HUMAN RIGHTS MONITORING INSTITUTE

HUMAN RIGHTS IN LITHUANIA

OVERVIEW

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About us

Human Rights Monitoring Institute (HRMI), founded in 2003, is a government performance watchdog that promotes the advancement of an open, democratic society in Lithuania through the consolidation of human rights principles.

The fundamental objectives of HRMI are to raise awareness of the cause and consequence of human rights violations; to strengthen the capacity of civil society to influence governmental human rights policies and practices by creating self-sustainable mechanisms for independent civil society scrutiny; and to motivate government to bring about tangible improvements in legislation, programs and services that ensure and protect human dignity and human rights.

HRMI undertakes systematic monitoring, promotion of findings and recommendations as well as strategic litigation with a view to narrow the gap between theory and practice, policy and implementation. Priority is given to vulnerable groups, those who possess limited capacity to safeguard their human rights.

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Foreword

Democracy and human rights are intertwined concepts that complement each other. The direct link between democracy and human rights is embodied by the right to participate in political processes. But the link between human rights and the fulfilment of democracy is far more extensive. Beyond establishing a multi-party political system, free elections, separation of powers, rule of law and other fundamentals, democracy functions only when human rights are protected. An individual participates willingly and knowingly in public life only when free from fear for his/her life, safety, privacy and discrimination—and able to express himself/herself freely. Greater protection of human rights serves to mature and strengthen democracy. Conversely, strong democratic states tend to institutionalize pro-active human rights policies.

Human rights should be ensured by governmental institutions, primarily courts. A key goal of civil society organisations is to continuously monitor government institutions to ensure that the human rights of individuals under the jurisdiction of the state are, in fact, being protected. Lithuania has no tradition of independent watchdog groups assuming this task. The need to establish a mechanism for government accountability and human rights advocacy is amplified by Lithuania's entry into the European Union. Although EU membership, *inter alia,* requires Lithuania to ensure stability of institutions guaranteeing human rights, paradoxically, systematic monitoring in this area previously carried out by the European Commission was terminated. The Human Rights Monitoring Institute saw the necessity and opportunity to step in and continue this work.

The analysis presented here is the first attempt by a non-governmental organisation to conduct a comprehensive assessment of the state of human rights implementation in Lithuania. Priority is given to sensitive and under-examined issues, proposing recommendations for solutions to current problems. HRMI aims for such form of civic scrutiny to become a continuous process and the first, critical step in helping governmental institutions and non-governmental organisations develop specific measures for protecting human rights.

The assessment focuses on areas closely related to the mission of the Human Rights Monitoring Institute: to facilitate development of a democratic society by strengthening human rights principles. That is why fundamental political and civil rights became the focus of the analysis, although the evaluation of rights of vulnerable groups included analysis of some aspects of their economic and social rights.

Much of the analysis took place at a time when Lithuania underwent its highest profile changes since independence. The country endured a political scandal and subsequent impeachment of its President in April 2004 — the first European leader to be removed through impeachment. Lithuania's Constitutional Court found Rolandas Paksas guilty of leaking classified information, using his office for financial gain and granting citizenship illegally. Though presidential powers are largely limited to affairs abroad, the presidential crisis brought into sharp focus the potential consequences for human rights protection when violations are sanctioned at the highest level.

The report is the result of collective effort. After assembling the methodology in October 2003, HRMI commissioned a group of experts to present initial evaluations in particular fields. Background papers were submitted in February 2004. At the same time, HRMI collected information from other sources to include government institutions, international inter-governmental and non-governmental organisations (NGOs), national NGOs, academic institutions, media and other experts. The overview integrated data and information analysis, such as statistics, legal acts, and case materials. National and international reports, overviews, sociological research, scientific and popular publications further expanded the research. The research and presentation of its findings combine social sciences and public interest approaches. HRMI aimed for a thorough and objective assessment and subsequent presentation in a way that could be easily understood by the general public.

We would like to acknowledge the group of people who contributed to the preparation of this report: Laurynas Pakštaitis, Saulius Starkus, Edita Žiobienė, Liudvika Meškauskaitė, Gabrielė Granskienė-Juodkaitė, Raimundas Kalesnykas, Raimundas Jurka, Sonata Mališauskaitė, Saulė Vidrinskaitė, Rūta Brazauskienė, Dovilė Juodkaitė, Margiris Karvelis, Dalia Zeleckienė, Jūratė Sabalienė, Giedrius Sadzevičius, Laura Kietytė, and Arūnas Kumpaitis. We especially thank Open Society Institute and Open Society Fund-Lithuania for financial support.

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Executive Summary

The process of European Union accession, especially harmonisation of national legal acts with *Aquis Communautaire*, motivated a number of legislative changes in Lithuania. A series of fundamental laws directly linked to human rights came into effect recently, including *Criminal Code*, *Code of Criminal Procedure*, *Civil Code*, *Code of Civil Procedure* and the *Penal Code.* By now all essential international legal acts in the sphere of human rights have been ratified. Yet the expansion of the legal framework vital to human rights did not eliminate all problems, *per se.* New issues emerged in the implementation of these legal acts. Imperfections surfaced. Not enough was done to create implementation mechanisms. Infrastructure to implement declared rights is wanting; no control mechanisms ensure rights are carried out. Most importantly, the public remains insufficiently aware of the importance of human rights to the democratic development of the state.

Implementation of the **right to political participation** raises issues at the local governance level. The procedure for electing municipal councils is flawed, raising doubts about the principle of equality as well as clarity and predictability of election results. Representatives of local communities have limited possibilities to familiarise themselves with legal mechanisms and to access information on the activities of municipal institutions. As a result, members of communities have few opportunities to contribute to decision-making processes. There is no effective mechanism for municipal institutions to react to public complaints.

The **right to collect and disseminate information** is guaranteed, yet the principle of press freedom is often distorted by abuse. There is no effective legal pre-trial mechanism which would guard against unethical or illegal practices. The right to access information is negatively affected by a flourishing trade in commissioned articles and by ignorance of the principle that advertising should be clearly labelled and immediately recognisable as such. Legal regulation is absent in other areas, such a political advertising; implementation mechanisms for existing laws have yet to be developed. The boundaries for protection of journalists' sources must be properly set. Electronic media is not fully governed by law. The analysis indicates the present system of self-regulating institutions cannot support existing laws, international treaties ratified by the state and standards of professional ethics.

The **right to respect for private life** is not fully understood, thus, a substantial number of violations can be observed. The 2003 presidential crisis distinctly revealed the scope of government intrusion into the private lives of its citizens – and the lack of mechanisms to guard against those abuses. The extent to which modern technology makes this possible is worrisome. An astonishing amount of private information is captured and transmitted electronically, regardless of consent. Wiretapping private telephone conversations seemingly turned into a routine practice, especially since the activities of the intelligence community are insufficiently supervised or held accountable. Additionally troublesome, Lithuanian media infringe daily on individual privacy without repercussion. Personal details regarding age and other characteristics are placed prominently on identity cards and used without justification. Other issues, including an individual's right to the spelling of a name and surname, remain unresolved.

Lithuania is undergoing substantial changes concerning the **right to fair trial.** Although significant progress has been made, additional efforts are needed. Reformers underestimated the importance of advancing professional management and administration of the judiciary and particular courts. The existing appropriations policy encourages dependency of the judiciary on the executive branch of power, forcing the courts to compete for allocations directed by a government whose policy priorities often leave the courts in constant deficit. If courts receive funding, court presidents are not free to disburse money directly. Another concern involves judicial selection, whose procedures are not sufficiently standardised. Judges frequently violate principles of independence and impartiality: misguided defence of public interests resembles protection of political authorities. Judges lack relevant knowledge and skills to effectively apply modern interpretation methods when employing international legal principles and norms. On the other side of the bench, citizens find provisions for state-guaranteed legal aid heavily bureaucratic. Aid intended to facilitate equal access to justice is disbursed without

sufficiently clear criteria. The government sets costs for the service at such a low rate that its quality and effectiveness are in doubt. Enforcement of court rulings and decisions by other public institutions gives rise to another worrisome issue: bailiffs became increasingly aggressive in collection efforts after the privatisation of their profession, violating rights and moral principles along the way. Yet there is little noticeable improvement for crime victims, despite policy intentions to that effect.

Concerning **police** activities**,** certain problems arise in the treatment of individuals in police custody. Detention periods are lengthy. Detainees experience delays in being brought before the court. Individuals in police custody are detained together with criminal suspects. Pre-trial detainees are transported by vehicles that neither meet national and international standards nor do they ensure normal carriage conditions, whereby detainees fall ill or are restrained by handcuffs without legal justification. Other violations include police invasion of privacy by officers who abuse their mandate when conducting searches of suspects or their homes and other premises in emergency cases, when photographing and filming individuals who are not suspects and whilst seizing without legal justification driving licences and vehicle registration documents, further violating rights to property and freedom of movement.

The **rights of crime victims** are compromised in several ways. Law enforcement personnel hesitate to recognise aggrieved parties as victims under the law, thus, jeopardising their eligibility to receive full access to legal rights and benefits. Instead, law enforcement officers stress to victims legal obligations regarding summons or other evidentiary proceedings. Lithuania does not follow the EU example in delivering minimal aid and support to victims. Victims suffer repeatedly and continuously, with constant replay of their negative experiences in media. A Fund for Crime Victims exists, but doesn't function, because there are no mechanisms for use of this fund. Damages for moral suffering are often omitted.

Although the penitentiary system has undergone significant reforms, ensuring adequate implementation of **prisoners' rights** points to outstanding problems. The number of permitted short-term visits by family and friends was reduced recently. Telephone conversations are limited. At the same time, the system stresses the importance of strengthening social ties. Inmates are not offered adequate work experience, nor do they receive vocational training, to prepare them for re-entry into society. Furthermore, disabled inmates face unfriendly conditions. Upon release, former inmates do not receive sufficient assistance in the social re-integration process due to increasing case workloads that leave inspectors unable to cope with little more than registration and paperwork.

To become a full-fledged member of the European Union, Lithuania must admit and put into practice a fundamental principle: tolerance toward a variety of people and cultures residing in the territory. The state is not fully ready for this new challenge; the *National Programme Against* ***intolerance, racism, xenophobia and homophobia*** is conceptually faulty and fragmented. Public institutions rarely react adequately to anti-Semitic actions and statements. Evident problems, such as the lack of competence of judges in hearing discrimination cases, are not addressed. Sexual minorities suffer permanent social exclusion. Age discrimination is figuring prominently in the labour market. Ungrounded restrictions in the military prevent religious minorities from observing rites associated with their beliefs.

The **right to property ownership** is influenced by the former political regime (1940-1990), which rejected private ownership and appropriated a significant amount of assets. The process of re-instituting ownership became protracted, marked by inactivity and corruption of public servants. The post-independence government declared the return of private savings accumulated during the Soviet period, yet cash deposits were never fully restored. Additionally, the imperfect *Law on Tax Administration* gives way to violations of the interests of property owners.

Protection of the **rights of vulnerable groups** is applied unevenly. Suppliers of health care services have not fully absorbed principles concerning rights guaranteed to **patients,** allowing for the likely possibility these rights will be ignored or violated. Not all patients have access to state-guaranteed health insurance. The privacy of drug abusers and HIV-AIDS patients is also infringed upon. Quotas

for specialist consultations do not correspond to patients' needs. Some patients do not receive free health care services – to which they are entitled – due to a lack of state funds in the healthcare sector. There is no independent mechanism to defend the rights of patients.

Protection of **rights of the disabled** encounters difficulties in mechanisms that establish thresholds for designation of disability and assessment of legal capacity. There is no standard methodology to evaluate to what extent an individual is disabled — or to what extent he/she can work. The assessment is based exclusively on expert medical opinion, yet the scope of the problem involves broader implications for the individual to function in society. Moreover, doctors receive no prior academic introduction to conduct assessments. For individuals suffering from mental disabilities, determination of legal capacity is based exclusively on medical criteria, which overlooks the social dimension of the problem. In Lithuania a person can be determined legally incapacitated in full – or not at all. There is no room for partial incapacitation under the law, which would make the individual eligible for rights he/she may be capable of exercising. Equally debilitating, an individual declared legally incapacitated is deprived of the right to appeal for a court review of the ruling, although other parties to the case enjoy this right. The system lacks effective mechanisms of accountability and supervision over caregivers of individuals declared legally incapacitated.

The analysis found protection of **child and youth rights** problematic in the education and employment sectors, as well as among drug addicts and within childcare institutions and criminal law enforcement, especially regarding violence against children. There is no systemic solution to deal with treatment for child victims of illegal activities, violence or excessive force. Moreover, childcare institutions are ill-equipped to assist victims of violence. The phenomenon of street children is especially painful. This group has not achieved the status of being vulnerable; street children are denied adequate assistance and subject to other consequences in the absence of state recognition of their plight.

The state response to domestic violence illustrates setbacks in the protection of **women rights**. There is no law or other legal regulations targeted specifically at **domestic violence victims.** Law enforcement institutions react inadequately, depriving domestic violence victims of a proper evaluation of the violence and related services and support. Lithuania is in the initial stages of developing an infrastructure of support and aid designed to administer services to the victims of domestic violence. The option of reconciling victim and violator is much abused. Lithuanian media, being prone to publicise violence and cruelty, infringe on victims' privacy.

Lithuania is part of a network of **human trafficking**: the export, import and transit of young women between East and Central European countries. Although there has been observable progress in curbing the illegal trade of women, victims continue to be oppressed by stigmatising stereotypes. Criminal proceedings against violators are initiated slowly, emphasising personal responsibility of victims regarded as rather representing the trade than being exploited by it. Government institutions and non-governmental organisations are incapable of ensuring needed services to the victims. Law enforcement agencies cooperate unsatisfactorily with counterparts in other countries.

Despite attempts to solve difficulties in realising **migrants' rights**, problems remain in the practice of reuniting families. Elderly people, disabled and other socially-disadvantaged individuals cannot easily acquire mandatory health insurance. A foreign applicant could be denied means to address the court for being unable to authorise official documents, access legal aid, or obtain interpretation and translation services. It should be noted that visitors to migration offices are forced to wait long hours in "live queues" on the request that each application appear in person, including elderly, disabled, and infants.

1. Introduction

This document reviews the present human rights situation in Lithuania. The process of European Union accession, especially harmonisation of national legal acts with *Aquis Communautaire*, set into motion a number of legislative changes. A series of fundamental laws directly linked to human rights came into effect recently, including *Criminal Code*, *Code of Criminal Procedure*, *Civil Code*, *Code of Civil Procedure* and the *Penal Code.* By now all essential international legal instruments in the sphere of human rights have been ratified. Yet the expansion of the legal framework vital to human rights did not eliminate all problems, *per se.* Moreover, new issues emerged in the implementation of these legal acts. Imperfections surfaced. Not enough was done to create implementation mechanisms. Infrastructure to implement declared rights is wanting; no control mechanisms ensure rights are carried out. Most importantly, the public remains insufficiently aware of the importance of human rights to the democratic development of the state.

The purpose of this overview is to assess the most sensitive human rights problems in Lithuania. The review focuses on the implementation of fundamental political and civil rights: right to political participation, to collect and disseminate information, to respect ~~for~~ private life, to safeguard against police abuse, to protect victims of crime and to ensure fair treatment of prisoners, minorities, property owners and vulnerable social groups. Analysis of the rights protection bestowed to vulnerable groups – health care patients, women, children and youth, disabled and migrants - inevitably touches upon social and economic aspects.

The report makes an attempt to determine priority areas –and recommend action. The analysis stresses flaws in the legal framework drawing on international and national legal acts and policy documents intended to secure human rights. The effectiveness of government institutions is further examined here, especially incidents where the actions, professionalism and practices of law enforcement and court personnel might be called into question.

2. Right to political participation

The purpose of the human right to political participation is to provide content to democratic institutions and bodies. When citizens do not have an actual opportunity to participate in political processes, democracy becomes a declaration. This is why it is important to monitor the implementation of this right both on national and local levels.

There are a number of problems related to the implementation of this right, primarily at the local governance level. The procedure for electing municipal councils is flawed, raising doubts about the principle of equality as well as clarity and predictability of election results. Representatives of local communities have limited possibilities to familiarise themselves with legal mechanisms and to access information on the activities of municipal institutions. As a result, members of communities have few opportunities to contribute to decision-making processes. There is no effective mechanism for municipal institutions to react to public complaints.

The principle of equality is violated by eligibility requirements for municipal elections. The threshold is determined by the nature of the candidate's position as of voting day. Active duty military or reserve defence personnel must retire 65 days before the election to be eligible to the municipal council even if there are no obstacles for being elected on the Election Day. Executives of institutions and agencies have limited access; however, they can be pre-existing members of municipal councils on voting day. Candidates experienced in local governance face a contradiction. Parliament and government members or public officials authorised to control or monitor activities of municipalities have no right to be members of municipal councils at the time of election, but they are allowed to submit their candidacy.

The presence of members of Parliament and other high-ranking officials on the candidate list further affects the clarity and predictability of the election results. Voters tend to think these prominent individuals will serve the municipality, if elected. Yet the will of the electorate to seat a high-ranking official on the municipal council is unfulfilled if the candidate fails to relinquish his/her office for the local government mandate. It is more often than not that a Member of Parliament or government gives up the mandate of a municipal council representative instead. This additionally violates the right to freely elect members of municipal councils, as elections cannot be regarded free when representation on the councils depends not on electoral votes but on political or personal considerations. Failure to reconcile the will of the electorate encourages popular indifference to the elections.

It is necessary to supplement and amend the *Law on Elections to Local Government Councils* to eliminate legal loopholes permitting unequal access to elected positions. Moreover, candidates whose current offices exclude them from serving on municipal councils should be announced alongside individuals ineligible for election. Those candidates who must choose whether to remain in office or serve on municipal councils should notify the Chief Elections Committee of their intention to resign at least 65 days before the election.

Lithuanian public opinion polls indicate that the individual right to information on the activities of municipal institutions is violated. A 2002 poll[1] indicated that there are more complaints regarding the violations of this right than with regard to violence against children, women or equal opportunities of women and men. In practice, citizens tend to meet the State President, members of Parliament or government more often than municipal council representatives. The opportunities of community representatives to access information on local government institutions are fairly limited because the rights of such representatives are not recognised nor regulated as such.[2] Relevant information about

[1] Human Rights in Lithuania: *Situation Assessment.* Vilnius, 2002.

[2] Complaints about restricted access to information or poor quality of supplied information are widely reported. Access to information held by employees of municipal, state and other institutions depends greatly on individual persistence. Public employees should be instructed on the right to access to information and their performance should be closely monitored.

municipal activities and legal mechanisms is absent in daily news coverage and on municipal Internet sites.

Current norms deny elected community leaders the right to freely state opinions in municipal council meetings – only the chairperson at his/her discretion grants a speaker the floor. This practice contradicts the constitutional postulate for public institutions to serve the people and the *Law on Local Governance*, which places the authority for self-governance squarely on the shoulders of the community members housed within a territorial administrative unit, not the municipal council or other municipal institutions. In practice, the members and officials of municipal councils view the authority of local governance as the domain of councils and their appointed officials. Yet in 2003 the Constitutional Court ruled that a municipality is a community of the state territorial administrative unit possessing the right of self-governance. In another ruling, the Constitutional Court stated that local governance is a local public administration system acting independently and it is not directly subordinate to national governance institutions.

Municipal councils should establish procedures for the election of community representatives and their participation in drafting and adopting council decisions. The municipal councils should take measures to make more accessible information on the regulations concerning municipal councils' activities. Toward this end, municipal councils should provide full access to Internet databases and records systems concerning regulations, legal acts, procedures, decision-making processes, relevant debate and discussions and decisions, among other council activities.

There is little interest among relevant institutions and officials to solve the absence of mechanisms or procedures for public complaints to be heard effectively. Envisioned by law administrative dispute commissions to weigh complaints against municipal public officials are ineffective. Moreover, current legislation overlooks commissions as a mandatory link in the administrative dispute system. Illegal activity or inactivity by municipal officials can be appealed directly in regional administrative courts, but they are located elsewhere in bigger towns. The administrative dispute mechanism is under-used, therefore, by residents unable to affect an evaluation of official breaches by public servants. Even if administrative commissions would function, objectivity could hardly be expected in a dispute between public servants and citizen complainants; dispute commissions are to be comprised of public servants. The *Law on Administrative Proceedings*, *Law on Administrative Disputes Commissions* and *Law on Local Self-Government* should be supplemented to diversify municipal commissions, adding lawyers, journalists and representatives of other public institutions. Municipal commissions should be a mandatory stage in solving administrative complaints and should be entitled to adopt mandatory decisions, except for pronouncements which must be approved by regional administrative courts.

Fierce debate broke out on the national level on a proposal to amend the *Law on Political Parties*, which sought to introduce quotas for party memberships. Parties of less than 1,000 members would be forced to reorganise within several months or terminate their activities. Smaller parties protested, charging that several larger parties were attempting to consolidate power by limiting the ability of certain politicians and their constituencies to participate in politics. According to Chief Electoral Commission data, about 15 of the 39 parties registered in Lithuania have 1,000 or more members. Even if the number of parties decreased considerably, enough parties of inconsequential weight would remain; therefore, the rationale for the amendment is not convincing. One should bear in mind that the proposal would most probably infringe on the right of association, which may be restricted in a democratic society only in certain cases: for protection of state security or national interests, to prevent public disorder or crime, or to protect public health or morals or rights and duties of other individuals.

3. Freedom of media

Lithuania grants the right to collect and disseminate information; however, the principle of press freedom is often distorted by abuse. Having endured years of spiritual and economic suppression, media developed an irrepressible yearning for free speech. Lithuanian media are free. Yet freedom of media is often perceived as absolute, protected jealously and without regard to associated duties and responsibilities.

In February 2004 the owner of the influential *Respublika* daily newspaper published a series of articles that included statements of an anti-Semitic and homophobic nature. Under the headline, *Who Rules the World?* Vytas Tomkus channelled the answer through a caricature of a Jewish figure holding up a globe. He was flanked by a man identified as homosexual. The articles implied that Jewish people and gays embezzled millions of other people's money, told lies and ignored laws. Tomkus raises the question: *Is it really worth for us to acquiesce to THEM?* Other statements insulted national and sexual minorities and took aim at those who valued democracy and human rights. Despite the revival of once-fatal stereotypes in a widely-read newspaper, politicians, responsible public officials, media and their self-regulating institutions kept silent for several days following the publication. The incidents were condemned and a pre-trial investigation commenced after protests by non-governmental organisations, prominent individuals and the international community. It is expected that this flagrant abuse of free speech will meet an appropriate legal judgement provided by criminal law.

If it is decided that the actions of the author do not fall within the area of criminal law, however, the case will not receive further legal scrutiny. Defending abuses of free speech is no simple matter. Media self-regulating mechanisms have insufficient authority to fulfil their mandate; institutions charged with this task work inefficiently. Newspapers, magazines, radio or television stations faced no sanctions when self-regulating institutions detected apparent breaches of journalist ethics or law well into 2004. The most effective way to protect individuals against human rights abuses by media is to seek help in civil court. Complainants most often petition the court to deny false information disseminated in media, which they claimed humiliated them, and requested that the court protect their right to privacy. Usually, the process of arguing for legal protection in court is complicated, time-consuming and costly. The solution is inaccessible to everyone. There is a need for an effective pre-trial mechanism that enables to protect individuals from unethical or illegal actions by media before the case goes to trial.

A lack of professional responsibility made the Tomkus incident possible. Weakness in this area was especially apparent during the 2003-2004 presidential scandal and subsequent impeachment process. Mass media were saturated with bias and tendentiousness; the public was deprived a clear division between facts and opinions and comments. It is notable that public television, funded mostly by taxpayers, fared no better than commercial television channels in this respect.

A basic principle of advertisement – labelling and recognition – is continuously violated, even though the *Law on Advertising* came into effect on 1 January 2001, and the *European Convention on Trans-frontier Television* was ratified on 17 February 2000. The principle of recognition means that information of a commercial nature must be clearly distinguished from information of another kind. Yet Lithuanians find it difficult to recognize where information ends and advertisement of goods and services begins. In his 2003 annual report, the Inspector of Journalist Ethics emphasised[3] that the Lithuanian press is inundated with commissioned articles, regardless of the fact that the *Ethics Code for Journalists and Publishers* prohibits this form of journalism and the *Law on Advertising* clearly

[3] Analytic overview by Romas Gudaitis, Journalist Ethics Inspector, *Guidelines on Development of Information Culture in Democratic Society*, 2001-2002: [http://www3.lrs.lt/owa-bin/owarepl/inter/owa/U0113703.doc]

states that such information could be published only with a disclaimer noting its purpose. The failure to properly label advertisements as such and the popularity of commissioned articles infringes on the rights of readers, viewers and listeners to distinguish the accuracy of information they receive.

Concerning political advertising, regulations and implementation mechanisms are absent. Without standardised rules, political advertisements have laid the foundation for ruthless political rows. There is a need to create political advertising rules, incorporate them into existing election laws and establish which institutions would bear responsibility for following such rules – and what sanctions should be imposed on those who break the laws. Of those laws on the books, some, such as the *Law on Adolescents Protection and Negative Impact of Public Information*, do not function. Adopted on 10 September 2002, its implementation mechanism has yet to be created; the law is not applied, in practice. Lithuanian media are saturated with violent, erotic and pornographic images that potentially create a negative impact on adolescents, among other groups. Given there is no working mechanism in place to respond to violations, the Lithuanian Radio and Television Commission reacts with warnings that have no preventive effect.

Establishing limits for protection of journalists' sources is an outstanding question. In its decision of 23 October 2002, the Constitutional Court asserted that the absolute protection of journalists' sources, established in the *Law on Media*, is in conflict with the *Constitution*. The wording of absolute protection of journalists' sources has long been criticized. In democratic countries the protection of journalists' sources is recognized and given special importance. However, courts can request disclosure of sources, and journalists can be punished or fined for failing to do so. There is a need to change the existing *Law on Media* to abolish the absolute protection of journalists' sources. Despite acknowledgement of this need by the Constitutional Court, the parliamentary legal Affairs Committee has yet to prepare and submit to parliament a draft of a modified legal act in accordance with the *Seimas Statute*, which calls for this action within three months following admittance that a legal act adopted by the Seimas is in conflict with the Constitution.

The electronic media remains outside legal regulation. Virtual newspapers and other computer-based information sources are routine phenomena, but no institution has been established to supervise the information dissemination process via the Internet. The *Law on Mass Media* does not mention the Internet or electronic media. The Government of Lithuania, by its decision No. 290 of 5 March 2003, confirmed procedures to control information that should not be published through publicly-used computer networks and limited publication of public information.[4] However, limitations on the human right to freedom of self-expression should be established by law, not by an executive act. It is imperative that the *Law on Mass Media* be amended to define electronic information means, folding digital radio and television into the scope of mass media. It is additionally important to establish which state institution is responsible for legal regulation of broadcast information. Such functions could be assigned to the Radio and Television Commission and Journalist Ethics Inspector.

There is no complete implementation of the human right to disseminate information through mass media. Democratic mass media should be accessible to the public and disburse diverse information and commentary via different channels. The issue is cumbersome because of the fact that owners of the largest dailies also serve as newspaper editors, and dailies have no public representation on newspaper councils or boards. Although media laws assert the public right to respond or comment to articles and reports, in practice, it depends on the good will of the media outlet whether an individual will be heard. There are no measures of any effect to respond to restrictions on public access to media. The *Law on Mass Media* should include a provision that the editorial office of public and commercial publications,

[4] Decision of Government of Lithuania No. 290 of 5 March **2003** *On Approval of the Procedure for Control of Information not to be Published through Publicly-Used Computer Network*, Official Gazette, 2003. Nr. 24-1002.

as well as public and commercial radio and television channels, must have public councils made of independent representatives of academia, science and culture. Such councils could have certain authorizations to ensure access of public interest viewpoints and diverse opinions. The public broadcasting authority – the Board of the Lithuanian Radio and Television – should ensure adequate representation outside mass media, allow members of society to make a contribution to the activities of broadcast stations and curb bias on public television.

The overall issues mentioned here indicate that the current system is incapable of ensuring existing laws, international treaties ratified by the state and standards of professional ethics. The mass media sector is governed by a number of reasonable legal acts, but those provisions remain mere declarations, to a large extent. The self-regulation system of 1996, created rather hastily to escape from the overwhelming intervention of the state, became exhausted, or perhaps was not fully activated. The system of self-regulation is no longer able to perform functions assigned by the state. There is a need to reconsider the current system, its principles of formation and competence. There should be a concrete decision on the necessity of two regulators in the audiovisual sector (Lithuanian Radio and Television Commission and Lithuanian Radio and Television Council), effectively spinning-off the competence of self-regulation institutions, yet refraining from a duplication of functions by introducing priority spheres of each institution and assigning the coordinating role to the Journalist Ethics Inspector. There is a need to change the procedure of institutional development by setting clear term of office for institutional heads and a rotation of members. An important condition for members of these institutions should be competence, not loyalty to political or financial groups. To achieve it, institutional representatives should be appointed by human rights protection institutions, Lithuanian Lawyers Association, academic community and experts in certain fields.

4. Respect for private life

Lithuanians are not fully aware of their rights concerning privacy. Public discourse often overlooks the obligations and duties associated with this right. Therefore, violations abound.

The 2003 presidential crisis clearly demonstrated the large scale of government intervention into individual privacy as much as it revealed the failure of protection mechanisms to guard against abuse. This endangers democracy, because there is a fine line between protecting democratic values and destroying them through excessive government intrusion into private lives. Democracy is not guaranteed by periodic elections or the structure of political authority alone. Democracy is a way of life, underpinned by a sense of security among citizens and an absence of fear, which, in turn, contributes to respect to oneself, respect to others—and respect for state institutions. Trust in state institutions also influences a sense of civic responsibility. Those in control of information about the private lives of individuals correspondingly hold power over individual behaviour. Without coincidence, totalitarian regimes do not recognize inviolability of private life. In Lithuania, special attention should be given to tightening controls in surveillance operations, especially wiretapping and collecting, managing and storing information on individuals, and to fighting disregard for privacy in the media.

The 2003-2004 presidential crisis uncovered an astounding amount of private information under electronic surveillance. Reports of wiretapping by intelligence[5] and law enforcement agencies left the public with the impression that such surveillance was a daily occurrence. Media reported that private companies employ wiretapping measures against competitors. A former interior minister admitted in a newspaper interview that some companies are "engaged in the information business" – and he did not have media in mind.[6] Yet media widely publish private information leaked from surveillance operations, including personal telephone conversations by the President of the Republic.

Alarmingly, provisions of the new *Law on Electronic Communications* provide that communication operators guarantee wiretapping measures for major special agencies. The government must immediately define which special agencies are major. Even more problematic, information gathered by special agencies can be provided to equally ambiguous "other pre-trial institutions".[7] The law permits certain institutions to demand information directly and initiate electronic means to gather the information. Intelligence-gathering agencies requested additional funds from Parliament to extend and develop wiretapping operations.[8] Society should be informed why it is necessary to increase wiretapping measures.

Wiretapping should be performed by special investigators, not rank and file police officers. In Lithuania the law grants police stations the right to use this surveillance measure. It is doubtful whether lower-ranking officers possess the professional qualifications to conduct and manage surveillance information responsibly. Moreover, existing laws and institutional policies fail to adequately protect individuals from instances of overzealousness, self-righteousness or outright abuse. A former interior minister once pointed out that "some operations personnel still think the end justifies the means. Sometimes the rights of innocent people are violated to solve the crime. There is a lack of strict control over surveillance activity, at least among police".[9] It is likely that the current practice of publicising surveillance material, including telephone conversations of the State President, will only weaken the current standards.

[5] The State Security Department and Special Investigations Agency are among the institutions figured prominently.
[6] "Politician Feels no Duty to Fight the Evil*", Lietuvos Rytas*, June 15, 2003.
[7] *The Law on Electronic Communications,* Article 177.
[8] The daily *Respublika* reported on December 10, 2003 that the State Security Department asked parliament to allocate 3,000,000LTL (€868,860).
[9] "Politician Feels no Duty to Fight the Evil", *Lietuvos Rytas*, June 15, 2003.

Laws governing telephone surveillance give contradictory instructions. The *Law on Operative Activities,* adopted in 2002, and the new *Code of Criminal Procedure* provide for wiretapping measures. The *Code* permits wiretapping after formal investigations procedure open and once the pre-trial investigation judge sanctions this measure. The *Law on Operative Activities* allows wiretapping with the permission of the Regional court president of president of the court chamber on the suspicion that a crime may be or has been committed—and permits the surveillance in a greater number of circumstances. The *Code* allows wiretapping for up to nine months; the *Law on Operative Activities* sets no limit. The *Cod*e requires investigators to inform the subject under surveillance, that his/her telephone conversations were recorded, whilst the *Law on Operative Activities* contains no such obligation. Thus, *Code* provisions are more defined and strict, overseen by pre-trial investigative judges and prosecutors who supervise the investigation. A parliamentary commission to supervise surveillance activities under the *Law on Operative Activities* was established only after the presidential scandal erupted at the end of 2003.

Further steps are needed to create an effective mechanism of control over surveillance activities and protection against arbitrariness and abuse. Parliamentary supervision of surveillance activities should be complemented by independent monitoring by, for instance, a special ombudsman, who would have the mandate to receive and investigate citizens' complaints. The laws that regulate operative activities should be detailed, comprehensive, clearly elaborating consequences for transgressions and limiting the ability for surveillance personnel to act on their own discretion. Wiretapping should be an exception, not a rule. Operatives, their superiors, judges, prosecutors and the general public should be made aware of the circumstances likely to trigger wiretapping, the categories of people subject to surveillance, the conditions and procedures for carrying out surveillance, the nature of information permitted for recording, the length of surveillance, and how this information can be used—and by whom. Judges issuing permits must have complete details in order to determine the necessity to apply this means and issue judgements rather as a conscious exception than conventional operative measure.

Abuses involving personal data give rise to other concerns. The special commission that investigated the vulnerability of former President Rolandas Paksas concluded that his advisors gave illegal instructions to the Special Investigation Agency to provide information about 44 people to include company executives, scientists and athletes. High-ranking officials of the Interior Ministry ran into trouble for collecting information on private individuals without legal justification. It was further discovered that one foreign embassy accessed databases of the state Social Security Fund, a fact that illustrates data managers are not only unprepared to guarantee data security, they apparently fail to comprehend various purposes for which the data could potentially be used. Clarity is needed in the regulations for management and use of such databases, especially within law enforcement agencies. Effective guarantees against violations of personal data are called for, along with measures to raise the level of professionalism and responsibility among personnel who manage private data.

Lithuanian media infringe on personal privacy almost daily. Rather than inform the public of the right concerning private life, and ways to protect against abuses, media continuously violate this right without repercussion from self-regulating institutions—or courts. Live media coverage of police work is a relatively new genre that has gained popularity among Lithuanians in recent years. Television reporters trail detectives to the scene of a disturbance and record the event without consent, and continue to film when the subjects become agitated or intoxicated. The *Law on Media* requires consent of the subject before recording or photographing, except when the activities of a private person are part of a public event or professional status, or when law enforcement agencies require documentary evidence. However, pictures and recordings taken under those circumstances cannot be shown or reproduced if they disgrace or humiliate the subject, or threaten his/her dignity or reputation. Despite these principles, camera crews routinely enter private property[10] and record aspects of individuals' private lives without consent. Had citizens a better understanding of their rights, invasions or abuses of privacy could be avoided.

[10] Most notably, television programs "TV pagalba", "Farai", and "Komanda".

Legal mechanisms to protect private life may be considered limited or ineffective. Court cases have lasted up to three years, with minimal damages awarded in return. The highest profile case[11] involving damages awarded to an AIDS patient cost the most influential newspaper, *Lietuvos Rytas*, 10,000 LTL (€2,896)[12] for publicising the medical diagnosis and other personal data. Bearing in mind the capital of the newspaper at the time of hearing—33,754,700 LTL (€9,776,000)—allowed the company to absorb the fine without major threat to profit, the preventive effect of the court decision is doubtful.[13]

Personal identity cards are increasingly exploited in Lithuania. Each individual is ascribed a personal identification number, which begins with gender and includes date of birth. Beyond official business, these personal identification numbers are requested for transactions ranging from postal deliveries to office purchases. Customers might notice these codes on identity cards affixed to the clothing of pharmacy employees. It is conceivable that the free distribution of such personal details occurs because employees, firms and the general public are unaware of potential consequences. Advertising age and gender may have a corresponding impact on an applicant's prospects for employment, education and/or other services. The government must restrict unfounded distribution of personal information and clearly define circumstances under which such distribution is justified. Moreover, the general public must be made aware of potential consequences related to the distribution of personal details.

Expression of identity constitutes another unresolved issue. A number of Lithuanians cannot determine their name and surname in a manner they see fit. For married women, the suffix "–ienė" is added to husband's surname. An increasing number of Lithuanian women have demanded a surname whose suffix does not disclose marital status. However, a married woman is forbidden from assuming a surname with a masculine suffix. The number of exceptions to that rule has risen. The lingering question is whether women denied exceptions are being discriminated against. Similar concerns arise when dealing with ethnic minorities who make use of Latin characters. Individuals belonging to this group are forbidden from writing the original form of their name. The problem has been politicised artificially. No convincing arguments have been offered from a human rights perspective to restrict native spelling of names and surnames of individuals belonging to ethnic minorities residing in Lithuania.

[11] Civil case L.A. v. UAB Lietuvos Rytas, Nr. 2-1862-11/2001 of the 3rd District Court of Vilnius.
[12] About 3.33 Lithuanian Litas (LTL) equal one Euro (€).
[13] For information on other abuses, see the sections on media freedom and protection of victims' rights.

5. The court system and the right to fair trial

The mission of courts in a democratic society is to uphold the rule of law and to protect human rights. The right to a fair trial understood as a system of certain guarantees - access to justice, independence and impartiality of judges, public hearings within reasonable time, presumption of innocence, right to defence and other - aims at achieving these goals. Effective implementation of this right requires that appropriate institutional, organisational and human prerequisites are in place.

Lithuania has undergone fundamental changes in establishing preconditions for a fair trial. Its court system has been essentially reformed, resulting in wide institutional autonomy. In a welcomed manoeuvre, newly-established institutions of self-governance, such as the Council of Judges, have initiated improvements in organisational structure and judicial selection. Parliament has adopted new procedural laws requiring guarantees for fair trial. Despite considerable progress, additional measures are needed to modernize the management and administration of courts and the justice system, to improve funding procedures, to further standardise the process of selecting judges, and to improve their qualifications and accountability. Measures should be taken to prevent procedural violations of the right to a fair trial, improve the system of legal aid and to improve the quality of work of the newly-privatized institution of court bailiffs.

When reforming the court system, the legislative authorities—and judges themselves—did not pay suitable attention to the importance of professional management and administration. Under the 2002 *Law on Courts*, the president of the Council of Judges, who plays a significant role in managing the court system, is a judge. The head of the national court administration is a lawyer, and court presidents are also judges. In other words, lawyers are running the system. It is doubtful whether these officials have sufficient managerial qualifications. Appointing judges as court presidents, moreover, is not the best use of their skills. Usually, well qualified and experienced judges are tasked with managerial issues for which they have been ill prepared.

The potential of the new *Law on Courts* to create a modern, transparent, independent, competent and accountable judiciary, to a significant degree, depends on the extent to which the system of justice and particular courts are managed professionally. Lack of professionalism leads to low efficiency, institutional insularity, concentration of powers and the judges' dependence on hierarchy. This discredits the notion of independent courts and judges. It might become ever harder to explain to the citizens why the judicial system and particular courts, managed and administrated by non-professionals, should be independent.[14] A professionally-managed and administrated national judicial system, as well as courts, has greater chance to be efficient, transparent and democratically ruled, to guarantee the real independence and professionalism of the judges, and to gain public trust. Measures should be taken to reduce the involvement of judges and lawyers in carrying out the functions that do not fall within their competence and to improve the quality of management and administration by employing qualified managers and other specialists.

The present system of funding of the judicial power stimulates their dependence on the executive power. The criteria of drawing up the budget remain unclear, and there is no framework according to which the institutions ensuring the self-government of the courts can participate in the budget process, especially in the crucial stage of considering the budget in the government. Therefore the size of the budget assignations actually depends on the Ministry of Finance and on the Government; there is always a budget deficit. As a result, the courts become even more dependable on the executive power: the Council of Judges is constantly asking the government for additional funding during the financial year.[15] The financial dependence on political branch of state power creates preconditions for

[14]Lithuanian society has already fairly negative attitude towards the courts: they are worst evaluated among all the law enforcement institutions. 37percent of the respondents have evaluated the functioning of courts as „poor". See A. Dobryninas, V. Gaidys. *Is the Lithuanian Society Safe? The Experience of Victimization of Lithuanians and their Attitude Towards Criminal Justice and Public Safety.* 2004, Vilnius.

[15] The annual report by the President of the Council of Judges, 2004.

controlling the work of the judiciary. There is a need for establishing clear criteria for funding the judicial power, as well as the mechanism according to which its institutions could participate in the budget process. It is worth to consider bypassing consideration of the draft budget for the judiciary in the government and to giving it over directly to the Parliament.

Moreover, when funding is allocated for courts, they cannot dispose of them directly and freely, because the funds are allocated by the Ministry of Finance in accordance with the requests made by court presidents. In some cases the requests are not fulfilled; courts do not receive assigned funds, and a part of these funds remains unused by the end of the financial year. Because of the lack of funds, many courts are functioning in poor conditions, cannot employ all the necessary personnel, and therefore cannot ensure the right for a fair trial. For example, when premises for the hearing cannot be afforded, some cases are heard in judges' offices, thus the right for a public hearing might be violated. Due to the lack of employees to deal with ever increasing workload, the court hearings take up an unreasonably long time. The courts should have a possibility to directly dispose of the funds allocated for them.

The procedure of selecting judges is not sufficiently standardized. The *Evaluation Criteria for Judicial Candidates and Judges Seeking a Career* is highly abstract, thus allowing too much discretion to the selection committee. On the other hand, welcome development is the recent change in law that provides for experienced legal practioners preferential possibilities to join the bench as it has been provided for legal academics.

The judges perform a public function and are maintained on the money from tax payers, so society has a right to demand that they account about their performance. Paying dues to the principle of the independence of judges and the importance of protecting their authority in the eyes of society, in democratic states the performance of judges is periodically evaluated by the judges' communities, with participation of representatives from society and from other branches of power. The fact that in 2004 the Council of Judges approved the *Regulations on Periodical Evaluation of the Judges' Performance* is much welcome. However, a number of improvements to the introduced evaluation system are needed. One of the problems is that the periodical evaluation of the judges' performance does not extend to the judges of the Supreme Court of Lithuania and the High Administrative Court.[16] All the judges should be subject to this system. Another problem is that quantitative and qualitative performance criteria are not described in detail. It is also important that the evaluation process is democratic and reasonably open. Under the valid provisions, the evaluation of the judges' performance is left exclusively to the judicial community. To ensure relative openness, the process of evaluation should also involve representatives of other power state institutions and other legal professions.

One of the channels vulnerable to violations of the principles of independence and impartiality of judges is in the process of case assignment. Recent reports by Open Society Institute and overviews by Open Society Fund-Lithuania analysing the court system in Lithuania emphasize that the present rules of case assignment, in particular, the chronological assignment method, do not ensure transparency and neutrality. No changes have been made. Meanwhile, there are a growing number of complaints claiming that the court presidents and presidents of court divisions do not follow established rules. Whether the complainant is correct is not a decisive factor. The right to a fair trial means that the court procedures should not only *be* impartial, but be *perceived* as such. This is effectively addressed through the international practice of random distribution of cases by a specially designed computer programs.

Judges themselves sometimes violate the rules of independence and impartiality. Most judges still perceive themselves as defenders of state interests, whilst in a democracy, judges are neutral arbitrators who defend the principles of rule of law and human rights. With this kind of mentality, a recent concept of public interest defence currently gaining currency translates into a means of defending the interests of those in power. Moreover, judges lack knowledge of legal principles, international standards and skills in modern interpretative techniques. Judges are taught "to follow the law". It is a

[16] The performance of these judges is evaluated at the discretion of the court presidents.

misleading dogma. Court decisions based on mechanical application of imperfect and often contradictory legal acts sometimes fail to agree with common sense and morals. This formalistic "legalism" is especially troublesome in the context of the future reform of European Court of Human Rights. The possibility to access this court, which arrives at its decisions by applying broader principles, will diminish. For that reason, administrative courts are to take on particular responsibility. The direct purpose of these courts is to ensure the protection of human rights from the abuse of government administration; courts must be accessible and effective. The principle of impartiality is also violated when the judges visibly express their opinion on the issues important for the final decision in the case. In criminal cases, the obvious accusatorial bias by the judge also contravenes the principles of presumption of innocence and equality of arms. Professional inadequacy and attitudinal mistakes should be addressed through judicial training.

Research carried out in 2003 by the Law Institute has revealed a number of problems related to the right to defence. The research showed that in 93.3percent of criminal cases defendants are assisted by *ex officio* lawyers. In most cases, lawyers change during the pre-trial investigation and the hearing of the case. Lawyers changed in 571 out of 1,046 reviewed cases. In one of the cases, lawyers changed 20 times.[17] Most of the lawyers consider "ex officio" cases of secondary importance. The attitude to the representing the victim of the crime is especially superficial and irresponsible. One of the reasons for this attitude is low remuneration for lawyers appointed by the state. Legal aid for the entitled is obstructed by bureaucratic formalities. No criteria have been set for evaluation of the work of *ex officio* lawyers. The requirements for obtaining legal assistance should be simplified. The performance of barristers who provide services funded by the state should be controlled; the public defenders' offices should be strengthened.

In 2003, the Ministry of Justice reviewed the work of public defenders offices (PDO) in Vilnius and Siauliai and concluded that their work has proved to be cost-efficient and of fairly good quality. The network of PDO should be expanded, and the public should be informed on the activities of presently working offices.

The state of enforcement of court decisions and decisions of other state institutions is worrisome. In 2003 private bailiffs replaced the state court bailiffs. The reform was intended to improve the efficiency of court bailiffs and to protect rights and interests of victims of the crime. In fact, the activities of bailiffs resemble an insensitive debt collection business. For example, the national television brought to public a case where a disabled woman and a single mother were levied 600 LTL (€174)) by the bailiffs for traffic rule violations. The actual fine was 60 LTL (€17). The difference went to court bailiffs as payment for their work. The media report revealed that the money was withdrawn from the mother's account without prior notice, without consideration that the funds were disability benefits for the mother and daughter, The bailiffs were reported to have treated the complainants without respect, mocking their disability.

Reform turned previously passive court bailiffs into aggressive debt collectors, violating the rights of debtors—and moral principles—along the way. Bailiffs do not employ as assertive tactics to the benefit of crime victims, where offenders claim to have no money, no movable or immovable property. The 2003 report on bailiffs' activities shows that court bailiffs collected 17.7percent of the 2.397 billion (€694,219,184) LTL due to collect. The state benefited from 70percent of this sum, whilst the rest of it was left to the private sector. A detailed analysis of the reform in the works is necessary to reveal and remove potential causes for the above-mentioned excesses.

[17] D. Valatkevičius. *Analysis of the State of Ex Officio Legal Assistance Provided in Criminal Cases.* An analytical academic essay. Law Institute, Vilnius, 2003.

6. Police and human rights

The public attitude towards police and related activities is changing, partly due to stricter requirements for entry into police institutions and professional positions. Society has begun to perceive police as serving largely to ensure the implementation of human rights and freedoms. A 2003 report by the Parliamentary Ombudsman office revealed a different side. Of all citizen's complaints against the officers of government institutions, 13percent (175 out of 1625) are complaints against conditions in temporary detention and actions of guarded escorts or officers in pre-trial investigation.

The police officers violate the time allowed for administrative apprehension. Police have a right to apprehend a person suspected of administrative violation for no longer than five hours *from the time the suspect is brought to the police station*. An undeterminable amount of time may pass from the first contact, the initial restriction of freedom; however, this length of time is not included in the overall allowable detention period. Moreover, whilst apprehended person in the police station, police officers tend to put off investigation and required paper work. In fact, individuals can be –and are regularly— detained for over five hours with no legal basis, since special case infractions such as disorderly conduct in the course of mass public gatherings allow police to detain individuals for up to 48 hours.

The problem of physical conditions in police detention facilities deserves greater attention. There are 46 facilities for temporary detention; eight of them conform to the rules of the *Law on the Pre-Trial Detention*. The space standards (five square meters per person) comply in 24 (54percent) of the detention facilities, However, there are wooden plank beds instead of mattress-covered beds in 12 (26percent) cells. Fourteen (30 percent) temporary detention centres do not have disinfection facilities; courtyards for light exercise are absent in 17 (37percent) facilities; and 23 (46percent) facilities lack space or professionals for health assistance.[18] It is quite important to implement the provisions of *2003-2007 Programme for Renovation of Detention Facilities and Improvement of the Detention Conditions*, as well as *The Requirements for Medical Assistance in the Places of Detention*, approved by the Minister of Health in 2004.

Individuals escorted under guard are transported in vehicles that do not conform to national nor international standards. Winter-time detainees are carried by load-carrying trucks without heating. Current *Regulations for Escorting under Guard* does not set rules for minimal clothing necessary for the prisoner in different seasons, contributing to ill health. Prisoners are restrained by handcuffs with hands behind the backs, travelling in cars inadequate for the purpose. The handcuff procedure is motivated by rules of pre-trial escort under guard. However, the mentioned regulations stipulate that the escort under guard begins when the judge is informed of the arrested person's delivery to the court, not beforehand.[19]

Police officers violate the right to respect for private life by carrying out unjustified personal searches. A personal search may be applied to suspects only, but police searches individuals who are not legally recognized as suspects. There are also cases where personal searches are performed in the presence of witnesses of the opposite gender, although it is not allowed by law. The right to respect for private life is also violated and the freedom of movement is restricted when the police officers, having no legal basis, inspect a car or passengers' and the drivers' personal items kept in the car. The present legal acts regulating car searches are not properly implemented; control over abuses is insufficient.

Experts conclude that police officers often abuse the right to search a person or his/her home and other premises in cases of urgency. The law stipulates that the suspect and the investigating judges should be informed about the facts regarding the intended search within three days after the action. Sometimes

[18] *The 2003-2007Programme for Renovation of Detention Facilities and Improvement of Detention Conditions.* Approved by the Government of the Republic of Lithuania by Resolution No. 141 of January 29, 2003.

[19] The summary of complaints to the Parliamentary Ombudsmen institution in 2003: [http://www3.lrs.lt/owabin/owarepl/inter/owa/U0116921.doc]

both parties are informed much later. There have been cases when personal items removed during the search, or whilst searching personal mail and documents, were not returned to owners following recognition that the suspect is innocent of criminal offence. Police officers, having no legal basis, take photographs and record individuals not legally recognized as suspects. The argument that these measures prevent crime is unpersuasive. Furthermore, individuals unrelated to criminal activity are taken to police stations, where their handprints or fingerprints are taken. Recently, traffic police administrators announce an idea to make public pictures and personal data of traffic offenders.

A related problem is police practice to confiscate drivers' license and documents proving vehicle registration. Police officers violate individuals' right to dispose of his/her property, as well as restrict freedom of movement, by holding the person's drivers' license or vehicle registration documents until the issue of a guilt or payment of fine is resolved. Police officers should not deprive a person of the driver's license until his/her guilt is proven at court.

The above-mentioned and other violations lead HRMI to agree with the UN Human Rights Committee, which, in its 2004 observations regarding Lithuania's periodic report under the International Covenant on Civil and Political Rights, recommends the establishment of an independent institution for controlling the legality of actions by police forces.

7. Victims rights

Lithuania has adopted a number of legal acts which grant a wide spectrum of rights and social guarantees for victims of crime. In many cases these legal acts resemble declarations, not measures.

Individuals who endure a criminal act do not fully achieve legal recognition as a victim of a crime. Public institutions and non-governmental organisations fail to provide qualified and timely assistance or support. Victims receive insufficient compensation for damages suffered during the course of a crime—and they face other indirect consequences as a result. A 2004 public opinion poll indicated that the general public is unaware of the current problems victims face. Twelve percent of those surveyed in 2004 thought crime victims enjoyed sufficient protection of their rights; 47 percent thought the status of crime victims' rights was inadequate.[20]

By law individuals who endure a criminal act achieve the status of victim — and according rights and privileges — only when a formal act is issued. New criminal laws do not assign status within a specific time period, which explains, in part, why pre-trial investigation officers procrastinate in awarding crime victims formal status under the law. Though Lithuanians' perception of police overall has improved, there remains a healthy distrust of police in handling crime victims: 34percent of victims do not file a police complaint; 53percent think police are helpless to protect victims; and 14percent of victims do not trust police at all.[21]

In Lithuania crime victims are not informed of their rights. The current practice emphasises only their obligations. The system treats crime victims rather as a source of information than an aggrieved party. Crime victims must arrive to court, if called, to give evidence—they cannot refuse. Victims must take an oath whilst under testimony; however, studies indicate victims are unfamiliar with their rights. Last year 5.7 percent of respondents in a national survey affirmed that they knew their rights before being subject to a criminal act; 38.2 percent knew some rights. Of those crime victims examined by law enforcement officers, 63.6 percent were not provided with necessary legal aid.[22] Yet the Criminal Procedure Code provides that the judge, prosecutor and other officials of the pre-trial investigation should not only explain the victim's procedural rights, they should ensure the possibility to exercise them as well.

A Fund for Crime Victims exists, but doesn't function, because there are no mechanisms for use of this fund. The Fund was established by the new criminal laws in 2003 to compensate for damages suffered during the course of a crime. The Fund has accumulated finances; however, these funds cannot be disbursed because *the Law on Compensation for Damage Caused by Criminal Acts* has yet to be adopted, despite its submission to parliament in 2002.

One of the least analysed problems in Lithuania is the right to compensation for moral suffering. By law the victim is recognised as a crime victim if he or she has suffered physical, property or moral damage. In practice, an individual may not receive moral damage if he or she cannot be shown to have first suffered physical and/or property damage.

Unlike other EU countries, Lithuania does not ensure minimum assistance and support for crime victims. Immediate assistance is critical. It should further be underscored that delays in providing assistance to victims only increases associated costs for dispute settlement, treatment and rehabilitation. The rehabilitation of the crime victim should begin at the moment the incident is recorded. Otherwise, victims endure related or indirect negative consequences when the victim suffers damages, especially those related to health ailments, disability or broken social ties. There is no

[20] A. Dobryninas, V. Gaidys. *Is Lithuanian Society Safe? Victimisation Experience and Approach to Criminal Justice and Security of Lithuanian Inhabitants,* Vilnius, 2004.
[21] *Ibid.*
[22] R. Uscila *Interaction Between the Crime Victim and the Offender: Victimological Aspect. Dissertation.* Lithuania Law University, Vilnius, 2003.

common social policy to provide a network of support to victims; it is important to undertake a systematic approach to fill this policy gap. A few non-governmental organisations provide limited support to crime victims. These organisations represent the most substantial means of assistance for crime victims; they should be encouraged to provide comprehensive services.

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8. Prisoners rights

Media force crime victims to suffer repeatedly, continuously by disseminating information about the crime without regard to protection of individual privacy. Media reveal names, age, social status and other details unrelated to the crime, as well as relations between the victim and criminal. Media coverage of crime scenes and regular promotion of violent images further endangers individual dignity and jeopardises the relationship of the crime victim with other members of the community. Media often stigmatise crime victims, portraying victims as the one to blame for the crime for being inconsiderate, provocative, or argumentative. This induces a sense of despair, leaving the victim to feel that no one can, or will, help. With a growing sense of insecurity, crime victims increasingly distrust law enforcement bodies. These circumstances have a direct influence on the decision of the crime victim to seek assistance from law enforcement agencies, although the penitentiary system has undergone significant reforms, ensuring adequate implementation of prisoners' rights raises outstanding questions. Further work remains with regard to prison conditions, employment prospects, social networking, education and social re-integration mechanisms.

A new *Pena Code* came into force on 1 May 2003 to mitigate varied policy viewpoints geared toward promoting leniency. These mitigating factors allowed for a marked departure in criminal responsibility: measures to avoid or postpone imprisonment, sanctions or lesser punishments, and conditions to improve execution of sentences.

Although the new legal provisions humanise sentence execution policy, implementation is inconsistent and ineffective. Previously, labour performed during prison sentences could be included in the general work experience needed for social benefits, such as old age pension. Currently, prisoners are ineligible for state guaranteed pension benefits; thus, their labour is not included into general work experience unless they insure themselves voluntarily in the pension system. Yet bearing in mind that former convicts are potentially unemployable, the employment period in a correctional facility may play an important part in calculation of future pension benefits. Additionally important, correctional institutions cannot offer satisfactory work experience for inmates. Companies that provide employment to prisoners use outdated equipment or technologies—or none at all.[23] Therefore, inmates do not develop appropriate professional qualifications, which are important for job hunting and for maintaining a legal source of revenue.

More than 50 percent of all prisoners did not have secondary education in 2003, according to data from the Department of Prisons. Moreover, prisons cannot provide vocational training to facilitate necessary minimal education. In 2003 about 25 percent of inmates attended general and professional training courses, an improvement over previous years, as determined by a temporary parliamentary commission tasked with investigation the situation in prisons. The Commission emphasised the need to prepare inmates for the labour market by applying general educational programs and professional training programs.[24] By extending the scope of inmate activities, prisoners could be allowed to pursue creative, professional, scientific or artistic endeavours instead of labour in correctional institutions.

The current system stresses the importance of social ties, yet the number of permitted short-term visits by family and friends was reduced recently. Previously, inmates in correctional facilities enjoyed the right to six short visits by family and friends. Currently, short visits number four. Moreover, phone privileges have been cut back. The *Penal Code* was amended to provide for the right to unrestricted telephone calls in order for Lithuania to adapt international standards and prepare for EU entry. This law was once again amended to restrict privileges for serious offenders to 12 calls weekly.

[23] *Resolution of the Seimas of the Republic of Lithuania on Conclusions of the Temporary Commission of the Seimas for the Investigation of the Situation in the Correctional Institutions. Official Gazette.* 2003. No. 56-2487.
[24] *Resolution of the Seimas of the Republic of Lithuania on Conclusion of the Temporary Commission of the Seimas for the Investigation of the Situation in the Correctional Institutions.* Official Gazette*.* 2003. No. 56-2487.

Prison sentences have been commuted in accordance with lenient measures promoted by the Criminal Code. This has sent an increasing number of former prisoners into society without proper attention to their ability to re-integrate. Probation officers are unable to manage increasing workloads. Each correctional official supervises 130 ex-convicts on average – up to 200 in some areas.[25] Their European counterparts supervise 30–40 ex-convicts.[26] The caseload corresponds to a decline in the quality of probation and related services. Former inmates do not receive appropriate assistance—if at all. An ex-convict may register his case with the appropriate officer and job centre, but may never participate in actual re-integration and re-socialisation programs. Probation officers find time for little more than case management. Problems related to ex-convicts' re-entry into society persist.

Prison conditions are unfriendly to disabled inmates, according to a 2003 survey on the legal and social position of imprisoned disabled individuals. The study found high discomfort levels and uneasy relations with other inmates. Disabled inmates were found to be vulnerable to harassment by other inmates. Prison officials seemed unaware of special needs. Almost half of disabled prisoners in the Pravieniškių correctional institution, for example, confirmed that they lacked medical assistance; one-third lacked proper medical care; and 58 percent expressed the desire to serve their sentences together with other disabled inmates, separately from the general prison population. Prison authorities should consider creation of separate units for disabled inmates to serve their sentences. Prison officials should be further trained in managing disabled prison populations.

Encouragingly, in 2004 the government approved a five-year national action programme on *Renovation of Correctional Institutions and Humanisation of Imprisonment* aimed at renovation of correctional institutions. These institutions must now meet national and international standards in hygiene, medical care and overall environment of prisons. It is important to monitor this program will be put into practice.

[25] *Probation System in Lithuania: Concept*. Vilnius: Law Institute. 2003.
[26] *Probation and Probation Services: A European Perspective*. Netherlands, 2000.

9. Discrimination, xenophobia and other forms of intolerance

To become a full-fledged member of the European Union, Lithuania must admit and put into practice a fundamental principle: tolerance toward a variety of people and cultures residing in the territory. The number of representatives of racial, ethnic, religious and other social groups will rise after EU entry. Lithuanians' experience with new arrivals may be insufficient. Taking into account the relative mono-cultural Lithuanian society and its tendency towards ethnocentrism, implementation of the human rights of foreigners may encounter negative effects.

The state is not fully ready for the new challenge. The *National Programme Against Intolerance, Racism, Xenophobia and Homophobia* is conceptually faulty and fragmented. The basic premise of this document is that the ethnic and political-legal definitions of the nation coincide. In this respect, the fight against xenophobia – dislike of anything foreign – is interpreted as the problem of integration of the minorities living in Lithuania. Consequently, the largest part of the programme envisions integration measures but does not suggest effective means to fight increasing intolerance, racism, anti-Semitism and homophobia, despite recognition that Lithuanian society in one of the most xenophobic and homophobic in Europe.

Research published in 2003 indicated that more than 80 percent of Lithuanians would oppose the marriage of their son/daughter to a person of another race.[27] It is not considered racism in the national government programme. Little attention is paid to anti-Semitism. The government programme does not discuss obvious issues, among them, judges' seemingly inability to handle properly discrimination cases. Accordingly, resources for the implementation of the programme are distributed irrationally. It is necessary to continue development of effective public policy on these issues. Particular attention should be paid to concerns related to Roma minority, manifestations of anti-Semitism, homophobia, forms of discrimination that received less public attention and improvement of protective measures against discrimination.

The representative surveys carried out in 2003 show that Lithuanians are intolerant towards Roma. The Council of Europe Commission against Racism and Intolerance in its report on Lithuania notes: ".... the community of Roma faces stereotypes, disfavour and discrimination in many areas of life, including education, employment, housing, medical care, obtaining citizenship and relations with the police." The national government programme recognises that entrenched public stereotypes of Roma influence actions of public officials. Indeed, individuals belonging to Roma community complain that police use physical force, intimidation and other forms of coercion against them.

Public institutions rarely react adequately to anti-Semitic actions and statements. Law enforcement agencies usually qualify anti-Semitic incidents as ordinary crime of the public order. In other countries, anti-Semitic acts are qualified either as "hate crimes"[28] or as an aggravating circumstance, increasing criminal responsibility. It is important to continuously monitor anti-Semitic manifestations and the reaction of law enforcement agencies.

Lithuania does not pay enough attention to intolerance towards homosexuals. Sexual minorities suffer permanent social exclusion. A survey of Lithuanian Gays League[29] reveals that most of the gays are afraid that people around them will treat them worse than others because of their sexual orientation. Sixty-seven percent of respondents did not reveal sexual orientation to their parents. Sexual orientation is kept secret in public life (89 percent) as well as in workplaces (88 percent).

[27] "Lithuanians in the European Union will learn to be tolerant." *Veidas.* July 31, 2003, No.31.

[28] McClintock, Michael and Judith Sunderland. "Hate crimes are crimes based on racial, ethnic, religious hate." *Anti-Semitism in Europe: Challenging Official Indifference.* Human Rights First, 2004.

[29] Research of Lithuanian Gays League, 2003: [www.gay.lt]

Age discrimination is figuring prominently in the labour market. One third of all inhabitants are pensioners (936,700 people). Whilst the basic pension allowance increased recently, the financial situation of the elderly people is difficult; many of them are forced to search for additional income. One of the few possibilities for the elderly to compete in the labour market is to consent to work for a lower salary than younger people of the same qualification. It is a widespread practice in Lithuania, despite labour laws forbidding a reduction in payment on the grounds of sex, age, race, nationality and political beliefs. Representatives of ethnic minorities further complain they are discriminated in labour relations. The degree of this phenomenon was not analysed in the current assessment.

The military places unfounded restrictions on behaviour that prevent religious minorities from observing rites associated with their beliefs. The UN Declaration *On Abolition of all forms of intolerance and discrimination based on religion and beliefs*" declares "… nobody shall be discriminated on the basis of religion or beliefs by any state, institution, group or individual" and "… the right to the freedom of thought, conscience, religion and convictions include the freedom to observe religious holidays, and practice religious rituals… ." Roman Catholics comprise the largest religious community, followed by numerous other religious denominations present in Lithuania. Provisions are made for only Roman Catholics to exercise their freedom of conscience, religion or convictions freely: an established institution of military chaplains, chapels housed at military camps, and observances of religious holidays and rituals. Soldiers belonging to religious minorities do not enjoy similar provisions.[30] Representatives of all faiths should have equal conditions.

The efficiency of protective measures against discrimination is in question. An individual discriminated against may apply to the court for redress; however, judges are not prepared to hear these cases. Judges' training programs should include an analysis of standards applied in discrimination case-law. In compliance with the European Commission Directive 2000/78/EC, non-governmental organisations should be allowed to represent victims of discrimination in judicial and administrative procedures. The laws should provide effective, proportionate and deterrent sanctions against discrimination. Compensations for discriminatory actions should be paid to the victim –not to the state budget.

[30] Orenius A. Some Cases of Human and Civil Rights Restrictions in the Statutory Organisations. *Jurisprudencija.* 2003. T. 48 (40).

10. Right to property

The right to property ownership is influenced by the former political regime (1940-1990), which rejected private ownership and appropriated a significant amount of assets. The restitution of existing property and compensation for lost assets under the previous regime is the main public concern. Despite the principle of private property protection being enshrined in the *Constitution* and other statutory acts, violations against owners who freely exercise their rights continue. Among the more serious infractions are restorations of real property and savings deposits.

Individuals continue to complain that the process of re-instituting ownership is protracted, marked by inactivity and corruption of public servants. The scale of corruption in this area is clearly reflected by a scandal involving distributors of land plots, where officials misused information or abused authority in the enforcement of the land reform restoration. These officials gained personally from violations against the interests of land owners.

One contributor to the protracted process of real property restitution is the fact that plots can be "relocated" from one locality to another. Essentially, owners could transfer their rights, along with land, to a location of higher market or aesthetic value. The present provision on *The Law on the Restoration of the Rights of Ownership of Citizens to Existing Real Property* has been used to the advantage of owners who, with the help of officials, "relocate" real property to a more favourable locality, thereby violating the interests of the owners having the right of ownership to be restored in the latter localities. Moreover, the present provision is criticized for fostering corruption by providing officials with the possibility to abuse the system; therefore, the provision should be abolished.

Another cause of violations stems from endless revisions of statutory acts regulating the restoration of ownership rights to real property. The *Law on Land Reform* which, *inter alia*, establishes the order of priorities of citizens purchasing land, forests and water bodies has been amended 20 times. The *Law on the Procedure and Conditions of Restoration of the Rights of Ownership to Existing Real Property*, replaced by the *Law on the Restoration of the Rights of Ownership of Citizens to Existing Real Property,* has been amended 30 times. Moreover, by-laws, related to the implementation of the above-mentioned laws, have undergone substantial amendments. The present legal uncertainty establishes conditions under which officials abuse their authority and impede owners' opportunities to recover property *de facto*. Whilst the *Law on the Restoration of the Rights of Ownership of Citizens to Existing Real Property* stipulates "land shall be returned immediately", often this provision is not actually implemented. According to officials responsible for the enforcement of the land reform, there are around 500 thousand hectares of land and forests to which the rights of ownership have been restored *de jure* restored; yet land is not returned *de facto*. [31] Government institutions responsible for restitution of land to which the rights of ownership have been restored must restore ownership immediately.

Overdue land owners' claims have reached the European Court of Human Rights. On 6 March 2003 the court delivered a ruling in the case *Jasiūnienė v. Lithuania,*[32] which, *inter alia*, states that Lithuania, having delayed the execution of the decision of Klaipėda District Court, adopted in 1996, to grant the plaintiff Stasė Jasiūnienė rights of ownership to her mother's land in Palanga, violated the rights of the plaintiff to the protection of property ownership. With regard to these and other violations stated in the case, the court awarded the plaintiff damages to be paid by the State of Lithuania.

The legal acts provide for the government to buy out real property from owners, if necessary for public needs. Owners have a right to choose to recover property in kind or receive fiscal compensation. The law regulating the payment procedure for compensations[33] stipulates that compensation shall be paid

[31] Lenčiauskas J. "Tough Allotment." *Kauno Diena,* March 26, 2004. No. 70.
[32] The Case of the European Court of Human Rights: *Jasiūnienė v. Lithuania*. No. 41510.
[33] *The Law of the Republic of Lithuania on the Amount, Sources, Payment Dates and Procedures of the Compensations for Real Property, which is Being Bought out by the State, and the State Guarantees and Privileges, Established in the Law on*

until the date established by the law (until 1 August 2006 for land, forests, and water bodies; until 1 January 2010 for residential houses and flats) in equal portions every year since the day a decision is adopted to restore the rights of ownership. Later, however, the procedure was changed. The Parliament adopted a law[34] which no longer provides for fiscal compensation payments every year and extended the date until which compensation is paid in full (until 1 January 2009 for land, forests and water bodies; 1 January 2011 for residential houses and flats). The protracted, restricted compensation process might constitute a violation of ownership protection and a breach of the principle of legal certainty. The State should meet its commitments related to payment of compensations for real property bought out from owners.

The post-independence government declared its intention to return private savings accumulated during the Soviet period; however, cash deposits were never fully restored. The *Law on the Restoration of Savings of the Population*, adopted by the Parliament in June 1997, restores the rights of individuals provided private ownership, *i.e.* cash deposits, seized by former occupational powers. A certain amount of money has been transferred to the accounts of these individuals in a former government bank privatised after independence, called Savings Bank of Lithuania. A part of the seized savings has been returned to the individuals who, according to the above-mentioned law, have priority to initiate the disposition of their savings. However, the remaining owners are still unable to fully exercise rights *de facto*, that is, to freely dispose of their savings.

The *Law on the Restoration of Savings of the Population* provides for several financial sources for the restoration of savings. A minimum two-thirds funding derives from privatisation of State property. Yet some owners are not allowed to initiate the free disposition of their funds, despite successful privatisation of property under satisfactory fulfilment of financial, legal and factual conditions by the State. The official date of savings' restoration was 31 March 1998. The delay might be considered constituting a violation of owners' rights; it is sufficient basis to claim damages from the State.[35]

The imperfect *Law on Tax Administration* gives way to violations of the interests of property owners. Since 1995 the law has been amended 48 times; the rights and obligations of tax payers and tax administrator have yet to be harmonized. In general, the rights of the tax administrator are extensive.[36] This is one of the reasons why the tax administrator can violate the interests of tax payers – property owners. The tax administrator has the right to withdraw—without due process—from tax payers' bank accounts taxes, penalties, and interest. If tax payers, who have suffered from this sanction, decide to question its validity, established procedures of dispute settlement allow for a lengthy time period to settle the claim. During this period, a tax payer cannot dispose of funds withdrawn from his or her bank account.

Another disputable tax administrator mechanism is the right to arrest and seize the property. If the tax payer seeks to prove in court that he has not incurred an infraction against the regulations, he cannot dispose of property during the dispute period. The tax administrator does not need to take into consideration the requests of tax payers as to which property could be seized. The stated reasons for the arrest and seizure of property are vague, where an inspection reveals that tax laws have been violated, or there is reason to believe that a tax payer might hide his assets. Grounds for the arrest and seizure of property are often based on the assumptions of tax administration officials. It is recommended, therefore, to specify the grounds by which tax administrators may arrest and seize the property of a tax payer or withdraw from his bank accounts taxes, penalties, and interest.

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the Restoration of the Rights of Ownership of Citizens to the Existing Real Property. Official Gazette, July 8, 1998. No. 61-1728.

[34] *The Law Amending the Law of the Republic of Lithuania on the Amount, Sources, Payment Dates and Procedures of the Compensations for Real Property, which is being bought out by the State, and the State Guarantees and Privileges, Established in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property.* Official Gazette, December 30, 1999. No. 113-3292.

[35] The Legal Research Centre. 29 October 2003. Inquiry No. 140-39T: [http://www.exjure.com]

[36] The Legal Research Centre. 26 March 2004. *Conclusions Concerning the Draft Law of the Republic of Lithuania on Tax Administration*: [http://www.exjure.com]

11. Protection of vulnerable social groups

11.1Patients

The healthcare system is closed, static, and inflexible. Although certain reforms have been declared officially implemented, the changes have shown no signs of reaching ordinary individuals. According to State Medical Audit Inspection data, the number of complaints regarding unsatisfactory health services doubled in 2003 over 2002 complaints. Investigations numbered 358 in 2003; nearly 70 percent related to adequacy of health care and 17 percent to accessibility. The number of civil actions reaching the courts also increased, mainly involving violations of the right of patients to be informed, as well as the right of adequacy and accessibility of health care. In December 2003 the Lithuanian Supreme Court confirmed the decision of a court of lower instance, which compensated material and non-material damages inflicted by doctors of the Kaunas Second Clinic and the Kaunas Infection Clinic, citing negligence, failure to provide necessary and urgent medical help and to take necessary tests, incorrect diagnosis, and surgery carried out without a written consent of the patient. The doctors' actions resulted in the death of the plaintiffs' daughter (*Veličkos v. Kaunas Second Clinic*).

Information from the Lithuanian Bioethics Society, a Centre of Civic Initiatives study ("Patient's Rights in Lithuania: Situation Analysis and Public Promotion"), and patients' interviews lend support to the view that suppliers of health care services have not fully absorbed principles concerning rights guaranteed to patients, allowing for the likely possibility these rights will be ignored or violated. Low service quality and negligence by doctors and health care workers are accepted as a standard. The blame for existing problems is placed on patients. Health care specialists often contend that patients do not follow doctors' recommendations. It is often forgotten that health care specialists have specific legal obligations, namely, to clearly and a manner easily understood inform patients' about the diagnosis, the effects of recommended treatment, possible complications, prognosis, and alternative treatment methods.

Not all patients have access to state-guaranteed health insurance. Whilst, since 2003, the list of patients guaranteed state-sponsored health insurance has been extended, some patients remain excluded. The question arises whether these patients are discriminated against in comparison with those included in the scheme. Patients suffering from drug addiction are not insured by the state, in contrast with, for instance, HIV-AIDS patients. The list of patients included in the state guaranteed health insurance scheme should be revisited.

The privacy of drug abusers and HIV-AIDS patients is also infringed upon. Individuals suffering from drug addiction are placed on a special list administered by a state institution. The existence of the registration system *per se* is purposeless, given the principle of voluntary treatment and taking into account that private medical institutions have the right to provide anonymous treatment for alcohol, drug and psychotropic substance abusers. Therefore, the registration system should be abolished. The right to respect for private life of HIV/AIDS patients is violated by compulsory HIV testing in certain cases involving employment, university admission, and enrolment in prisons, detention centres or shelters. The requirement for compulsory testing should be abolished.

A part of the population is restricted financially from accessing health care services. In recent years the budget of the State Health Care Fund has remained the same, whilst patients' direct health care expenses have increased. Specialist consultations, driven by quotas, do not correspond to patients' needs. Some patients do not receive free health care services – to which they are entitled – due to a lack of state funds in the healthcare sector. [37]

[37] For example, the price of one bed per day in a nursing hospital is 42.50 LTL (€12.31). The price covers the salaries of hospital staff, cost of electricity, heating, washing, detergents, and other consumables. Of that sum, 2 LTL (€0.58) is allocated for medication, which is exactly the cost of one administration of pain medication. See: *Kauno Diena* ,May 5, 2004: [http://www.kaunodiena.lt/lt/?id=6&aid=18773]

Recent years brought cases where patients stated that they found false or incorrect records in their medical files. One patient complained that, whilst reading her medical records, she found records about a visit to a specialist two years ago, along with treatment and medication provided. The patient claimed that she had not visited a doctor for the ailment stated in the medical files. She considered these to be false records, made by the doctor seeking to get additional funds from the insurance fund. Legally, the decision to correct suspected false entries is left to the doctor. If the doctor refuses a patient's request, a medical council must decide whether the request of the patient is justified. If the patient is not satisfied with the council's decision, she can go to court. Legal proceedings might be lengthy and expensive. There is no independent mechanism to defend the rights of patients. An independent and efficient pre-trial dispute resolution body should be established.

Certain legal acts allow patient to express his will with regard to the actions of a health care service provider in the event of incapacitation or death. The *Law on the Confirmation of Death and Critical Conditions of Health* stipulates that a patient may not be resuscitated if he, according to procedures established by law, has previously submitted his consent and the action requested has been approved by a medical panel. Hence, it seems that the law establishing the right of a patient to refuse treatment in a critical condition imposes certain limitations to use this right by referring the request to the competence and responsibility of other individuals, namely, a medical panel. In this case, it remains unclear which issues should be discussed by the panel and where the limits of its competence lie. Must it investigate the content of patient's refusal, as well as the objectivity of his expression of will? It is not clearly stated whether the panel must compare the patient's refusal to health care services with his actual state of health, or whether the panel has the right to reject the will of a patient and take measures to resuscitate him.

11.2 Disabled

The attitude towards disabled individuals in Lithuania has been changing. Short-term and long-term programmes are being implemented, designed to ensure the protection of disabled against discrimination and to provide possibilities to use means aimed at social and economic integration and full-fledged involvement in public life. New laws are underway. Whilst these measures are encouraging, mechanisms to certify disability and incapacity, as well as the system of legal assistance to the disabled, give rise to numerous troubles.

Protection of the rights of disabled individuals encounters difficulties in mechanisms that establish thresholds for designation of disability and assessment of legal capacity. There is no standard methodology to evaluate to what extent an individual is disabled — or to what extent he/she can work. The assessment is based exclusively on expert medical opinion, yet the scope of the problem involves broader implications for the individual to function in society. Moreover, doctors receive no prior academic introduction to conduct assessments. Until now commissions examining the state of health of the disabled certify a degree of handicap with a set expiry date, which has to be revised every year or every second year. Quite frequently, individuals with serious disabilities are forced to go through the same procedure of medical examination in health care institutions every two years in order to receive conclusions of medical commissions concerning the degree of handicap and capacity for work, despite the fact that the condition of disability may be irreversible. It is necessary to adopt new laws regulating procedures of certification of disability and capacity for work, which would include a qualitative evaluation. It is especially important to ensure that the system of determining the degree of handicap and capacity for work takes into consideration individual capacities and skills of the person in question. Additional means are needed to guarantee equal opportunities for people with disabilities to productive and profitable work in an open labour market. This can be achieved through establishment of job quotas for the disabled and a package of incentives for employers.

The issue of determining the degree of handicap, based entirely on medical criteria, is closely related to certification of legal incapacity. Legal incapacity constitutes inability of a person to fully perceive her actions and to take control of her actions; therefore, decisions are based merely on medical certificates, overlooking the social dimension of the problem and placing doubt on the efficacy of the

decision itself. In Lithuania a person can be determined legally incapacitated in full – or not at all. There is no room for partial incapacitation under the law, which would make the individual eligible for rights he may be capable of exercising. This contributes to the formation of marginal groups of disabled individuals, stripped of any possibility to use partially their rights and freedoms. A complex evaluation process should be developed and introduced, one which embraces aspects of individuals' ability to function in society. Additionally, the current certification scheme should be changed to allow for limited legal incapacity in order to provide individuals with the possibilities to use what rights and freedoms they can.

Equally debilitating, an individual declared legally incapacitated is deprived of the right to appeal for a court review of the ruling, although other parties to the case enjoy this right. The system lacks effective mechanisms of accountability and supervision over caregivers of individuals declared legally incapacitated.

Individuals declared legally incapacitated but whose legal incapacity is being deliberated by the court have difficulties obtaining legal assistance. The strained financial condition of these individuals and their family members often place them in the category of people eligible for state-guaranteed legal assistance. Yet there are only eight institutions providing free legal assistance in Lithuania. One is in Šiauliai, two in Kaunas, two in Klaipėda, and three in Vilnius. The scarcity of these institutions makes them inaccessible to many disabled individuals, especially those residing outside the service areas. Additionally, the procedure for obtaining legal assistance is complicated and lengthy. Relevant legal provisions should clearly state that disabled people overall belong to social groups eligible for state assistance, and procedures for awarding legal assistance should be clarified and simplified.

Where compulsory medical measures take effect, the existing system does not fully guarantee the right of an individual to have a lawyer present during court hearings. The Criminal Procedure Code provides for mandatory participation of a lawyer in cases involving blind, deaf, mute and other individuals, whose physical and mental disabilities necessitate the presence of a lawyer. However, legal assistance is not provided during mandatory court revision of the necessity to continue compulsory medical treatment. It is especially important in cases of individuals who recover and might be sent to serve the sentence from which she was relieved due to her mental state. The revision procedure is quite formal; only the conclusion about person's health condition, provided by a representative of the health care institution, is taken into account.

11.3 Children and Youth

Department of Statistics data indicate that there were 802 thousand children under 18 year old in Lithuania, at the beginning of 2003, together with youth, the figure rises to 1,383,809, or 40 percent of the population. The situation regarding rights of such a substantial part of society reflects the quality of life of the entire society. The assessment found protection of child and youth rights problematic in the education and employment sectors, as well as among drug addicts and within childcare institutions. Additionally troublesome trends are found in criminal law enforcement, especially with regard to violence against children. Moreover, there is no systemic solution to deal with treatment for child victims of illegal activities, violence or excessive force. The phenomenon of street children is especially painful.

In 2004 the UN Committee on Economic, Social and Cultural Rights emphasised the worrisome situation of street children and the necessity to take immediate action in order to find out reasons for and the scope of neglect, abuse and negligence of these children with the intent to guarantee needed assistance to them and their families. Formally, street children are not recognised as a concern of the system. There numbers are unknown; their rights to health care, education, and satisfaction of basic needs are not guaranteed. Help to these children is limited to *ad hoc* support provided by NGOs, along with the initiative of private individuals. As opposed to drug addicts, street children are not identified by the state as a separate vulnerable social group, disallowing state assistance. Formal recognition should be made immediately. Current institutional analyses of the situation are also insufficient. A

joint report by the United Nations Development Programme, UNICEF and World Health Organisation, entitled "A Brief Evaluation and Reaction to the Use of Toxic Substances and Sexual Behaviour of Street and Children in Special Institutions", provides an example to follow, especially as it indicates the absence of organisational networks working with street children.

Limited possibilities of teen-aged school dropouts who return to the education system remain a matter of concern. Municipalities do not pay much attention to 16 to 18-year-old teenagers. If there is no special youth school (adult schools accept individuals above 18 years old), 16- and 17-year-old teenagers have no possibility to return to the education system. Therefore, the number of the youth schools and classes should be increased[38].

The Lithuanian Employment Agency reports youth (up to 25 years old) unemployment remained higher (11.8 percent) than the total unemployment rate in the country (9.8 percent).[39] Unemployment consequences affect youth worse than adults with significant life and work experience. A society incapable of offering youth job opportunities risks the perpetuation of a vicious circle of unemployment and social isolation. It is very important to ensure a smooth transition from educational studies to work. Education, professional training, and access to information are the main preconditions that help youth find a job and avoid unemployment. It is necessary to strengthen information systems, providing enough information to schoolchildren on the situation and tendencies in the labour market.

Recent calls to introduce drug tests in schools have generated heated debate. In view of children's rights, the recommended testing procedure is unconvincing, as:

- There is no infrastructure guaranteeing professional psychological help to a child. Testing may cause insecurity and contribute to a decline in self-confidence and a deterioration in relations between schoolchildren, teachers, and parents;
- The role of parents is an outstanding question. Scientific research and the experience of foreign countries show that one of the most important issues whilst solving the problem of drug addiction is the participation of parents;
- There are doubts about the efficiency of mechanisms guaranteeing the confidentiality of data on tested children.

Whilst drug addiction is mainly confined to young people,[40] there were no specialised units for teenagers and children in the institutions providing in-medical help for people suffering from drug addiction as late as 2003. Not enough attention is being paid to the development of a special infrastructure for the rehabilitation of young drug-addicts; in fact, it is not yet developed in Lithuania.

There are a number issues concerning criminal justice for minors.[41] Noticeably, minors were lately singled out in criminal laws. The *Criminal Code* and the *Code of Criminal Procedure* take into account peculiarities of criminal responsibility for juveniles, the aim of which is to ensure that imposed sanctions correspond to age and social maturity in order promote a change in way of life and

[38] In 2002 there were 26 youth schools.

[39] "A brief overview of a situation in the labour market in 2003." Lithuanian Employment Agency, 2004: [http://www.ldb.lt/ldb_site/index.aspx?cmp=sit&id=36&nr=2]

[40] In 2003 a study by the Council of Europe, entitled *The European School Survey Project on Alcohol and Drugs (ESPAD)*, was conducted in Lithuania for the third time. The study revealed that 3.2 percent of 15 to 16-year-old teenagers in Lithuania had used some illicit drugs in 1995. In 1999 this number increased five times to 15.5 percent. In 2003, approximately 15.6 percent of schoolchildren had used some illicit drug at least once in their lifetime. As regards the spread of drugs among schoolchildren, the use of drugs remained on the same level during the last four years. Even though the use of drugs has stabilised, it still remains on a very high level among children from risk groups in larger towns. According to specialists, the use of drugs exceeding 10 percent of a certain population is a problem—and it threatens the security of this population. Information is based on data of Ministry of Health.

[41] Since 2000 it has been noted that the number of felonies and grave crimes increased among juveniles (e.g. 398 criminal acts in 2001, and 585 in 2002). The latter criminal acts make up 25 percent of all juvenile crimes. Juvenile robberies, rapes, and crimes committed in public places have rapidly increased. The number of crimes committed by teenage groups has also increased. According to the Police Department, in April 2004 there were 242 groups of teenagers (children) loosely formed for activities that spill over into alcohol consumption, drug use, and mass public demonstrations.

behaviour—and prevent them from committing new crimes. Special attention is paid rather to educational than punitive sanctions. However, these sanctions cannot be fully addressed in the current system.

The new *Criminal Code* includes a provision that allows 18 to 20-year-olds to be regarded as a minor, if "the court, having taken into account the nature of crime, motives and other circumstances of the case and an expert evaluation, if needed, concludes the social maturity of a person is such". However, the concepts of "transitional age" and "social maturity" are not clearly described, thereby opening applications to different interpretations by lawyers, psychologists, social workers and specialists in other fields who may take part in evaluations of maturity. Proper application of the new progressive provisions in the *Criminal Code*, thus, depend on the knowledge that judges, prosecutors, and experts in different fields share. Therefore, it is necessary to analyse in detail the content, purpose and application of current legal provisions.

The *Criminal Code* and *Code of Criminal Procedure* require further improvements, especially with regard to juvenile interrogation procedures and specialisation of officers and institutions working with minors. Rights of juvenile misdemeanour offenders are often restricted. As an increasing caseload appears before the courts, further attention should be paid to regulations prescribing treatment of minors in administrative justice, an essentially un-reformed area of law. Currently, legal regulation of minors in the administrative justice process and actions of officers whilst carrying out certain procedural actions involving youth and children are insufficient; applicable legal acts do not foresee the possibility for child protection institutions to participate in carrying out procedures; and there are no norms guaranteeing the confidentiality of information about the juvenile offender.

The efficiency of sanctions imposed on minors in accordance with the *Code of Administrative Violations (CAV)* remains questionable. Warnings and fines make up the usual penalties imposed on minors. Since parents usually pay fines, this sanction is ineffective, rather impoverishing parents than encouraging responsibility. The establishment of parental responsibility for juvenile offences is an obvious shortcoming. Parents are held responsible if a child 14 to 16 years of age uses narcotic substances, becomes drunk or consumes alcoholic beverages in public places, and/or causes disorder or behaves disorderly in public places. The absence of personal responsibility contradicts the general principles of law and does not have a real effect on children. Such provisions should be abolished.

Child victims of crime deserve special attention. In 2003 the Information and Communications Department under the Ministry of Interior found that 128 children suffered from the criminal activity of parents, foster parents or guardians –and additional 37 children from the illegal activities of close relatives.[42] According to child protection authorities, 1,100 cases of child abuse were reported in 2002, with an increase to 1,500 cases reported in 2003. Among those cases, relatives perpetrated the abuse in 417 cases. Breaking down the type of abuse reported, authorities recorded 113 child abuse cases, and 219 children by expedited separations from families due to the abuse. Of those cases, 786 criminal offences were filed, with 90 cases were concluded by penalties imposed on perpetrators.[43]

The recorded official cases indicate a variance with the actual situation in the population. Direct interviews conducted by the Child Development Centre in 2004 suggest that 31 percent of 18-year-olds admitted having suffered sexual abuse, whilst 46 percent said to have faced physical punishment. Only 1 per cent of cases is disclosed publicly, mostly these incidents are discussed among relatives and peers. The survey results further revealed a presumption that child victims of sexual abuse are more often apt to take the same action as adults.[44]

[42] *Data on Adolescent Victims of Abuse during May-December 2003.* Form F 50 N – Department of Information and Communications under the Ministry of Interior of the Republic of Lithuania.
[43] G. Budvytienė. "Rebuff on Violence Against Children." *Kauno Diena*. Nr. 103 (17260).

[44] "Violence has Many Faces." ELTA: [http://www.bernardinai.lt/index.php?exp=1&s_id=125&n_id=5622&lang=lt]

Childcare institutions are ill-equipped to assist child victims of violence. A survey conducted by the non-governmental organisation Children House indicates unawareness of how to extend assistance to victims of child abuse and where to seek professional advice. The staff of such institutions should include more child psychologists and other experts because a one conversation with a child may not be enough to provide meaningful help. Overall, teachers do not possess sufficient knowledge for working with risk groups; surprisingly, many have a positive attitude towards physical punishment. Alarmingly, 25 percent of employees of child and youth care institutions did not take action whilst facing child abuse.[45]

11.4. Women

11.4.1. Victims of Domestic Violence

A vast majority of Lithuanians (87 percent) admit the existence of domestic violence, according to a survey, *Life without Violence*.[46] Other selected sociological surveys strongly support the theory that this phenomenon is widespread.[47] Yet state authorities fail to duly tackle the problem. It is necessary to take immediate action to initiate improvements of the legal framework, especially the institution of reconciliation between the victim and the offender, and additionally broaden the selection of measures that can be imposed on perpetrator. The level of professionalism among police officers should be raised. There is a need to expand support networks for domestic violence victims and, furthermore, create conditions for their immediate access to legal, psychological, and other necessary assistance. Laws and rules of ethics must be implemented among media, preventing breaches in rights.

There is no law or other regulations targeted specifically at domestic violence victims. Domestic violence is covered by general criminal legal acts applied to victims of other crimes. Given the acute vulnerability of domestic violence victims and prevailing societal stereotypes, which indirectly justify perpetrators' actions, it is necessary to adopt a specific statutory act to prepare needed secondary legislation providing for a better protection of rights of victims of violence and their legitimate interests and needs, as well as ensure appropriate and timely assistance and limit freedom of perpetrators or prevent him from exercising rights to common property.

Police officers must take pro-active measures in solving conflict between victim and perpetrator; in fact, officers treat domestic violence cases as ordinary family conflicts and, though under existing laws each form of violence one or another way must be evaluated from a legal perspective, officers hesitate to resort to legal measures. For that reason, domestic violence victims are often deprived of a proper evaluation and related services and support. Inefficient law enforcement responses only intensify the conflict between victim and perpetrator. Police officers should be trained on how to react properly to domestic violence cases.

The option of reconciling victim and violator is much abused. In cases when a woman experienced violence or compulsion, resulting in certain bodily injuries, physical pain or limitation of freedom, she is given the freedom of choice whether to pursue criminal prosecution of the perpetrator If a woman who suffered violence files a case, she often faces the pressure from both the offenders and the law enforcement officers to resolve the conflict peacefully. Law enforcement officers find it easier not to

[45] *Violence against Children: Evaluation of the Situation in Custody Institutions.* Survey material. Vaiko Namas, Vilnius, 2003.

[46] In 2002 Spinter public opinion and market research studio carried out an opinion poll in Lithuania, ordered by Women's Information Centre, as a part of regional information and educational campaign, entitled *Life Without Compulsion*, supported by the United Nations Fund for Women.

[47] To summarise results of the survey conducted in Lithuania during 1997–2002, the following data should be highlighted: 42.4 percent of married women or women without a registered marital status at least once in a lifetime experienced physical, sexual violence or threat from the current spouse/partner; 63.3 percent of Lithuanian women (above 16) at least once experienced physical, sexual violence or threat. About 71.4 percent experienced violence from unfamiliar men, whilst 43.8 percent claimed sexual harassment of men. About 53.5 percent of divorcees experienced physical, sexual violence or threat from their ex-husband or partner. Most respondents primarily consider compulsion as physical action or rape. About 69 percent consider compulsion as a requirement to have sexual intercourse as a condition of employment or promotion. A psychological compulsion, such as an obsession, was experienced by 56 percent respondents; economic compulsion is rare.

investigate conflicts, but to convince the victim that, given the existing situation, the best solution is reconciliation. In 2003 the survey *Interaction between the Crime Victim and the Offender*[48] showed that 59.7 percent of victims experienced psychological and 15.1 percent physical pressure to "reconcile". Subsequent analysis revealed that in cases of purposeful bodily injury after the "reconciliation", the relationship between the victim and the perpetrator worsens in more than 50 percent of cases, whilst the relationship stays the same among 20 percent or ends in 6.8 percent. This means that, more often than not, if the conflict is not investigated fully, it intensifies, with another violent outburst soon to follow. The institute of reconciliation should be reviewed substantially and greatly improved.

Lithuania is in the initial stages of developing an infrastructure of support and aid designed to administer services to domestic violence victims. More than 100 non-governmental organisations (NGOs) representing the rights and interests of women are registered in Lithuania; the number of NGOs providing various services to women is lower by far. Most active NGOs conduct project-oriented activities, whereby the victim is used as an illustration and the organisations aim to increase awareness of the issues involved in domestic violence.

Lithuanian media, being prone to publicise violence and cruelty, infringe on victims' privacy. The *Women's Information Centre* conducted an informational educational campaign *Life without Violence* analysed the national daily *Lietuvos Rytas* to find that 60 percent of articles related to domestic violence concern physical and 33 percent sexual abuse. The daily rarely writes about psychological abuse. It should be noted that the newspaper hardly ever includes viewpoints condemning abuse – 76 percent of articles appear neutral, whilst 12 percent indicate fighting domestic violence may be necessary. Only 33 percent of *Lietuvos Rytas* articles on domestic violence address causes and consequences of this phenomenon.

11.4.2. Victims of Human Trafficking

Lithuania is part of a network of human trafficking: the export, import and transit of young women between East and Central European countries. Whilst progress in curbing the illegal trade of women can be observed, victims continue to be oppressed by stigmatising stereotypes. Criminal proceedings against violators are initiated slowly, emphasising personal responsibility of victims regarded as rather representing the trade than being exploited by it. Government institutions and non-governmental organisations are incapable of ensuring needed services to the victims. Law enforcement agencies cooperate unsatisfactorily with counterparts in other countries.

Human trafficking is one of the most brutal violations of human rights, which can take different forms: illegal transplantation and smuggling of human organs, abduction and trade in children (newborn or adolescent), trade in humans for debt collection, forced marriage, forced pregnancy, and forced prostitution. The most widespread form of human trafficking involves forced recruitment of women into prostitution.. The actual scope of this phenomenon is unknown. Despite the ongoing *2002-2004 Program on Prevention and Control of Human Trafficking and Prostitution*, which is aimed at elimination of causes and conditions of trade and prostitution, there remain unresolved issues from victims' rights perspective.

Human trafficking victims suffer from numerous stereotypes, the dominating on being the *guilty* victim. Prevailing Lithuanian attitudes assume the victim "knew where she was going" and question "what kind of victim is she?" or renounce her as "just a prostitute" who "got herself involved with criminals. Society perceives her further as a *loser*. This is also reflected in the survey, initiated by the Bureau of International Migration Organisation in Vilnius, in which public opinion determined "it's the fault of the girls, because they truest everyone too much." Such opinion was supported in 59

[48] Uscila R. *The Interaction between a Crime Victim and a Criminal: Victimological Approach*. Vilnius, Law University, 2003.

percent of responses, whilst 43 percent said that the criminals are responsible for it.[49] Often, if the victim manages to escape the network of trade in humans, she avoids seeking help because she distrusts police officers. There have been cases, when victims of trafficking, detained for prostitution, experienced physical coercion and psychological pressure in law enforcement institutions, their belongings were taken away, they were illegally searched and exposed to extensive and tiresome interrogations. Criminal proceedings against violators are initiated slowly. Often cases of forced prostitution are deemed without prospects to reach court. It is necessary to fight the stereotypes that shape a negative attitude towards victims of forced prostitution, eliminate causes of continuous secondary victimisation of victims, remove legal regulations preventing relief of victims from criminal or civil responsibility for offences resulting from human trafficking, and reinforce victims' rights, encouraging victims to cooperate with law enforcement agencies.

Government institutions and non-governmental organisations are incapable of ensuring needed services to the victims. There is a lack of qualified specialists able to provide a package of services. This category of victims should receive professional attention, including rehabilitation, psychological, medical and legal assistance. It is necessary to work preventively with those considered highly likely to become the next victim.

Law enforcement agencies cooperate unsatisfactorily with counterparts in other countries. An effective influence on this phenomenon by solely national measures is hardly possible because human trade relies on an intricate international network. Law enforcement institutions, closely cooperating with special agencies in other countries, should focus their attention on disruptions to current operations to reduce the profitability of the business. Foreign victims of trade in humans must be protected. They should have the possibility to receive identity documents, confirming their legal status, and receive a temporary resident's permit, allowing them to stay in Lithuania for a certain period. Victims should also be able to leave freely for their home country.

11. 5. Migrants

For a number of years Lithuania has been a crossroads for migrants. Recently, migration processes have been intensified. With the improvement of the country's economic situation and strengthened links to Western countries, Lithuania is becoming more attractive as a destination country for individuals from politically unstable and economically weak countries.

A significant step has been taken towards the implementation of rights of an increasing number of migrants. After Lithuania joined the European Union, the law *On Legal Status of Foreigners* came into effect to combined previous legislation: *On Legal Status of Foreigners* and *On Status of Refugees.*. The purpose of the new law is to establish procedures for foreigners on arrival and departure, stay and residence, refuge, integration and naturalisation, and complaints against decisions with regard to legal status of foreigners. However, several problems related to actual implementation of rights to refuge and family reunion and accessibility of courts remain outstanding. It is necessary to modernise the work of migration services.

Elderly people, disabled and other socially-disadvantaged individuals cannot easily acquire mandatory health insurance. Foreigners are not issued a temporary resident's permit if they do not hold a document of valid health insurance. However, insurance companies consider elderly, disabled and other socially-disadvantaged individuals as belonging to groups of higher risk. In these cases an individual trying to acquire a health insurance often confronts difficulties. Insurance companies either refuse to insure such individuals or insure them for a short term, which significantly increases the insurance cost. It is also notable that normally the provided health insurance covers only the first medical assistance provided by the system.

[49] *Women Trafficking in Baltic States: Public opinion*. Vilnius Bureau of International Migration Organisation. Vilnius, 2002.

For foreigners without identity documents, applications must be made to the embassy of his country. Not all countries have embassies in Lithuania. Citizens may seek help at embassies of other countries under inter-governmental treatise. In reality, proxy embassies often refuse to help such people, essentially making an individual a hostage in a foreign country. A foreigner who lost documents and is unable to prove the legitimacy of his stay in the country can be deported by court decision. It is logical to assume that an increase in immigration brings an increase in the number of people who lose identify documents. The practice of their detention and deportation may result in forcing them to avoid seeking help of migration services and otherwise pursue illegal residence in the country.

A foreign applicant could be denied means to address the court for being unable to authorise official documents, access legal aid, or obtain interpretation and translation services. Foreigners can lodge a complaint against decisions of migration authorities. However, this right may be impinged by practical obstacles – lack of funds to pay court fees or difficulties related unfamiliar language. The law stipulates the possibility for courts to exempt or partially exempt a petitioner from court fees. However, the law obligates an individual to provide evidence that he is not able to pay. Lithuanian judges routinely require a foreigner to produce evidence that he is unable to pay. For foreigners, unlike for Lithuanians, such an insensitive application of the law makes practically impossible to access a court.

Since procedures are conducted in the national language, courts require that all documents are submitted in Lithuanian. In the absence of the translation, the documents produced in a foreign language are not admitted in the file. It might be difficult and costly to make an accurate translation of documents from a little known language. Besides, a foreigner often faces communication difficulties with the lawyer. This has a negative impact on quality of legal services, and encumbers foreigner‘s ability to protect rights. An inability to locate an independent interpreter, who could accurately interpret the essence of the issue to a lawyer or the court, creates an obstacle to court access.

Migration offices provide poor quality services; the work conditions and conditions for customers attending migration offices are unsuitable. Work methods of migration offices are obsolete. Visitors are exposed to long hours of waiting in “live queues” to discuss an issue with an officer—even to identify and pick up the appropriate form. Moreover, it is required that each applicant and his family member(s), including elderly and handicapped individuals, children and newborn baby, must appear in person to the migration officer. It is imperative to implement measures to modernise working conditions of migration offices.