], Valstybės žinios, 2005, Nr. 115-4280.

Participation of women in political life*Legislative initiatives, national case law and practices of national authorities*

One of the goals of the Programme on the Equal Opportunities of Women and Men for the years 2005-2009¹²⁰ is to encourage women to participate actively in social and political life of society. According the mentioned Programme participating in politic and social activities in society is an important indicator of the equality of men and women. In accordance with a research¹²¹, which was fulfilled in 2003, „the Survey of Lithuanian residents: women and politics“, the respondents as an most important reason of low activity of women in politics, named the family duties of the woman.

Analyzing nowadays situation in Lithuania, it should be mentioned, that the increase of the number of women politicians can be noticed. In the first round of the election of the President of the Republic of Lithuania 2 candidates were women. First time in history of Lithuania women take a part during the second round of elections. On 13 of June of 2004 in elections to the Parliament of Europe 5 Lithuanian women became parliamentarians (For Lithuania 13 places were granted). On the 2000-2004 term of Parliament only 10.6 percent of all members were women. After the election of the Parliament of the term 2004-2008 the number of women parliamentarians increased till 20.57 percent. First time after the restoring of the independence of the Republic of Lithuania in the period of 2001-2004 three women ministries were working in the Government of the Republic of Lithuania. In 2005 two women ministries are still working. It should be noticed that Lithuania appointed a woman for the mandate of European commission commissioner. The woman also was appointed to the European court of human rights.

In the moment of writing there are no legal acts which determine the specific quotas for women representatives in the governing bodies. Few drafts of the elections laws concerning the issue of determination of quotas were submitted to Parliament but none of them was adopted. In the committees of Parliament the discussions on this issue ended by the snide remarks against the initiative¹²².

Article 24. The rights of the childOther relevant developments*Legislative initiatives, national case law and practices of national authorities*

During the period under scrutiny the Government of the Republic of Lithuania approved the National Programme on the Prevention of Violence against Children and of Support for children for 2005-2007¹²³. This program is intended for the eliminating the violence against children. The measures of program are intended to help for children who experienced or may suffer from violence also to support their families. The measures for juvenile violators are also planned. The theme of violence against children is widely discussed in society. Not less important is the issue of violence between juvenile (blackmail, sneering, etc.). The main goals

¹²⁰ 2005 09 26; LR Vyriausybės nutarimas Nr. 1042 Dėl Valstybinės moterų ir vyrų lygių galimybių 2005-2009 metų prgramos patvirtinimo“ [The resolution of the Government of the Republic of Lithuania No. 1042 //Valstybės žinios, 2005, Nr. 116-4202

¹²¹ 2005 09 26; LR Vyriausybės nutarimas Nr. 1042 Dėl Valstybinės moterų ir vyrų lygių galimybių 2005-2009 metų prgramos patvirtinimo“ [The resolution of the Government of the Republic of Lithuania No. 1042 //Valstybės žinios, 2005, Nr. 116-4202

¹²² Lygios moterų ir vyrų galimybės. Ataskaita apie padėti Lietuvoje [Report on the standing of equal opportunities of women and men in Lithuania] Lygių galimybių plėtros centras, 2005.

¹²³ 2005 05 04 Lietuvos Respublikos Vyriausybės nutarimas Nr. 491 « Dėl Nacionalinės smurto prieš vaikus prevencijos ir pagalbos vaikams 2005-2007 metų programos patvirtinimo » [The National Programme on the prevention of violence against children and od support for children for 2005-2007], Valstybės žinios, 2005, Nr.58-2021.

of the program are to decrease the level of violence against children, to form the intolerance for violence in society, to create a system of measures ensuring the prevention of the violence against children. Also the aim of this program is to create an effective system of supporting the children who experienced violence and their families. In order to achieve all these goals the measure plan for the implementation of the Programme was created.

On the 13 of September the Government of The Republic of Lithuania approved the measures 2005-2006 of the implementation of the plan of actions of national fight against poverty and social disjuncture for 2004-2006¹²⁴. In accordance with this document the big attention is awarded for the children living separately from their parents. The main goal is to increase the number of such children living not in the special institutions but in families on the basis of ward.

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Legislative initiatives, national case law and practices of national authorities

The Office of the Equal Opportunities Ombudsman of the Republic of Lithuania received a written complaint from the Chairman of the Trade Union of Engineers of the company AB “Vilniaus Vingis”, with request to investigate whether the decree of January 21, 2005 No. 11 of the Chief Executive of AB “Vilniaus Vingis” is not discriminatory towards the employees of the company. The decree mentioned above establishes that in order to determine the needs of qualified personnel and the number of specialists that require training in the year 2005, the executives of structural divisions of the company are obliged to question the employees of pensionable age and those close to that age in order to find out their plans of their further work for the company.

During the investigation it was determined that such questioning of employees of pensionable age and those close to that age can be regarded as discrimination on the ground of age, it can be understood as a hint that it is time for an employee to exercise his/her right to pension. During the questioning negative preconceived attitude was being expressed towards the employees. According to the Chairman of the Trade Union and some of the employees, the executives suggested they should quit their jobs during the questioning.

Having examined the above mentioned complaint the Ombudsman of the Equal Opportunities decided to warn the Chief Executive of the company AB “Vilnius Vingis”, that the decree of January 21, 2005 No. 11 can be regarded as discriminatory treatment of the employees, based on preconceived attitude towards their age¹²⁵.

In the other case the professor of one of the biggest universities of Lithuania suspected himself being discriminated on the ground of age. In accordance with the 31 article of the Law on Higher Education¹²⁶ to the positions of the heads of higher schools or departments or vice-heads of departments of Higher schools can not be appointed persons older than 65 years. The Ombudsperson organized the survey of the heads of biggest Universities and Ministries of education and Science and Health care. According to the results of the surveys most of the respondents stated that such regulation may violate the equal rights of the elderly people. The Ombudsperson decided to recommend for the competent institutions to initiate

¹²⁴ 2005 09 13; Lietuvos Respublikos Vyriausybės nutartimas Nr. 1002 “Dėl Lietuvos Respublikos 2004-2005 metų nacionalinio kovos su skurdu ir soliacine atskirtimi veiksmų plano įgyvendinimo 2005-2006 metų priemonių patvirtinimo“ [The resolution of the Government of The Republic of Lithuania No. 1002 “Concerning the measures 2005-2006 of the implementation of the plan of actions of national fight against poverty and social disjuncture for 2004-2006”], Valstybės žinios, 2005, Nr. 112-4091.

¹²⁵ 2005 06 14; The decision of The Equal Opportunities Ombudsman No. (05)-SN-50.

¹²⁶ 2000 03 21; Lietuvos Respublikos Aukštojo mokslo įstatymas [Law on Higher education]//Valstybės žinios,2000, Nr.27-715.

the amendments of the discussed rule¹²⁷. The parallel decision was decreed in the other case. The person who works in the one of the theaters of Vilnius city complained to the Ombudsperson because he suspected himself being discriminated on the ground of age too. This actor was compelled to work on the half of manning despite of the fact that he performs more often in the performances than his younger colleagues. The Ombudsperson after the investigation decided to warn the director of theater and recommended to stop paying for that person less than for others¹²⁸.

Good practices

Elderly persons have a possibility to study in the University Of Third Generation. This is informal institution of education of adults. This university was established 5 years ago. In present time about 2000 persons are studying.

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

The aim of the Law on Equal Treatment, which came into force in the beginning of 2005, is to prohibit any direct or indirect discrimination based on disability in the sphere of employment, education and services.

Good practices

The opportunity to complain for the Ombudsperson of Equal Opportunities came into effect on the 1 of January of 2005. Despite the fact that only 12 complains were filled, the decisions in this cases are very important and shows for society the aspects of discrimination which were not noticed till now. In one of these decisions the ombudsperson of equal opportunities determined that the violation of the equal rights of the persons with disabilities is the insurance of their life on conditions which are not favourable for them¹²⁹. The disability can not be the incontrovertible argument evaluating the risk of death. Any uncertainty about the bigger risk must be certified with undoubted grounds not only on presumptions of the insuring company. One more decision should be mentioned because it's meaning in everyday life of blind or weak-eyed person¹³⁰. One of the banks rejected to perform banking operations, which exceed 200 litas for the blind person without the participation of the other person who is not blind and can sign the required documents. The Ombudsperson decided that this practice is the discrimination of the persons with disabilities. The disable person isn't incapable and requirement for participation of other person during the banking is the breach of his rights. The decisions of the authorized institutions fulfill not only the protectoral role but also the educational one too.

In order to indicate the real standing of the human rights of specific group or persons it is necessary to perform observations. Protection of the rights of the mentally ill first of all needs the analysis of the current situation. The four non-governmental organisations (Human Rights Monitoring Institute, Global Initiative on Psychiatry, Viltis: Lithuanian Welfare Society for Persons with Mental Disability, Vilnius centre for Psychosocial Rehabilitation) were involved in the monitoring project "Human Rights Monitoring in Residential Institutions for mental Disabled and Psychiatric Hospitals". These organisations combined their expertise and

¹²⁷ 2005 01 15; The decision of The Ombudsperson of the Equal opportunities No. (04)-SN-67.

¹²⁸ 2005 06 18; The decision of The Ombudsperson of the Equal opportunities No. (05)-SN-4.

¹²⁹ 2005 14 15; The decision of The Equal Opportunities Ombudsperson No. (05)-SN-10.

¹³⁰ 2005 08 29; The decision of The Equal Opportunities Ombudsperson No. (05)-SN-81.

experience in different areas, such as psychiatry, mental health care management, human rights of people with mental disabilities as well as knowledge in monitoring techniques and methods. The goal of this monitoring was to collect data, conclusions and recommendations in order to contribute to public debate among relevant institutions and individuals.¹³¹

Professional integration of persons with disabilities: positive actions and employment quotas

Legislative initiatives, national case law and practices of national authorities

On the period of scrutiny Lithuanian law system was complemented with the adjustments of Law on Social Companies¹³². The Parliament adopted the amendments to the law of Social Companies on the 1 of July of 2005. The innovations of this law were made seeking to employ persons who lost the professional and general working capacity. This law made a base for establishing social companies of disabled. One of the goals of the amendments was to ensure for social companies of disabled specific status. Social Company of disabled persons is specific type of social companies. The social company of disabled persons is a social company, where employees pertaining to the disabled persons target groups, comprise not less than 50 percents of average annual number of employees recorded in employees list, from which the disabled persons of I and II disablement group or average level of disability, or persons for whom is recognized the working capacity till 30 to 55 percents – not less than 40 percents of average annual number of employees recorded in employee list¹³³. On the ground of Law on Social Companies, the State afford the financial support for the enterprisers which have the status of social enterprise by giving them subsidies for the new workplaces, education of employees, work environment. In Lithuania are established 21 Social enterprises. 7 of them have a status of the Social enterprise of disabled people.¹³⁴

Amendments to the law on Profit Tax, Law on Possession, Use and Disposal of State and Municipality property, and Law on Public Procurement were adopted together with Law on social companies. According to the Supplement to the Law on profit Tax, the profit of the social companies is taxed at the rate of 0 per cent, if: 1) during the taxation period employees of the company, pertaining to the target group, specified in Law of social Companies, comprise not less than 40 per cent of average annual number of employees recorded in employee list, and 2) during the taxation period the company is not engaging in the activities included in the list of activities of the social companies not subject to support, or the legal person's income from such activities during the period of taxation is not exceeding 20 per cent of the total income, and 3) on the last day of taxation period the companies have status of social company¹³⁵.

¹³¹ Monitoring report: Human rights monitoring in residential institutions for mentally disabled and psychiatric hospitals.//Human rights Monitoring Institute, 2005.

¹³² 2005 06 30; LR Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas [The Law amending the Law on Social companies] // Valstybės žinios, 2005, 85-3137.

¹³³ 2005 06 30; LR Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas [The Law amending the Law on Social companies] // Valstybės žinios, 2005, 85-3137.

¹³⁴ Socialinės apsaugos ir darbo ministerijos informacija [Information of Ministry of social security and labour] // <http://www.socmin.lt/index.php?826306501>

¹³⁵ Pelno mokesčio įstatymas [the Law on profit Tax], Valstybės žinios, 2001, Nr. 110-3992.

CHAPTER IV. SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

Workers' information on the economic and financial situation of the undertaking

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights¹³⁶ concluded that the situation of Lithuania is not in conformity with Article 29 of the Revised Charter because the content of the information provided to worker's representatives in the event of collective redundancies is too restrictive.

Legislative initiatives, national case law and practices of national authorities

On 12 March 2005 the Law Amending the Labour Code was adopted.¹³⁷ In the new provisions the definitions of information and consultation were slightly changed. Information involves the information relating to the current and future activities of the enterprise and its economic and financial condition, information on the current state and structure of labour relations, and potential changes in employment, information about the measures application whereof is intended in case of a possible redundancy; other information, other information connected with labour relations and activities of the enterprise. Consultation shall mean the exchange of opinion and the dialog between the employee representatives and the employer (employers' organizations).

Article 28. Right of collective bargaining and action

Social dialogue

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights do not provided conclusions about the conformity with Article 6 of the Revised European Social Charter¹³⁸.

Article 29. Right of access to placement services

¹³⁶ European Committee of Social Rights, Conclusions 2005 (Lithuania), Articles 1§4,2,3,4,8,9,10,11,14,15,17,18,21,22,24,25,26,27,28,29 and 31 of the Revised Charter, www.coe.int.

¹³⁷ Darbo kodekso pakeitimo ir papildymo įstatymas [Law amending the Labour Code], Valstybės žinios, 2005, Nr. 67-2400.

¹³⁸ European Committee of Social Rights, Conclusions 2005 (Lithuania), Articles 1§4,2,3,4,8,9,10,11,14,15,17,18,21,22,24,25,26,27,28,29 and 31 of the Revised Charter, www.coe.int.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Conclusions of the European Committee of Social Rights¹³⁹:

Article 8(2) (right to employed women to protection of maternity)

Conclusion: The Committee concluded that the situation in Lithuania is not in conformity with Article 8§2 of the Revised Charter of the grounds that national law did not, for at least part of the reference period, ensure that adequate damages were payable to a woman dismissed in violation of this provision.

Article 24 (right to protection in cases of termination of employment)

Conclusion: The Committee considered that the situation of Lithuania is in conformity with Article 24 of the Revised Charter regarding the right to appeal to an impartial body. The Committee considered that as a whole the system of compensation is adequate and is in conformity with Article 24 of the Revised Charter.

Article 25 (right of workers to the protection of claims in the event of insolvency of the employer)

Conclusion: Pending receipt of the information requested, the Committee concluded that the situation in Lithuania is in conformity with Article 25 of the Revised Charter.

Article 29 (right to information and consultation in collective redundancy procedures)

Conclusion: The Committee considered that the situation is not in conformity with Article 29 of the Revised Charter (prior information). The Committee concluded that the situation of Lithuania is not in conformity with Article 29 of the Revised Charter because the content of the information provided to workers' representatives in the event of collective redundancies is too restrictive.

In the case *Rainys and Gasparavičius v. Lithuania*¹⁴⁰ the applicants alleged, in particular, that they had lost their jobs and that their employment prospects had been restricted as a result of the application of the Law of the Evaluation of the USSR State Security Committee and the Present Activities of Permanent Employees of the Organization, in breach of Articles 8, 10 and 14 of the Convention. The Court recalls the case of *Sidabras and Džiautas* where it found a violation of Article 14 of the Convention, in conjunction with Article 8, to the extent that the Act precluded those applicants from employment in the private sector on the basis of their „former KGB officers“ status under the Act. The applicants' Rainys and Gasparavičius complaints were similar, and more – they were wider: they related not only to their inability to apply for various private sector jobs, but they also concerned their actual dismissal from existing employment in that sector. But this supplementary element did not prompt the Court to depart from the reasoning which was developed in *Sidabras and Džiautas* case. The Court noted that the applicants lost their former jobs as a lawyer in a private telecommunications company and barrister, in view of the application of the Act which the Court has found to be discriminatory, in breach of Article 14 of the Convention. The Court decided, that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 8.

Legislative initiatives, national case law and practices of national authorities

The Article 129 (Termination of an Employment Contract of the Initiative of an Employer without any Fault on the Part of an Employee) of Labour Code during the period under

¹³⁹ European Committee of Social Rights, Conclusions 2005 (Lithuania), Articles 1§4,2,3,4,8,9,10,11,14,15,17,18,21,22,24,25,26,27,28,29 and 31 of the Revised Charter, www.coe.int.

¹⁴⁰ Eur. Ct. H.R., *Rainys and Gasparavičius v. Lithuania* judgment of 7 April 2005.

scrutiny was amended twice. The 3(5) item of this article was amended ¹⁴¹, and the new provisions of item 3(5) of Article 129 of the Labour Code prohibit termination of the employment contract on the employer's initiative for the reason - the employee age. And new amendment prohibits dismissing the employee if he/she is already entitled to the full retirement pension or is receiving it.

The second amendment of this article changed the words in item 4: the word "disabled" instead of "invalid".

The Article 138¹⁴² (Reasons of the Termination of an Employment Contract during the Reorganization of an Enterprise) was supplemented by one of the considerations, which may not be a legitimate reason to terminate employment relations – dealership (or its part) transmission. The previous amendment declared that changes of the owner of an enterprise, establishment or organisation, the subordination, founder or name thereof, any merger by forming a new enterprise, establishment or organization, division by forming new enterprises, establishments or organisations, division by acquisition or merger by acquisition may not be a legitimate reason to terminate employment relations.

Reasons for concern

According to the records of Office of Equal Opportunities Ombudsman, 50 per cent of complaints, which are received during the first part of 2005 year, are based on the age discrimination, and one third of them based on gender discrimination. The big part of these complaints is given by elderly people, who were fired because of their age¹⁴³.

Remedies against the decision of dismissal and compensation due in the event of an unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

On 12 May 2005 was adopted the amendment of Article 140 of the Labour Code¹⁴⁴ which provides, that a severance pay has to be given not only to the employees whose employment contracts are terminated on the basis of Article 129 of the Labour Code, but a severance pay has to be given to those employees, whose employment contracts were terminated upon liquidation of the employer, and if there is no other person who is obligated by the law to perform the employment obligations of the employer (Article 136 of the Labour Code). The Article 140 of the Labour Code was annexed with a new part 3. This amendment provides that the employer has an obligation to the employee the average work pay for the period that the employer is late to settle accounts with the employee who was being dismissed.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The amendment¹⁴⁵ of Article 130 (*Notice of the Termination of an Employment Contract*) (1) of the Labour Code provides that the employer shall give notice to the employee about the termination of the employment contract. This notice shall be written and the employee shall be informed under signature. The previous amendment of this article provided only for a written notification, and there was no requirement for the employees' signature, which acknowledging receipt of the notice.

¹⁴¹ Darbo kodekso pakeitimo įstatymas, [Law amending the Labour Code] Valstybės žinios, 2005, No. 67-2400.

¹⁴² Darbo kodekso pakeitimo įstatymas [Law amending the Labour Code] Valstybės žinios, 2005, No. 67-2400.

¹⁴³ Daugėja skundų dėl lygių galimybių pažeidimų, <http://www.delfi.lt/archive/index.php?id=7000034>, prisijungimo laikas 2005-07-04.

¹⁴⁴ Darbo kodekso pakeitimo įstatymas [Law amending the Labour Code] Valstybės žinios, 2005, No. 67-2400.

¹⁴⁵ Darbo kodekso pakeitimo įstatymas [Law amending the Labour Code] Valstybės žinios, 2005, No. 67-2400.

The amendment of Article 130 (7) provides that the term of notice of termination of an employment contract shall be extended for a period of the employee's illness or vacation, and also for the period of time which is equal to the period of time from the moment a case is allowed by the court until the moment the court decision comes into effect. This is in case a rejection to give a prior assent to dismissal of the employee is under dispute according the procedure prescribed by the law.

The amendment of part 1 of Article 134 of the Labour Code provides for new guarantees to chairmen of trade unions and labour councils. The previous amendment provided, that employees, who are elected to representative bodies of employees, may not be dismissed from work under Article 129 of this Code (Termination of an Employment Contract of the Initiative of an Employer without any Fault on the Part of an Employee) without the prior consent of the body concerned during the period for which they have been elected. This part of Article 134 was supplemented with new provisions, which provide that without a consent of a representative body of a trade union or a labour council, chairman of trade union and labour council can not be dismissed not only under Article 129 of the Labour Code, but also under part 3(1) of Article 136 of the Labour Code (when the employee performs his duties negligently or commits other violations of labour discipline provided that disciplinary sanctions were imposed on him at least once during the last 12 months).

Article 31. Fair and just working conditions

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

The Law amending Law on Equal Opportunities of Men and Women¹⁴⁶ Article 2 defines, that sexual harassment is offensive conduct of sexual nature, verbal or physical, towards a person with whom there is work, business or other relations of subordination. The amendment of Article 5 provides that when implementing equal rights for women and men at work place the employer must take appropriate means to prevent sexual harassment of the employees.

Article 5 of the Law on Equal Treatment¹⁴⁷ (which entered into force on 1 January 2005) provides that when implementing equal treatment the employer, regardless of the person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, must take measures to prevent sexual harassment of an employee or public servant.

Working time

Legislative initiatives, national case law and practices of national authorities

12 May 2005 was adopted the law amending the Labour Code.¹⁴⁸ New Article 144 of Labour Code provides, that for the employees employed in more than one undertaking or in one undertaking but under two or more employment contracts, the working day may not be longer than 12 hours. The amendment of Article 152 provides that the collective bargaining agreement can allow for a norm of more than one hundred and twenty hours of overtime per year (but not more than one hundred and eighty hours of overtime per year).

¹⁴⁶ Moterų ir Vyrų lygių galimybių įstatymo 1 straipsnio papildymo, įstatymo papildymo 2¹ straipsniu ir priedu įstatymas [The law amending the Law on Equal Opportunities of Men and Women], Valstybės žinios, 2005, Nr. 115-4280.

¹⁴⁷ Lygių galimybių įstatymas [Law on Equal Treatment] Valstybės žinios, 2003, Nr. 114-5115.

¹⁴⁸ Darbo kodekso pakeitimo įstatymas [Law amending the Labour Code], Valstybės žinios, 2005, No. 85-3138

Article 32. Prohibition of child labour and protection of young people at workProtection of minors at work and monitoring of the protection

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights needs further information in order to assess the situation (the conformity with Article 7 of Revised European Social Charter)¹⁴⁹

Article 33. Family and professional lifeParental leaves and initiatives to facilitate the conciliation of family and professional life

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Conclusions of the European Committee of Social Rights¹⁵⁰:

Article 8 (right of employed women to protection of maternity)

Conclusion: The Committee concluded that situation in Lithuania is not in conformity with Article 8§1 of the Revised Charter on the grounds that there is no compulsory period of 6 weeks post-natal maternity leave. The Committee concluded that the situation in Lithuania is not in conformity with Article 8§2 of the Revised Charter on the grounds that national law did not, for at least part of the reference period, ensure that adequate damages were payable to a woman dismissed in violation of this provision. The Committee concluded that the situation in Lithuania is in conformity with Article 8§3 of the Revised Charter. The Committee concluded that the situation in Lithuania was not in conformity with Article 8§5 of the Revised Charter during the reference period on the grounds that pregnant women, women who have recently given birth and breastfeeding women who were obliged to take leave due to the health and safety risks at work were not remunerated or compensated during this period.

Article 27 (right of workers with family responsibilities to equal opportunities and treatment)

Conclusion: The Committee concluded that the situation in Lithuania is not in conformity with Article 27§1 of the Revised Charter on the grounds that fathers who are not single are discriminated against with regard to the right to work part-time. Pending receipt of the information requested, the Committee concluded that the situation in Lithuania is in conformity with Article 27§2 of the Revised Charter.

Legislative initiatives, national case law and practices of national authorities

On 30 June 2005 was adopted the Law amending the Labour Code.¹⁵¹ The new provision of Article 214 of Labour Code provides the guarantees for employees who rising disabled child under 18 years old. These persons, as the employees shall be granted an additional day of rest per month or their weekly working time shall be shortened by two hours. During this time shall be paid the average wage.

¹⁴⁹ European Committee of Social Rights (European Social Charter (Revised), Conclusions 2005 (Lithuania), www.coe.int

¹⁵⁰ European Committee of Social Rights, Conclusions 2005 (Lithuania), Articles 1§4,2,3,4,8,9,10,11,14,15,17,18,21,22,24,25,26,27,28,29 and 31 of the Revised Charter, www.coe.int.

¹⁵¹ Darbo kodekso pakeitimo įstatymas [Law amending the Labour Code], Valstybės žinios, 2005, No. 85-3138.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

On 19 May 2005 was adopted the Law amending the Law on State Allowances.¹⁵² The main reason for this amendment was conclusions of the European Committee of Social Rights (2004) which were the basis of the Seimas Ombudsman recommendation after finding that there were categories of elderly and disable persons excluded from any social assistance. This law entered into force upon 1 July 2005.

On 1 July of 2005 enters into force the new redaction of Law on State Social Insurance Pensions¹⁵³.

On 1 July of 2005 enters into force the new redaction of Law of Social Integration of Disabled¹⁵⁴. This Law provides the new disability evaluation system.

On 17 March 2005 was adopted the Law Amending the Law on Social Assistance Pensions.¹⁵⁵ The objective of this law shall be to set state social assistance benefits for the persons specified in this law to whom the state assistance is provided because of their disabilities, age or other reasons laid down in this law. This law shall apply to the persons permanently residing in the Republic of Lithuania.

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

According to Article 79, 113 and 114 of the Law on Foreigners Legal Status¹⁵⁶, asylum seekers normally are accommodated and undocumented foreigners are normally detained in the Foreigners Registration Center, where they are provided with food, necessary hygiene items and necessary health assistance. In addition asylum seekers are provided with 25 Litas as a monthly allowance for minor expenses¹⁵⁷. On 28 October 2005 Minister of Health Security issued the Order on Hygiene Provisions and Rules in the Foreigners Registration Center¹⁵⁸, which clearly establishes hygiene requirements for the premises and services of the Foreigners Registration Center.

¹⁵² Valstybinių šalpos išmokų įstatymo pakeitimo įstatymas [Law amending the Law on State Allowances], Valstybės žinios, 2005, No. 71-2556.

¹⁵³ Valstybinių socialinio draudimo pensijų įstatymas, nauja įstatymo redakcija [Law on State Social Insurance Pensions, new amendment] Valstybės žinios, 2005, No. 71-1555.

¹⁵⁴ Neįgaliųjų socialinės integracijos įstatymas, nauja įstatymo redakcija [Law of Social Integration of Disabled] Valstybės žinios, 2005, No. 71-2554.

¹⁵⁵ Valstybinių šalpos išmokų įstatymo 5,6,7,9,19,23,27 straipsnių pakeitimo ir papildymo įstatymas, [Law Amending the Law on Social Assistance Pensions] Valstybės žinios, 2005, No. 44-1406.

¹⁵⁶ Įstatymas “Dėl užsieniečių teisinės padėties” [Law on Foreigners Legal Status] Valstybės žinios, 2004, Nr. 73-2539.

¹⁵⁷ 2002 02 13 LR socialinės apsaugos ir darbo ministro įsakymas Nr. 20 “Užsieniečio teisės kas mėnesį gauti piniginę pašalpą smulkiosioms išlaidoms įgyvendinimo tvarka” [13 February 2002 Minister of Social Security and Labour Order No. 20 on Implementation of Foreigner’s Right to Receive Monthly Allowance for Minor Expenses] // Valstybės žinios, 2002, Nr. 17-702

¹⁵⁸ 2005 10 28 LR sveikatos apsaugos ministro įsakymas Nr. V-836 “Užsieniečių registracijos centras. Higienos normos ir taisyklės” [28 October 2005 Minister of Health Security Order No. V-836 on Hygiene Provisions and Rules in the Foreigners Registration Center] // Valstybės žinios, 2005, Nr. 135-4863

Positive aspects

28 October 2005 Minister of Health Security Order on Hygiene Provisions and Rules in the Foreigners Registration Center¹⁵⁹ might be regarded as a positive development, because it establishes detailed hygiene requirements for the premises, the distribution of hygiene items to foreigners, the nutrition and the health assistance systems in the Center.

Good practices

In 2005 the Lithuanian Red Cross implemented the social assistance project to asylum seekers in the Foreigners Registration Center funded by the European Refugee Fund and the Ministry of Internal Affairs, which was aimed to fill the gap of social assistance and help to satisfy basic social, medical and psychological needs of asylum seekers.¹⁶⁰

Reasons for concern

The asylum seekers' reception system in Lithuania, providing the Foreigners Registration Center in town of Pabrade with a status of the only accommodation facility for all asylum seekers except for unaccompanied minors, might be characterised as being not in the line with Art. 13, 14, 15, 17, 18, 20 and 24 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers due to the following reasons:

1. The Foreigners Registration Center definitely lacks the character of a social institution, neither social nor psychological staff have been employed in the Center.
2. Once accommodated in the Center, asylum seekers with special needs particularly women, children, elderly, the traumatised and the disabled find themselves in a very poor social environment surrounded by the uniformed border guards next to the detained irregular migrants.
3. The nutrition system is centralised in the Foreigners Registration Center, it does not always secure religious or cultural dietary requirements.
4. The medical unit, located in the Foreigners Registration Center, provides only necessary health care services, while access to the hospitals and services of specialists is available only in emergency cases. Neither psychological, nor mental health services are available in the Center.
5. The amount of 25 Litas (approx. 7 Euro) is really modest, thus asylum seekers sometimes are not able to satisfy their basic needs (e.g., proper food, health care, clothing, school necessities).

Article 35. Health careAccess to health care

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Committee of Social Rights¹⁶¹ has deferred the conclusion of article 11 (right to protection of health) of Social Charter.

¹⁵⁹ 2005 10 28 LR sveikatos apsaugos ministro įsakymas Nr. V-836 "Užsieniečių registracijos centras. Higienos normos ir taisyklės" [28 October 2005 Minister of Health Security Order No. V-836 on Hygiene Provisions and Rules in the Foreigners Registration Center] // Valstybės žinios, 2005, Nr. 135-4863

¹⁶⁰ Projekto aprašymas [Description of the Project] www.redcross.lt

¹⁶¹ European Committee of Social Rights, Conclusions 2005 (Lithuania), Articles 1§4,2,3,4,8,9,10,11,14,15,17,18,21,22,24,25,26,27,28,29 and 31 of the Revised Charter, www.coe.int.

Legislative initiatives, national case law and practices of national authorities

On 1 January 2005 came into force the new amendment of the Law of the Rights of Patients and Compensation of the Damage to their Health¹⁶². The purpose of this law is – to regulate the right of patient to the qualified health care, accessibility and acceptability of health care, patient right to choose physician, patient right to the information, right to refuse the treatment, right to the private life, right to apply and etc.

On 5 July 2005 enters into force the Law amending Law on Health Insurance¹⁶³

On 5 July 2005 was adopted The Law amending Law on Mental Health Care.¹⁶⁴ The purpose of this law is to establish the rights of the persons who are provided with mental health care, the procedure and supervision of mental health care. The 28 article was added with Para 4 , which guarantees, when solving issues regarding involuntary hospitalization and involuntary treatment of mental patients, the administration of a mental health facility must apply for provision of secondary legal aid, if such person is not represented by his representative.

The case history of the illness of the patient must include a record of consent. The Supreme Court of Lithuania in the case *Julita Raudonienė and others v. Hospital (Clinics) of Vilnius University* considered, that the right to perform an operation of any kind shall be performed only if the consent was given. If the patient (an infant), the consent to the operation shall be given by the parents. In the case the consent was given to the planned operation. But the kind of operation was changed during treatment period, to which consent was withheld. According to these circumstances the court considered, that the right of patient was violated¹⁶⁵.

Article 36. Access to services of general economic interest**Article 37. Environmental protection**Right to a healthy environment*Legislative initiatives, national case law and practices of national authorities*

On 12 April 2005 enters into force the Law amending Law on Environmental Protection¹⁶⁶. The annex of this law was fulfilled with a Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedy of environmental damage. Before this amendment the annex of this law contained the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. The amendment extended the powers and functions of governmental institutions (Article 8): these institutions shall request that liable persons undertake the preventive measures for the environmental protection. The law was fulfilled with new article 32 (1) which provides the application of preventive and environmental reinstatement measures. The amendment regulates the compensation of expenses: prevention and environmental reinstatement expenses shall be compensated by the subject, who caused the damages.

¹⁶² Pacientų teisių ir žalos sveikatai atlyginimo įstatymas, nauja įstatymo redakcija [Law of the Rights of Patients and Compensation of the Damage to their Health], Valstybės žinios, 2004, No. 115-4284.

¹⁶³ Sveikatos draudimo įstatymo pakeitimo įstatymas [The Law amending the Law of Health Insurance] Valstybės žinios, 2005, No. 86-3209.

¹⁶⁴ Psichikos sveikatos priežiūros įstatymo papildymo įstatymas [The amendment of the Law on Mental Health Care] Valstybės žinios, 2005, No. 86-32080.

¹⁶⁵ Byla *Julita Raudonienė ir kiti v. VŠĮ Vilniaus universiteto ligoninės Santariškių klinikos* (Nr. 3k-3-206), sprendimas 2005 m. kovo 30 d., [The Supreme Court of Lithuania, case *Julita Raudonienė and others v. Hospital (Clinics) of Vilnius University* (No. 3k-3-206), judgement 30 March 2005.

¹⁶⁶ Aplinkos apsaugos įstatymo pakeitimo ir papildymo įstatymas, [The Law amending Law on Environmental Protection], Valstybės žinios, No. 47-1558.

On 28 June 2005 was adopted the Law amending Law on Waste Disposal¹⁶⁷. This law amends provisions which regulate the particular kind of waste disposal – the waste of electrical equipment and installation.

The right to access to information in environmental matters

Good practices

The information about the environmental matters is available in the web site of Environmental Protection Agency (Aplinkos apsaugos agentūra). The information contains environmental atmosphere, water, vegetation, fauna, ecosystem, landscape, waste, territory planning matters and etc.

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Positive aspects

The European Consumer Centre¹⁶⁸ in Lithuania has been established, and started to work in 13 May 2005, by the agreement of the European Commission and the National Consumer Rights Protection Board under the Ministry of Justice. This centre aim is to spread the information on consumers' rights, provide consumers with information, provide advice to the citizens of Lithuania when they have purchased faulty goods or services within the EU, help consumers to resolve disputes under out-of-court settlement procedure, provide information on the Internet.

National Consumers Right Protection Board (*Nacionalinė vartotojų teisių apsaugos tarnyba prie Teisingumo ministerijos*) has the right to protect consumers (citizens of Lithuania), when they purchased faulty financial services in other EU member states. This is related to the obtained membership of the Consumer Complaints Network for Financial Services (FIN-NET)¹⁶⁹.

¹⁶⁷ Atliekų tvarkymo įstatymo pakeitimo ir papildymo įstatymas [The Law amending of Law of Waste Disposal] Valstybės žinios, 2005, No. 84-3111.

¹⁶⁸ Europos vartotojų centras, European Consumer Center, <http://www.ecc.lt>.

¹⁶⁹ , <http://www.delfi.lt/archive/article.php?id=7757128>

CHAPTER V. CITIZENS' RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

Article 40. Right to vote and to stand as a candidate at municipal elections

Participation of foreigners in public life at local level

Reasons for concern

There is no statistical according which can inform about the nationals and citizens of other EU countries who took place in the elections.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

A citizen of the Republic of Lithuania or any other citizen of the Member State of the European Union, permanently residing in Lithuania, who is at least 20 years of age on the day of elections, may be elected in the Republic of Lithuania as a member of the municipal council. A citizen of the Republic of Lithuania or any other Member State of the European Union will be considered to be permanently residing in the Republic of Lithuania when he has declared his place of residence and the data relating to his place of residence in the Republic of Lithuania has been entered on the population register of the Republic of Lithuania prior to the reference date. The reference date will be the date on which 65 days are left before elections.

Persons who, by the reference date, have not yet served their sentence imposed by the court, as well as persons to whom the application of compulsory medical measures, imposed by the court, has not ended by the reference date, and persons who have been declared legally incompetent by the court may not be elected as members of the municipal council. Person, who's right to stand for election was deprived by the court in the country of his or her nationality, cannot stand as a candidate for elections.

Persons who on the day of elections are in the active or alternative military service, also officers, non-commissioned officers and re-enlistees of the national defense system, police and the internal affairs service who, by the reference date, have not retired from the service, as well as officers of other military-type and security services who are on the payroll, and may not be elected as members of the municipal council.

Right to vote and to stand as a candidate to municipal elections for third country nationals

Legislative initiatives, national case law and practices of national authorities

Only the citizens of the Republic of Lithuania or the European Union have a right to vote and to stand as a candidate to municipal elections. Citizens of third country do not have a right to vote and to stand as a candidate to municipal elections. There is any registered draft Law with such provisions.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union..

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

Article 46. Diplomatic and consular protection

CHAPTER VI. JUSTICE

Article 47. Right to an effective remedy and to a fair trial

Access to a court and, in particular, the right to legal aid / judicial assistance

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Court of Human Rights declared the following cases against the Republic of Lithuania as admitted, where among others, the applicants claim that they were denied a right to a court:

- Kambangu against the Republic of Lithuania (application No. 59619/00);
- Trijonis against the Republic of Lithuania (application No. 2333/02).

Katunda Kambangu, a citizen of Angola claimed that his taking into custody in the Foreigners' Registration Centre was illegitimate and that he was deprived of the right to demand the review of his "arrest". This complaint was fully admitted by the Court, additional questions were made to the parties.

Trijonis claimed that the preventive measure, a house arrest was equal to imprisonment, and was ordered illegitimate and without legal base. In addition, he alleges the deprivation of the right to a court and unreasonable delay in the review of his case. The ECHR declared his claim partially admissible.

Legislative initiatives, national case law and practices of national authorities

The right to legal aid/judicial assistance

With the adoption of different amendments (in force since May 2005) to the existing Law on the State Guaranteed Legal Aid (in force since 2001)¹⁷⁰, legal aid was finally made available to every citizen of the Republic of Lithuania. The law expanded the conception of legal aid and made it available not only in criminal matters but in civil and administrative cases, as well. There are two levels of legal aid, guaranteed by the state – primary legal aid, available to everyone, and secondary legal aid, where persons have to fulfil certain criterions to be eligible to get it.

Primary legal aid is provision of legal information, legal consulting and drafting of legal documents, which are intended for state and municipal institutions. It also includes help to achieve extrajudicial dispute settlement, as well as drafting agreements of such settlements. However, primary legal aid does not cover the representation of person's interests at court. Primary legal aid is available to all citizens, legal residents of the Republic of Lithuania, as well as to citizens of the European Union, including persons, who have right to receive legal aid based on international agreements signed by the Republic of Lithuania. Primary legal aid is provided at no cost at all, and a person does not have to declare his income or property. Primary legal aid is rendered by a special administrative institution, which a person has to address according to his declared place of living.

Secondary legal aid includes drafting of different legal documents, defence and representation in the court, process of execution. Among others, it covers costs of litigation in the civil, administrative or criminal procedure.

¹⁷⁰ Valstybės garantuojamos teisinės pagalbos įstatymas [The Law on the State Guaranteed Legal Aid], Valstybės Žinios, Nr. 30-827.

Citizens and legal residents of the Republic of Lithuania, as well as those of other states of the European Union can apply to receive secondary legal aid, if they meet the financial criteria for the eligibility. Only persons with a weak financial background have right to get the access to the secondary legal aid. The Government establishes the limit of assets and income the person, which should not be exceeded in order to be eligible for secondary legal aid. However, the Law establishes a category of persons, who should have access secondary legal aid, not depending on the level of their income. Among others, victims of criminal actions seeking for restitution of damage, persons having right to the state support can receive secondary legal aid defending their rights.

The right to directly address the Constitutional Court

There is a debate going on about the possibility to grant the right to the individuals to address the Constitutional Court. The Constitution previews the limited right to address the Constitutional Court, where only the President, Government, 1/5 of the Parliament members or other courts have such a right. The Chairman of the Parliament Artūras Paulauskas, as well as the Chairman of the Constitutional Court expressed their positive opinion that the citizens of Lithuania are already mature enough to be able to use such a right reasonably. Among possible cases, when this right could be available to every individual, are the violation of the right to free education and medical services. However, it is not expected that the right of direct access to the Constitutional Court will be made available in the next months, as amendments to the Constitution (which requires repeated acceptance by no less than 94 members of Parliament) and the Law of the Constitutional Court¹⁷¹ need to be made. In order to prevent the misuse of such right and overflow of the Constitutional Court by cases, precise criterions have to be established.

Approval of preventive measures under the Law on Prevention of Organized Criminality

On 01-04-2005 the Constitutional Court published its ruling¹⁷² on the request of different district courts, whether certain preventive measures of The Law on Prevention of Organized criminality¹⁷³ do not violate the right to a court, which is established in Article 30 Para 1 of the Constitution. The applicants, different district courts had doubts that Article 6 Para 3 of the mentioned law, which previews preventive measures, in particular the official warning, does not violates the individual's right to the court, as the Law does not preview the possibility to contest the mentioned measure at the court. The Constitutional Court stated that the right to the court is established in the Constitution (Art. 30 par. 1) and is absolute, and the legislator has the duty to ensure that all the disputes regarding the violation or restriction of individual rights and freedoms could be solved at the court. The analysis of the Law on Prevention of Organized Criminality allows assert that the wording of the Law does not prevent the individual to contest the ordering of said preventive measures at the court. Officials, ordering such preventive measures are subjects of administrative regulations, therefore, all their decisions can be questioned and contested in the general administrative procedure.

Positive aspects

Municipal institutions coordinating the provision of legal aid reported a successful start of state guaranteed legal aid. Alone in Vilnius region during first 5 months 456 requests were made to the institutions, of which 198 requests were accepted. Persons are satisfied with the quality of legal aid.

¹⁷¹ Konstitucinio teismo įstatymas [The Law of the Constitutional Court] Valstybės žinios, 1993, Nr. 6-120.

¹⁷² The Ruling of the Constitutional Court of the Republic of Lithuania On the Restraint of Organised Crime, 29 December 2004.

¹⁷³ Organizuoto nusikalstamumo užkardymo įstatymas [The Law on Prevention of Organized Criminality], Valstybės žinios, Nr. 60-2138.

As there are more requests for legal aid than possibilities to accept them, the Ministry of Justice is considering to expand the criteria and to make legal aid available for a wider circle of individuals.

Good practices

Provision of primary legal aid aims also to the circles of individuals that might have more necessity of such legal aid and have less possibilities to access it. Good examples can be observed, when legal aid is provided in penitentiaries. The lawyers of municipalities plan visits to penitentiaries, where persons can be advised in different legal matters.

Reasons for concern

Some provisions of the laws of Lithuania still do not ensure the necessary processual rights. Although some provisions of the Code of Administrative Offences¹⁷⁴ preview very high administrative fines and they could be compared to the criminal penalties in the sense of their strictness, the Code of Administrative Offences does not provide for the processual guarantees, even though they would be available in a similar criminal procedure.

Another aspect of concern is also related to the administrative procedure. The Code of Administrative Offences previews a wide range of officials, entitled to apply sanctions and penalties. It can hardly be interpreted as the realisation of the right of an individual to the court in the sense of Article 47.

Independence and impartiality

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the case *Karalevičius v. Lithuania* European Court of Human Rights has established the facts of illegitimate preventive arrest at certain periods, unacceptable arrest conditions as well as violations of the applicant rights regarding the censorship of the applicant's correspondence. However, the Court found the applicant's claims concerning the unreasonable delay of the process, partiality of the court, and wrongful conviction as ungrounded.¹⁷⁵

Legislative initiatives, national case law and practices of national authorities

In September 2005 the Supreme Court discussed the issue of improving the activity of courts. It was stated that the system, principles of activity, and self-managing system of the courts in Lithuania is in line with the standards of the European Union and there are no obvious reasons for considerable changes. The practice shows that most complaints about the courts concern insufficient activity of existing structures, and more specifically, regarding the quality, responsibility and principles of certain persons, responsible for a specific area. Therefore, the personal liability should be taken into consideration and improved to be more efficient.

Publicity of the hearings and of the pronouncement of the decision

Good practices

In order to improve the publicity of the court activity, the Minister of Justice Gintaras Bužinskas has taken an initiative to present the judge candidates to the public earlier this year. The Council of Courts has approved this initiative, however it still not fully realised. Open presentation of judge candidates could help to avoid discussions about intransparent court

¹⁷⁴ 1984-12-13 Administracinių teisės pažeidimų kodeksas [The Code of Administrative Offences].

¹⁷⁵ Eur. Ct. H. R. (3 rd sect.) *Karalevičius v. Lithuania* (Appl. N. 53254/99) judgement 7 April 2005.

activity and selection of judges. The Government has other ideas, how to improve the acceptance of the courts by individuals, among others, to involve public representatives in the judge selection procedure and the Judicial Court of Honour, the right of the President to initiate a disciplinary case to a judge.

Reasonable delay in judicial proceedings

The Institute of Law, a research institution, founded by the Ministry of Justice, conducted a research “The ways and possibilities of criminal proceedings’ optimalism and acceleration”¹⁷⁶ and presented it to the Ministry of Justice in May 2005. The research shows that recently adopted Code of Criminal Procedure allows the prosecutors and other officers conducting the pre-trial investigations to work more efficiently. However, heavy workload, lack of cooperation between different institutions and lack of management knowledge still stand on way to fully assume the offered possibilities.

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Court of Human Rights partially admitted the application of Trijonis against the Republic of Lithuania (application No. 2333/02). In addition to the claim that the preventive measure house arrest was equal to imprisonment, was ordered illegitimate and without legal base, Trijonis claimed that his case review at the court was unreasonable delayed.

Article 48. Presumption of innocence and right of defence

Presumption of innocence

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The European Court of Human Rights admitted the following applications:

- Bendžius against Lithuania (Appl. No. 67506/01);
- Ramanauskas against Lithuania (Appl. No. 74420/01);
- Milinienė against Lithuania (Appl. No. 74355/01).

The applicants claim that they were provoked to commit criminal offences by using a criminal offence imitating model, thus the presumption of innocence was violated.

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court has declared its ruling¹⁷⁷ on the request of different district courts, whether the preventive measures of The Law on Prevention of Organized criminality¹⁷⁸ do not violate the presumption of innocence and the legality of punishment, which are established in Article 31 para 1 and 4 of the Constitution. The applicants, different district courts, had doubts that Article 6 para 3 of the said law, which previews that preventive measures can be applied to a person, who is suspected of the relations with the organized criminal groups or organizations. The Constitutional Court stated that a democratic state is obliged not only to protect and defend an individual and the society from criminal offences and other dangerous

¹⁷⁶ www.teise.org

¹⁷⁷ The Ruling of the Constitutional Court of the Republic of Lithuania On the Restraint of Organised Crime, 29 December 2004.

¹⁷⁸ Organizuoto nusikalstamumo užkardymo įstatymas [The Law on Prevention of Organized Criminality], Valstybės Žinios, 1997 Nr. 60-2138.

violations of law but also manages to do this effectively. A system of fighting criminal organizations has to be established, which previews not only repressive measures (penalties, once a person is found guilty) but also preventive measures. Even though the goal of repressive and preventive measures is the same – to fight the criminality, their content and grounds are different. The major difference is that preventive measures are not considered to be penalties. Their purpose is to prevent an individual from a criminal activity and thus, to protect the public interest.

The Constitutional Court stated that the preventive measures can be applied only when all requirements, listed in the Article 3 of the Law on Prevention of Organized Criminality, are present. All listed requirements have to be cumulative. The preventive measures can be applied only, if there was information that an individual had relations with organized groups, if this information was received in the order established by law, if this information leads to the conclusion that this individual can commit an offence, and that preventive measures would guarantee the security of the society and ensure public order and individual rights and freedom.

Considering all of the above, the Constitutional Court found that the statement of the applicants that preventive measures can be applied barely on the grounds of suspicion that a person has relations with criminal groups, is ungrounded. When applying preventive measures, it is necessary to make sure that all listed requirements are present and that chosen preventive measures comply with the requirements of proportionality. By applying preventive measures, a person is not declared as guilty but only to prevent this person from committing a serious criminal offence, and on the other hand, to protect the society from such offences. Thus, applying preventive measures, when all cumulative requirements are fulfilled, does not violate the presumption of innocence.

Article 49. Principles of legality and proportionality of criminal offences and penalties

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

Declaring the constitutionality of the Article 163² of the Code of Administrative Offences, the Constitutional Court emphasized¹⁷⁹ that even if the penalties for the administrative violations (administrative fines from 20 000 Lt. To 50 000 Lt. With the confiscation of goods) are comparable to those for criminal violations, it does not allow to automatically question the constitutionality of such provisions. The sanction for a violation of law, however, has to be constructed in a way, that the court could have a possibility to consider all circumstances that could diminish the liability, even those, not previewed by the law, and to apply penalties, milder than previewed by the law. But the sanctions milder than previewed by the law should occur more as an exception to the rule than the rule.

The Constitutional Court also stated that if certain sanctions, previewed by law are comparable to the criminal sanctions due to their strictness or amount, no matter, which sort of liability they apply to (administrative, criminal, disciplinary or other), the law should provide for all processual guarantees, previewed by the Constitution.

¹⁷⁹The Ruling of the Constitutional Court of the Republic of Lithuania On the Code of Administrative Offences, 10 November 2005.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offenceRight not to be tried or punished twice*Legislative initiatives, national case law and practices of national authorities*

The Constitutional Court in its ruling¹⁸⁰ made it clear that the principle *non bis idem* does not mean that a person punished for a violation of law once, cannot receive a stricter sanction for a repeated offence than a person, committing an analogue violation for the first time. However, a repetitive offence cannot be considered as a circumstance, which would allow applying criminal liability to a person who has already been punished for the administrative violation. The dispense of a person from liability of one sort in accordance with the laws, cannot prevent considering to submit this individual to a different kind of liability.

Regarding the strictness of the sanctions, the Constitutional Court stated that the offences, for which the law previews such strict sanctions, may cause great damages to the society and economics of the state and thus, the strictness can be reasonable. However, the construction of penalties have to ensure that the court could have a possibility to consider all the circumstances, having impact on the qualification of the offence and to apply a penalty accordingly. The Constitutional Court has emphasised that if certain sanctions can be equalled to the criminal sanctions in their strictness, all procedural guarantees, provided in the Constitution, have to be applied, no matter, if the sanction is imposed in the civil, administrative or criminal procedure.

¹⁸⁰ The Ruling of the Constitutional Court of the Republic of Lithuania On the Code of Administrative Offences, 10 November 2005.