HUMAN RIGHTS
IN LITHUANIA
This publication is issued under the UNDP programme
SUPPORT TO THE IMPLEMENTATION
OF THE NATIONAL HUMAN RIGHTS
ACTION PLAN (LIT/02/005)

REVIEWED BY
Prof. Dr. Algis Krupavičius (Kaunas University of Technology),
Assoc.Prof. Dr. Andrius Nevera (Mykolas Romeris University)

Authors of the 1st part: Dr. Algimantas Ėepas (head of the group),
Dr. Petras Ragauskas, Raimundas Jurka, Dr. Karolis Jovaišas,
Assoc.Prof. Dr. Aurelijus Gutauskas, Rasa Paužaitė, Rita Matulionytė,
Dr. Ingrida Mačernytė-Panomariovienė, Lina Beliūnienė,
Eglė Kavoliūnaitė, Jolita Malinauskaitė, Laura Kietytė,
Sonata Mališauskaitė-Simanaitienė, Jonas Misiūnas,
Dr. Svetlana Gečenienė, Dr. Gintautas Sakalauskas,
Mindaugas Lankauskas, Arūnas Želvys
Authors of the 2nd part: Prof. Dr. Aleksandras Dobryninas,
Assoc.Prof. Dr. Vladas Gaidys

The publication was deliberated and recommended for publishing
by the Council of Law Institute (29 October 2005, protocol 5)

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ISBN 9955-9821-3-6
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Introductory word by Ms. Cihan Sultanoglu, Resident Co-ordinator of the United Nations and Resident Representative of the United Nations Development Programme in Lithuania

Even a short glance at newspaper headlines, survey results and statistical data from the recent years would convince any outsider that Lithuania is undergoing a political renaissance. Successful membership in the EU and NATO, increasingly pro-active foreign policy, presence of strong democratic institutions, robust economic growth, falling unemployment – Lithuanians have claimed many impressive victories to date. And yet, to my mind, the most important achievements continue to elude public opinion at home and abroad.

It is difficult to capture the essence of these achievements in economic figures or political yearbooks, because they relate to the way Lithuanian people handle the challenges facing them. They are frank about their problems, innovative in their solutions, and forward-looking in their recommendations. All these features are clearly reflected in a new Report on Human Rights situation in Lithuania, you are holding right now. Combining sociological surveys, statistical data, and extensive commentary by national authors, the Report presents an up-to-date, comprehensive guide to all the key human rights and development issues in Lithuania.

The current Report continues the work started by the situation assessment on Human Rights in Lithuania, carried out in 2002 in the framework of the UNDP project “Support to the Implementation of the National Human Rights Action Plan”. Comparison of today’s situation with the results of the situation assessment exercise enables the authors of this publication to draw concrete conclusions about the latest developments in the area of human rights protection. This analysis is further extended by in-depth consideration of outstanding issues in every area of human rights and list of recommendations how to address them.

The fact that Lithuania is so open about any shortcomings it still faces in the area of human rights clearly speaks about growing national confidence: country’s leadership believes that these shortcomings can be overcome with the help of already functioning institutions and protection mechanisms in place. This combination of self-confidence and frankness, achieved in less than 15 years, is precisely what makes Lithuania such an attractive partner in the eyes of many post-Communist transition countries. National Report on Human Rights situation is an example of successful democratization efforts and we hope that Lithuania will actively share this experience in the context of global HURIST programme and other human rights initiatives.

We would like to extend our gratitude to Lithuanian Parliament for successful cooperation in the area of human rights protection and express hope that the initiatives championed by under the Human Rights Action Plan will continue to meet with success, while Human Rights reports will become part and parcel of political life in Lithuania.

Resident Co-ordinator of the United Nations and Resident Representative of the United Nations Development Programme in Lithuania
Ms. CIHAN SULTANOGLU
Introductory word by Ms. Zita Žvikienė, Chairman of the Committee on Human Rights of the Seimas of the Republic of Lithuania

During the entire history of human civilization, human rights received a lot of attention, however, not always that attention was the same significant, important, and ensuring an adequate protection, regulation and implementation of the rights. Having realized that only a legal establishment of rights is insufficient, mankind chose to follow the road of an advanced society. Concern for the protection of human rights is actually becoming a national policy priority of democratic states and Lithuania is no exception.

With regard to the rule of law, the establishment of human rights in the Constitution of the Republic of Lithuania seems to be flawless. In the Constitution, they are referred to as inherent rights (Article 18) in an attempt to assign to them the highest legal status: the fundamental human rights are not prescribed by the state, but exist beyond and independently from the state; at the same time it means that, when creating law, a government of a state, instead of being obliged to keep to its own legislation, is tied by the rules of fundamental rights, the duty to adhere to those rights and to ensure their implementation. Every time a new law is being passed or an existing law is being changed, the adequacy of that law in relation to the international conventions guaranteeing human rights is being controlled. Lithuania regularly presents reports to the international institutions concerning its compliance with the obligations of ratified international human rights documents. In spite of the fact that the international community favourably assesses Lithuania’s progress in the area of human rights protection, there are still problems arising in the fields of law explanation, interpretation, application, public information and education as well as there is a lack of cooperation when providing legal assistance and performing especially significant constitutional obligations. One would wish to see the public attitude change not only with regard to the rights but also with respect to the duties, which form an inseparable part of the human rights.

A comprehensive analysis of the acts of both national and international law in this publication rather precisely reflects the current situation concerning human rights in Lithuania. It is worthwhile mentioning that the authors did not limit themselves to the analysis of the protection of separate human rights, but also based their statements on sociological surveys. The analysis of certain legal documents alone does not provide a sufficient basis for the assessment of the effectiveness in ensuring the human rights. Another important factor is the feelings and opinions of people as to the protection of human rights, the breach of human rights and the possibilities of re-establishment of infringed human rights.

I would like to express my gratitude to the United Nations Development Programme, to all representatives of non-governmental and government institutions as well as to the group of authors, who have accomplished this meaningful work, and I would like to express my hope that similar studies will become not only a long-lasting tradition, but also an effective instrument when trying to make progress in the actual implementation of human rights in Lithuania.

Chairman of the Committee on Human Rights of the Seimas of the Republic of Lithuania
Ms. ZITA ŽVIKIENĖ
Effective protection of human rights is one of the keystones of the law and democracy within the State as well as of the social solidarity. Lithuania has rather in-depth awareness of this approach. The will of the political state to ensure the human rights and freedoms to the widest possible extent has been continually and consecutively expressed from the very first steps of the re-established statehood. Already the Act of 11 March 1990 on Re-establishment of the Independence of the Republic of Lithuania declared that the re-established State of Lithuania “guarantees the human rights, the rights of citizens and national communities”¹. The fundamental human and citizen’s rights were formulated on the same day of the Re-establishment of the Independence in the Principal Provisional Law of the Reconstituent Seimas of the Republic of Lithuania², with further restatement and elaboration in the Constitution of the Republic of Lithuania³ of 25 October 1992 adopted by referendum.

The importance of human rights has been always emphasized in all stages of the legal system reform. The Constitutional Court of the Republic of Lithuania has stated once and again that the Constitutional foundation of the rule of law state is a universal principle on which the entire legal system of Lithuania and the very Constitution are based, the Constitutional foundation of the rule of law state, apart from other requirements, also supposes that the human rights and freedoms must be guaranteed⁴. The necessity to ground the legal system reform of the Republic of Lithuania on the principal provision to guarantee the human rights, freedoms and legitimate interests to a maximum extent was underlined in the main programme-based document of the legal system reform, i.e. the Guidelines for the Legal Reform as adopted by the Seimas of the Republic of Lithuania⁵ in 1993. This provision has been implemented consistently in the legal system of the Republic of Lithuania.

HUMAN RIGHTS IN LITHUANIA

The duty to defend the human rights is recognized as one of the key functions of most state institutions⁶. In the final stage of the legal system reform – when the new codes of the Republic of Lithuania were adopted – the importance of human rights for the legal system was emphasized repeatedly. The protection of human rights is acknowledged to be the purpose of practically all new codes⁷. As the finalization of the legal system reform is approaching, the political will of the State to guarantee the human rights in Lithuania to the widest possible extent remains unchanged. The Programme of the Government of the Republic of Lithuania for 2004–2008 approved by the Seimas of the Republic of Lithuania establishes the main obligation of the Government in the legal system area, which is to improve the mechanisms ensuring the protection of human rights in Lithuania⁸.

The objective of the re-established state to integrate into the community of democratic nations, awareness that the respect for the human rights and their effective guarantees is an essential characteristic feature of the State seeking to be a full-fledged member of the international community were of considerable importance to the development of the system of the protection of human rights and fundamental freedoms in Lithuania. Already at the time when we were outside the international arena, and the world was ignoring the re-established statehood of the Republic of Lithuania, the Reconstituent Seimas of the Republic of Lithuania by its resolution of 12 March 1991⁹ formally undertook the obligation to comply with the Universal Declaration of Human Rights of the United Nations General Assembly of 10 December 1948 and to join the instruments of the International Charter of Human Rights of 16 December 1966: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; Optional Protocol to the International Covenant on Civil and Political Rightsⁱ⁰. On 5 September 1991 the Reconstituent Seimas of the Republic of Lithuania made an official statement that “it will respect and honestly fulfill all the obligations established by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950”¹¹,

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though the possibilities to join the very Convention appeared only a few years later. This practice to undertake and implement the provisions of the international legal instruments in the area of human rights has not changed until now. The Republic of Lithuania was the first Member State of the European Union to ratify the Treaty Establishing a Constitution for Europe, including the Charter of Fundamental Freedoms.

The important role of the primary enforcement of human rights in the legal system of the Republic of Lithuania in Lithuania’s becoming a full member of the international community determined that the human rights protection system in the Republic of Lithuania was built primarily through reception of the international legal standards. A particularly important role in that process should be attached to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its optional protocols. The Constitutional Court of the Republic of Lithuania has acknowledged that the laws of the Republic of Lithuania should not create any obstacles to application of the Convention provisions in the courts, and that the jurisprudence of the European Court of Human Rights as a source of law interpretation is also relevant to construction and application of the Lithuanian law. The Statute of the Seimas of the Republic of Lithuania enforces the requirement to present, together with every draft law, an explanatory note indicating whether a draft law is in conformity with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The significance of the European Convention for Human Rights is also recognized in the practical application of law. The Supreme Court of Lithuania has recognized the jurisprudence of the European Court of Human Rights as the source of the Republic of Lithuania law. In 2001–2004 the Supreme Administrative Court directly followed the provisions of the European Convention for the Protection of Consumer Rights and Fundamental Freedoms and the jurisprudence of the

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17 See: Ruling of the Senate of the Supreme Court of Lithuania on the application of Articles 7, 7-1 of the Civil Code of the Republic of Lithuania and the Law of the Republic of Lithuania on Communication to the Public in the judicial practice when investigating civil cases of honor and dignity defense // Judicial Practice, 1998, No.9; Ruling of the Senate of the Supreme Court of Lithuania on application of the laws regulating the duty of parents to maintain children of minor age in the judicial practice // Judicial Practice, 2005, No. 23.
European Court of Human Rights in hearing of forty-five cases\textsuperscript{18}. Not only state institutions of the Republic of Lithuania, but also the public recognizes the importance of the European institutional system of the protection of human rights. The residents of the Republic of Lithuania more than the residents of other European countries are apt to apply for support to the European Court of Human Rights. From the day the European Convention for the Protection of Human Rights and Fundamental Freedoms came into power in Lithuania the Court has received more than 2000 complaints about the State of Lithuania. 1604 reports were recognized by the Court as irrelevant, only in six cases against Lithuania investigated by the Court complaints were fully or partially recognized as acceptable. Nevertheless, the number of appeals to the Court keeps increasing. By number of claims per 10 000 of residents registered by the European Court of Human Rights hardly three European countries are ahead of Lithuania\textsuperscript{19}.

The importance of the European Convention for the Protection of Human Rights and Fundamental Freedoms should not be questioned. However, it should not throw into the shade the importance of the other legal documents enacting the human rights in the Republic of Lithuania. However, despite the fact that in the legislation of the Republic of Lithuania and judicial practice (particularly in the jurisprudence of the Constitutional Court of the Republic of Lithuania) an independent doctrine of human rights has been developing, in the academic spheres there is a tendency to treat the issues relating to Human Rights from the international law perspective.

This situation can be also illustrated by the fact that a major part of researches on the issues relating to the protection of human rights were primarily grounded on the analysis of the international law issues\textsuperscript{20}. The situation assessment on Human Rights in Lithuania carried out in 2001–2002 in the framework of the project of UNDP “Support to the Implementation of the National Human Rights Action Plan” can be considered as almost the only exception. The results of that analysis were summarized in the Report on Human Rights situation in Lithuania. Based on it in December 2002 the publication “Human rights in Lithuania: situation assessment”\textsuperscript{21} was issued.

\textsuperscript{19} 2004 Activity Report for the Government of the Republic of Lithuania made by the representative of the Republic of Lithuania at the European Court of Human Rights http://www.tm.lt/strasburas/2004_ataskaita_doc
The present book was further extended to the direction chosen in the aforemen- tioned study with the aim to give a complete picture of the human rights protection system in Lithuania based on the summary of the relevant issues concerning Lithuania as well as the principles of the national legal system.

Though this book is aimed at showing the human rights protection system as a whole by scope it is much ahead of the other publications issued in Lithuania in relation to the protection of human rights without any need to further assert that independently of the scopes of studies intended for the problems related with human rights separate human right still have to remain outside the scope of analysis. Being the core and limits of the entire public and social life the human rights penetrate into all areas of the social relations, split into abundance of sub-topics so becoming an inexhaustible and wide-ranging subject. Therefore, this study is dealing with those issues the analysis of which outlines the human rights system and which by their relevance highlights the most important strengths and weaknesses of the system. The judgment on what issues should be considered as the most relevant and asking for special treatment is primarily based on the analysis of the national law sources in line with the international instruments for the protection of human rights. Considering that the current study was prepared in the framework of the National human rights action plan of the Republic of Lithuania particular attention in shaping the concept of the current study was given to Vienna Declaration and Action Programme22, i.e. the documents which initiated the development of the national human rights action plans. In deciding which issues relating to the protection of human rights call for special treatment significant importance was attached to the sociological survey of human rights monitoring, which highlighted the protection of what human rights is given the most considerable attention of the Lithuanian society. The survey results are presented in this book.

In line with that it should be noted that separate chapters are devoted not to all issues relating to the protection of human rights discussed in this study. Certain problems related with the protection of human rights by their nature and substance could not have been analyzed separately from other related issues, therefore the analysis of those problems recurs in a number of the other chapters of this study. For example, the issues pertaining to implementation of the right to life are elaborated in the chapters “The right to the health protection”, “The rights of the child”, etc., the issues relating to the protection of the rights to freedom are discussed in the chapter “The right to a fair trial”, “The rights of the persons with the restricted freedom”, etc. The most illustrative example to support this statement is the right to equality that is analyzed almost in all chapters of this study. So, non-listing of separate human rights in the table of contents of this book does not mean in any way that they are not analyzed in this study.

The present study consists of two large structural parts – the analysis of the common rights of all members of the society and the analysis of human rights of the members of separate social groups. Nevertheless, just the formal division of the study into the “general” and “special” structural parts is hardly possible. In many levels and meanings these parts overlap, the analysis of the “common” human rights without discussing how the members of separate social groups are exercising them would be inconsistent. In line with that the legal situation of separate social groups may be analyzed only from the perspective of the “common” human rights.

The analysis of the each separate topic of this study can be relatively divided into the repeating structural parts: the discussion about the recent achievements in ensuring the protection of the relevant human rights and the analysis of the problem issues relating to the protection of separate human rights. Though the recent years have been significant for the legal system of the Republic of Lithuania in strengthening the protection of human rights, and really many important and progressive steps have been made towards the development of the human rights protection, by joint agreement of the authors it has been decided to devote not more than one fifth of the scope of each chapter for the overview of achievements. That position of the authors was determined by the understanding that this study is primarily meant for critical assessment of the existing situation. Also, taking into account that the study is also presented in English more attention was given to those solutions in the area of the human rights protection in the Republic of Lithuania, which could serve as the examples of “good practice” to other states.

The analysis of the legal acts of the Republic of Lithuania covers a major part of the content of this study. Firstly, the legal regulations which most clearly reflect the State’s position on the issues relating to the protection of human rights, development tendencies and needs of the human rights protection system. However, the study in any way is not limited to the analysis of only these official documents. Much attention is given to the law application issues: the practice of the Constitutional Court of the Republic of Lithuania, the Supreme Court of Lithuania as well as other judicial institutions. With the aim to identify the problems faced in realizing the human rights enforced by the legal acts the practice experts specializing in certain topics were consulted as well. Their in-depth considerations and advice have contributed greatly to this study. Therefore, on behalf of all the authors I would like to express my gratitude to E. Žiobienė, Director of the Lithuanian Center for Human Rights; R. Juozapavičius, Director of “Transparency International” Lithuanian Branch, Č. Jokūbauskas, Chairman of the Civil Cases Division of the Supreme Court of Lithuania; N. Matulevičienė, Head of the Copyright Division of the Ministry of Culture; G. Leonavičienė, Head Jurisconsult of the Legal Department of the Agency of Lithuanian Copyright Protection, R. Šimulevičius, Head of the Intellectual Property Protection Division of the Criminal Investigation Board of the Lithuanian Criminal Police Bureau, J. Dovydenas, Deputy Director of the Lithuanian Neighboring Rights Association AGATA, V. Simanavičius, Vice-president of the Lithuanian Music Industry Association,
D. Kuolys, Director of the Civil Society Institute, H. Mickevičius, Director of the Human Rights Monitoring Institute, D. Vilytė, Director of the Open Society Fund Lithuania, V. Mizaras, Head of the Civil Law and Civil Procedure Department of the Faculty of Law of Vilnius University, D. Širvaitytė, Chief Specialist of the Private Law Department of the Ministry of Justice, G. Dambrauskiénė, Head of the Labor Law and Social Security Department of the Faculty of Law of Mykolas Romeris University, L. Višinskienė, Deputy Head of the Labor Relations and Remuneration Division of the Ministry of Social Security and Labor, V. Dudienė, Chief Specialist of the Labor Relations and Remuneration Division of the Ministry of Social Security and Labor, A. Ėckanauskaitė, Chief Specialist of the Lithuanian Bioethics Committee, R. Kšivickienė, Head of the Control Division of Vilnius Territorial Patients’ Fund, J. Normantienė, Press Officer of the Control Division of Vilnius Territorial Patients’ Fund, D. Remeikytė, Head of the Law Division of the National Land Service, A. Razmienė, Head of the Public Health Safety Division of Vilnius Public Health Center, J. Suraučienė, Head of the Public Health Safety Division of the State Public Health Care Service under the Ministry of Health, V. Keturka, Head of the Chemical Laboratory of the National Public Health Research Center, V. Urbonavičius, Chief Specialist of the Control Division of the Legal and Personnel Department of the Ministry of Environment, S. Juodvalkis, Vice-president of the Lithuanian Consumer Association, A. Rickuviienė, Chairperson of the Western Lithuania Consumers’ Federation, Z. Ėeponytė, President of the Lithuanian Consumer Institute, S. Umantas, Chairman of Šiauliių Consumers Federation, A. Armanavičienė, President of the National Consumers Confederacy, Ž. Jančorės, President of “Atviras kodas Lietuvai” (Open Source for Lithuania), D. Valentaitė, Chairperson of Kaunas Civil Society Center “Dainava”, S. Antanaitis, Chairman of the Federation of the Associations of Multi-Family Apartment House Owners of the Republic of Lithuania, K. Grinys, Chairman of the National Water, Electricity and Heating Consumers Protection League, M. Girdzevičius, Chairman of the Consumer Forum, F. Petrauskas, Chairman of the National Consumer Rights Protection Board under the Ministry of Justice, J. Kügystė, Head of the European Law Division of the National Consumer Rights Protection Board under the Ministry of Justice, M. Močiulskis, Member of the National Consumer Rights Protection Board under the Ministry of Justice, D. Skučaitė, Member of the National Consumer Rights Protection Board under the Ministry of Justice, T. Pavilanskas-Kalvanas, Senior Specialist of the Division of Economic Interests of the National Consumer Rights Protection Board under the Ministry of Justice, I. Kierienė, Chief Specialist of Vilnius Children’s Rights Protection Service, L. Trakinskienė, General Director of “Gelbėkit vaikus” (Save the Children Lithuania), J. Valickienė, Deputy Director of the children’s day center “Duok ranką” of “Save the Children Lithuania”, R. Šalaševičiūtė, Controller for Protection of the Rights of the Child of the Republic of Lithuania, A. Miškinis, Chief Advisor to Controller for Protection of the Rights of the Child of the Republic of Lithuania, R. Ėerniauskienė, Chief Specialist of the Public Relations Unit of the Organization Division of Vilnius Chief Police Commissariat, A. Matulis, Chairman of the Elderly People’s Association, P. Ruzga,
Chairman of the Pensioners’ Union “Bočiai”, A. Šileikytė, Manager of the Adult Education Sector of the Ministry of Education and Science, Z. Valaitytė, Chairperson of the Society of the Physically Disabled of Lithuania, Z. Maliąauskaitė, Representative of the Welfare Society for Persons with Mental Disabilities “Viltis”, E. Ėaplikienė, Head of the Social Integration of the Disabled Division of the Ministry of Social Security and Labor, A. Smaliukas, Lecturer of the Civil Law and Civil Procedure Department of the Faculty of Law of Vilnius University, P. Ancelis, Chairman of the Council of the Crime Victim Care Association of Lithuania, R. Uscila, Research Director of the Human Rights Monitoring Institute; R. Ažubalytė, Head of the Criminal Procedure Department of Mykolas Romeris University; A. Rudzinskas, Associate Professor of the Civil and Commercial Law Department of Mykolas Romeris University, A. Daplys, the former long-term Director of the Law Institute, G. Švedas, Head of the Criminal Department of the Faculty of Law of Vilnius University, Attorney-at-law L. Biekša, Representative of the Lithuanian Red Cross, A. Liausėdas, Director of Rokiškis Mental Hospital, R. Veliulis, Director of the Social Support to the Minors and Prevention Center of Kaunas Chief Police Commissariat, L. Stulginskienė, Head of the Prevention Division of the Social Support to the Minors and Prevention Center of Kaunas Chief Police Office, R. Paliukienė, Head of the National Minorities Division of the National Minorities Department; T. Leončikas, a doctoral student of the Ethnic Research Center of the Social Research Institute, S. Visockis, Chairman of Vilnius Romary Society, R. Petraitis, Head of the Foreigners’ Registration Center of the State Boarder Guard Service under the Ministry of the Interior, R. Ėiurlionytė, Coordinator of Vilnius Office of the International Migration Organization, V. Siniovas, Coordinator of the representative office of the Board of the United Nations High Commissioner for refugees in the Republic of Lithuania, M. Ėirbaitė, Coordinator of the legal aid of the Lithuanian Red Cross Society to refugees, L. Voïšnis, Head of the Division of Asylum Affairs Information of the Migration Department under the Ministry of the Interior.

The key ideas and considerations of the authors of the study were presented in twelve seminars in Alytus, Jonava, Marijampolė, Pabradė, Pravieniškės, Utena and Vilnius, with the participation of the persons dealing with the relevant areas of human rights. Therefore, the authors took advantage of the possibilities to check how their situation assessment and suggestions how to solve the identified problems conform to the life reality. Attention to practical needs can be also illustrated by the fundamental recommendation to state institutions given at the end of each chapter of this study for what steps are to be made in seeking to ensure the relevant human rights in Lithuania to a wider extent.

As the legal analysis is the theme of the content of this study by authors’ agreement it was intentionally decided to avoid analyzing one of the key issues relating to the protection of human rights, i.e. lack of financial resources necessary for effective functioning of the human rights protection system. The decision was taken after finding out that this issue, given the protection of different human rights, can be raised and discussed based on the equivalent arguments, and that the suggestions to allocate more money to resolve the
raised problems are repeated at the end of each chapter of this book. Therefore the authors of this study are apt to generally acknowledge that financial resources for effective functioning of the human rights protection system are insufficient. The common position of this study authors should be emphasized as well – the protection of human rights should undoubtedly be recognized as the sphere of the State’s life, which must be given a priority in dealing with issues relating to budget allocations. A majority of the human rights discussed in this study by their relevance do not allow estimating a lack of financial resources as the state’s justification for providing inadequate protection.

We would like to express hope that the in-depth considerations and ideas presented in this book will be reflected in both the legal theory and practice of Lithuania. And also, that the critical estimations and suggestions contained in this study will receive appropriate academic and civil feedback as well as will be of use not only to a narrow circle of human rights experts, but also to the general public of Lithuania.
I. HUMAN RIGHTS IN LITHUANIA: LEGAL EVALUATION OF THE SYSTEM
THE RIGHT TO PARTICIPATE IN THE COUNTRY GOVERNANCE AND OTHERWISE TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS

Introduction

In a course of late three years there were a few changes in Lithuania regarding the ensurance of the rights of the citizens to participate in the country governance and otherwise take part in the conduct of public affairs. The main legal acts in the majority of fields have not changed. Although outwardly seems that there have been no essential changes also in the implementation practice, we still can be glad that the attitude of people to the implementation of these rights has significantly improved (most probably it has been predetermined by the overdue reaction to the earlier changes and the increase of the activity of the citizens). In November 2004 to the question “What do you think how much attention is paid in Lithuania to the right to take part in the state governance?” 17% of the respondents specified much attention paid and 34% specified little attention paid\(^1\). Referring to the fact that according to the data of May 2002 the mentioned answers have respectively formed 11% and 50%\(^2\), the progress is evident.

On the other hand, the concern is caused by the fact that the citizens are very little aware of the protection mechanisms of the right to take part in the country governance. After the summing up of the answers to the question “Do you know where to address due to the violated rights in these fields?” it has appeared that among the sixteen rights this takes the second place according to the number of those who do not know where to address regarding its violations (according to the survey carried in November 2004 they have formed 59% of all the respondents) and just fourteenth place according to the number of those who know where to address (they have formed 19% of all the respondents)\(^3\). The latter data clearly show that Lithuanian citizens especially lack the information on the protection measures of this pointed right. Of course, it is important to have in mind that in certain cases such information simply does not exist as there are no legal protection measures (for example, the municipality council violates the right of the inhabitants to elect the community representatives of the residential area as it does not provide the needed procedure for the implementation of this right. However, there are no adequate legal instruments that would force the adoption of the respective legal act).

By the way, it is worth of noticing, that in the review of 2005 of “Freedom House” the situation of the political rights in Lithuania has been evaluated undermost in a course of

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\(^1\) See the chapter “Sociologic Aspects of Human Rights Monitoring” of this book. P. 388.
\(^2\) Ibidem, p. 388.
\(^3\) Ibidem, p. 403.
late ten years (the evaluation until now has been stable)\(^4\). The review does not contain the clear reasoning of this evaluation. However, based on its content it is possible to presume that this could have been predetermined by the public allegations that the carried seizures at the seats of the four political parties carried by the officials of the Special Investigation Service during the Presidential elections campaign have been politically reasoned\(^5\). Other facts mentioned in the review (the impeachment of the suspended President Rolandas Paksas as well as facts having determined it; the suit of the prosecutor’s office to allow the prosecution of the three members of the Seimas related to the “Rubicon” case and its rejection as well as resignation of the members of the Seimas) could hardly be the serious reason for such decision. It should be noted that there are no legally valuable evidence that could prove the suspicion that during the Presidential elections campaign the officials of the Special Investigation Service tried to influence the political processes. On the other hand, in the discussed case even the suspicions themselves diminish the confidence in the political system. Thus, the change of the index reflecting the situation of political freedoms is understandable (though not necessarily true).

The Constitution provides that “the citizens shall have the right to take part in the state governance both directly and through democratically elected representatives”, also “the right to seek employment, on general terms of equality, in the civil service of the Republic of Lithuania”\(^6\).

In practice the rights of this category are also consolidated in the international legal acts (for example, Article 21\(^7\) of the Universal Human Rights Declaration and Article 25\(^8\) of the International Covenant of the Civil and Political Rights that are valid in the Republic of Lithuania). By the way, the concept “the right to the state governance” used in Article 25 of the International Covenant of the Civil and Political Rights has been changed into the wider category “the right to take part in the conduct of public affairs”.

It should be noted that according to the type of consolidation in the Constitution of the Republic of Lithuania and international acts, “the right to the state governance” (or “the right to take part in the conduct of public affairs”) lacks the concreteness and preciseness. There just minimal quantitative and qualitative criteria provided for the participation of the citizens in the state governance. From this standpoint it should be noted that the mentioned right “to take part in the conduct of public affairs” by Article 25 of the International


\(^5\) Ibidem. P. 382.


Covenant of the Civil and Political Rights according to the assessment of the United Nations Human Rights Committee does not mean that any person or social group (both big or small) may freely choose the respective way of participation or, moreover, in each case demand for the possibility to personally take part in solving the issues relevant for oneself.

On the international level it is acknowledged that if the democratic elections are held in the state (first of all free and periodical) and the citizens have the equal rights to claim for the political and career posts at the government and administrative institutions (and take direct part in the state governance when holding such posts), then the level of the participation of the citizens in the state governance correspond to the minimum standards of the protection of human rights.

In Lithuania, following the Constitution, both the aforementioned requirements expressing the minimal standards are supplemented by the right of the citizens to express their will (participate in public affairs) in a way of referendum, through the right of the legislative initiative, the citizens are guaranteed the petition right and the right to criticize the work of the state authorities and officials as well as appeal their decisions.

The laws of the Republic of Lithuania additionally provide certain specific ways of the participation of the citizens in the conduct of public affairs. That is the participation in discussions of different issues at the Seimas of the Republic of Lithuania (first of all, participation in the legislative process), when adopting the acts of administrative regulation, also in different decision making at the local municipal institutions (the Law on the Local Self-Government provides the following rights: the right to held debates on the municipal budget; the right to elect the representatives of local communities apart from the municipal council members; the right to form the Ward Advisory Councils out of the representatives of the local communities; the right to direct participation in the decision drafting; the right to initiate and participate at the public polls of the inhabitants of a municipality, municipality communities and local inhabitants).

**Elections**

The valid laws of the Republic of Lithuania guarantee the right to the democratic (general elections, equal suffrage, direct and secret ballot) elections. The laws consolidate the right of the citizens to elect and be elected as the President of the Republic, the member of the Seimas, the member of the European Parliament and the member of the municipal council.

The right of the permanent residents of the Republic of Lithuania to the elections is limited only in three cases: 1) in the absence of the citizenship of the Republic of Lithuania (at the Presidential and Seimas elections) or the citizenship of the European Union.

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9 This attitude has been revealed in the case Marshall, Denny, Marshall and the Mikmaq Tribal Society v. Canada [referred to on 10 June 2005]. Internet search: http://www.ohchr.org/english/about/publications/docs/sdecisionsfinal.pdf.
The citizens of the Republic of Lithuania shall have the right to elect the members of the Seimas, also to elect the President of the Republic, irrespective of their place of residence (i.e. the domicile may even be outside Lithuania).

It should be noted that from 30 December 2003 the right to participate in the elections of the members of the municipal councils is not associated with the citizenship. Any permanent resident of the respective municipality shall have the right to vote and be elected the member of the municipal council. Thus, lately the right to the participation in the state governance has been significantly expanded. It is also important that granting of the right to participate at the elections to the municipal councils for the foreigners corresponds to the principle provision of the Council of Europe convention “on the Participation of Foreigners in Public Life at Local Level”\textsuperscript{11} that until now has been the essential obstacle for Lithuania to become the signatory member to this document.

The right to be elected to certain posts is limited for the persons declared incapable by the court. The right to be elected is also limited for the person seeking for the respective position by the minimal age census that depends on the position sought (for the candidates to the office of the President of the Republic the age census is 40 years; for the members of the Seimas – 25 years; for the members of the European Parliament – 21 year; for the members of the municipal councils – 20 years).

The office-seekers must permanently reside in Lithuania (when running for the membership at the municipal council – to reside on the territory of the respective municipality). A person running for the President of the Republic or the office of the member of the Seimas cannot be connected with a foreign state by oath or pledge. Moreover, when running for the office of the President of the Republic two more additional requirements are applied: residential qualification (one has to be residing in the Republic of Lithuania for late three years) and citizenship by origin. It is noted that from the theoretical point of view the latter requirement for the candidates to the post of the President of the Republic may be measured as the discriminative criterion (as does not depend upon the will of a person. Thus, a stateless person born in Lithuania, despite of being the Lithuanian citizen even the whole life, will not be able to become the President of the Republic). However, referring to the fact that this requirement is still applied in certain undoubtedly democratic countries (for example, the United States of America) at least on the international level it is not assessed as the violation of the human rights (first of all – the infringement of the equality).

Persons who are in the national defense services or in alternative service as well as officers, non-commissioned officers and re-enlistees of the national defense system, the police force, and the internal affairs service who have not retired from service, and offi-

cers of other militarized and security services who are on the payroll shall not be eligible to be elected to members of the Seimas.

Persons who have not completed a court-imposed sentence shall not be eligible to be elected.

The laws safeguarding the right to the democratic elections (i.e. both the right to vote and the right to be elected) are properly implemented in Lithuania. Neither the national, nor international courts, institutions engaged into the protection of human rights, other organizations and international observers have stated the essential violations.

Only one problem is noted that has especially become evident during the 2004 elections to the Seimas of the Republic of Lithuania. These are violations of secret ballot via post. When assessing the legitimacy of the elections in one of the electoral districts the Constitutional Court of the Republic of Lithuania *inter alia* has pointed out that “it is evident from the case material that during the repeated voting via post at the elections to the Seimas at the one-candidate electoral district No 42 of Raseiniai there have been quite many violations of the Law on Elections to the Seimas when the secret ballot as well as the requirements for the personal (direct) voting have been ignored. During the hearing of the Constitutional Court it has appeared that similar violations of the Law on Elections to the Seimas have existed in other electoral districts as well. The direct and indirect purchase of electoral votes has started in the electoral practice that distorts the real will of electors, provide the preconditions for the dishonest competition during the elections, and decrease the trust in the national representatives. The fact proves that the provisions of the Law on the Elections to the Seimas and other laws do not consolidate the effective mechanism that would ensure and eliminate the misuse of the voting via post and the institute of voting via post itself would not provide the preconditions to distort the real will of the electors”12.

On 19 January 2005, seeking to solve the problems mentioned by the judgment of the Constitutional Court the Board of the Seimas of the Republic of Lithuania formed the working group to prepare the draft laws amending the laws regulating the elections, their funding and political advertising as well as to implement the judgment of the Constitutional Court as of 5 November 2004. Currently the respective acts have not been prepared yet.

The equal rights to the public service

The Constitution of the Republic of Lithuania provides the right to all the citizens “to seek employment, on general terms of equality, in the civil service of the Republic of Lithuania”. The implementation procedure and terms of this right are regulated by the

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12 See the judgment of the Constitutional Court as of 5 November 2004 “On the Interpellation of the President of the Republic of Lithuania whether during the 2004 elections to the Seimas of the Republic of Lithuania there have been any violations of the Law on the Elections to the Seimas of the Republic of Lithuania” (Valstybės žinios (Official Journal). – 2004, No. 165-6059).
Law of the Republic of Lithuania on Public Service, some special laws and different post-regulatory acts.

Out of all the terms for the employment to the public service (provided limitations) only one requirement by Paragraph 3 Part 1 Article 9 of the Law on Public Service causes doubts regarding the conformity from the point of view of the protection of human rights. This requirement provides that the person employed for the public service has to be “not elder than 62 years and 6 months”. It should be noted that this limitation itself is not related neither to the objective nor ethical criteria of the concrete person and obviously does not conform to the provision of paragraph “c” Article 25 of the International Covenant of Civil and Political Rights providing that “each citizen without any discrimination provided by Article 2 and without any groundless limitations shall have the rights and possibility based on common terms of equality to enter the public service of one’s own country”. It seems that it would be justifiable to relate a certain age limit to the presumption that a person cannot be employed in a certain work activity. However, the laws should provide the possibility to deny such presumption.

The attention should be paid to the fact that the special legal acts (first of all the laws and statutes regulating the activities of courts and law-enforcement authorities) also conso-
lidate the provisions that prevent the employment for certain state service posts just because the person seeking to hold or holding such post must be at certain age. The mentioned notice has also been applied for the mentioned legal acts.

In practice, when implementing the rights of the citizens on equal terms to join the state service, majority of problems arise due to nepotism and protectionism. Even the former Vilnius city Chief Police Commissar has been publicly accused of employment of relatives and cohabiter to the police service. It is unusually difficult to establish the real level of this problem, there have been no trustworthy researches carried17. However, based on the informal information18, the assumption could be made that this problem is even more sore on the local government level (except the biggest cities where the situation usually does not differ from the central authorities).

**Participation in the placement of the officials**

The valid legal acts do not provide any specific rights of the citizens to take part in the placement of the state officials. However, in certain cases, especially when it concerns the officials appointed by the Seimas, there are certain *de facto* rights (at least possibilities). The candidacies and biographies of persons to the offices of judges appointed by the Seimas, Ombudsmen of the Seimas, Prosecutor General and other high officials are published in advance in the data base of the Seimas. In such cases, the citizens (their groups), following the procedure established by the Statute of the Seimas, may provide both their position as well as contradictions and different information (for example, the information discrediting the applicant or in other ways causing doubts about his suitability for the respective office).

In 2005 the Courts Council obligated the National Courts’ Administration to publish on the webpage the data on the applicants to the office of judges the candidacies of whom will be discussed in the nearest meeting of the Courts’ Council19. It is believed that this provision will provide the society with the preconditions to receive the information about these persons, also, in case of need, timely inform the respective authorities about the personal traits and circumstances that mis-become the posts sought by the applicants at all levels of courts.

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17 It is possible to mention only one familiar research when preparing this review where the issue under the discussion is reflected – that is the interview of the public servants of Vilnius city municipality ordered by the Transparency International Lithuanian Division at the end of 2004, carried by the company “Baltijos tyrimai” where people have been requested to specify the most risky fields from the corruption point of view. “Employment at the municipality” has been rated as the third most problematic field (27% of the respondents assessed it as the most risky).

18 One of the sources of this type of information – round-table discussion on the corruption problems in the local governance, organized by the “Transparency International Lithuanian chapter”.

19 Resolution No. 13 P-342 of the Court Council as of 14 April 2005 “on the publishment of data on the webpage about the applicants to the judges” [referred to on 1 June 2005]. Internet search: http://www.teismai.lt/savivalda/nutarimai/20050414-342.doc.
Referendums

Following Article 4 of the Constitution “the nation shall execute its supreme sovereign power either directly or through its democratically elected representatives”. This provision is supplemented by the provision of Part 4 Article 69 of the Constitution: “provisions of the laws of the Republic of Lithuania may also be adopted by referendum”. “Authenticity” of the aforementioned provisions is confirmed also by the practice of nine referendums held in a course of 15 years (despite of the fact that part of them has been acknowledged as irritated, still real ones).

Following the Constitution of the Republic of Lithuania the referendum shall be declared only in two cases: either upon the demand of not less than 300 000 citizens (currently this forms nearly 12% of the citizens of the Republic of Lithuania enrolled into the lists of voters; most probably due to that fact nobody has managed to initiate the referendum in such a way), or upon the decision of the Seimas.

The requirements for the adoption of legally binding decision in a way of referendum are very strict (especially referring to the constantly increasing torpidity of the majority of citizens for the participation in the adoption of the political decisions). Following Parts 1 and 4 Article 8 of the Law on Referendum “the mandatory referendum shall be deemed held in case more than a half of the citizens having the voting right and enrolled into the lists of voters have taken part. […] The decision regarding other issues, laws or their provisions that have been discussed during the mandatory referendum shall be deemed adopted in case of approval of more than a half of the citizens who have participated in the referendum, but not less than 1/3 of those having the voting right and enrolled into the lists of voters”20.

It should also be noted that the Constitutional Court has categorically stated that there should be no additional limitations provided for the referendum as: the right to held referendum on economic issues relate to the “fulfillment of the economic expertise on the future outcomes”; the provision of the condition that in case the Seimas states the nonconformity of the presented project to the Constitution, then “the issue of the amendment of the Constitution should be considered first of all” and so on21.

There is no meaning of talking much about the practice of civil referendum initiatives as the practice until now very clearly shows that the requirements for this initiative are impossible in practice. In a course of more than eleven years from entering into force of the Constitution there have been ten referendum initiatives. However, all of them failed to collect the required number of signatures of the citizens.

The failure of all the initiatives of the citizens shows certain declarative of the powers of nation directly adopt the decisions. The citizens could be really free settlers of the state issues only when the respective initiative arise from them but not when they solve the

issues that the politicians condescend to transfer them being afraid to bear the responsibility (e.g. on 20 October 1996 the referendum was held where the issue “Whether the deposits of the citizens have to be compensated through fairly privatization of the state property?” was raised). As mentioned above, in a course of 15 years the Seimas has initiated nine referendums.

It is also worth of mentioning that certain decisions by the Seimas, made without submitting respective questions for the referendum, have caused negative reactions in the public. First of all the issues of membership at NATO and approval of the Constitution for Europe should be mentioned.

Most probably due to that the claims are raised more often as the Seimas refuse to ask the opinion of the nation and it is said that this depends not only on the maturity of political ethics and democracy, but also to the field of law. The matter is that the right of the public to settle certain issues in a way of referendum is provided by the laws. Part 1 Article 9 of the Constitution expressis verbis provide that “the most significant issues concerning the life of the State and the Nation shall be decided by referendum”. Due to the assumed uncertainty (it is not clear what is attributed to the category of “most significant issues”). However, although the category of “most significant issues” really has even no standard list, the systematic explanation of the Constitution allows the conclusion that the list of issues is determined not by the content of the provisions of the specific legal regulations or regulatory object, but by the procedural rules. Following the rules provided by the Constitution as well as the Law on Referendum, the referendum could be initiated by 300 000 of citizens or the Seimas (meeting of the representatives of the nation) in corpore. Thus, following the Constitution the significance of the issue is verified by two alternative facts: certain part of the civil nation is of such opinion (and expresses its opinion following the provided procedures) or the majority of the members of the Seimas who have taken part in the respective meeting is of such opinion. With this respect it is possible to state that until now the right of the nation to solve the significant issues of the life of the State and Nation in a way of referendum has not been limited.

The issue related to the attitude demonstrated by the Seimas to the public opinion remains open. Although it is undoubtedly significant, it still cannot be attributed to the field of law (that means also to the field of human rights). Thus it is not expedient to analyze it in the present report.

Petitions

The Constitution of the Republic of Lithuania as of 25 October 1992 provides: “the citizens are guaranteed the petition right the procedure of implementation of which is provided by the law”. By the way, the Law on Petitions providing this procedure was adopted at the end of 1999 (i.e. after seven years from entering into force of the Constitution).

It should be noted that the Constitution itself does not define the content of the petition right. From the specified provision of the Constitution it is impossible to form the opinion whether the petition right is related to the adoption of the decisions or the activities (inaction) of certain officials (institutions). Thus, the Law on Petitions not only provides the implementation of the petition right but also defines its content and meaning.

Following Paragraph 2 Part 3 Article 9 of the Law on Petitions in force, an application shall not be recognized as petition if “it is not necessary to pass new legal acts, to amend, supplement or declare invalid any effective legal acts in order to meet the demands and proposals". Thus, the submission of the petition is nothing else as the sui generis initiative of legislation of laws and other legal acts.

It is worth of noticing that despite the fact that Constitution provides the guarantee for the citizens of the petition right, following the Law on Petitions a petition could be submitted not only by the citizen of the Republic of Lithuania but also each foreigner living on the territory of Lithuania (i.e. not even just a stateless person but also the citizen of another state). Still, even the aforementioned circumstance does not form the needed preconditions to make the practical significance of the petition right at least slightly bigger for the legislation in Lithuania.

Following the reports provided by the Seimas Petitions’ Committee, in a course of four years (2000-2003) the Seimas has received and analyzed 122 applications submitted following the Law on Petitions. 30 of them have been acknowledged as petitions (i.e. approximately one fourth of them). Based on the petitions of the citizens, the Seimas has adopted two laws23.

The latter data show that the petition institute at the Seimas virtually is functioning. However, it does not make the significant influence over the state governance.

Following the Law on Petitions, the independent petition commissions are also formed and act under the Government as well as at each municipal council. However, the information on the activities of these institutions is not publicly announced but even upon special applications is not always accessible.

The initiative of the citizens in legislation

The citizens participate in the legislation in several ways. The most significant of them relate to the initiation of laws. As distinct from other three subjects having the legislation initiative right at the Seimas, the citizens (the citizens of the Republic of Lithuania having the active voting right) may initiate not only the legislation at the Seimas, but also the referendum. By the way, the terms significantly differ. The legislation initiative at the Seimas may be raised by the votes of 50 000 of the citizens. Seeking to adopt the law at the

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referendum it is needed to collect at least 300 000 (i.e. six times more) signatures of the citizens supporting the respective initiative.

As mentioned above, in a course of more than eleven years from entering into force of the Constitution there have been ten initiatives of referendum. However, all of them failed due to the lack of the number of signatures of the citizens.

Compared to the practice of foreign countries, the terms and procedure of presenting the initiative of legislation at the Seimas by the citizens of Lithuania are regulated in a quite liberal way. Contrary to the majority of European countries, there are no direct limitations for the manifestation of such initiative. But the provisions of the Constitution provide two indirect limitations: 1) the draft Law of the Republic of Lithuania on the State Budget (only the Government could prepare it and submit for the Seimas), and 2) the draft laws ratifying and denouncing the international treaties (only the President of the Republic submits them for the Seimas).

Referring to the terms of declaration of the initiative of the legislation of the citizens it seems that it is possible to believe that here the situation should be different than in a case of initiation of referendums. However, the differences are not essential ones. The matter is that after the start of “the era of legislation initiatives of the citizens” in Lithuania in 2000, the legislative initiatives were related not so much to the initiatives of the citizens themselves, but to the initiatives of the politicians. There have been seven cases of rising of such initiatives on the whole in a course of four years. However, even five of them have been organized by the members of the Seimas (to be precise – parliamentary political parties)\(^{(24)}\). Out of the rest two, one has also been with the evident political “flavor”\(^{(25)}\).

Thus, until now the legislative initiative of the citizens has been mostly dedicated not so much for raising the idea of legislation, but to use the signatures of the citizens for making political pressure over the ruling majority of the Seimas (in all the cases of “party” initiatives, they have been organized by the opposing parties) and/or for the aims of the political communication.

On the other hand, the aforementioned facts do not deny (on the contrary, prove) that from the procedural point of view (i.e. from the legal point of view) the legislative initiative of the citizens is “alive” legal institute. Moreover, that the opposing political parties express the expectations and position of a certain part of the public.

When assessing the practice of the legislative initiative of the citizens it should be noted that yet out of seven mentioned initiatives only one has been useful\(^{(26)}\).

\(^{(24)}\) The authorship of the three initiatives belongs for the Social-Democrats, the rest two – for the Union of Liberals and Centrists.

\(^{(25)}\) The initiative to limit the budgetary means allotted for the needs of the defense raised by the Naujoji Sąjunga (New Union-Social Liberals) that has not been a parliamentary party at that time yet is meant.

\(^{(26)}\) One of the initiatives of the Social-Democrats party was successful – on 7 December 2000 the Seimas adopted the Law Amending Article 13 and 14 of the Law on the Value Added Tax.
Participation in the national law-making processes

It is worth of mentioning that following the laws of the Republic of Lithuania the possibilities of the participation of the citizens in the management of public affairs attributed to the competence of the Government are narrower than in the case of the matters attributed to the competence of the Seimas. That especially clearly manifests in the law-making process. The law-making processes happening at the Government are virtually incommunicative for the citizens (after the approval of the draft guidelines of the improvement of the law-making officially registered in 2003 the situation would change).

The reticence of the Government has been confirmed by the representatives of the non-governmental organizations.

Currently the Statute of the Seimas\textsuperscript{27} provides the possibility for each citizen or their group, like for any person concerned, to take part in the discussions of the draft laws submitted by any subject. The reliance of this possibility is increased also by the rules of the information spread: all the information about the draft legal acts registered at the secretariat of the sessions of the Seimas is operatively announced on the homepage of the Seimas. The information on the draft laws under discussions is published in the national press (at the same time by inviting the citizens to provide their comments and suggestions). The participation of the citizens in the law-making process limits to the discussions at the Committees of the Seimas. Only the representatives of the citizens who have initiated the legislation at the Seimas can take part in the plenary sessions, however, even they have this right during the primary stage – submission for the Seimas.

The main problem relating to the possibility to take part in the law-making processes is the possibility to get acquainted with the draft legal acts. It is noted that it is not relevant only talking about the law-making at the Seimas (all the important information, related to all the projects registered at the secretariat of the sessions of the Seimas, is published on the homepage of the Seimas. The information on the most important projects is published in one of the national dailies).

The majority of problems arise when trying to get acquainted with the draft decisions of the local government institutions. This information is usually not published at all (that means the possibility to take part in the decision making process significantly diminishes).

On the level of local government the citizens face the problems even trying to get acquainted with the documents of territorial planning, the drafts of which following the laws must be provided for the public discussions. The information on these projects is usually announced, however, very often this is done just formally (sometimes the impression is made that it is sought to make this information to be noticed by as less people as possible – it is being published in the unpopular newspaper, the format of the advertisement chosen is unexceptional and so on).

Very often the problems arise also trying to get acquainted with the draft legal acts under the discussion at the Government that are not always published on the ministerial homepages, contrary to what is required by the legal acts in force (it should be noted that following the procedure established by the Government, the draft laws prepared by the ministries must always be published (i.e. their relevance is presumed). Whereas, other draft legal acts under the discussions at the Government may be unpublished only in cases when they are not attributed to the category of “relevant ones”). On 12 April 2005 in the agenda of the session as of 13 April 2005 of the Government, published on the homepage of the Office of the Government of the Republic of Lithuania, it has been provided to discuss the two draft legal acts prepared by the Ministry of Finance. However, one of them (the draft law of the Republic of Lithuania Amending Articles 2, 3, 4, 5, 6 and 7 of the Law on the Restoration of Savings of the Citizens) has not been published on the homepage of the ministry. The Draft Law on the Acknowledgement as Spent of Part 3 Article 9 of the Law on the Legal Status of Persons Aggrieved from the Occupation of 1939-1990, prepared by the Ministry of National Defense; the draft amending the Resolution No 1641 of the Government of the Republic of Lithuania as of 19 December 2003 “on the approval of the maximum number of offices of the public servants and employees, employed according to the labor contracts and receiving the payment from the state budget and the state monetary funds”, prepared by the Ministry of the Interior; the draft Resolution on Approving the rules for the formation and maintenance of the list of foreigners who are forbidden to come to the Republic of Lithuania, prepared by the same ministry; some relevant drafts of the legal acts have not been published, however, provided for the discussions on the agenda of the same day.

The criticism of the activities of the state authorities and officials

The right of the citizens to criticize the work of the state institutions and officials is virtually ensured. However, the attention should be paid to the fact that on 1 May 2003 the criminal liability has been revoked for the persecution of the citizens for the criticism (i.e. the new Criminal Code of the Republic of Lithuania, contrary to the Soviet Criminal Code does not any more defend the right to the criticism by the measures of the criminal law). That witnesses the evident reduction of the level of the protection of the mentioned right (it should be noted that the Constitutional Court when analyzing the conformity of the limitations of the right to criticize the work of the state institutions and officials to the Constitution has already paid attention to this safeguard as a positive thing). In practice the majority of problems arise due to ensurance of the right of the state officials to criticize the work of the state institutions and officials. It should be mentioned

that this right is limited for the state servants. In the past there have been attempts to limit it even more than it is provided by the Constitution of the Republic of Lithuania.

Part 3 Article 20 of the Law on the Officials, adopted in 1995\(^{30}\) provided that the civil servants of level “B” disagreeing with the policy implemented by the Seimas, President of the Republic, the Government may resign in case the critics of their activities, provided following the work procedure through the institutions, have not given the positive results. Certain officials declare their discontent through the mass media, during the political and other public events (except the cases when such declarations are made during the electoral agitations for the Seimas, President of the Republic or municipal councils, […] they must resign in a course of 14 days. In case of the refusal to retire they are dismissed from the office of the state governance following the procedure established by the laws”. The Constitutional Court specified in the judgment as of 10 March 1998 that such regulation contradicts the Constitution of the Republic of Lithuania (\textit{inter alia} constitutional right to criticize the state institutions and officials) and is impossible in the Republic of Lithuania\(^{31}\). According to the Court, even the state servants have the right (without infringing the loyalty and certain other principles) to criticize the work and decisions of the state institutions and officials.

In practice, the cases happen when due to the criticism of work of the state institutions or officials the rights of the citizens are being limited. However, the court practice shows that in such cases the citizens may make use of the effective judicial protection of the violated rights. On 8 March 2004 in the case Dermeikis v. Klaipėda region Environment Protection Department, the applicant as the state servant has been punished following the disciplinary procedure for the expressed thoughts and opinion in the press without informing the Ministry of Environment and Klaipėda region Environment Protection Department and due to the fact the these thoughts and opinion has not coincided with the official position of the latter ones. The Board of Judges of Lithuanian Supreme Administrative Court has decided that the disciplinary punishment for the opinion expressed in the press about the project prepared by the Ministry of Environment regarding the cleaning of the coast area, imposed by Klaipėda Region Environment Protection Department is illegal. At the same time the Board has noted that the Law on the Public Service has consolidated the principles such as “loyalty, decency, exemplary conduct, that may limit the freedom of a public servant […] to criticize the work of the public institutions or officials, i.e. a public servant, when expressing his beliefs or criticizing the work of the public institutions or officials, has not to infringe the mentioned principles”\(^{32}\). It is evident from the decision of the Board of Judges of Lithuanian Supreme Administrative Court that following the practice of the administrative courts the right to criticize the work or decisions of the public institutions and officials or acknowledge as virtually inconsistent with the loyalty of the public servant only when according to the post held the respective official has to implement the concrete decision of the public institution or official.


\(^{32}\) The administrative case no A8 – 259 – 04 of Lithuanian Supreme Administrative Court.
The attention should be paid also to one specific way through which the right to criticize the work of the public institutions and officials is implemented collectively: that is the right to arrange pickets, meetings, demonstrations or peaceful gatherings. Although in the doctrine of human rights this right is granted the status of independent right as properly has noted the United Nations Human Rights Committee, the safeguarding of this right is "essential seeking to make use to the full extent of the rights protected by Article 25".

When communicating with the representatives of some Lithuanian non-governmental organizations the notifications have been received that sometimes the municipalities derogate from the right to arrange the pickets. The representative of Lithuanian Green Peace has specified the concrete case when Pakruojis region municipality has refused to organize the picket against the establishment of the swine-breeding complexes (there is no information whether the judicial protection of this right has been used, however, after a certain period of time the picket still has been organized).

Appeal against the decisions of the public institutions and officials

Part 2 Article 33 of the Constitution of the Republic of Lithuania consolidates the right of the citizens to appeal the decisions of the public institutions and officials. Looking at the context of this norm (the aforementioned right is related to the right to criticize the work of the public institutions and officials) and following the systematic analysis of the Constitution it seems that this right should not be related to the protection of the subjective rights and freedoms of the concrete persons (the right to the judicial protection is provided by Part 1 Article 30 of the Constitution), but rather with the right of each citizen, when appealing in his opinion illegal decision, to protect the public interest and in such a way participate in the public affairs.

Following Article 73 of the Constitution the Seimas Ombudsmen Office deals with part of the respective complaints (complaints regarding the misuse and bureaucracy of the public and municipal officials). Apart from the Seimas Ombudsmen of the general competence there are two more specialized Ombudsmen offices: Ombudsmen of the Protection of Children’s Rights (following the Law on the Ombudsmen on the Protection of Children’s Rights one of its functions is to analyse the complaints of natural and legal persons related to the activities of the public and municipal institutions or authorities, or their inactivity, due to which the rights of the children or their lawful interests being violated or may be violated) as well as the authority of the Ombudsmen of the Equal Opportunities (following the Law on

33 Article 25 of the International Covenant in Civil and Political Rights is meant, consolidating the right to participate “in public affairs”.
34 See General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25, (General Comments). Adopted by the Committee of Human Rights at its 1510th meeting (fifty-seventh session) on 12 July 1996 [referred to on 1 June 2005]. Internet Search: http://www.unhchr.ch/tbs/doc.nsf/0/d0b7023e8d6d9896025651e004bc0eb7/Opendocument.
the Equal Opportunities\textsuperscript{36} as well as the Law on the Equal Opportunities of Men and Women\textsuperscript{37} analysing the complaints regarding the violations of these laws). It should be noted that the complaints for the aforementioned institutions could be submitted irrespective whether the applicant protects his own or public rights and interests.

Although the control institutions established by the Seimas have no right to revoke the appealed decisions or punish the culprits (except the Ombudsmen on Equal Opportunities), they play quite a significant role. That is confirmed both by the number of the analyzed complaints (e.g. there were 1989 complaints analyzed by the Seimas Ombudsmen Office during 2004; the complaints based on which the investigations of the activities of the officials have been carried and the decisions have been made formed 76\%, half of them have been acknowledged as reasonable, i.e. the facts of the abuse, bureaucracy or improper public administration of the officials have been established\textsuperscript{38}).

Talking about the appeal of the decisions of the state institutions and officials it is important to note that following the Law on the Public Administration\textsuperscript{39} as well as other legal acts, administrative (subordination) procedure, it is possible to appeal the decisions of nearly all the state institutions and officials. Of course, this procedure is not applied towards the institutions and officials being in the highest position of the hierarchical pyramid (the Government, President, Seimas, the Board of Lithuanian Bank and etc.), also towards the decisions of the officials of the pre-trial investigations as well as the courts (the latter decisions must be appealed following the procedural rules, which though some times being very similar to the administrative procedure it is not attributed to it).

Referring to the fact that following the Law on Government\textsuperscript{40}, the Government has the right to withdraw the legal acts of the ministers, Government institutions and authorities under the ministries (in case they contradict the Constitution of the Republic of Lithuania, International Agreements of the Republic of Lithuania, the laws and other legal acts adopted by the Seimas, the decrees of the President of the Republic of Lithuania, Resolutions of the Government or the ordinances of the Prime Minister), even the decisions of the ministries, the Government institutions and institutions under the ministries may be appealed for the Government, following the administrative procedure (the valid legal acts do not provide any limitations in this respect). To tell the truth, currently there is no data that the Government has withdrawn the respective acts based on the complaint of the citizen\textsuperscript{41}.

\textsuperscript{41} Generally it is important to withdraw the acts of the aforementioned institutions by the Decision of the Government. On 2 May 1996 the Government made a decision No 526 “On the withdrawal of the Order No 22 “On the Formation of the District Council” as of 7 June 1995 made by the Panevëžys District Administrator [there is no data on the official declaration, referred to on 1 June 2005]. Internet search: http://www3.lrs.lt/cgi-bin/preps2?Condition1=27157&Condition2=.
It should be noted that the valid laws practically do not provide the right for the citizens to provide *actio popularis*. Part 1 Article 56 of the Law on the Administrative Proceedings prescribes that “in cases provided by the laws natural persons may lodge complaints with the court seeking to protect the public interest or the rights of the state, municipality and persons as well as the interests protected by the laws”. However, none of the laws provides such right neither for the individual citizens nor for the non-governmental organizations established by the citizens. After the assessment of the Lithuanian legal system it needs to be stated that currently such right is granted only by one legal act – the Convention, valid in the Republic of Lithuania, ratified by the Seimas “On the right to receive the information, the public participation in the decision making as well as the right to address the courts with the issues of the environment protection”\(^{42}\) (that has been stated in one of the judgments of the Board of Judges of the Lithuanian Supreme Administrative Court)\(^{43}\).

It seems that seeking for the efficient implementation of the constitutional right to appeal the decisions of the state institutions or officials it would be expedient to provide the possibility of *actio popularis* in cases when the public interests may be violated.

**Participation in the adoption of the administrative regulation acts**

The Public Administration Law provides that the obligation of the public administration institutions is to negotiate the administrative regulation. Based on the provisions of Article 7 of the mentioned law the public administration institutions: “regarding the administrative regulation decisions, related to the common lawful interests of the public and significant for the huge part of the community of inhabitants, have to consult with the organizations representing the public interests in the respective field (representatives of associations, professional unions, public organizations, other non-governmental organizations), whereas in cases provided by the laws – also with the inhabitants. The public administration institution itself chooses the ways of consultancy (the meeting of the persons concerned, publicly announced meetings, invitations by the representatives, other ways of opinion clarification), in case the laws do not provide otherwise”\(^{44}\).

It should be noted that both even the small number of notifications based on which all the persons or organizations concerned would be invited for the consultations and the

\(^{42}\) The Convention “On the right to receive the information, the public participation in the decision making as well as the right to address the courts with the issues of the environment protection” // Valstybės žinios (Official Journal). – 2001, No. 73-2572.

\(^{43}\) “After the systematic analysis of the norms of Part 5 Article 2, Part 2 Article 9 of the Convention and Paragraph 3 Part 3 Article 5 and Part 1 Article 56 of the Law on the Administrative Proceedings it is evident that the public organizations concerned, helping to solve the environment protection problems, acting following the requirements of the national laws, shall have the right to protect the public interest by addressing the administrative court in the field of the environment protection” (see the Judgment of the Board of Judges of Lithuanian Supreme Administrative Court as of 23 January 2004 in the administrative case Žvėrynas community v. Vilnius City Municipal Council and Administration).

information provided by the non-governmental organizations show that in practice this requirement is pretty often ignored (especially on the level of local governance). Moreover, when choosing the way of non-public invitation, the problem of choosing the loyal social partners becomes especially relevant. After inviting the loyal social partners this right virtually becomes declarative one and the “implementation” of it only prolongs the bureaucratic procedures as well as vests the exterior legitimacy for the prejudicial decisions for the public.

**Participation in the Implementation of Justice**

Neither following the Constitution of the Republic of Lithuania nor according to the international commitments as well as according to the laws in force of the Republic of Lithuania, the citizens have possibilities to directly participate in the implementation of justice (of course except the possibility to become the judge).

Constantly arising initiatives in the public to form the jurymen boards or the Institutes of Lay Judges have not received any approval from any branch of the government.

**Participation of the municipal inhabitants in the activities of local government institutions**

The possibilities for the inhabitants of municipalities and their community members at the activities of local government institutions are safeguarded by the recently mentioned Law on Public Administration as well as the Law on Local Governance\(^45\). As mentioned in the beginning of this chapter, the Law on the Local Governance provides certain concrete rights of the inhabitants enabling them to participate in the settlement of the public issues attributed to the competence of the local governance institutions. However, the implementation of the majority of them is not properly safeguarded. It looks like that the low level of their implementation is still predetermined by the fact that the majority of the formal rights related to the participation of the inhabitants in our country have not evolutionally evolved, but have been granted when implementing the recommendations approved by the Committee of Ministers of the Council of Europe\(^46\).

Despite of the requirement that “municipalities have to provide the conditions for the inhabitants to debate the draft budget following the procedure established by the activity regulation of the municipal council” (see Part 4 Article 37 of the Law on Local Governance), more than a half of the regulations of the municipal councils do not even mention the

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implementation procedures of this right. Having in mind that the procedure of the participation at the process of decision-making by the inhabitants is not mentioned at all also by half of the municipal regulations, this omission provides the obstacles that are hard to overcome at least more significantly to participate in the discussions of the draft budgets.

Another right – the right to elect the representatives of local communities of the residential area apart from the election of members of municipal councils (see Part 2 Article 32 of the Law on Local Governance) – in the majority of municipalities is also hardly implemented. Following the data of April 2005 more than one third of municipalities even have not approved the procedure of the election of the mentioned representatives (although the laws provide that they are elected namely following the procedure established by the municipal council). Moreover, only in a half of the municipalities that have approved the mentioned procedure such representatives have been elected (at least in one community of the residential area).

In this respect it seems quite consistent that another form of inclusion of the representatives of community – formation of the wards advisory councils out of the community representatives of local residential areas (see Part 5 Article 30 of the Law on the Local Governance) is used only in one third of municipalities (and not really in each ward). Moreover, the formation of the mentioned councils is not the obligation of the local governance institutions, but the right.

The right to direct participation in drafting the decisions (see Paragraph 2 Article 4 of the Law on Local Governance) is also hardly implemented. Thus, the reference that the inhabitants of the municipality may initiate the decisions of municipal councils is provided by hardly half of the council regulations (however, even in such cases the right of the initiativeness is just a conditional one, as it may be implemented not directly but only through the council members, mayor and/or head of administration). We have managed to find the right of the inhabitants of direct and official submission of comments and proposals regarding the draft acts of municipal councils only in the regulation of Kédainiai municipal Council. Having in mind that such right the citizens have even at the Seimas of the Republic of Lithuania, the distance of municipalities from its inhabitants seems hardly justifiable. On the other hand, under the current conditions this right would not be very useful as just a few municipalities out of sixty officially publish all the projects on the internet. Others confine themselves to the publication of the agenda beforehand. However, referring to the fact that the standard term of publication of the agenda is 3 days before the meeting, thus the majority of the inhabitants hardly manage to get acquainted with the projects (especially if they are working and have no possibility to personally visit the municipal administration during the working hours).

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47 See paragraph 12.5 of the Council regulation (the regulation is approved by the decision No BD-7/91 of Kédainiai region Municipal Council as of 18 April 2003 “On the approval of activity regulation of Kédainiai region Council”; there is no data on the official publishment of it).
The municipal authorities do not tend to initiate also the overall opinion polls of the inhabitants of the municipality, wards or residential areas (local referendums, carried following the provisions of Article 13 of the Law on Local Governance).

Finally, it is important to pay attention to the fact that the inhabitants do not get properly acquainted not only with the draft legal acts but also with the legal acts in force. Although Part 1 Article 12 of the Law on the Announcement and Enforcement Procedure of the laws and other legal acts of the Republic of Lithuania imperatively provides that “the normative acts adopted by the institutions representing the municipalities come into force on the next day after their publication in the local press or on the next day after the official news publication in the local press about the adoption of the normative legal act and the publication of the whole text of the normative legal act on the internet homepage of the respective municipality”48, in part of the municipalities the normative acts adopted even by the councils are accessible for the inhabitants only at the local governance institutions (upon the concrete request).

To sum it up we need to state that local governance institutions having to be closest to people are estranged from them nearly most of all. It is even worse that the evident reluctance to expand the publicity and participation of the inhabitants in the public affairs on the level of local governance is noticeable. Very often this is done even ignoring the imperative provisions of the laws (the activity regulations of municipal councils do not provide the terms for the inhabitants to discuss the draft budgets, more than one third of municipalities have not approved the procedure of the elections of community representatives of the community of the local residential area for the direct participation in the draft decision making, the legal acts adopted by the local governance institutions often are not officially published and other).

The inactivity of the representatives of the Government also provides the favorable conditions for the inveteracy of the mentioned problems. As when the local administration subjects do not follow the Constitution and the laws (by inter alia violating the right of the citizens to participate in the state governance and other public affairs), do not implement the decisions of the Government, then the valid laws provide the common obligation of the representatives of the Government to demand “to follow the Constitution, implement the laws as well as carry the decisions of the Government”49, also to submit the “written demand for the immediate implementation of the law, carrying of the decision of the Government” for the respective subject of municipal administration, and in case of the refusal to implement such demand “to address the court regarding the inactiveness of this subject of municipal administration”49.

The freedom of Associations

In the context under the discussion, the especially important role is played also by the freedom of association, including the right to form the associations taking care of the public affairs as well as become the member of such associations. The political parties and membership in them are especially important in the process of public affairs and participation in the elections. It is noted that following the Human Rights Committee of the United Nations the states must ensure that in the internal governance the political parties should respect the provisions of Article 25 of the International Covenant of the Civil and Political Rights and in such a way would empower the citizens to implement the rights under the discussion50.

Officially (i.e. following the national legal acts and international legal acts valid in the Republic of Lithuania) the freedom of associations in Lithuania is properly ensured. Only the activities of those associations are limited, the published ideology of which, aims or activity methods contradict the public order (in the wide sense). There is no information that the political parties themselves would violate the provisions of Article 25 of the International Covenant on Civil and Political Rights. It is worth of mentioning that from 1995 none of the public institutions is not specially binded to control whether the political parties commit any violations (except the control of the financial activities). Earlier this obligation has been attributed for the Ministry of Justice. On the other hand, after granting the right to participate in the elections to the municipal councils for the foreigners permanently residing in Lithuania, the question naturally arises regarding the limitation consolidated by the Law on the Political Parties providing that the members of the political parties could be only the citizens of the Republic of Lithuania51. Referring to the possibilities of foreigners to participate in the political life of the country, this limitation is not only vacuous, but this also impedes the efficient exercise of the aforementioned rights (practically converts them into the vain declaration). Moreover, only the lists of candidates formed by the political parties participate in the elections for the members of the municipal councils. From this point of view it is expedient to discuss the possibility of the amendment of the Law on Political Parties.

Moreover, in case this problem is solved, Lithuania will not have any obstacles to access the Council of Europe Convention “on the participation of foreigners in the public life on the level of local governance”52. It should be noted that on 1 January 2005 this Convention has been valid only in seven European countries that have reached the standard level of democracy (in Denmark, Iceland, Italy, the Netherlands, Norway, Finland and Sweden). Thus, if we would manage to access it, this fact undoubtedly would strengthen the international image of Lithuania as that of the state, meeting the high standards of democracy.

50 See General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments). Adopted by the Committee of Human Rights at its 1510th meeting (fifty-seventh session) on 12 July 1996 [referred to on 1 June 2005]. Internet search: http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6989802561e1e004bc0eb/Opendocument.
Recommendations

Refering to the problems discussed in the present chapter of the Review it is evident that in certain cases the right of the citizens to participate in the state governance or otherwise take part in the conduct of public affairs in Lithuania are not sufficiently ensured for the time being. Seeking to solve the noticed problems certain measures should be taken.

First of all, it is important to ensure that the citizens know where to address (apart from the courts) regarding the constraints of their right to participate in the state governance. In cases when there are no created mechanisms for the protection of the rights and the protection of the violated rights, it is important to do this.

In the field of the implementation of the election right it is important to take legal and organizational measures seeking to properly ensure the secrecy of the elections (especially in case of the elections via post as this has been specified by the Constitutional Court). This work should be done before the elections to the municipal councils provided in spring 2007.

The discriminative provisions of the Law on Public Service as well as other legal acts related to the employment for the specific posts in the state service should be withdrawn following which only the fact of turning into the specific age prevents the employment for the respective offices. Referring to the fact that such relation is reasoned by the statistical ability of people at a certain age to properly perform the specific duties, it is possible to provide that the presumption exists that a person at a certain age is not able to perform certain functions any more. However, in case such person proves that he still possesses the features needed for the performance of the functions, the possibility for him to continue his work at the public service should be left.

Seeking to limit as much as possible the possibilities for the manifestation of all kind of protectionism (inter alia political) and nepotism, it is important to improve the practice of the policy for the employment for the state service and its implementation (for example, to invite the representatives of the society to observe the work of the selection committees and participate there having the right of the advisory vote, as well as most probably organize the centralized competitions).

Having the aim to ensure not only the active but also the passive right to the elections to the municipal councils for the foreigners not as a vain declaration (especially referring to the fact that only the political parties could nominate the candidates to the municipal councils at the elections), the Law on the Political Parties should be amended and the foreigners should be granted the right to become the members of the political parties. This work should also be done before the elections to the municipal councils provided in spring 2007.

As the right for the foreigners to participate in the elections for the authorities representing the local governance will be granted after amending the provision of the Law on the Political Parties limiting the right of foreigners to become the members of the political parties, the legal environment will be formed in the Republic of Lithuania meeting the
main requirements of the Council of Europe Convention “on the participation of foreigners in the public life on the level of local governance”. That would provide the conditions for our country to access the aforementioned Convention and strengthen the international image of Lithuania as the state having reached the high level of democracy.

Seeking to effectively implement at most the constitutional right of the citizens to appeal the decisions of the state institutions or officials, it is expedient in the administrative and civil law to implement the *actio popularis* institute (i.e. the right of the citizens and their organizations to address the court seeking to protect the public interest).

The essential measures must be taken seeking to ensure the right of the citizens provided by the Law on Public Administration to participate in the adoption of the acts of administrative regulation. For this aim it is first of all needed to more clearly regulate the procedure for the selection of social partners, seeking to avoid the possibilities to choose the favorable partners and in such a way *de facto* avoid the consultations (to imitate them or even falsify). At the same time the Government should take care to ensure the constant monitoring of the following of the provided duties for the administrative regulation subjects.

It is important to take measures to make the local governance institutions to follow the provisions of the Law on the Announcement and Enforcement Procedure of the laws and other legal acts of the Republic of Lithuania and officially publish their normative acts. The amendment of the Law on Local Governance could ensure that by providing the concrete officials responsible for the announcement of the legal acts of the local governance institutions and by providing the administrative liability for noncompliance to this obligation. The representatives of the Government should supervise whether the municipalities follow the provisions of the aforementioned law.

Certain institution of the Government (maybe the Chancellery of the Government) should supervise the proper implementation of the obligation by the ministry to officially announce the draft legal acts. The obligation to publicly announce the draft legal acts of the municipal councils (at least on the homepage of the municipality) should be provided also for the local governance institutions.

The Government (through the Government representatives) should concretely supervise and periodically inform the public whether municipalities properly implement their obligations related to the inclusion of the citizens into the public affairs (whether the work regulations of the municipal councils provide the conditions for the inhabitants to discuss the draft budgets and whether they are followed, whether they have approved the procedures for the elections of the representatives of the community of the residential area, whether they ensure the right of the inhabitants to the direct participation in preparation of the draft decisions and so on). In case of necessity, as it has been provided by the Law on the Monitoring of the Municipal Administration, the representatives of the Government should appeal the illegal inaction of the municipalities for the court.
THE RIGHT TO A FAIR TRIAL

Introduction

In a democratic state, a person’s right to a fair trial is understood as a right to a combination and entirety of all constitutional guaranties of a person’s interests. This entirety consists of the right to a public, prompt (within a reasonable period of time), impartial, equal in rights and transparent case investigation and/or a trial by an independent tribunal established by law. This right is also called the right to a fair hearing. It is a first- generation civil right, which is also recognised in the international documents regulating the protection of human rights. When assessing the 1992 Petition Wolf v. Panama, the Human Rights Committee at the United Nations pointed out that the concept of fair trial with regard to Article 14, Part 1 of the International Convent of Civil and Political Rights should be interpreted as establishing a number of requirements, such as, equality of arms and respect for the principle of adversary proceedings1.

In the long run, social processes taking place in every democratic state and society change the interests and needs of the people participating in them. As a social quality of relations changes, not only the attitude of society and its separate members to these relations, but also the activities of the institutions that are solving the disputes arising out of these relations alter. The carried out survey attests to this point. According to the data of a sociological research that was carried out in 2004, a person’s right to a fair trial is not adequately enforced. 42.2% of the population think that their right to a fair trial is violated to the largest extent. 42.9% of the population think that this right is violated by the prosecutor’s offices, whereas 38.3% thereof think that this right is also infringed by the officials of pre-trial investigation institutions. However, the largest number, i.e. even 52% of the population, criticise the courts for the violation of the human rights to the greatest extent2. And, it seems, there is a reason for that. The courts are the institutions that have the last word when solving disputes and protecting a person’s interests from being violated. Besides, court decisions are always public, and thus they are accessible and known to the society, which affects the degree of trust in courts. Other public opinion surveys also confirm the above mentioned. According to the data of a research that was carried out by the Institute for Social Research (March 2004), only 24% trust the courts, whereas a larger part of the population, i.e. 33%, distrust activities of the judiciary. According to the

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2 See in this book “Sociological Aspects of Human Rights Monitoring”.
people that participated in the research, the main reasons for distrust are almost the same as in 2003, namely, unobjective conduct of the courts, unfair punishment, delay of cases and other. The respondents mostly criticised partiality of the courts. Finally, according to the sources of another research, in 2004, the activities of the courts, when compared to other law enforcement as well as law and order authorities, are evaluated as the most unsatisfactory. As much as 37% of the population highlighted that the activities of the courts are the least controlled among all law enforcement institutions. When the opinion of the respondents as to their trust in courts in comparison to other state management and public institutions, such as the President’s Office, the Parliament, the Government, non-governmental organisations and other, was evaluated, it turned out that the activities of the courts in ensuring human rights in Lithuania are considered to be rather poor: 19% positive and 36% negative responses; nevertheless, it is important to mention that since 2002 the evaluation has significantly improved (the numbers were 10% and 52% respectively). It should be highlighted that, if compared with previous years, in 2004 the assessment of the right to a fair trial results improved. If three years ago 51% of the population were negative in their assessment, then in 2004 the number of such respondents was lower – 40%. Different from the results of the 2001 research, when this problem was more often mentioned by men than by women, the responses to the question in the 2004 research are rather similar across all socio-demographic groups. Besides, the trust in courts, as an institution, has increased in this period of time. In November 2001 the courts were trusted by 17% of the population, whereas three years later – by 23%.

The summary of the data of the sociological research reveals that a significant part of Lithuanian population thinks that, in Lithuania, their right to a fair trial is violated. It is worthwhile noticing that the effectiveness of an adequate enforcement of the right to a fair trial depends on the system of relevant substantive and procedural legal norms, principles and measures that helps to ensure human rights and freedoms. It was also influenced by the reform of law enforcement institutions. New codes that came into force in 2003 (the Criminal Code, the Code of Criminal Procedure and others) more or less influenced the understanding of new contemporary standards of human rights protection in Lithuania when applying the jurisprudence of the European Court of Human Rights. Besides, the enforcement of the principles of continuity and transition of a legal system reform with regard to the requirements and recommendations of the United Nations, the European Union and the Council of Europe has demanded a lot of time and efforts.

6 Ibid.
The right to a hearing within a reasonable time

The application of the right to be tried within a reasonable time is especially important and at the same time problematic. The Constitutional Court of Lithuania stated some time ago that the delay of the proceedings does not comply with the principles of a democratic state based on the rule of law. It is perhaps one of the most common problems, which, if remaining unresolved, denies the possibility for a person to properly actualise his/her rights in court. A proper application of the right to a hearing within a reasonable time helps to ensure not a formal, but a meaningful implementation of justice as well as nourishes rightful expectations of a person. Lithuania encounters the problem of the time limits of pre-trial investigation and legal proceedings, which European Court of Human Rights calls a “systematic” problem of all states. It is an effective and prompt execution of each legal procedure, which might determine human rights and duties, that constitutes the main element of justice.

Furthermore, it is worthwhile noticing that the legislation has established the principle of concentration and economy of a case process, which is meant to ensure that a case investigation happens within the shortest possible period of time, of course, without affecting the quality of investigation. The judges, judicial self-governance institutions and National Courts Administration give special attention to the implementation of this principle. Even though each year case investigation times are becoming shorter and the number of indications of case delays decreases, still much needs to be done in this field. For example, in 2004, 1509 civil cases were left in courts uninvestigated and thus to be investigated in 2005, and their investigation has already lasted more than 6 months. Those delayed civil cases make up 1% of all civil cases investigated in 2004. On December 31, 2004, in district and county courts the investigation of 596 criminal cases, which lasted longer than 6 months, was not yet complete and that sums up to as much as 3.4% of all criminal cases investigated in 2004. There are subjective and objective reasons for the delay of those cases. Among the objective reasons, that is the reasons that are beyond the control of the courts, there is such a reason as increase in workload, when, after a postponement of a trial, another court hearing can be appointed only after a certain period of time since, in the meantime, other cases have to be investigated. Among the subjective reasons there can be such as organizational difficulties of courts or a concrete judge. It is worthwhile observing that as the

danger of a trial delay because of subjective or objective reasons increases, the chairmen of
courts or court divisions should unequivocally follow and apply the regulations established
by the Decision of the Council of Courts of June 11, 2004, concerning the apportionment
of cases among judges in Lithuanian court of appeal, county courts, county administrative
courts and district courts. The judicial self-governance institutions should endeavour to
achieve that the reasons for every long-lasting trial should become known to a court
chairman as well as to a chairman of a higher instance court, who supervises the adminis-
trative activities in that court, and to the judicial self-governance institutions.

Many examples from the practice of law can be provided proving that, because of
certain objective and subjective reasons, a case process within a reasonable period of time is
not ensured. The requirements of a process within a reasonable time are frequently not
followed when imposing or applying procedural coercive measures. For instance, Article
20 of the Constitution of the Republic of Lithuania establishes the impossibility to keep a
person detained on arbitrary grounds. A person can be arrested only on the bases and
according to the procedures established by law. The European Convention for the Protec-
tion of Human Rights and Fundamental Freedoms obligates the states to establish such
legal regulation that would ensure a person’s right to the shortest possible civil and crimi-
nal cases investigation and trial. A person’s right to be tried within a reasonable time stipu-
lated in the Convention means not only that the duration of pre-trial investigation and trial
in court as well as a person’s preliminary detention period must not exceed the time limits
established by the laws of criminal procedure, but also that the actual duration of the
performance of procedural actions as well as the periods between them should justify the
necessity to keep a person in custody. Both, the whole duration of custody and intermedia-
te periods of custody should be equivalent to the time used for the performance of certain
procedural operations of pre-trial investigation. In the practice of the European Court of
Human Rights, the complexity of a case, which predetermines a long-lasting pre-trial inves-
tigation and the duration of detention, is considered to be one of the criteria that justifies
a relatively long period of detention (Decision in the case W. v. Switzerland (1993)).
Unfortunately, Lithuanian laws of criminal procedure do not establish clear criteria on the basis
of which one could define the validity of a period of detention. Even though it depends on
the discretion of a judge who is imposing detention, however, a person’s right to the

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10 Decision No. 241 of the Council of Courts, June 11, 2004, „On Adoption of Regulations Concerning the Apportionment
of Cases Among the Judges in Lithuanian Court of Appeal, County Courts, County Administrative Courts and
20040611241.doc.

11 The European Court of Human Rights concluded in the decision concerning the case Eckle v. Germany (1982) the
breach of Article 5, Part 3 of the Convention, stating that, if under existing circumstances court (pre-trial investigation)
institutions could have performed a prompter investigation, no other circumstances can justify an excessive duration

tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=W.%20%7C%20v%20%7C%20Switzerland&
sessionid=3399227&skin=hudoc-en.
application of this procedural measure must be proportional to the goals of a criminal procedure. Thirdly, the criminal procedure law establishes the right of a detainee or his defence counsel to appeal against a court’s ruling that imposes detention or that prolongs the period of detention. However, the law does not mention the right of a detainee or his defence counsel to appeal against an excessive and unreasonable period of detention, when the detainee has already been kept in custody for some time, because the above mentioned participants in the proceedings can employ the right to appeal against this pre-trial measure exclusively right after the measure has been imposed or right after its application period has been prolonged. In conclusion, it could be said that the detainee or his defence counsel are not entitled to question if a remaining period of detention is valid and expedient if, for instance, the period of detention has come to the middle. Such a situation clearly hinders the participants’ in the proceedings right to be tried within a reasonable time.

The right to a due process is also impeded if the time limits of pre-trial investigation are prolonged. The right of a suspect to a prompt pre-trial investigation established by a valid Code of Criminal Procedure has been enforced rather vaguely due to excessively formalized proceedings as well as a heavy workload of pre-trial investigation officers and prosecutors. The problem lies in the fact that only a suspect, his representative or his defence counsel are entitled to appeal to a judge of pre-trial investigation concerning an excessive pre-trial investigation (Article 215 of the Code of Criminal Procedure), whereas a victim, as an interested participant in a proceeding, does not have such a right. The problem could be solved by setting forth this right of a victim in the legislation of criminal procedure.

Furthermore, when discussing the issues of enforcement of the right to a hearing within a reasonable time, it is worthwhile observing that, in some cases, the expectations of a prompt trial are not met because of the delay of a proceeding. As it was mentioned earlier, the delay of a proceeding in both civil and criminal cases is determined not only by the institutions that execute procedure but also by the parties of the case themselves. In a civil procedure, the parties frequently misuse their procedural rights by exploiting the shortcomings in the content of the regulations of proof in civil cases. For instance, Article 179 of the Code of Civil Procedure discusses a case of presenting evidence. According to the Article, parties and other participants in a proceeding provide evidence. If the provided evidence is insufficient, a court may offer the parties and other participants in the proceeding to provide the court with corroborative evidence and fixes a time limit for presentation thereof. In such a case, a failure to provide evidence on time is unequivocally considered to be a violation of the time limit as fixed by the court. This regulation demonstrates that a court must exert direct control in order to prevent a delay of proceedings. However, the regulation has been put into practice unsuccessfully. When artificially trying to slow down the tempo of a trial, the parties often request the court to allow them to present corroborative evidence thus delaying the proceedings. It has been noticed that a party’s right to a fair trial is often restrained by another party, when the latter makes use of the procedural possibilities established by law. Therefore, on the one hand the law assists a party in a proceeding to
make use of its procedural rights, on the other hand it impedes the interests and expectations of another party to a trial within a reasonable time.

Besides, it is worthwhile noticing that on March 15, 2005, the Commission of the European Communities proposed a regulation draft that is meant to simplify the European requirements concerning a small claims procedure, which constitutes an important step when ensuring the right of the citizens of the EU states to a fair trial. Besides, in order to secure a case investigation and a court hearing within a reasonable period of time, a creation and development of a clear control system of procedural actions in all stages of legal proceedings is needed.

The right to a public hearing

Article 117 of the Constitution of the Republic of Lithuania establishes the principle of a public trial, which is actualised by the provisions of the Code of Civil Procedure and the Code of Criminal Procedure. These provisions stipulate that in all courts the investigation of cases is open to the public, with the exception of certain proceedings when publicity conflicts the interests of confidentiality: when secrecy of a person, his private life or his property has to be protected as well as in the case when a public trial might disclose state, professional or commercial secrets, or other cases. The courts themselves should explain to the public their decisions since public scrutiny is an optimal way to enhance the authority of judicial power. The principle of publicity encompasses not only the publicity of a trial, but also the publicity of case material and its public accessibility. However, in the Code of Civil Procedure as well as in the Code of Criminal Procedure, the principle of publicity is defined in a narrow sense and in a fragmented manner. The Codes establish only the publicity during trial, which means that any person is entitled to be in a courtroom during a court hearing. Neither the Code of Civil Procedure nor the Code of Criminal Procedure define the principle of publicity in a broad sense, namely, after a court hearing non-participants in a case (and persons that do not participate in a proceeding) do not get a proper possibility to become acquainted with the case material or to copy extracts (of parts) thereof at a court registry. The fact that people cannot get acquainted with the written records of


14 Article 9 of the Code of Criminal Procedure and Article 9 of the Code of Civil Procedure of the Republic of Lithuania define other cases of closed court sittings. The Criminal Procedure allows closed court sittings for the offences committed by persons younger than eighteen years, or for the crimes and misdemeanours against a person’s freedom of sexual self-determination and immunity as well as in other cases, when it is needed to prevent the disclosure of personal life details of the participants in a proceeding or when a witness or a victim is questioned to whom anonymity is applied. In civil cases, a closed court sitting can be announced by a reasoned court ruling in order to protect the secrecy of a person’s personal and family life.

proceedings creates and strengthens the image of non-publicity of the courts. On the one hand, it encourages distrust in courts. On the other hand, since the practice of the courts in Lithuania is based on written data (evidence), there is a more substantial basis to believe that in certain cases written records could have been changed, because sometimes it is enough to conceal or forge one document of a proceeding in order to change a court judgement. The fact that the public cannot get acquainted with the written records of cases not only creates an image of courts’ secrecy, but actually makes them secret in several important ways. Until the court material is made public, it is easier to exert pressure on a judge and demand that he destroyed a certain document or concealed a certain piece of evidence. The publicity of written records would protect judges from such a pressure.

Besides, the enforcement of a person’s right to a public hearing is related to one of the largest problems of the organization of the courts’ activities. It is no secret that the majority of the country’s city courts and regional district courts were built several decades ago. Due to the development of the society and an increasing number of lawsuits it often becomes impossible to organise court hearings in the facilities built for that purpose – the courtrooms. Whether it is a pre-trial or a judicial investigation (except for the phase of final decision making), legal proceedings have to be public and accessible to all persons (exceptions established by law excluded). However, in practice, certain trials take place right in a judge’s office because there is a shortage of facilities in a court building. Such a state of affairs hinders the right of other participants in a proceeding to take part in a judicial procedure. It is a clear violation of the right to a public hearing.

Furthermore, a person’s right to a public hearing is related to legal regulations concerning the institute of a court decision making and delivery. In civil procedure, separate elements of this institute – court decision-making and delivery of a judgement – are interpreted in different ways. Article 277 of the Code of Civil Procedure establishes the participant’s in a procedure right to file an application for an additional judgement to be passed within 20 days from an original court judgement. It means that a limitation period for an appeal to the court for an additional decision is computed from the day of the making of a court decision. According to the law, the question regarding the expediency of an additional decision can be raised by both, a court on its own initiative and a person participating in a proceeding. However, the latter may make use of this right only if he is familiar with the judgement and its content. Thus, there is a possibility that in certain situations, because of objective reasons, a participant in a proceeding might fail to exercise the above mentioned right if, for instance, he fails to arrive to court and to hear the court pronounce the judgement. It is probable that in such a case a certain period of time will pass until the court sends a copy of a court decision by post. In certain cases, the limitation period established by law can be actually decreased (Article 269 of the Code of Civil Procedure), and that may clearly impede the participant’s in a proceeding right to a public and fair hearing. Therefore, when stipulating in the regulations the computation of a respective limitation period, it is important to take into account actual possibilities of a participant in a proceeding to exercise his rights.
The right to a public hearing is also violated when parties (participants) of a case are not properly informed about the time, place and other important circumstances of a trial. In other words, the restriction of the right to know the circumstances of a case as provided by and according to the procedure established by law deprives a person of the possibility to actualise his right to a fair hearing. A number of cases in legal practice reveal that a person’s right to a public hearing has been fundamentally breached by an improper court hearing notice. For instance, the Code of Criminal Procedure provides for the right of a convicted person to participate in a hearing in a court of appeal. The law stipulates that a convicted person should be informed about a hearing according the procedure established by law. The failure of the convicted person to arrive to a hearing, when he was properly informed, does not interfere with the trial (Article 322 of the Code of Criminal Procedure). As can be seen from a record of proceedings of an appellate court, there are cases when appellants did not take part in a court hearing. Other documents of the proceedings revealed that they were not informed about the hearing of an appellate court and there were no documents found contradicting this information. Therefore, it is evident that the notices of a court hearing were not sent to the addresses of the appellants, and the convicted persons were not informed about a court hearing according to their place of residence. As those participants did not take part in the appeal proceedings because of this reason, the rights stipulated in the Code of Criminal Procedure were fundamentally impeded\(^\text{16}\). The laws imperatively require the courts to inform about a trial properly and on time, but due to heedlessness and carelessness of judges it still happens so that a person’s right to a fair trial is being harshly violated.

Another problem that is common in legal practice is related to sending or handing over writs of summons. This problem has been solved in the law on civil procedure. Article 130 of the Code of Civil Procedure clearly stipulates that if a residence and a workplace of an addressee are not known and the procedure established by law does not provide for the appointment of a curator or when a case encompasses more than ten participants in a trial and it is not possible to deliver procedural documents, the court may deliver the procedural documents by means of a public announcement in the press. In such a way, a copy of a claim to a defendant, writ of summons, notices and other procedural documents can be delivered to the participants in a proceeding. Meanwhile, Article 236, Part 2 of the Code of Criminal Procedure includes a short provision stipulating that, if a case encompasses many victims or civil plaintiffs, they may be informed about the time of a trial by means of the press. The abstractness of the provision endangers the implementation of the right of the above mentioned participants in a proceeding to a fair trial because of one clear reason: a court is given too much freedom to interpret the meaning of the term “many victims or civil plaintiffs”. The decision to inform about the time and place of a trial by means of the press in order to avoid the delay of the case becomes completely justifiable. However, such a

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decision on the basis of substantive aspects raises doubts concerning the fairness of the court. On the other hand, the right to a public hearing is clearly infringed in such a case when a notification in the press informs only of the time of a trial and fails to mention the place of the proceedings (Article 236, paragraph 2 of the Code of Criminal Procedure).

The right to an impartial tribunal

The Constitution of the Republic of Lithuania establishes a principle of independence of judges, which means that in Lithuania justice is administered solely by courts. Neither state institutions, nor officials, nor separate persons can interfere with the judiciary’s administration of justice. However, not only the independence of judges is important, but also their accountability to the state and its citizens. The independence of judges stipulated in the Constitution is closely related to their professional and civil responsibility. Independence is not a privilege but one of the most important guarantees of the work of judges and the judiciary. A judge is responsible for passing an impartial and fair judgement. The independence of judges cannot be used to cover their misuse of powers, incompetence, carelessness, disrespect and disaffection to a person. There are no cases that are less important. A judge should consider all cases as the same significant. The constitutional right of a person to have his case investigated by an impartial tribunal means that the case cannot be investigated by a judge, whose impartiality could be questioned. Tribunal’s impartiality and independence is an essential guarantee ensuring human rights and liberties as well as a necessary condition for a fair trial and therefore, for trust in courts17.

Therefore, the rules of impartiality may limit the scale of a judge’s participation in a case. It is requested that judges notify in the following cases: 1) if they participated in the investigation of the case earlier; 2) if they are relatives with a party or with a participant in a proceeding; 3) if they or their relatives are directly or indirectly interested in the outcome of the case, or 4) if there are other circumstances which may raise doubts as to their impartiality. The Human Rights Monitoring Institute highlights that the requirements of impartiality are often breached by courts themselves. The concept of ‘public interest’ currently gaining currency in administration of justice often translates into a means of defending the interests of political power. Judges lack the skills when applying legal principles, international standards and modern interpretation methods. The idea that the courts must follow the law exclusively often fails to agree with an elementary logic of law application. This formalistic “legalism” completely eliminates a mechanism of a flexible application of the conception of law in democratic states18. It is worthwhile noticing that up to this day no clear conception has been formulated concerning procedural and administrative activities of judges, and especially, of court chairmen. When investigating a case, the chairman of

court acts as a judge, however, he also performs certain organizational economic functions. According to Article 103 of the Law on Courts of the Republic of Lithuania, the chairman of court, vice chairman and the chairman of a division are officers of court administration, who in compliance with the procedure prescribed by this as well as other laws and legal acts, direct the organisational work of the court. The chairman of court is personally responsible for providing adequate working conditions for the judges and the court staff and must ensure that the court building and premises are in good condition and well protected and that the court has adequate supply of inventory and other organisational and technical facilities. This combination of responsibilities threatens the impartiality of the chairman of court. According to the procedure established by law, the chairman of court is responsible for repairs and construction of premises. Thus the judges are forced to have commercial relations with private companies. It is possible that other parties may blame the chairman of court for being partial when organising a tender for construction works. Such cases may have a negative impact on a public image of courts and their impartiality.

The requirements of impartiality are regularly breached in the course of proceedings, 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, adversarial conditions and equality of arms. Such examples are common in legal practice.

When further discussing the implementation of a person’s right to an impartial tribunal, it is worthwhile mentioning that the provisions of several laws raise doubts as to their being well-grounded. For instance, Article 59, Part 3 of the Code of Criminal Procedure stipulates that if the case is heard by one judge only, request for his disqualification shall be decided by himself. Of course, this guarantees an operative solution to the issue of challenge, however, such a system of legal standards means the violation of the principle “no person shall be a judge in his own trial” and enhances distrust in courts. If a party in a proceeding is certain that the court is partial, it can request a removal of the judge, whereas if the court decides that there is no basis for the removal, the party will doubt the impartiality of the court to even greater extent. In such a situation, one can conclude at the very beginning of the proceedings that the party will certainly appeal in case of an adverse judgement. Bearing in mind the reasons stated above, the legislator should change the provisions concerning the procedure of solving the issues of requested removals of judges. The jurisprudence of civil cases with regard to the procedures of removal could serve as a good example when correcting the above mentioned provision of the Code of Criminal Procedure. Furthermore, it would be adequate to change Article 59, paragraph 3 of the Code of Criminal Procedure and to lay down the provision stipulating that, when a case is investigated by one judge, the question of his removal should be solved by the chairman of court, the chairman of the Department of Criminal Cases, or by a judge appointed by them.

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The right to know one’s charges

The greatest problem related to the breach of a person’s right to know the charges brought against him is the failure to ensure a defence counsel during detention. Article 10 of the Code of Criminal Procedure stipulates that a suspect, an accused and a convicted person shall be entitled to defence. This right shall be guaranteed to them from the moment of their arrest or the first questioning. The court, the prosecutor and the officer of pre-trial investigation must ensure for the suspect, the accused and the convicted person an opportunity, in accordance with the measures and means provided by law, for defence against the suspicion and the charge, and take all the necessary steps to ensure protection of their personal and property rights. In legal practice, the most common problem encountered when detaining suspects of crimes (especially juvenile persons) is that their defence counsel is not present, even though the presence of a defence counsel is indispensable during the case investigation, where, for instance, a juvenile person is a suspect (Article 51, paragraph 1, subparagraph 1 of the Code of Criminal Procedure). It is worthwhile noticing that the law of criminal procedure does not define the cases of procedural actions for securing the mechanism of remedies, the application period of which is computed from the actual moment of their application. The only way that would help to solve this problem and would ensure a person’s right to know what he is charged with is to stipulate in the law a strict control of the performance of such actions.

Articles 218-220 of the Code of Criminal Procedure do not provide for a possibility for the accused, after he got acquainted with a copy of the bill of indictment, to object to the actions of the prosecutor (concerning inaccurate or ungrounded content of the bill of indictment, etc.). In practice, it happens that, while the accused receives and gets acquainted with a copy of the bill of indictment (it may take a long time in complex cases), meanwhile the prosecutor has already sent the required pre-trial records and other documents to the court. A conclusion can be drawn that the accused and his lawyer do not actually have a possibility to object to the content of the bill of indictment, since all pre-trial investigation records have already by then reached the court.

The right to a fair hearing

When estimating the implementation of the right to a fair hearing, one encounters not only inadequate execution and application of laws but a fairly groundless nature of provisions of the laws as well. For instance Article 151, paragraph 1 of the Code of Criminal Procedure stipulates that, with a view of securing a civil claim or a likely confiscation of property, a temporary limitation of the property rights of a suspect or a natural person who is financially responsible for the actions of the suspect, or of other natural persons who have possession of the property received or acquired in a criminal way may be imposed by a decision of a prosecutor. A temporary limitation on the property rights may be imposed together with a seizure or search or separately from them. The problem lies in the fact that
it is a prosecutor and not the court, who by his decision can restrain the inviolability of personal property. The Constitutional Court has often stated in its rulings that the information about a private life of a person can be collected only by a well-grounded decision of a court and only in compliance with the law. The law and the court guard a person from an arbitrary and illegal intervention into his personal and family life as well as from encroachment upon his honour and dignity and both constitute the most important guarantee of the inviolability of a person’s private life. These guarantees prevent the state and other institutions as well as their officials and other persons from unlawful intervention into a person’s private life. In conclusion, it could be said that a person’s constitutional right to the inviolability of his property as a part of his private life can be restrained only by the court acting in accordance with the law.

Another problem is related to the right of a victim to request a fair hearing. For example, Article 178, Part 2 of the Code of Criminal Procedure establishes a right of a suspect, his defence counsel or a victim to request in writing that the prosecutor performs the actions prescribed by the Code. There is no clear reason why legal assistance is granted only to a suspect when he can make use of his lawyer’s legal assistance. Meanwhile a victim, who, for instance, suffered a substantial damage, in compliance to the Article 178, Part 2 of the Code of Criminal Procedure, is not entitled to request the prosecutor, via his legal representative, to perform corresponding procedural actions. In keeping with the principle of equality before the law, it is necessary to define the right of a victim to address the prosecutor via his representative in the context of legal relations established by Article 178.

The infringements of the right to a fair hearing are noticed in other stages of the procedure as well. For instance, occasionally courts of appellate instance would draw up court decisions in an inadequate manner, thus clearly impeding the rights of the participants in a proceeding. Article 331 of the Code of Criminal Procedure stipulates that a decision of a court of appellate instance has to be drawn up in compliance with the main provisions of Chapter XXIII of the Code, i.e. it must comply with the requirements for the decision of the first instance. However, the law also stipulates that the decision must indicate against which circumstances of the case with regard to the decision of the court of the first instance an appellant is appealing and the subject matter of the appeal as well as the circumstances that were established or additionally investigated in the hearing of a court of appellate instance. It is worthwhile highlighting here that the courts would pay no attention to the fact that it is requested to indicate, in a descriptive part of a decision of an appellate court, the proof of the circumstances (either newly established or additionally investigated) that was collected during the hearing of appellate instance as well as that was known before. Article 320 of the Code of Criminal Procedure stipulates

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that a court of appellate instance must check the case to the extent that is requested in appeals. It means that the legitimacy and validity of a decision of the first instance is controlled without exceeding the limits of an appeal, whereas the limits of an appeal are defined not only according to its basis and reasons, but also on the basis of the requests of an appellant stated in the appeal. Therefore, the courts of appellate instance must investigate thoroughly the reasons for appeal and compare them with the material collected in the case, whereas in their decision they must discuss all arguments of the appeal and substantiate or give reasons for the rejection of those arguments. That is why a descriptive part of the decision has to include well-founded conclusions concerning the essence of the appeal. If the courts do not analyse the reasons for an appeal and do not provide well-grounded conclusions concerning those reasons, mainly on the basis of the reasons listed by an appellant, in that case legitimacy and validity of the decisions of the first instance courts remain uncontrolled, which contradicts the very essence of an appeal procedure. Therefore, due to the absence of well-grounded conclusions concerning at least a part of the appeal’s requests and its main arguments, such appeals were considered to be unresolved, which caused the violation of the rights of the parties in a proceeding.

Besides, the right to a fair hearing was impeded in such cases when appeals were not considered to the extent that was requested by appellants or when appeals were rejected without providing the reasons for rejection. The norms of the Code of Criminal Procedure obligates the court of appellate instance to check the case to the extent that is requested in the appeal and, in a ruling that rejects the appeal, to specify the reasons why the appeal was rejected and the court decision recognised as just. So the courts of appellate instance would not keep to the requirements of the above mentioned law and would not check the cases to the extent that it was requested in the appeals, whereas in their rulings, the courts would make conclusions that were questionable and failed to answer the issues raised by the appellants. The right to a fair hearing was also infringed by a failure of the court to present well-grounded statements as well as by a failure to indicate and analyse the evidence on which they were based. It should be mentioned that on of the most important principles of the law on criminal procedure is an exhaustive and impartial investigation of all circumstances of a case, because only by means of such an investigation one can evaluate the evidence in accordance with the law and apply the criminal law adequately.

Such more or less similar cases demonstrate that the courts of the contemporary democratic state are not competent enough to meet the expectations and interests of ordinary citizens. Besides, the inconsistent and ineffective justice executed by judges is directly linked to the effects thereof: instability of public interests protection mechanism and inadequate legal proceedings.

The right to a fair punishment

As to the implementation of the right to a fair punishment, it is the national policy concerning economic sanctions which raises greatest concern. Economic sanctions are excluded from one legal act: the Code of Administrative Law Offences encompasses only the penalties imposed on natural persons, whereas the administrative sanctions that are imposed on legal persons are stipulated in the laws regulating different spheres of legal relations. When determining administrative measures for various offences, their extent and circumstances of application are frequently regulated according to different and often incompatible criteria. These differences mean that the offences that are frequently analogous in their essence and circumstances are often given different evaluations. The principle of proportionality establishes that the extent of every measure of liability must not exceed the consequences of the offence, otherwise there is a danger for an unfounded restriction of human rights.

Besides, a systematic analysis of Articles 31 and 109 of the Constitution of the Republic of Lithuania allows to conclude that in Lithuania the policy of economic sanctions does not entirely comply with international standards for the protection of human rights. When discussing a mechanism of the application of economic sanctions, first of all it should be mentioned that the sizes of punishments established by the Code of Administrative Law Offences seem to be problematic if considered with regard to the right to a fair punishment. Article 24 of the Code stipulates that, for various administrative offences, a larger penalty than the one established by the article can be imposed in compliance with the law, i.e. from 3 to 10, and even 25 thousand Litas, etc. Consequently, the following question arises: shouldn’t the persons, upon whom the penalties established by the above mentioned code are imposed, receive the procedural guarantees that are stipulated in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms? Notwithstanding the fact that those guarantees are usually applied during a criminal procedure, the jurisprudence of the European Court of Human Rights demonstrates that the Court considers the penalties of such size (with regard to the level of livelihood of the citizens) as criminal penalties, regardless of the fact to which branch of law a national legislature attributes such penalties, especially in those cases when a pecuniary penalty can be replaced by an administrative arrest. To this day in Lithuania the above mentioned code does not provide for such guarantees.

Recommendations

An adequate implementation of the right to a fair trial is a process that demands an attentive reaction towards the interests of both parties of a proceeding in the context of dialogue, tolerance and compromise. In conclusion, a number of recommendations should be listed with regard to the implementation of the right to a fair trial.

Chairmen of courts, whose job is to direct the courts, must take measures to define the reasons behind long-lasting investigations of cases. It should be emphasised that in order to secure an optimal duration of legal proceedings, it is necessary to adhere to the principles of adequacy and process complexity evaluation. On the other hand, it is advisable to correct the provisions of relevant laws in order to clearly define the criteria for the application of certain procedural legal measures. Besides, in order to prevent case delays as much as possible, it is necessary to get rid of certain excessively formalised legal provisions, which as a rule satisfy the interests of only one party of a case.

Attention should be paid to the fact that, especially in a procedure of a criminal case, the requirement of publicity, with certain restrictions, is not ensured. Therefore, the laws should clearly stipulate the guarantees securing a person’s right to know where an investigation and proceedings of his case takes place, who carries out the investigation and directs the proceedings and who is responsible for the final decision in a relevant stage of the process. Both, civil and criminal procedures lack unambiguous conclusiveness that would secure a common person’s knowledge about his rights and their enforcement. On the other hand, a contemporary state based on the rule of law must find a solution for ensuring a proper work of the judiciary. It is necessary to allocate additional funds for modernisation of courts in order to prevent trials in the offices of judges and making the final judgements somewhere else than in retiring rooms of the courts, etc. Thirdly, financial resources of law enforcement institutions should not be saved at the expense of the interests of the parties in the case by failing to inform them properly about the place, time and other circumstances related to the trial.

It is necessary to find a solution for ensuring economic activities and other organisational technical measures of the courts. In such a way the conflict of economic organisational and judicial functions of chairmen of courts could be solved. In view of securing the impartiality of a judge during legal proceedings, it is advisable to rely on the practice of the jurisprudence of civil cases.

It is recommended to establish and enforce the measures of control of legal defence mechanism in a criminal procedure. The problem that is encountered regularly is the absence of an adequate legal assistance in the regions of the Republic during night or when several persons, who are in need of legal assistance, are arrested, etc.

It is essential to establish in the laws the principle that, in all cases, the information about a life of a private person can be collected exclusively by a well-grounded court decision and only according to the rules established by law. On the other hand, the laws regulating legal proceedings must stipulate equal legal procedural possibilities for both parties of a proceeding.

Finally, when defining and applying administrative liability and administrative measures for various offences, their size and application circumstances should be regulated according to uniform and harmonised criteria.
THE RIGHT TO THE INVIOLABILITY OF PRIVATE LIFE

Introduction

The present chapter deals with the legal guarantees of the inviolability of the personal and family life that mean the constraint of the accessibility to the details and facts of such life, prohibition of the illegal collection and publicity of the confidential and other information of the private nature that exclusively belongs to a person.

The human rights and freedoms in the sense of responsibilities and obligations are consolidated in the international human rights documents as well as in the Constitution of Lithuania, whereas the application of such freedoms may be predetermined by such formalities, conditions, constraints and restrictions that are provided by the law and that are necessary for the protection of human rights and freedoms, the legal interests of the public and the state. The present chapter deals with the issue whether the basis for such constraints and restrictions as well of the procedure of their application does not contradict the underlying principles of the protection of human rights consolidated in the aforementioned documents and Constitution of Lithuania.

The specific problem analyzed in this chapter should also be noted. To date the published reports and reviews on the situation of human rights in Lithuania very often wrongly interpret the valid laws providing the grounds and procedure for the restriction of the right to inviolability of private life and the situation in the field of the protection of these rights is portrayed in a subjective and tendentious way. Due to the fact that the different evaluation of the same phenomenon must be motivated and grounded by legal arguments, then the latter circumstance in the present chapter cannot be and is not ignored.

The principal laws safeguarding the right to the inviolability of private life

Articles 2.22 and 2.231 of the Civil Code make the basis for the constitutional right to the inviolability of the private life and its restriction as well as constraint more concrete and detailed. The provisions of the mentioned Articles have been formed following the practice of the European Court of Human Rights while applying Article 8 of the European Convention for the Protection of Human Rights and the Fundamental Freedoms. Other principal legal acts related to protection of this right are as follows: the Law on the Provision of Information to the Public2, the provisions of Articles of Chapter XII of the Criminal Procedure Code3 providing the terms and conditions for the application of the procedural

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compulsory measures, the Law on Operative Activities⁴, the Law on Electronic Communications⁵, the Law on the Rights of the Patients and the Compensation of Harm caused to their Health⁶, the Law on the Organized Crime Prevention⁷. The latter was acknowledged as non-contradictory to the Lithuanian constitution by the Ruling⁸ of the Constitutional Court as of 29 December 2004 whereas certain provisions of the Law on Operative Activities have been changed referring to the Ruling⁹ of the Constitutional Court as of 8 May 2000. It also should be noted that the new Criminal Procedure Code and the Law on the Electronic Communications have been adopted with reference to the practice of the European Court of Human Rights.

That allows the well-founded conclusion that the valid laws safeguarding the inviolability of the private life and at the same time providing the grounds and procedure of their constraint have passed the strict and thorough testing within the rulings of the Constitutional Court. Due to that reason the essential and most important issue arises not so much due to the quality of the mentioned laws and their conformity to the Lithuanian Constitution but due to the linking of these laws and inter-conformity, also due to the their interpretation and the practice of their application.

The right to the inviolability of the private life and operative activities

Having the aim to clear out whether such interpretation and application is grounded, it is important at least shortly discuss the new threats and challenges for the safety of each person and society, and what measures of response have to be considered as adequate and proportionate. The conclusion of the Constitutional Court on the non-contradiction to the Constitution¹⁰ as of 29 December 2004 is important and significant in this context that relates to the provisions of Articles 3 and 4 as well as Part 3 of the Article 6 and Part 1 of the Article

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8 of the Law on the Prevention of the Organized Crime providing the restrictions of the freedom and private life for the persons that have not yet been officially alleged for the committed crime. The Constitutional Court, in its turn, has made such conclusion based on the rulings of the European Court of Human Rights in the similar type of cases.

In general, trying to establish the priorities of social values in the contemporary society, the special attention should be paid to the safeguarding of the balance among different interests. The obligation of the state is to restrain from the wanton restraints and limitations of the human rights though it is a very important, however, not sufficient condition for the safeguarding of human rights. If the person does not feel safe himself, safe for the life and health of his family and relatives, ownership, if upon return home the person is not sure whether his home is not robbed, violated or desolated, if upon seeing the child to school or into the street the person is anxious about the offered drugs, then such negative obligation of the state hardly comforts him. The state also has the positive obligation to protect a person from the dangerous attempts and when it cannot manage this then quickly and thoroughly reveal the criminal activities and appropriately apply the law seeking that the person who has committed the criminal act has been fairly punished and no one innocent would be punished. In its turn this is possible when the relevant for the investigation information on the planned, in process or committed crime is, apart from other measures provided by the law, collected also by using the operative means that relate to the inevitable, however, necessary in democratic society and applied following the procedure established by the laws, intervention into the private life of the person.

In such context the assertion of certain authors and interpretations provided at the reviews of the non-governmental organizations related to the restraints by the allegedly imperfect laws regulating the rights to the inviolability of the private life do not sustain the elementary criticism and misinforms the public. It is paradoxical, however, the lawyers of the society that has freed itself from the totalitarianism express their nostalgia towards the common human values in such a way that by declaring the state obligation to refrain from the willful restraint of human rights by its authorities at the same time they ignore the power of the state that namely has the power to safeguard efficiently the human rights. Usually all the reports and reviews that evaluate the situation of the protection of human rights in Lithuania deal exceptionally with the issues related to the willful limitations and constraint of human rights by state institutions, however, reasonless ignore the positive obligation of the state to safeguard the real and effective protection of human rights. Such attitude is unbalanced as the important condition for the safeguarding of the rights of the persons who are loyal to the law is the restraint and limitation of the rights of the violators of the law. For example, the proposal to change the provisions of the Law on the Operative Activities in such a way "seeking to eliminate the legal preconditions for the subjects of the operative activities to interfere within the private life of the individual in case of absence of

the sufficient and concretely defined basis”\textsuperscript{12}, ignores the nature of the operative activities and the circumstance that only during such activities it is possible to collect the information having the evidentiary value. And on the contrary, in case such “sufficient, concretely defined basis” is established, then the indictment or conviction has to be concluded in the case but not the solving of the issue relating to the application of the measures of the operative activities in the investigation of the criminal activities in the case have to be carried.

That does not mean that the operative investigation may be carried without any legitimate reason. On the contrary, such investigation is carried when the evidence of the criminal activities has not been established, however, the information possessed on the planned, in the process or committed crime of violence or felony or certain minor crimes, when the possessed information is on the crimes against the constitutional system of the state, its independence, economic safety, safeguarding of the state defense and other grounds provided by the law\textsuperscript{13}.

The operative activities without any doubt is a strong arm and measure that may be directed against the dissentient and political opponents or used for their elimination from the political process as well as for the control of the mass opinion and attitude. Concretely existing possibility of the misuse of such data does not deny the fact that the data received and recorded during the operative activities are significant for the disclosure of the criminal activities and investigation of the case and is a significant precondition for the safeguarding of the public interests as well as rights and freedoms of other persons. For example, the Human Rights Monitoring Institute considers the possibility for the listening to the telephone conversations by the police commissariats\textsuperscript{14} as unacceptable in its annual survey and suggests to concretely define the categories of persons the conversations of whom could be listened to, also the type of the information that could be recorded\textsuperscript{15}, the length of listening to, who and how could make use of the collected information\textsuperscript{16}.

Such suggestions of more than questionable nature are unsupported by the realia of the operative activities as upon the provision of which no reference has been made to the fact that the operative investigation is carried based on the information possessed both on the planned, in the process or committed major crime or certain minor crimes and on the person, planning, committing or having committed the crime, also the crimes causing danger for the constitutional system of the state, its independence, economic safety, safeguarding of the state defense and other interests of national safety\textsuperscript{17}. The operative activities are


\textsuperscript{13} Article 9 of the Law on the Operative Activities (20 June 2002 No. IX-965) // Valstybės žinios (Official Journal), 2003, No. 47-2063.


\textsuperscript{16} Ibid., p. 20.

\textsuperscript{17} Paragraphs 1 and 7 Part 1 Article 9 of the Law on the Operative Activities // Valstybės žinios (Official Journal), 2002, No. 65-597.
carried with respect to the persons planning, committing or having committed the crimes or with respect to the persons infiltrated by criminal organizations into the law enforcement and other state institutions irrespective of their gender, race, nationality, language, social situation, belief, convictions or attitudes. Therefore, the issue itself “to define the categories of persons whose telephone conversations could be listened to” is formulated absolutely incorrect. On the contrary, the issue can be formulated for what categories of persons the operative activities cannot be applied, including the secret listening to the telephone conversations. Such is one person whom this exception should not be applied – is the President of the Republic (Part 3 Article 6 of the Law on the Operative Activities). Secondly, in such a case the effective means of the disclosure of the crimes would be withdrawn from the institutions – police commissariats that are in front lines in the fight against crimes.

The statement that unlike Criminal Procedure Code limiting the possibilities of the listening to the telephone conversations, the Law on the Operational Activities does not limit the term of such listening, also does not correspond to the reality. In truth, following Part 5 of Article 10 of the mentioned law the application of operative activities including the usage of the technical means necessary for the control of the mentioned conversations is sanctioned for not longer period than 3 months. True, though the final sentence of the mentioned part provides the possibility to prolong this period, however, the concrete period is not specified as well as whether the number of prolongations is limited. Such provision does not discount the possibility of usage of technical measure in practice for the unlimited period of time. On the other hand, that practically does not eliminate but on the contrary presume the obligation of the state to create the legal defense mechanism not only from the criminal attempts but also from the illegal activities of the institutions of the state itself that limit the human rights to the inviolability of the private life.

That means that the limiting activities of the right to the private life must comply with the following requirements:

1) refer to the law that in its turn has to be formulated following the principles of legal precedence and accessible for the persons concerned who could clearly understand the circumstances and terms when the officials may apply the secret measures with respect to them;

2) be inevitable and proportionate to the type and gravity of the criminal activities the perpetration of which the concrete person is suspected of;

3) be comparatively transparent as far as the secrecy allows. To that end the effective mechanism of the control of these means should be created, that would consolidate the detailed guarantees and adequate security measures, eliminating the possibility of the misuse of these activities;

4) be strictly controlled by the authorized and competent respective service, also by the judicial authority.

Namely the control is that weakest link that has caused most of concern as the uncontrolled authority degenerates and abuses its authority. In this regard the control of the
operative activities carried by the courts and the parliament in principle cannot be effective as it can control the subjects of the operative activities virtually just according to the respective documents and reports provided by them that are far from being objective and impartial. While the operative activities related to the observation of a person, his surveillance, secret inspection of the dwelling places and transport, access to the computer systems and similar does not reject the possibility of misuse by such acts. Therefore, there is a need of the service for the control of the operative activities that in case of evidence could start investigation whether the operative activities are inevitable and proportionate to the investigated crimes, irrespective of the type and gravity of the planned, in the process and committed crimes, whether the subjects of the operative activities, carrying the operative activities, do not infringe the limits of the competence, do not misuse their authorities and similarly.

That does not mean that the aforementioned internal safety service would carry the operative activities itself and would compete with the currently active subjects of operative activities by its powers and type of carried operative activities. On the contrary, this service would carry the effective control of the subjects of operative activities, i.e. the purpose of it would be to observe, supervise and record whether the operative activities are applied without violating the laws and in case of a need start the official investigation on this issue. The internal security service or otherwise called one, referring to the analogues active in Western countries, should be established in Lithuania and the regulations of its activities should be discussed by the legal society.

One of the most important guarantees of safeguarding the secrecy of the private life and confidentiality is the requirement of the law according to which all the collected information on the private life should be destroyed upon the discontinuation of the criminal procedure. Such information should also be destroyed when it is decided that all or part of it in the criminal procedure will not be used as having no relevance though the criminal procedure is not discontinued.

Such imperative requirement of the law is violated when such type of information is made public by the media or it is published (e.g. the reports of telephone conversations) containing the data on the private life of a person. At the same time the principle of the constitutional human right to the inviolability of the private life is roughly violated and the details of life become the object of the sick curiosity, villainous passions or backbiting. Seeking to avoid such type of the misuse that is the secondary, negative consequence of the democratic society and freedom of the media they should be condemned not only morally but also the proper and efficient measures need to be taken. It would be expedient to adopt such legal acts regulating the operative activities, changes and amendments of the provisions that would tighten the responsibility of the subjects of operative activities for making public of the secret information or its „leakage“, irrespective of whether controlled or not.

19 Ibid., Part 3 Article 161.
The subject of the operative activities in its turn in each case of illegal publicity of the information or leakage must carry the official inspection seeking to establish who and through what channels forwarded the operative information for the media. At the same time it does not dispose of the possibility to prosecute such person or the head of the respective service who has not assured the appropriate protection of the operative information following the articles of the Criminal Code providing the liability for the disclosure of the service secrecy or non fulfillment of the official duties (Article 297 and Article 229 of the Criminal Code).

The right to the inviolability of the private life and freedom of self-expression

Not only the governance degenerates without control. The self-expression of the person and the right to distribute information on the private life of the person are the object of the misuse in cases when the information is spread via internet. Anonymity induces the negative influence of the content of such information as well as the misuse of the fact that it is difficult to establish as well as arraign the person who has spread the concrete information. In electronic media each person, willing to do so, can express his opinion practically at ease, however, anonymity very often induces unethical self-expression and behavior that contradict the moral norms. The problem is not solved by Decision No 290 of the Government of the Republic of Lithuania as of 5 March 2003 “On the control of the public use of the off the record information on the computer networks and approval of the procedure of the distribution of the restricted public information”\(^{20}\), where the provision is consolidated that the founder (manager) of the internet webpage is responsible for the content of the internet webpage. However, this decision does not solve and cannot solve the problems related to the establishment of the persons who have to be arraigned and application of the sanctions against them.

Part of the law, namely Part 3 Article 2.23 of the Civil Code, provides the exceptions from the general rule when the spread of the information on the private life of the public person is not forbidden. At the same time in practice hardly resolvable problems arise related to the elucidation, interpretation and application of this provision. Public persons the authority of whom and decisions made are significant for the society and separate citizens, cannot claim and do not exercise such right to the private life like private persons do. The society reasonably expects from the public persons meaningful results and rational activities for the sake of public result. Therefore, it is not forbidden to make public the details of their private life that may cause negative effect for those interests. Namely there lay two problems relating to the fact that what persons are considered to be public and what details of their private life may influence the public interest.

\(^{20}\) Decision No 290 of the Government of the Republic of Lithuania as of 5 March 2003 “On the control of the public use of the off the record information on the computer networks and approval of the procedure of the distribution of the restricted public information // Valstybės žinios (Official Journal), 2003, No. 24-1002.
In first case the problem arises not due to the *ex officio* of the public persons who according to Part 3 Article 14 of the Law on the Provision of Information to the Public are the persons taking part in the public and political activities. In a broad sense each citizen while exercising his constitutional right to take part in the state governance through the representatives elected in a democratic way, takes part at the elections, may be recognized as a public person. Therefore the concept of such person needs to be precisely interpreted. On the other hand it is hard to delimit, and this is universally accepted opinion, the founded and lawful interest in the private life of the public person from the willful and illegal that is prohibited by the Constitution\(^{21}\).

The way of solving of this identified problem is not the amendment of the valid laws, but rounded interpretation of the provisions of these laws. On the other hand, such interpretation is uninformative and little of favor to the theory and practice when the text of the legal norms is explicitly rewritten, as it is done, for example, in the Report on the Situation of Human Rights in Lithuania\(^{22}\). The key of the solutions of this problem is the wording of the criteria based on which it is possible to decide in each concrete case in what activities and what forms is the participating person considered to be a public person and what factors of the private life should be assessed as the exceptional part of the private life and what facts of life and details may satisfy the lawful and grounded public interest to know them.

Generally, the reports and reviews on the situation of human rights in Lithuania very often unfoundedly interpret the laws and falsely cause doubts in the quality of the valid laws. For example, there are reasonable doubts caused for certain authors whether the provided possibility by Part 3 Article 14 of the Law on Provision of Information to the Public to make public the information on the private life without the person’s consent in three cases: first of all, when the publication of the information does not cause any harm to the person; secondly, when the information helps to disclose the violations of the laws or crimes and; thirdly, when the information is provided at the public court procedure, does not contradict the Constitution. The doubts are justified by the fact that Article 22 of the Constitution does not provide any stipulations for the protection of the right to the private life. Moreover, the provisions of the mentioned law also do not conform to the requirements of Article 8 of the Constitution\(^{23}\). Such statement, however, shows that even lawyers analyzing the implementation of the human right to the inviolability of the private life not fully understand on what grounds and following what interests could limit such human right.

It is evident that in case the person commits the crime and confronts other persons, society, he cannot refer to the provision of the secrecy and confidentiality of the private life. Secondly, in case the decision has been made at the public court hearing, that means that there have been no obstacles to make the information relevant to the case public and the secondary publication of it cannot cause any negative consequences. Thirdly, and that is most important: the Constitution is the integral act consolidating the human rights and


\(^{22}\) Ibid., p. 33-34.

\(^{23}\) Ibid., p. 34.
freedoms in the context of obligations and responsibilities, prohibitions to infringe the human rights and freedoms of other persons, public and state interests. Thus, the substantiation of the doubts related to the conformity of such prohibitions to the Constitution by stating that Article 22 of the Constitution does not provide any concrete prohibition means the ignorance of the systematic approach towards the Constitution.

The provided evaluation of the situation of the human right to the inviolability of the private life presented in this chapter is based on the objective criteria and is not a disputable subject. On the other hand, if the opinion expressed in the report, prepared later on, differs from that expressed in the earlier reports or review, then it has to be justified by legal arguments. The society has a reasoned and lawful interest to know what is the real situation of human rights in Lithuania and what report assesses it objectively, impartially and fairly.

**Recommendations**

Lithuanian laws safeguarding the human rights to the privacy and confidentiality of the private life, except certain exceptions, correspond to the standards of the protection of that right, consolidated by the international documents on human rights. The most important problem is not the incompletion of the national laws or their gaps, but the issues of the interpretation, elucidation and application of the latter laws. One of the most important problems of the inadequate interpretation of the laws is that the systematic approach is ignored both to the Constitution itself as a uniform act and to the complexity of laws providing the basis for the constraint and limitation of the human right to the inviolability of the private life as well as procedure and at the same time ignoring the new threats as well as challenges for the safety of the society. Therefore, it is important to adequately reveal in what cases, grounds and procedure the intervention to the persons’ private life is acknowledged as necessary, lawful and inevitable by the consistent, methodological and purposeful explanatory work, publications in the press and different reviews as well as reports without any exception to the present report as well.

The state has not only the negative obligation to refrain from the illegal, wanton interference into the persons private life or application of such restraint and limiting means of such human rights that are inadequate and out of proportion for those activities for which a concrete individual is charged. The state also has the positive obligation to create the effective mechanism of control of the operative measures that limit the person’s private life, consolidating the detailed guarantees and adequate security measures as well as the obligation to establish the respective service enabling it to control the legitimacy of the carried operative activities.

Seeking to prevent the widely spread misuse related to the publicity at the mass media of the operative information containing the data in the private life of the person it is expedient to tighten the disciplinary liability of the subjects of the operative activities for no securing of any of the information or its controlled “leakage”. In case of a lack of the legitimate grounds to start the prosecution with respect to the guilty persons for the disclosure of the service secrecy and/or malperformance of the service.
Aurelijus Gutauskas

THE RIGHT TO INFORMATION

Introduction

The right to the information includes many areas of life of a person and society. That is not just the right to receive information on the events in the state, to get familiar with the official documents of the state institutions, but also the right to get familiar with the information about oneself, one’s health as well as the right to be protected from the limitations of such information and illegal disclosure by the state or other persons.

The right to the information manifests not only as a subjective right of every person to receipt of the information and its dissemination, but also as a freedom of mass media – the objective form of the expression of the right to the information on nowadays society⁹.

The right to the information also includes different aspects of legal regulation of the means of the mass media, also the issue of dissemination of the information.

The right to the information not only satisfies the needs of the individual but also provides him with the possibilities to implement such important political right – the right to participate at the state governance. Most probably it is impossible to implement that political right without the proper implementation of the right to the information.

In such a way the right to the information is an important element of the freedom of self-expression, encompassing such aspects as the right to receive information and the right to disseminate the information.

Already on 19 December 1996 the Constitutional Court of the Republic of Lithuania has noted that the legislator is directly obligated to establish the procedure for the state institutions to provide the citizen with the information possessed about him. Thus, the form of the law as the legal source and the way of its adoption best guarantees the fact that the common interests predetermined by the constitutional system for the protection of the state secrecy will be coordinated with the safeguarding of the human right to look for the information, receive it and publish².

The special laws are valid in Lithuania regulating the right to the information: 2 July 1996 (the wording of 2004) “The Law on the Provision of Information to the Public”³.

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The right to the information is defined by Articles 5 and 25 of the Constitution of the Republic of Lithuania. Whereas, the law on the right to receive information from the state and municipal institutions describes in detail the aforementioned articles of the Constitution. The Constitution regulates the right to the information. The Constitutional Court has acknowledged that it is important to make this right more concrete by the laws. The Seimas has made it concrete with the help of the laws the list of which is provided.

**The right to receive information**

The right to receive information is not only related to the obligation of other legal subjects “to stand” the activities of the person looking for the information but also with the obligation of certain subjects to act effectively, i.e. to provide the possessed information that is of interest to the person looking for it. The implementation of that right always requires the special, concretizing it laws providing the obligation for the provision of it by those who possess it. The person seeking for the information may have the additional duty to prove that he has the right to receive it and that it is needed for the implementation of his certain rights as well as the protection of the lawful interests. Naturally, the separate laws could provide the presumption that certain information corresponds the aforementioned criteria (for example, the information possessed by the information manager on the person requesting for such information). Though, such presumption as any other may be denied

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in any concrete case (as the presumptions are for the speed up of the process for the transfer of the evidentiary pressure)\textsuperscript{11}.

The right to receive information from the state and municipal institutions is an important principle of democratic society formulated by the law – the state and municipal institutions have to provide the information on their activities. They could refuse to provide the possessed information only in cases when it is necessary within the democratic society and is more important than the right of the person to receive information.

The law on the right to receive information from the state and municipal institutions does not regulate such receipt of the information that is regulated by other laws. It regulates not only the receipt of the public information but also the private information about oneself, preserved by the state and municipal institutions in case such information is collected in an automatic manner. Thus, this law realizes the provisions of 2, 3 and 5 Part Article 25 of the Constitution. The provisions of that law relate to the norm of Par. 3 Article 5 of the Constitution when the government authorities serve for people.

The priority should be not the refusal to provide the information but the provision of the information. This is important to be followed in each concrete case when deciding whether there are any grounds to limit the information. It is evident that it may be difficult to decide in each concrete case whether, for example, any information in the documents corresponds to the implication of the law prohibiting the rendering of certain information. In this case, the public servant has to decide to provide the information or not, having ascertained whether the rendering of the information really will violate the interests specified by Part 1 Article 13 of the Law and what is more important referring to the concrete circumstances for the democratic society – the right of the person to receive the information or the refusal to provide it. Undoubtedly, the problem could be seen here – whether the provided discretion of the public servants may be justifiable? Here most probably the most important criterion is the competence of the public servant.

The practice of the European Court of Human Rights shows that the Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms\textsuperscript{12} consolidating the freedom of the self-expression does not obligate the state in all the cases to provide any required information for the person. Article 10 of the Convention provides the right to freely express one’s thoughts and beliefs but not the right to receive any information and the freedom to freely disseminate such information. Part 2 Article 10 embeds the list of outlines in case of which the exercise of the right to freely express one’s thoughts and beliefs may be limited. Of course, such limitations have to be provided by the law itself. Thus, though the person has the right to receive from the state the possessed information about him and this is in no way his absolute right. Article 10 of the Convention does not protect the absolute right of the individual to access any information. That is also testified

\textsuperscript{11} Ragauskas P. The Information Preserved in the Archives and the Legal Protection of Personal Data, Vilnius, 2005, p. 2.

by the case Leander against the Sweden (Leander v. Sweden, Appl. No. 9248/81; judgement 26/03/1987). It has been established in this case that Article 10 of the Convention does not guarantee the right for the individual to receive information that he wishes to use for his own purposes. The information about him has not been provided for the provider of the petition considering the national safety.\textsuperscript{13}

The citizens of Lithuania specify that their right to receive the information on the activities of the municipal institutions is being violated. The survey of 2002 showed that there are twice as many complaints about the violations of the mentioned right than the violations of the ownership right, violence against women or concerning the safeguarding of equal opportunities of men and women.\textsuperscript{14} Although the activities and decisions of the municipal institutions are directly related to the human rights, in practice the citizens more often meet the President of the Republic, members of the Seimas than the members of the municipal councils. The possibilities of the community members to access information at the local municipality institutions are quite limited as the rights of such representatives are either unrecognized or unregulated by the regulations of the municipal councils.

Following the law on the right to receive information from the state and municipal institutions the state and municipal institutions must within the period of 24 days (in certain cases within a month) respond to the written enquiries. The information may be not provided only if that is very important for the protection of the democratic society and is more important than the person’s right to receive information. The official information is free of charge though the institutions may apply charges to cover the costs of the service (information search, copying). In case of the refusal to provide the information the citizen may apply to the court. The efficiency of these legal norms has been shown by the successful claim of journalists against the Ministry of Health in 1999. On the other hand, there are still no systematic and standard procedures following which the state institutions would provide information. It is on the whole difficult for the journalists and the public to access the public documents. The communicants are needed for the efficient work of journalists as the access to the public documents allowed by the laws is still limited and the law is applied very incorrectly.

Article 6 of the Law on Provision of Information to the Public provides that each citizen has the right to receive the public information from the state and municipal institutions. However, the receipt of the information is impeded by several reasons. First of all, in Lithuania like in other post-communist countries there is no acknowledged opinion that the public servant works for the citizens and is accountable for them. Secondly, most often there is no staff scheduled at the state institutions the main responsibility of whom would be to respond to the questions of the citizens. Whereas, the field of public relations is yet in the initial development stage.


\textsuperscript{14} Human Rights in Lithuania. Situation Assessment, Vilnius, 2002.
And finally, the third reason is that the public servants avoid providing the information as they do not know what information is to be provided and what is confidential.

Many complaints relate not only to the work of the municipalities, but also to the unreadiness of the employees of the state and other institutions disposing of the public information as well as the bad quality of the provided information. The receipt of the information very much depends on the activity of the concrete person and persistence in pursuing the exercising of this right. The personnel of the public authorities have to be acknowledged to the human right to the information. Finally their work has to be controlled.

In the law on the right to get information from the state and municipal institutions the concept “information” includes not only the official documents but also other information, knowledge, data that are at the disposal of the state or municipal institutions and that are recorded at the respective documents. The law guarantees the right of the person to receive and the obligation of the state and municipal institutions to provide the information of ternary nature: the public information on the activities of the state and municipal authorities, including also the activities in the field of the internal administration; private information about oneself, i.e. the private information on the person who applied for such and the official documents.

Following Part 20 Article 2 of the Law on the Provision of Information to the Public the official documents of the state and municipal authorities as well as institutions include written, graphic, phonic, preparatory, computer information and other documents related to the activities of the state and municipal authorities and institutions that are included into the records of documents of the mentioned institutions and are created or received. It is evident from this concept of the official document that the origin of this official document, i.e. its creation or receipt is derived from the activities carried by the state and municipal institutions. As the activities of the state and municipal institutions, in the sense of law, includes also the internal administration, thus the state and municipal institutions must provide the persons with the official documents or the information contained in them and on the activities that such institutions carry in cases of the internal administration. The problems may arise due to the fact that the law itself is not clear and provides the public servants with the possibility to state that the internal administration issues should not be the object of the right to the information.

Though the aforementioned Article 6 declares the right to receive information by the persons (not only journalists), from the point of view of the receipt of information the main aim of this law is to safeguard the right to the information for the journalists and other organizers and distributors of the public information. From the point of view of the receipt of the information the priority is given for the journalists.

Part 4 and 5 of the mentioned Article also separately discuss the rights to receive public information by the organizer and distributor. Following the provisions of the mentioned Article the information during the preparation of which no accumulation of additional data is needed, public information for the organizers and/or distributors is provided not later that in a course of one working day, and the information, during the preparation of
which the accumulation of additional data is needed – not later than in a course of one week. In such a way the rights of the journalists to receive information are discussed separately and provide the more favorable conditions for the receipt of the information, having in mind the terms of the provision of the information. We think that there is no reason to give preference to the journalists excluding them from other citizens.

Moreover, the way how the journalist could complain about the refusal to provide the information also in cases when such information is insufficiently provided or is improper is not discussed. On the other hand, this gap could be filled by the provisions of the Law on the Right to Receive Information\(^\text{15}\) that regulate all the receipt of the information for all the persons.

One more problem is that the concept of the journalist used in the Law on the Provision of Information for the public is very wide. Thus, the possibility to make use of this status for many persons is provided. The laws provide additional rights for the journalists: the right to receive the information in a more operative way; the right not to reveal the source of information; the right to the accreditation and so on as well as obligates them to follow the journalism ethics rules and the common principles of public information. However, the laws do not consolidate the obligation of the journalist to be the member of the professional association and follow the ethic obligations assumed by that association or the obligation to have the respective license (permit) for the journalistic activities. It is needed to define the status of journalist as a special legal subject in a more exact manner in the Law on the Provision of Information to the Public as well as to link this status to the dependence to the professional association as well as to the acquisition of the respective license (permit) for the journalist’s activities\(^\text{16}\).

The state and municipal authorities as well as institutions must, following the procedure established by the Law on the Right to Receive the Information from the State and Municipal Institutions\(^\text{17}\) as well as other laws, provide the public information as well as the possessed private information, except the cases provided by the laws when the private information is not provided. The information of private nature (following the Law of the Republic of Lithuania on the Right to Receive Information from the State and Municipal Institutions\(^\text{18}\)) – that is the information on the personal and family life, person’s health, information related to the person’s honor and dignity. The information that should not be rendered is the one that according to the laws is the state information, service, commercial or bank secrecy or is private one, except the provided case by Article 7, i.e. the requests for the receipt of the private information about oneself. By the way, the analogous provision is


included in Article 19 of the Law of the Republic of Lithuania on the Provision of the Information for the Public. As any information related to the person in the broad sense is the information on his personal life and the information published in the public registries loses the status of the private information and following the law it is treated as the public one. Thus, it is not clear what private information must be provided by the state and municipal institutions for the mass media. Moreover, the Law of the Republic of Lithuania on the Provision of the Information for the Public itself defines what is the private information: that is the information on the personal and family life, personal health, other information that from the point of view of safeguarding the human right to protection of personal life is the non-rendered information. It is important to amend the law in this case.

Article 14 of the Law of the Republic of Lithuania on the Provision of Information to the Public consolidates the principle of the protection of the private life that emphasizes the fact that during the preparation and broadcast of the public information it is obligatory to ensure the human right to respect his personal and family life.

The information on the private life may be published without the consent of a person only in cases when the publication of the information does not cause harm for a person or when the information helps to disclose the violations of the laws or criminal activities; the information is also provided when the case is examined at the open court proceedings. Moreover, the information on the private life of the public person (politicians, public servants, heads of the political parties and public organizations as well as other persons participating in the public and political activities) may be published without their consent in case this information reveals the circumstances of the private life of that person or personal features that are significant for the public. We should mention that there have been attempts to amend the Criminal Code by a separate article (Article 285-1 of the Criminal Code) providing the criminal liability for the disinformation. However, such draft was not sufficient enough to protect from the broadcast of information conforming the concept of disinformation and has not been adopted.

When evaluating the provisions of Article 14 of the aforementioned law the problems may arise regarding the provision of Part 3 Article 14 of the Law providing that the information may be disseminated without the consent of a person when this information reveals the circumstances of the private life of that person or personal features that are significant for the public. Very clear and reasonable question arises how the limits will be established in this case, when the private information will be treated as of significant public importance and when it will be just private information. The law does not provide such limitations leaving a wide margin of appreciation for the subjects who will apply this provision. Such indetermination in certain cases may predict-

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ne the situation when the information of the private nature containing no information of the public importance will be spread in the press\textsuperscript{22}.

The laws of the Republic of Lithuania do not define the conception of the lawful public interest to receive certain information on the private life of public and non-public persons. The lawful public interest is one of the main principles of limitation of the information on personal life\textsuperscript{23}. In Lithuania the lawful public interest is understood as a public right to receive information on the private life of a person protected by the law in cases when it is important to protect the rights and freedoms of other persons from negative consequences\textsuperscript{24}.

By the decision as of 23 October 2002 “On the Conformity of Article 8 and Part 3 Article 14 of the Law of the Republic of Lithuania on the Provision of Information to the Public to the Constitution of the Republic of Lithuania” the Constitutional Court when analyzing the issue whether the source of the media should be revealed has noted that the legislator is tied by the conception of the freedom of mass media following which to demand to reveal the source of information is possible only when this is needed seeking to safeguard the vital and other significant interests of the public, also seeking to safeguard the protection of the constitutional rights and freedoms of the persons to execute the justice, i.e. only then when the reveal of the information source is important for the sake of the more important interest safeguarded by the Constitution\textsuperscript{25}.

The priority of the public interest gives the privilege for the mass media to publish the facts that are of the wide and indefinite interest of the public. The same decision of the Constitutional Court states that the public interest to know more about the public persons than other persons is constitutionally grounded. This interest would not be safeguarded if in each case when publishing the public information on the private life of the persons taking part in the public and political activities the personal consent of this person would be needed. In such a way the mass media may without the consent of the public person to inform the public on his private life to such extent that personal features, behavior, other circumstances of private life could be important to the public matters. Thus, the published information will gain the public value.

On 1 January 2001 the Law of the Republic of Lithuania on the Advertising came into force and the advertisement on the TV is regulated also by the European Convention on the TV without boundaries that Lithuania ratified on 17 February 2000. Its principle of identification which is the main principle of advertising is constantly violated. The principle of identification of the advertisement means that the information of the commercial type must


\textsuperscript{23} This principle is expressed in Part 2 Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of the European Court of Human Rights.

\textsuperscript{24} Paragraph 18 Decision no 1 as of 15 May 1998 of the Senate of the Lithuanian Supreme Court.

be clearly distinguished from other type of information. However, what concerns the Lithuanian mass media it is difficult for people to distinguish where the information ends and where the advertising of goods and services starts. The violation of the principle of identification of advertisement and flourishment of the “ordered journalism” violate the right to the information of the readers, spectators and listeners. Though there is the appointed institution – National Consumer Rights Protection Council under the Ministry of Justice – for the monitoring of the follow up of the principle of the identification of the advertising, however, it is still hard to identify the violations of the advertisement.

Lithuanian legal acts do not specify the political advertising and there are no legal provisions of the legal regulation of such advertising. The valid laws on the elections provide only certain limitations of the sources of agitation time of the political nature and means used that are not enough. It is important to create the rules of the political advertisement that would correspond the experience of other democratic states and to incorporate them into the valid laws on the elections or to adopt a separate Law on the Political Advertising26.

It would be expedient to mention also Article 3 of the Law Amending the Law of the Republic of Lithuania on the Provision of Information to the Public (No. VIII-1905 as of 29 August 2000) that consolidates the principles of mass media providing that “the organizers, distributors, journalists of the public information follow the Constitution and the laws in their activities, international agreements of the Republic of Lithuania, the principles of humanity, equality, tolerance, respect for a person, respect the freedom of speech, creation and conscience, variety of opinions, follows the professional ethics of journalists, supports the development of the democracy, public openness, promotes the public citizenship and state progress, strengthens the state independence, forms the national culture and moral”. Article 4 of the Law provides that each person has the right to freely express his thoughts and beliefs. Article 39 of the Law provides that “the advertisement cannot humiliate the person’s dignity, also cannot discriminate due to the race, gender or nationality, offend religious feelings or political beliefs, promote the harmful behavior for health and environment protection”27.

Article 20 of the Law of the Republic of Lithuania on the Provision of Information to the Public prohibits the publishing of information that incites national, racial and religious hatred. Article 47 of the Law provides that the Committee of Ethics of Journalists and Publishers monitors the compliance to the provisions of the laws in the disseminated public information that prohibits the incitement of national, racial, religious, social or gender hatred, slander and disinformation. All the interested persons could address this committee. Moreover, the Inspector of Journalists’ Ethics controls the implementation of the provisions of the specified law who according to his competence examines the com-

27 The second and the third periodical report according to the international convention on the abrogation of all forms of racial discrimination. Approved by Decision No 528 of the Government of the Republic of Lithuania as of 3 May 2004.
plains of the persons concerned related to the violation of their honor and dignity by the mass media. The Inspector of Journalists’ Ethics may warn the organizers and distributors of the public information about the observed violations of the legal acts regulating the information of the public and demand the elimination of them, also to require the denial by the organizer of the public information and publishers following the established procedure of the unfaithful information that also humiliates the persons honor and dignity or is harmful to their lawful interests or would provide the person with the possibility to respond and deny such information himself. Moreover, institutional organization should not be related just to the national minorities. These institutions are important for all aspects of the right to the information.

The Law of the Republic of Lithuania on the Provision of Information to the Public provides the possibility to protect the immunity of the information on the private life at the pretrial institutions: the Committee of Ethics of Journalists and Publishers, the Service of the Inspector of the Ethics of Journalists, the Committee of Lithuanian Radio and Television. The ombudsmen perform very important role in the protection of human rights as their obligation is to control how the executive branch ensures the human rights and lawful interests.

Speaking about the Committee of the Ethics of Journalists and Publishers, the Service of the Inspector of the Ethics of Journalists, the Committee of Lithuanian Radio and Television the statement could be made that the activities of the mentioned authorities are not efficient. It is very strange that the Law on the Provision of Information to the Public (Article 47) does not provide what type of the decisions may be made and what measures could be taken by the Committee of the Ethics of Journalists and Publishers. The fact that the mass media itself must declare the decision made by the Committee, cannot be treated as the punishment for the violator of the right, neither as the moral satisfaction for the person whose rights have been violated. Thus, the activities of this Committee in the field of the right to the immunity of the information on the private life are not efficient.

Following Article 49 of the Law on the Provision of Information to the Public, the statement could be made that the powers of the Committee of Lithuanian Radio and Television are much broader and, moreover, it has the right to apply the different punishments for the violators. Though, in practice, the activities of this Committee are dying.

The Inspector of Journalists’ Ethics does not exercise the right to address the competent state institutions as well as the Committee of the Ethics of Journalists and Publishers provi-

28 The second and the third periodical report according to the international convention on the abrogation of all forms of racial discrimination. Approved by Decision No 528 of the Government of the Republic of Lithuania as of 3 May 2004.

29 Is not efficient due to the fact that independent experts are not included into the activities of these institutions and there are very few lawyers working. See Meškauskaitė L. The Right to the Protection of Private Life. http://www.lrs.lt

30 For example, during 2002 only one decision was made regarding the violation of the right to the information on the private life. See. Žiobiene E. The protection of the right to the information on the private life. Doctoral Thesis, Vilnius, 2003, p. 104.
HUMAN RIGHTS IN LITHUANIA

ded by Paragraph Three Part Two Article 51 of the Law on the Provision of Information to the Public regarding the observed violations of the mentioned law and other legal acts regulating the information of the public.

The right to collect and disseminate the information is safeguarded; however, the freedom of the mass media is very often transformed into its abuse. There is no effective lawful pretrial mechanism that would allow protecting oneself from the unethical manifestations of mass media that also infringe the laws. Breach of the principle of identification of advertising, flourishment of the “ordered journalism” violates the right of the readers, spectators and listeners to the information31. Certain fields lack the legal regulation or there are no mechanisms of implementation of the legal norms – political advertising is not legally regulated, the issue on the limits of the protection of the sources of information of journalists is still open, electronic media is not legally regulated. The present system of the institutions of the self-regulation of Lithuanian journalists is incapable of safeguarding the valid laws, the international contractual obligations ratified by the state of Lithuania as well as the standards of professional ethics.

The right of the person to disseminate information through the mass media is not fully implemented. The mass media in the democratic system must be accessible for the public, they should publish or otherwise disseminate different information, comments of different persons. However, the Law on the Provision of Information to the Public does not safeguard the mentioned requirement. This problem is puzzled by the fact that the owners of the biggest dailies at the same time are the editors and the dailies do not have the public councils or boards.

The Law on the Right to Receive Information from the State and Municipal Institutions is important in the implementation of the right to information as there are such important concepts as private and public information. However, the understanding of the private information is quite abstract and wide. It would be expedient to define the private type information in the Law on the Provision of Information to the Public that would also contain the information of public value and that could be published without the consent of a person. In such a way the protection of the privacy of a person would be guaranteed.

Due to the limited possibilities to get familiar with the legal mechanisms of the municipal activities and their rights, the right of the citizens to participate in the preparation of the draft decisions and other municipal matters is not implemented, though provided by the Law on the Local Self-Government. This information can be found neither in the main newspapers nor on the municipal web pages. It is especially important to note that the regulations of the councils as the main document that has to provide in detail the election procedure of the representatives of the public, their rights, obligations, communication of the municipal institutions with other representatives, are not provided in the visible and easily accessible places. Moreover, there is no provision on how the representatives of the public have to be elected with the help of whom the community will implement

their right to receive information on the activities of the municipal institutions and to provide the opinion of the community through these representatives on the decisions of the municipal institutions. The participation of the aforementioned representatives at the activities of the councils is not provided.

The municipal councils have to provide the procedure in their activity regulations on how the representatives of the community of the locality are elected, how they participate in preparing and making of the draft decisions, how the community through its representatives receive information on the draft decisions and adopted acts.

The Law on the Legal Protection of the Personal Data was adopted on 11 June 1996. The new wording of the law has been adopted in 2002 and better reflects the changes that have happened in this field and have been harmonized with the rules of the European Union as well as the Council of Europe Convention on the protection of persons, related to the automated processing of personal data.

Certain problems could be identified. From the standpoint of the right to receive information, this law is very much important as it provides the right to collect, administer and forward (disseminate) personal data, also the right of the person to get familiar to one’s personal data, handled in an automatic way, that are at the possession of the state and municipal institutions. Thus, this law realizes one of the provisions of Part 5 Article 25 of the Constitution stating that the citizen has the right following the provisions of the law to receive the information about himself, possessed by the state institutions.

The person who has noticed that the information is not comprehensive, true or precise may make use of the possibilities provided by that law to influence the content of the information. This law allows this and in general provides a possibility for a person to object to the collection of information about him. Article 19 provides that in case the subject of data does not agree on the control of his personal data, then the data administrator has to immediately discontinue the administration of personal data, except cases provided by the laws, and inform the recipients of data.

The attention should also be made to the fact that the limitation of the search, receipt and dissemination of information related to USSR KGB activities cannot be based from the moral point of view (that is one of the grounds provided by the Constitution). On the contrary the moral arguments witness the importance of the publicity of illegal and harmful activities to the public and the state as well as importance of condemnation by the public related thereto. Such limitation cannot be based also on the need to protect the constitutional system as the publishing of information on the criminal organization or its contributors may impend only in case if it is delivered by the respective criminal organization or dependent on it.

When systematically evaluating the applicable Lithuanian law it is possible to find only one reason for limitation of the search, receipt and dissemination of information related to the activities of USSR KGB. That is the exception based on the constitutional principle of lawful expectations concerning the persons who admitted their secret colla-
boration with the special services of USSR and included into the respective list of confessed persons. Article 8 of the Law of the Republic of Lithuania on the Registration, Record and Protection of the Confessed persons who secretly collaborated with the secret services of the former USSR provides certain guarantees for them (classification and protection of the information provided by the registered, confessed or included into the records persons and data about them)\(^3\).

Considering the aforementioned circumstances it is evident that the laws of the Republic of Lithuania cannot limit the right of the citizens to search, receive or disseminate the archival information related to the activities of the USSR KGB in case this information is not related to the persons who following the procedure established by the law have admitted their collaboration with the special services of USSR. Such information is not considered as part of the private life of any person and the respective limitation of the freedom to information would violate the Constitution of the Republic of Lithuania.

Thus, the provision of Part 3 Article 20 of the Law on the Archives that “the access to the documents containing the agency information of the special services acting on the territory of Lithuania also of the Ministry of Interior of Lithuania SSR, Lithuanian Subunit of SSR of KGB belonging for the National Document Fund as well as to the instituted criminal cases and deportation cases is limited to 70 years from their initiation” causes serious doubts with respect to the conformity to the Constitution.

These doubts are even bigger as according to the valid laws of the Republic of Lithuania the common rule is that all the court judgments are public (unless the hearing of the case has been public, however such cases are exceptional). Therefore, due to logically unexplainable reasons our legal system has become such contradictive that the judgment of the court of the independent Republic of Lithuania made yesterday is public and accessible to all the persons. Whereas, the limitation of the access to the cases created by the criminal structures of the illegal occupational government is for decades.

When assessing the circumstance that the archival document is not directly related to the information on the private life, i.e. the respective information in it can be, but not necessarily is, the information in the documents kept at the archives on the personal data cannot be the basis for the general preventing the familiarization to a certain document or its part.

Even if the document contains the separate places that should be concealed (that concerns not only the safeguarding the protection of the right to the private life) if there are technical possibilities to conceal them, the document has to be public after concealing these places. This requirement is predetermined by the fact that the constitutional freedom of information cannot be limited based on the fact that seeking to implement that right the state authorities or servants “should labor for” or “that would cause inconveniencies”. The financial expenditure is not the argument when limiting the constitutional rights of the

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person as the Constitution does not prevent the possibility to demand that the person seeking to exercise the constitutional freedom of information would compensate the reasoned costs related to the preparation of certain information33.

Article 5 of the Law on the State and Service Secrets is very important containing the list of the classified information. Especially is important the provision of the law that though the provided list is comprehensive, the named information may (but not need) to form the state or service secret. Thus, the existence of this list is not the unambiguous imperative and information that officially could be named in the list not necessarily will form the state or service secret.

The disputes regarding the classification, declassification of the information forming the state or service secret (and that directly relates also to the person’s right to get familiar with such information as in case of its groundless classification the rights of the person are limited as well as his lawful interests) form the important aspect of the human rights. As the right to the information should be attributed to the constitutional rights of a person then the provision of Article 30 of the Constitution stating that a person, the constitutional rights or freedoms of whom are violated, has the right to apply for the court should be applied in this case as well34.

Moreover, Article 12 of the Law on the State and Service Secrets provides that the disputes among the subjects of the secrets, also the disputes among the subjects of the secrets and other persons, arising due to the classification and declassification of information are being solved by the Committee on the Coordination of the Protection of the Secrets that is defined by the law as the institution the regulations of which are approved by the Government. The decisions made by it are obligatory for the subjects of the secrets and are final ones. However, the law does not provide the possibility to appeal the decisions of the Committee of the Coordination of the Protection of the Secrets.

The problem could be seen also due to the provisions of Article 21 of the Law on the Procedure of the Transfer of the Data of the Registry. They are not clear enough as the criteria are unknown based on which the decisions will be made that the “legitimacy of the application” of a person to receive data is not sufficient enough and how the person will be able to complain about the non-submitting of the data in the registry based on that.

The provision of Article 22 of the mentioned law is also unclear, stating that the “user” cannot use the received data for other purpose and in another way that it is provided during their “transfer” (i.e. non-submission). The concept of the user is unclear: whether it contains just the institutions of registry administration, or also the persons who received information from the state registries? The fact that the information, the receipt of which is not limited, is used by the person for other purposes as well that specified upon the receipt of it should not be considered as the violation of the law and the law cannot be unfoundedly limited.

There is no procedure how the person willing to receive the information kept in this registry should address the registry administrator. It is unclear what are the terms of the submission of the information or their non-submission, or the procedure of complaint about the submission of the improper information (for example not all of it).

One of the deficiencies of the Law on the Registry of the Real Estate as of 24 September 1996 (the wording as of 2001) is that there is no procedure how a person willing to receive the information from this registry should address the registry administrator. The terms for the provision of information are not clear or the procedure of appeal of the non-submission of such information or appeal of the submission of the improper information (not full and so on).

The Law on the Establishment of the Hypothec Registry as of 24 September 1996 (the wording as of 1997) does not provide how a person could receive the information from the hypothec registries. It also does not formulate the principle of the publicity of the hypothec entries.

The Law on the Registry of Property Seizure as of 4 November 1999 (the wording as of 2003) does not provide any direct obligation to provide information for persons. Moreover, this gap could be filled with certain provisions of the special state registries that will get information on the property seizure or it is possible to refer to certain provisions of the Law on the State Registries consolidating the common principles of formation and usage of all the registries. However, the provisions of the aforementioned laws are incomplete from the point of view of the receipt of the information. In cases when the right to receive the public information from the state registries is totally unregulated or it is only partially regulated then the provision of the Law on the Right to Receive Information should be followed.

Article 16 of the Law on the Registry of Property Seizure specifies that procedure of the transfer of data at the Property Seizure Registries is provided by the regulations of the mentioned registry. The data of the Property Seizure Registry are transferred for a certain fee the amount of which is established following the procedure approved by the Government. The state institutions have the right to get the data from the property seizure registry free of charge when it is needed for carrying of the direct functions of the mentioned institutions. However, it is not clear from the provisions of the law who and in what cases has to pay for the transfer (and not provision) of the data of the property seizure registry.

The right to the information on the health state, health treatment and other is one of the main rights of the patient that has to be guaranteed and safeguarded from the unlawful disclosure of such information. The Law on the Patients’ Rights and Compensation for the Harm Caused to Health does not provide the detailed procedure of the disputes regarding the receipt of the information.

The noticeable problem in this field is that very often Part 1 Article 52 of the Law on Health Protection and Part 1 of Article 6.736 of the Civil Code are violated that provide that

the provider of the health care services cannot provide the information on the patient to any other persons without having the person’s consent or to provide the conditions to receive the copies of the medical documents (case record and so on).

Article 4 of the Law on Human Tissues and Organ Donation and Transplantation or Article 9 of the Law on the Ethics of the Biomedical Researches regulate very shortly the right to the information on a person’s health and especially the protection of such information, as a principle, specifying that these issues are regulated by the Law on the Patients’ Rights and Compensation for the Harm Caused to Health. However, in the Law on the Psychic Health Care the right to the information and disputes regarding the receipt of it are regulated separately in detail.

Article 20 of the Law on the Psychic Health Care states that the patient or his representative has the right to complain the health care conditions for the administration of the psychiatric institution, Ministry of Health Care or the Court. In case of disputes between the patient or his representative and the administration of the psychiatric institution in relation to the compulsory hospitalization and compulsory treatment then the disputes are solved at the court. The law itself does not directly provide the possibility to appeal the decision of the psychiatric institution regarding the limitation of the right of the patient to the information.

The right to disseminate the information

Article 25 of the Constitution of the Republic of Lithuania provides that a person has the right to have one’s own beliefs and freely express them. There should not be any obstacles for a person to search, receive and disseminate the information as well as ideas. The freedom to express one’s beliefs, to receive and disseminate the information cannot be limited in any other way except by the law, in case it is necessary for the protection of health of a person, his honor and dignity, private life, moral and for the protection of the constitutional system. The freedom to express one’s beliefs and disseminate information is incompatible to the criminal activities – instigation of national, racial, religious or social hatred, coercion and discrimination, slander and disinformation. Moreover, Article 44 of the Constitution of the Republic of Lithuania provides that the state, political parties and public organizations, other institutions or persons cannot monopolize the mass media. The censorship of the mass media is forbidden

Part 3 of Article 25 of the Constitution consolidates that the limitation of the expression of beliefs, information freedom has always to be understood as a measure of the exceptional type. The exception of limitation means that it is not possible to interpret the grounds of the limitation possibilities provided by the Constitution through their extension. The necessi-

36 The second and the third periodical report following the international convention regarding the revocation of all types of racial discrimination. Approved by Decision no 538 of the Government of the Republic of Lithuania as of 3 May 2004.
The right of a person to search for information, receive it and disseminate is not absolute. The limitations of the right to the information is predetermined by the relation of that constitutional value to other lawful values, expressing the rights and freedoms of other persons as well as important needs of the society. One of such needs is the necessity to protect certain knowledge for the sake of the society or individual. These are the state, commercial, professional, technological secrets or knowledge on a person’s private life. The state declares especially important military, economic, political or other news the disclosure or loss of which may affect the national interests being the state secret. Seeking to prevent the publishing of such information the protection of them is provided by the law, the usage of them is limited. The Constitutional Court of the Republic of Lithuania by the Judgment as of 19 December 1996 in its statement on the limitation of the right to the information has emphasized that the protection of the common interests in the democratic state cannot deny the person’s right to information in general. The doctrine of human rights and freedoms as well the international and national law referring to it relates the solution of this problem to the rational relation of legal values that guarantees that the limitations will not violate the respective essence of the human right.

The European Court of Human Rights in the case Sunday Times v. United Kingdom acknowledged as reasonless the prohibition set by the court of the United Kingdom to publish the continuation of an article on the methods of the carried scientific researches and experiments of one pharmaceutical company after which the pain relieve preparation “talidomin” appeared on the market. After the publication the opinion has spread that the majority of mothers of the congenital children used this medication during their pregnancy period. By revoking the abolishment of the publication the court specified that families, having suffered the tragedy of “talidomin”, were vitally concerned to learn everything about the circumstances related thereto and possible solutions. The limits of the lawful public interest established with reference to the fact whether the receipt of information was important for the members of the society and/or were there any grounds to believe that the information would help the members of the society to protect their lawful and publicly significant interests.

The Law of the Republic of Lithuania on the Provision of Information to the Public provides the procedure for the receipt, preparation, publishing and distribution of the public information, the rights and responsibilities of the organizers, distributors, owners.

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and journalists of the public information. Article 4 of the mentioned law provides the right for each person to freely express their thoughts and beliefs. This right also includes the freedom to keep to one’s opinion, to collect, receive and disseminate the information following the terms and procedure established by the laws.39

The freedom of public information is guaranteed – the person has the unhindered right to look for, receive and disseminate the information and ideas, however, this right cannot derogate from the rights and freedoms of other persons. The freedom to express one’s beliefs, receive and disseminate the information cannot be restrained in other way except by the law if that is necessary for the protection of human rights, health, honor and dignity, private life, moral or constitutional system. The public officials are liable according to the laws for the impediment to the dissemination of the knowledge through the mass media and unlawful refusal to provide the information for the organizers of the public information as well as journalists. The freedom of public information cannot be limited in other way except the laws that regulate the state secret and its protection, service secret and its protection, commercial secret and its protection, the secret of person’s health (medical) and its protection, protection of person’s rights and his private life.40

The freedom of speech and beliefs, the freedom to receive and forward the information is not dissociated from the possibility to create one’s own means of public information (press, electronic means and others). In Lithuania there are conditions for the ethnic communities to use the mass media in their native language.

The right and freedom to get the information belongs to all the citizens, however, the mass media representatives are more active in exercising it and introduce themselves as the most important holders of such freedom and right. However, even the unlimited freedom of the mass media to get the information from the state and municipal institutions does not mean that all the citizens have the same freedom. The corrupted mass media can even prevent the citizens to get the information from the state and municipal institutions.

The Law on the Provision of Information for the Public provides also the limits of the competence for the Inspector of the Ethics of Journalists. The inspector examines the complaints of the persons concerned regarding the infringed honor and dignity by the mass media, regarding the violation of the right to the protection of the private life, also it evaluates how the principles of informing the public are observed that are provided by the mentioned law and others, as well as provides the suggestions for the state institutions for the improvement of their implementation. The Inspector of the Ethics of Journalists stated in the report of 2002 that in a course of a year he has received 126 complaints and applications as well as has made 13 decisions. Only 8 complaints have been unreasoned.41

40 Ibid.
Thus, the conclusion could be made that 105 complaints have been left unexamined. That means that the discussions about the work efficiency of such institution are meaningless.

The protection of juveniles, from the dissemination through the mass media of the information that is harmful to them is not safeguarded in Lithuania. As expressly noted by Dr. L. Meškauskaitė, until now the mechanisms of realization of that protection have not been implemented, the competence of institutions implementing the protection has not been delimited, the legal base has not been fully created. Thus the Law of the Republic of Lithuania on the Protection of Juvenile from the negative effect of the public information as of 10 September 2002 is not being applied in practice.\textsuperscript{42}

**Recommendations**

The adoption of different laws regulating the right to the information has been predetermined by the provisions of Article 25 of the Constitution of the Republic of Lithuania that exceptionally regulate the freedom of self-expression as well as the international obligations of the Republic of Lithuania in the field of human rights.

Different aspects of the right to the information are regulated by the Constitution of the Republic of Lithuania, the laws and other legal acts. However, there are two main problems that remain from the point of view of the receipt of information and dissemination of it. First of all, the wide discretion of the public servants should be reduced. Secondly, the current laws have to be improved. The obvious inconsistency of the laws in this field is noticed.

There are many complaints relating not only to the unreadiness to provide the information by the employees of the public and other institutions having at the disposal the public information as well as the bad quality of the provided information. The receipt of information very much depends on the activity and toughness of the concrete person when aiming to exercise this right. The employees of the institutions disposing of the public information must get familiar with the human right to receive information. Finally their work must be controlled.

The priority should be not the refusal to provide the information, but the provision of information that should be followed in each concrete case upon deciding whether there are grounds to limit the information and what is more important referring to the concrete circumstances for the democratic society – the right of the person to receive information or refusal to provide it.

I think that there are still quite positive changes happening in this field of human rights, having in mind that people more often address the state and municipal institutions in search for the needed information and receiving it in a good quality.

\textsuperscript{42} Meškauskaitė L. Mass Media Rights. Vilnius, 2004, p. 112.
THE RIGHT TO THE OWNERSHIP

Introduction

The ownership in all times has been acknowledged as the economic basis for the human rights and freedoms. It remains the essential (necessary) condition for the implementation of the freedom of persons’ economic activities. Therefore, the right to the ownership is attributed to one of the most important human rights. Article 23 of the Constitution of the Republic of Lithuania provides the immunity of the ownership. The rights to the ownership are safeguarded by the laws. Thus, the provision of the Constitution imperatively demands the consolidation of the immunity of the ownership. However, this right as other constitutional rights is not assigned to the absolute human rights. Part 2 Article 23 of the Constitution consolidates the underlying rule of the institution of ownership and therefore the rights to the ownership are being protected by the legal acts having the greatest legal power – the laws. All other legal acts in the field of regulation of the rights to the ownership have to comply with the laws. The state is under the obligation to legislation and based on that – protection of the ownership. To this end the entire legal system has been created consisting of the civil, administrative, criminal and other laws having the aim to assure the protection of different and dynamic ownership relations. While interpreting the principle of the right to the ownership consolidated by Article 23 of the Constitution the following aspects are of the most importance: immunity of the ownership, legitimate safeguarding of the rights to the ownership, the possibility to limit the ownership right towards the public needs. The right to the ownership is regulated by Article 1 Protocol 1\(^2\) of the European Convention for the Protection of Human Rights and Fundamental Freedoms where it defines that each natural and legal person has the right to the unhindered use of his/her ownership. Nobody can be deprived of the ownership, except cases when this is needed for the sake of the public interests and only following the conditions provided by the law as well as following the common principles of the international law. However, the former provisions in no way can limit the right of the state to apply such laws that in its view are needed for the control of the usage of the ownership referring to the common interest or seeking to guarantee the payment of taxes, other duties or fines. The United Nations Universal Human Rights Declaration\(^3\) also declares the right to the ownership and has been

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referred to by Article 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, this article deals only with the right to have the ownership and the prohibition to the willful deprivation of it. One of the most important instruments of the United Nations – International Covenant on Civil and Political Rights\(^4\) – does not regulate the right to the ownership at all.

The doctrine usually refers to the constitutional guarantee of the protection of the ownership as *status quo* as it primarily protects the ownership rights of the person. At the same time the broader conception of this Constitutional Guarantee is acknowledged. The lawful interests of the persons the ownership rights of whom have been violated by the occupational government are also protected by the constitutional provisions of the protection of the ownership. In this instance it is significant that the legislator starting from the very first day of the restoration of the independence of the Lithuanian State has acknowledged the succession of the ownership rights of the citizens of Lithuania that have been illegally violated by the occupational government. Following Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the understanding of which as well as the scope of application is explicated in the jurisprudence of European Court of Human Rights, the ownership is understood not just as a private ownership, i.e. movables and real property. In certain cases the ownership is interpreted also as the rights legally granted for a person that may be established. Though not being the ownership in the physical sense such property substantiated by the private law as stock or monetary claims related in a way of delict also fall under the applied understanding of the ownership. The right to use the ownership without hindrance encompasses also certain economic requirements based on the public law, for example benefits according to the compulsory insurance that is provided by the laws on the social protection. The rights to the pension benefits and other system of social protection are also safeguarded by Article 1 Protocol 1 at least on the level of the paid installments\(^5\). The guarantee of the protection of ownership right is each time more widely applied also at the jurisprudence of the Constitutional Court of the Republic of Lithuania. By the judgment as of 25 November 2002 the Court stated that Article 23 of the Law on the State Social Insurance Pension Benefits of the Republic of Lithuania (the wording as of 21-12-2000 and 08-05-2001) that allowed the pay of the incomplete pension benefits for the working pensioners contradicts the constitutional principle of ownership right\(^6\). In this case the person’s right to the ownership has been violated by the legislator after the adoption of the anti-constitutional law. However, the claim of E. Stasytis, the pensioner who has suffered from the mentioned law,


regarding the harm caused by the Law infringing the Constitution has not been satisfied by the Supreme Administrative Court of Lithuania, referring to Part 4 Article 72 of the Law on the Constitutional Court where it states that the powers of the rulings of the Constitutional Court in relation to the conformance of legal acts to the Constitution are directed to the future\(^7\). Following the logics of the inactiveness of the Judgment of the Constitutional Court antedate, it would mean that as long as the Constitutional Court acknowledges the law as infringing the Constitution, it remains lawful and causes no harm towards the rights of the citizens. After its acknowledgement by the Constitutional Court as infringing it again does not cause any harm as starting from that day it is not applied. In case the constitutional right of the person is being practically violated then the interpretation of the valid laws is forbidden in the legal state in such a way that it withdraws the possibility from the person to implement his/her subjective right to the recovery of harm with the help of the provided measures of the law\(^8\). Unfortunately, in this situation, despite of the acknowledgement of the violation of the right to the ownership, practically it has not been protected. At the moment there are more claims of the similar nature under the investigation at the court of Lithuania. The Constitutional Court by its judgment as of 13 December 2004 has acknowledged that the approved rules of the work pay of the public servants by the Government decision as of 20 May 2002 following which in cases when the state or municipal institution lacks the allotted means for the payment of the work pay for the public servants and applies the indexation ratio as well as calculates and pays the smaller work pay than that they deserve for the work done, violates the ownership right and equality of persons consolidated by the Article 23 of the Constitution. According to the Constitutional Court, the person who has performed the commissioned work gains the right according to the Constitution to claim for the full payment of the work pay provided by the laws or other legal acts in full and on time. This right of the person is safeguarded by the Law on ownership\(^9\). The fact that due to the improper laws the right of the persons to the ownership may be violated is also revealed by the public opinion polls. In 2003 the public opinion and market research company “Spinter Research” upon the order of Lithuanian Free Market Institute carried the opinion poll of enterprises of the companies on the tax administration and ownership protection in Lithuania. First of all, the owners and heads of the companies acting in Lithuania were requested to answer whether they are of the opinion that their ownership is safe in our country. The positive answers to this question formed only 14.9% of the respondents whereas 45.5% were of the negative answers. The Heads of the large companies are mostly unwarranted about the safeness of their ownership: even 55.9% of them think that their ownership is unsafe and just 11.8% considers it as safe. 40.9% of the respondents are of the opinion that the biggest danger for the safety of the ownership is caused by

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\(^7\) Judgment No. A5-264-03 of Lithuanian Supreme Administrative Court as of 27 June 2003.


inappropriate laws. A bit more than 21% of the respondents specified the inadequate (inappropriate) implementation of the laws as the danger to the safety of the ownership, 14.9% mentioned the illegal activities of the public officials, 11.9% noted the dishonesty of the business partners and only 6.3% of the respondents think that the danger to the ownership is caused not by the illegal activities of the representatives of the public authorities10. To sum it the entire conclusion could be drawn that the scope of the application of the guarantee of the protection of the right to the ownership is very wide. It is impossible to overview all the problems related to the right of the person to the ownership in the present work. Two topics have been chosen for the more detailed analysis: the problems of the restoration of the ownership rights to the extant real estate as well as the problems of the take over of the ownership for the sake of the public needs. The mentioned topics have been chosen not incidentally. 15 years have passed from the restoration of the independence of the Republic of Lithuania; however, the procedure of the restoration of the ownership rights to the extant real estate for the citizens is still not over. That causes huge discontent within the public as the citizens who cannot recover their ownership complain to different authorities. For example, at the office of the Ombudsman of the Seimas of the Republic of Lithuania more than a half of the complaints received are those related to the abuse of the office by the public officials during the process of the restoration of the ownership rights to the extant real estate. Not less problems are being caused during the process of the taking over of the ownership for the public needs that currently become more often due to the receipt of the structural funds from the European Union for the development of the communications infrastructure.

The restoration of the ownership rights to the extant real estate by the citizens of the Republic of Lithuania

The birthright to the private ownership was confuted by the occupational government after the carried nationalization and illegal expropriation of the private ownership in 1940 and later. Such license acts of the occupational government were illegal and the legal state or public ownership could not have formed based on the mentioned acts. By the ruling as of 27 May 1994 of the Constitutional Court stated that “the property withdrawn from people in such a way should only be considered as the property disposed of the state only de facto”11. By the Act as of 11 March 1990 “On the restoration of Lithuanian independent state”12 Lithuanian state emphasized its loyalty towards the universally accepted principles of the international law, guaranteed the rights of the person and the citizen. By acknowledging the succession of the ownership rights and their restoration, on 15 November 1990 the

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Supreme Council made the principled decision and approved the following provisions: the succession of the ownership rights of the citizens of Lithuania is unquestionably acknowledged; the citizens of Lithuania have the right to recover the property belonging to them in kind within the limits and procedure established by the law and in case the recovery is impossible to get the compensation. The issues on the ownership rights of the citizens to the extant real estate are regulated by the following main legal acts: the Law on the Land Reform of the Republic of Lithuania\textsuperscript{13}, the Law on the Restoration of the Ownership Rights to the Extant of the Real Estate of the Citizens of the Republic of Lithuania as of 1 July 1997\textsuperscript{14} (that has replaced the Law on the Procedure and Terms of the Restoration of the Ownership Rights to the Extant of the Real Estate of the Citizens of the Republic of Lithuania as of 18 June 1991 valid until that time with the number of amendments); the Law on the Implementation of the Law on the Restoration of the Ownership Rights to the Extant Real Estate of the Citizens of the Republic of Lithuania as of 2 July 1997\textsuperscript{15}, the Law of the Republic of Lithuania as of 16 June 1998 on the Amounts, Origin, Payment Terms and Procedure of Compensations for the State Redeemable Property also the Guarantees and Privileges, Provided by the Law on the Restoration of the Rights of the Citizens to the Extant Real Estate\textsuperscript{16} as well as other post-regulatory legal acts. Following the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate the restoration of the successive ownership rights is based on the provision that the extant real estate is returned to the citizens of the Republic of Lithuania and in case there is no such possibility then fair compensation is applied. The Constitutional Court has stated that this provision does not contradict the principles of immunity of the ownership and protection of the ownership rights as the fair compensation also assures the restoration of the ownership rights\textsuperscript{17}. The Constitutional Court having investigated the conformity of the articles (and their parts) of the restitution laws to the Constitution has stated that the legislator, having the discretion to establish the terms and procedure of the restoration of the ownership rights to the extant real estate by laws must take into the consideration the changed social, economic and other conditions. While acknowledging the succession of the ownership

rights and restoring the ownership rights the continuity of the formed tenancy relations cannot be denied. The objective economic and social changes in a course of a half century period of time predetermined the concrete possibilities for the restoration of the ownership rights (limited restitution). The limited restitution of the ownership rights manifests through the methods of the restoration of the ownership rights and limited list of successors in case the owners of the property are deceased. The list of the successors according to the provisions of the law of succession is longer than the list of the persons who could pretend to the restoration of the violated ownership rights in case of death of the owner of the property.

From 1991 when the process of the restoration of the ownership rights was started the legal regulation of these relations was changed many times. Quite many amendments to the legal acts related to the restitution were adopted namely due to the established contradiction of the mentioned provisions of the legal acts to the Constitution by the Constitutional Court. By the ruling as of 2 April 2001 the Constitutional Court acknowledged that Part 2 of Article 5 of the Law on the Restitution of the Ownership Rights of the Citizens of the Republic of Lithuania to the extant real estate within the scope that provides that the free (undeveloped) land is not returned in kind in case the citizen has no dwelling-house or any other construction apart from the land that used to be in possession belonging by the ownership right, though there is no concrete public need for that free (undeveloped) land, also Part 3 Article 12 of the law within the scope that provides that part of the land remaining after the unrequited transfer to the ownership of the citizen of the usable land plot at the dwelling house or other construction which is on the land plot possessed upon the ownership right is redeemable, although there is no concrete public need for the aforementioned unoccupied (undeveloped) land, contradicts Part 3 Article 23 of the Constitution of the Republic of Lithuania. The provisions of Article 5 of the Law on the Restitution of the Ownership Rights to the Extant Real Estate of the Citizens of the Republic of Lithuania have been changed after the mentioned ruling of the Constitutional Court and it has been established that the ownership rights to the land, within the territories connected to the cities by the established procedure till 1 June 1995, are being restored by the unrequited transfer into the ownership by the citizen having the dwelling houses or other constructions belonging to them by the ownership right, their used land plot of the specified borders at the mentioned constructions by the territory planning documents or the land plot used by them for other purposes (gardening and etc.), specified in the territory planning documents, except on the territory of the National Park of Curonian Spit, but not bigger than 0.2 ha in Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas and not bigger than 0.3 ha in other cities. When the land plot at the constructions is in the territory of the land that belonged by the ownership right and is larger than respectively 0.2 ha or 0.3 ha, in case the citizen wishes so, then the latter

larger land plot is transferred into the ownership, also the free (unbuilt) land plot possessed by the owner and having remained at the land plot in use (when there are a few citizens, having the rights to the restoration of the ownership rights to the land, – in case they request so, this remaining free (unbuilt) land plot, beside the constructions, being in use is transferred unrequited into the joint ownership or the ownership of the constructions), irrespective of the prepared territory planning documents of that locality, but not more than 1 ha of the total area in Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas and not more than 1.5 ha of the total area in other cities\textsuperscript{20}. This Judgment of the Constitutional Court has been very important from the point of view of the protection of the ownership right of persons as revealed wider possibilities for the repossess the land in the cities possessed before the nationalization.

On 4 March 2003 the Constitutional Court made a judgment where it acknowledged that the provision of the amendments and supplements as of 15 January and 29 October 2002 to the Law on the Restoration of the Ownership Rights to the Extant Real Estate, following which returnable and already returned for the owners the dwelling houses (parts of them, apartments), in case there are tenantry living who (as specified by the law) could not implement their right to the privatization, are taken for the public needs, redeemed by the state and are not returned in kind for the owners, contradicts the Constitution\textsuperscript{21}. The court has stated in the latter judgment that the right of the citizens provided by the procedure and terms of the laws to restore the violated ownership rights to return in kind the dwelling houses (their parts, apartments) arises from the ownership right which is a birthright, constitutional principle of the protection of the ownership right as well as the restitution laws adopted by the Seimas. Having made a decision to restore the ownership rights, the state has to follow the accepted obligations and provide conditions seeking for the concrete realization of this right of the citizens. The state has an obligation to act in such a way that the guarantees provided by the state for the tenants would be realistically implemented and the problems of provision of tenants with the dwelling-places could not be solved for account of the owners of the returnable or already returned residential houses (their parts, apartments). At the same time the Constitutional Court has noted that the laws by which the state provides the guarantees for the tenants, have to be supported by the material and financial resources. Otherwise, the laws become inactive, it is not possible to make use of them. In such a way the person’s trust in the state and law is shattered, the preconditions are provided for the violations of human rights. As the obligations undertaken by the state for the tenants have not been fulfilled yet, the Court has stated that the lawful expectations of the tenants, living at the returnable (returned) dwelling houses (their parts, apartments) have been violated.


After the fulfillment of the petition of the citizen, on 12 October 2004 by the Law IX-2490 the amendment of Article 10 of the Law of the Republic of Lithuania on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate was adopted, providing the possibility to restore the provided term by the law for the submission of applications regarding the restoration of the ownership rights to the extant real property. Following Part 1 Article 10 of the valid law until that time, the ownership rights have been restored for the citizens who have submitted the applications for the restoration of the ownership rights to the real estate by 31 December 2001. The citizens, having missed the specified terms for submission of applications, used to lose their right to the restoration of their ownership rights following the latter law (the term is eliminated). Following the new wording of the latter law, the citizens, having missed the terms specified by the law due to the reasons that the court has acknowledged as important, the missed term would be restored. The latter draft law has been opposed by motivation that the eliminated terms are needed seeking to ensure the stability of legal disputes and guarantee the lawful expectations as well as legal reliance of the subjects taking part in the economic turnover. Referring to the fact that following the legal regulation provided by the draft law the restoration of the ownership rights would be prolonged for the unlimited time, there have been fears that this would prevent the implementation of the political agreement to finalize the restoration of the ownership rights, prepare the favorable legal bases for the development of the economy market, provided by chapter IX of the Government Programme for 2001–2004 approved by the Resolution of the Seimas of the Republic of Lithuania as of 12 July 2001 “On the Programme of the Government of the Republic of Lithuania”. However, it has been decided that the defeasible terms do not correspond the continuity of the ownership rights of the citizens of the Republic of Lithuania gained before occupation, provided by the regulatory acts. Therefore, such provision violates their rights and lawful interests. Moreover, another amended project of this article is under the current discussions, providing that in case the court, following the procedure established by the Civil Procedure Code, makes a judgment regarding annulment of the court judgments adopted following the laws of USSR (LSSR), based on which the buildings and (or) their pertinent have been forfeited as wantonly built and used for the receipt of the non-labor income, the ownership rights to the mentioned buildings and (or) their pertinents are restored for the citizens whose applications for the restoration of the ownership rights to the real estate have been submitted following the procedure established by the mentioned law by 31 December 2006. The missed term may be renewed for the citizens, having missed the specified term due to the reasons, acknowledged by the court as important. The aforementioned amendment has been prepared after the difficulties during the interpretation of the provision of Paragraph 1 Article 1 of the Law of

the Republic of Lithuania for the Restoration of the Ownership Rights to the Extant Real Estate that the ownership rights are restored also to the real estate that following the laws of the USSR (LSSR) has been treated as the “illegal forfeiture”. The currently valid legal acts do not provide the explanation how to interpret the concept of “otherwise illegally forfeited” property. Moreover, according to the data of the Association on Apartment House Owners of the Republic of Lithuania, during the Soviet times the civil cases have been specially fabricated for persons disloyal to the Soviet Government seeking to unrequitedly nationalize the real estate possessed by the owners, following the court procedure, by shading with the help of the concept of the wanton constructions or usage of property for the receipt of the non-labor income (Articles 114 and 116 of the Civil Code of LSSR). Currently, the Civil Procedure Code of the Republic of Lithuania does not provide a possibility for an owner to address the court regarding the annulment of the judgments made by the Soviet courts, seeking to acknowledge the illegally forfeited ownership due to the wanton constructions or used for non-labor income. Therefore, the prepared amendments of the Civil Procedure Code of the Republic of Lithuania that would provide the conditions for the annulment at the courts of the judgments of the Soviet courts that are incompatible to the current law and order of the Republic of Lithuania and restore the ownership.

Currently the process of restoration of the ownership to the land for the lawful owners is not over yet. According to the data of the Ministry of Agriculture of the Republic of Lithuania\textsuperscript{25}, starting from 1 January 2005, the beginning of the land reform, there were 745,5 thousands of applications for the restoration of ownership right to 4.2 million ha of land in rural areas have been submitted by the citizens. Until 1 January 2005, there were 688 thousand of citizens of whom the ownership rights in the rural areas have been restored to the area of 3.73 million ha: for 574 thousand of citizens 3 million ha have been returned in-kind or by equivalent land plots, whereas 113.3 thousand of citizens received money or securities for 0.67 million ha of the state redeemable land according to the decisions made. That forms 90.86 % of the specified area in the applications for the restoration of the ownership rights. In other words, the land has been returned for 9 citizens out of 10 willing to restore the ownership to it. The least of the ownership has been restored in Vilnius area – 76.77 %, in Utena district – 84.61 %, Klaipėda district – 86.95 % of the specified area in the applications. Altogether, the ownership rights have not been restored in the rural areas of the country to 0.47 million ha of the land or forest. Until 1 January 2005 the works of restoration of ownership rights and other works of the land reform mainly have been finished in 300 cadastral areas (23% of all the cadastral areas).

During 2004 the works of the restoration of the ownership rights of the citizens to the land, forests and ponds in the country have been significantly fast in the districts of Klaipėda, Vilnius, Alytus, Kaunas. The percent of the restoration of the ownership rights to the plot increased by 5.23 of point, in Vilnius district – by 4.77 points, in Alytus district – 4.05 points, in Kaunas district – 3.42 points (the latter rate has increased by 3.32 points in the country during the same period of time).

\textsuperscript{25} All the statistics related to the restoration of the ownership right has been received from the National Land Council under the Ministry of Agriculture.
By 1 January 2005 the ownership rights to the land of private farming have been restored for 129.2 thousands of citizens; the sales-purchase agreements of the public land have been concluded with 33.5 thousand of citizens. There are 52.9 thousand of citizens whose ownership rights to the land of private farming have not yet been restored and with 49.4 thousand of citizens the sales-purchase agreements have not been concluded. 70.2 thousand of citizens do not wish to privatize the land used for the private farming.

The rapidity of the works of the restoration of the ownership rights for the citizens during 2003–2004 has slowed down due to the necessity to implement the land reform works: prepare and implement the land planning projects of the state leased land reform, privatization of the land for the private farming that requires lots of labor expenditures (the land for private farming is in 5–7 land plots and in different places of the rural territory). Moreover, last year, planners helped to declare the areas of crops for the inhabitants of the country during April, May and June.

It is provided that during 2005 the return of the land will be over in more than 700 cadastral territories (or 54% of all the number of cadastral areas). On the whole there are 1289 cadastral territories in Lithuania. The most complicated and most labor expenditures requiring works of the land reform are being carried in Eastern Lithuania (especially in the regions of Vilnius, Šalčininkai, Trakai, Ignalina). The procedure of the restoration of ownership rights of the citizens in this part of Lithuania will continue during 2006–2007. After the restoration of the ownership rights to the land, forest and ponds, the minor landed property has formed – one owner gets about 6 ha of the land and the land plots for the private farming are even smaller. Seeking to provide the conditions for the farmers to compete with other farmers of EU, it is needed to form the rational landed property of farms have to be formed and that could be most efficiently achieved through the land consolidation projects. It is provided to start drafting the land consolidation projects already this year and they will be funded following the Lithuanian 2004–2006 Activity “the Redistribution of the Land Plots” of the Common Programming Document of the Measure “the Encouragement of the Readjustment of Rural Territories and Development”.

The following factors had negative influence over the restoration of the ownership rights to the land, forest and ponds:

1. From the very beginning of the reform this process has been impeded by the change of the teh laws and post-regulatory acts. For example, on 1 July 1997 the Law of the Republic of Lithuania on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate has been changed 18 times from it entering into force. Many changes have been made also in other legal acts regulating the restitution.

2. There are disputes at the courts regarding the restitution of the ownership rights to the land among the applicants. Most often these are the disputes regarding the establishment of the facts having the legal power (who was the owner of the land until 1940, what land was managed and where, etc). According to the data of the National Land Council under the Ministry of Agriculture, the applicants to 105 thousand of ha have not yet submitted the documents proving the ownership rights and kindred with the owner of
the possessed land. That forms 15.6% from the remaining area to which the ownership rights have not been restored. The circumstance about who was the owner of the nationalized or otherwise forfeited property after 15 June 1940 following the laws of USSR (LSSR) has to be established following the legal acts valid on the respective territory of the Republic of Lithuania until 15 June 1940\textsuperscript{26}. The averment procedure is impeded also by the fact that after many years after the nationalisation it is difficult to find the documents proving the ownership in the archives. There are cases, when the citizens do not agree with the fact that following the valid laws their rights cannot be restored to the extant real estate (e.g. Article 2 of the Law on the Ownership Rights of the Citizens to the Extant Real Estate provides the limited list of the successors who could apply for the restoration of the ownership rights) and asperse the officials of land planning as well as the courts regarding the violation of their rights\textsuperscript{27}.

3. There is a number of cases when the citizens demand for the restoration of the land (forest) in the former place, although it is attributed for the state redeemable land. In such cases in the cities and urbanized territories the problem of public and private interests is faced in such cases, when the citizens require the in-kind restoration of the land on the territories that are being used and are provided for the use of common public use or meeting the needs of the public, i.e. schools, kindergartens, sports and recreation fields, etc. In the sense of the protection of human rights it is important that the legal acts regulating the land reform, restoration of the ownership rights to the Extant Real Estate as well as talking of the ownership for the public needs, provides the priority right for the private interest. Therefore, in the aforementioned cases, the ownership has first of all returned for the citizens and only then taken for the public needs after the fair compensation for it.

4. Part of the citizens by 1 April 2003 have changed their opinion regarding the way of the restoration of the ownership rights. Therefore, the already made decisions have been annulled regarding the compensation for the land redeemed by the state and new decisions made. The terms for the opinion change have been provided by the Laws amending the Law on the Ownership Rights to the Extant Real Estate. After granting the possibility for the applicants to change their opinion due to the way of the restoration of the ownership right, it is expected to have compensation, under more favorable conditions, for the extant real estate that cannot be returned in-kind. However, that causes also negative consequences – provide the conditions for delay of the process of restoration of the ownership rights. There are also many cases when during the implementation of the projects of land reforms the citizens have changed their opinion regarding the boundaries or place of the projected land, forest, despite they have already coordinated the boundaries and areas of the mentioned projected land, forest or ponds. Part of the citizens who wish to restore the ownership to the land that following the laws is attributed to the redeemable land by the state have not chosen other ways of compensation for it.

\textsuperscript{26} Civil case No 3K–7–4/1999 of Lithuanian Supreme Court.

\textsuperscript{27} The official letter of A. Dumčiaus, the member of the Seimas of the Republic of Lithuania, for the Law Institute “On the Problems of the Restoration of the Ownership Rights to the Extant Real Estate”, 08-06-2005.
5. The uneven and insufficient funding of the works of the land reform in the previous years (2000–2002) has not induced the companies, carrying the land reform, to look for additional specialists for performing those works. Therefore, the insufficient number of them slows down the restoration of the rights.

From September 1991 till 1 January this year, more than 58 thousand of citizens have submitted the applications for the restoration of the ownership rights to 64 thousand of ha of the land on the territory of the cities. There were 41.8 thousand of decisions made and that forms 71.86% of number of applications of the citizens.

By 1 January 2005 there were 58183 of the applications of the citizens submitted for the restoration of the ownership rights to 63523.6 ha of the land on the territory of the cities. There were 41846 of decisions, i.e. 71.92% of all the submitted applications of the citizens. There were 17338 decisions made for the restoration of the land in-kind and transfer unrequited into the ownership of the present premises or the land plots used for other purposes and 10060 of the decisions for the transfer unrequited into the ownership of the new land plots for the individual construction in the city. There have been 6773 conclusions prepared and issues regarding the unrequited transfer of the equivalent land plots at the rural residiency (67619.25 thousand of litas of the land value). The total value of the land plots that are transferred for the land possessed in the cities forms 67.7 million litas.

The least number of the applications satisfied during the restoration of the ownership rights in the cities of Vilnius and Kaunas. Although till 1 July 2005 the ownership rights in Lithuania have been restored for 92% of the land specified in the applications. However, in Vilnius this number reaches slightly more than 50%. That causes serious problems as the land in these territories is the most valuable. Therefore, it is especially important to properly protect the rights and lawful interests of the owners of the land.

Apart from the aforementioned, the problems impeding the restoration of the ownership rights to the land in the cities arise due to the fact that the municipalities have not prepared the sufficient number of the detailed plans of the land plots for individual constructions that would be transferred for the citizens unrequitedly into the ownership for the land possessed in the cities, the approval of the plans of the land plots returned in-kind are retarded (that is especially relevant in Vilnius and Kaunas), the preparation of the plans of the premises and land plots used nearby other buildings is delayed, the contradictory

28 The similar problems of the restitution of the land in Lithuania have been noticed by foreign researchers. R. Giovarelli and D. Bledsoe have distributed the main problems related to the restitution of the ownership rights in their report into 3 categories: 1) the land that belonged for the peasants and other private persons until the entering into force of the Law of the Republic of Lithuania on the Land Reform, have become the object of discussions between the latter persons and claimants for the restoration of the ownership rights to the land; 2) the regulatory base, related to the terms and groups of people who have the right to restore their ownership right, have changed for many times. At the same time there were even a few different laws applied and the different versions of the law have been applied for the claimants, depending on the term of the submission of applications; 3) the administrative problems also impeded the restoration of the ownership rights to the land that encompassed the complicated system of land evaluation during the Soviet time, the usage of the land maps instead of “orto-foto” maps, covering 80% of Lithuanian territory. Giovarelli R., Bledsoe D. Land Reform in Eastern Europe Western CIS, Transcaucuses, Balkans, and EU Accession Countries [interactive]. Seattle, Washington. October, 2001. (V. EU Accession Countries). [referred to on 10 March 2005]. Internet search: http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/007/AD878E/AD878E10.htm.
landplanning projects to the laws are prepared. The municipalities state that they have no enough means for these works and do not manage timely prepare the plans of the land plots during the established terms.

The application of equivalence principle is not clearly regulated by the regulatory acts when restoring the ownership rights and returning land in-kind or granting the unrequited new the state land plot. That is especially important in the cities when the land of agricultural purpose possessed until the nationalization is returned in-kind with the fully equipped engineering or communication infrastructure from the municipal or private investor’s means. Seeking to solve the latter problem, the amendments to the decision of the Government of the Republic of Lithuania “On the Procedure and Terms of the Implementation of the Law of the Republic of Lithuania on the Restoration of the Ownership Rights to the Extant Real Estate” and the methodology of establishment of equivalence approved by the decision of the Government should be prepared.

According to the data of the Heads of Districts the ownership rights to the land, in case of monetary compensations, have been restored for 123 thousand of citizens. From the beginning of the land reform till 1 January 2005 there were 597 million litas allotted for the payments, 390 million of litas out of which during 2004. Last year the whole amount of compensation has been paid for 2390 of persons suffering from serious diseases. According to the data of the state enterprise State Property Fund, from July 2002 till October 2004 there were 5770 of citizens who have received the compensations in securities (shares) for 124.2 million of the state redeemable real estate. Seeking to pay the compensations following the terms specified by the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate, i.e. until 1 January 2009 there were 217 million litas allotted in the state budget of 2005–2006 for the state redeemable land, forest and ponds; in 2007–2008 – 158.5 million litas. Totally there are 751 million litas unpaid for the citizens. 117 million litas out of that number need to be paid during a shorter period of time, i.e. until 1 January 2007 for persons following the Law on Compensations whom the privilege is applied, the compensations for the state redeemable land, forest and ponds.

From 1994 the lengthy payment of the compensations for the state redeemable real estate increases the social tension and dissatisfaction of the citizens having the right to the compensation. On 16 June 1998 the Seimas of the Republic of Lithuania adopted the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate\(^29\). The latter law provides that monetary compensations are being paid each year in equal parts from the moment of the adoption of a decision for the restoration of the ownership right

and the concrete terms specified during which the payments have to be made. The latter terms depended on the type of property and the categories of persons – till 2002, 2006 and 2010. In 1999 the law amending the Article 7 of the latter law was adopted that even more concretizes the payment procedure as it provided that annual part of compensation should have been paid every quarter in equal parts. However, on 23 December 1999 the Seimas of the Republic of Lithuania again made an amendment to the aforementioned Article 7 of the law following which the new provisions have been consolidated: the Government establishes every year the payment terms, amounts and procedure of separate objects of the real estate. The Government establishes that referring to the financial rates of the budget as well as the financial resources of the state. The terms for payment of monetary compensations have been prolonged. The Constitutional Court of the Republic of Lithuania, when analyzing the constitutionality of the provisions of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate, has established the contradiction to right of persons to the immunity of ownership consolidated by Article 23 of the Constitution and other constitutional principles. On 23 August 2005 by the judgment the Court has stated that the state, having decided to restore the ownership rights to the extant real estate, also in such a way, when the monetary compensation is paid, has properly fulfill its obligations, following the established terms; sufficient financial and other means of the state have to be allotted. The terms established by the law following which the payment of monetary compensations should be finished may be prolonged only in exceptional cases, when due to the special circumstances the state experiences especially hard economic-financial situation and due to the fact that in case the terms previously provided by the laws during which the payment of the monetary compensations have to be finished are not prolonged, the bigger harm would be caused for the values safeguarded by the Constitution than that arising from non-prolonged terms. The Constitutional Court has noted that even in case when the necessity appears due to the objective reasons to prolong the terms of payment of monetary compensations, legal regulation should be such that it would be clear what part of monetary compensation and when has to be paid for the persons having the right to such compensations. The latter judgment of the Constitutional Court shall come into force on 30 December 2005. Therefore, until that time the legislator receives an obligation to amend the


anticonstitutional provisions of the aforementioned law. In 2003 the new provision of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate has been adopted that the term of payment of compensations for children, parents and spouses of the deportees, political prisoners, resistant and the disabled of 1st group is prolonged until 2009 without providing any motifs. More than 30% of persons, being in the lists, are at the age of 85 and more and the privileges of compensations are not applied for them; approximately 23% of people with the non applied compensation privileges have inherited the monetary compensations as suffering from serious diseases or the disabled of the 1st group, or they are in great need of the endoprothesis operations. The payment of compensation for these persons is provided until 2009 and 2011. The latter persons address the Ministry of Agriculture, Ministry of Finance and Ministry of Social Protection and Labour with the requests for help or demands for the payment of the compensations belonging for them. Seeking to at least partially solved the latter problems on 26 May 2005 the Amendment of Article 21 of the Law of the Republic of Lithuania on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate was adopted providing the prolongation of the term of the expressed will to the monetary compensation for the state redeemable real estate to the compensation in securities. Following the previous procedure the citizens were able to change the expressed will to receive monetary compensations for the state redeemable real estate and request the compensations in securities until 1 July 2004. After entering into force of the amendment of the aforementioned law the latter term has been prolonged until 31 December 2005. The compensation in securities (shares) has been favourably accepted by the public. Therefore, it is expected after the prolongation of the term for changing of the expressed one’s will and providing the compensations in securities (shares), the debt of the state for the citizens will decrease.

Due to the often change of the regulatory acts, the issues related to the restoration of the ownership solved by the Constitutional Court of the Republic of Lithuania, the contradiction of the provisions of the Law on the Restoration of the ownership Rights of the Citizens to the Extant Real Estate to the Constitution of the Republic of Lithuania and due to the unprepared programme of the Government for the provision of the state guarantee for the tenants, the issue of the restoration of the ownership right to the dwelling houses where the tenants reside has not been solved for a long period of time. Currently the

majority of the lease contracts with part of the owners have not been signed as the owners have not finished the legal registration of returnable houses, have resold or redonated the returnable houses, have changed the place of residence, have left abroad, therefore, it is complicated to find them. Some owners do not sign the lease agreement due to the small lease price and part of them address the court or do not agree with the terms of lease agreement as there is no obligation of the municipalities in the agreement to repair and maintain the houses as well as the attributed territory. There are cases when the owners do not sign the lease agreement as they are certain that the process of the movement of tenants will be longer than.

Another problem relates to the fact that tenants and owners often take the guarantee letters issued by the state. They do not respond to the repeatedly and a few times sent encouragement in a written form by the Division of the Restoration of the Ownership Rights to arrive at the municipality and take the state guarantee letters. When the employees of the division bring these documents for the tenants and owners, nobody opens the doors, it is motiveless refused to sign the state guaranteed document, it is refused to accept it. Referring to such situation, the Division of the Restoration of the Ownership Rights of Kaunas City Municipality Administration suggested changing the provisions of regulatory acts. Currently there is no procedure provided by the currently valid regulatory acts, following which the guarantee letters are handed for the owners or tenants. As the claimant state, in such case the notices are sent for the owners and tenants to take the state guarantee letters. Following Article 9 of the Guarantee Law, it is obligatory to issue the guarantee letters for the tenants and owners. That means that the issue of the guarantee letters is one of the conditions, in case of non-fulfillment of it the further process of restoration of the ownership cannot be implemented. Trying to solve the formed situation it is possible to apply a few methods of handing of the guarantee letters: to provide the liability for the non-taking the guarantee letter; on the whole suspend the process of restoration of the ownership rights; not to suspend the restoration of the ownership procedure and in case of non taking the guarantee letters to make a presumption that the owner or the tenant already possesses them; to constrainedly obligate the owner or the tenant to sign the guarantee letters. In case

36 For example, in 2004 there were 107 orders adopted of the Head of Administration of Kaunas city municipality regarding the restoration of the ownership rights of the citizens, out of which 46 orders regarding the in-kind return of houses, 32- regarding the partial return of houses, 61- regarding monetary compensation, compensation in securities (shares), other equivalent property for the non-returned in-kind dwelling houses, their parts, apartments. In 2004 there were 1160 state guarantee documents issued. Out of which 398 for the owners, 762 – for the tenants. The state guarantee documents have not been issued for 677 families of the tenants. 81 families of the tenants, residing at the houses that are returnable for the owners, as the tenants have not provided all the required documents. 596 state guarantee documents for the tenants have been issued after the restoration of the ownership rights and the houses have been returned in-kind. The lease agreements of the returned for the owner the dwelling house, its part or an apartment have been concluded with 202 owners of the houses or apartments. – The reference of the Ombudsman of the Seimas of the Republic of Lithuania No. 4D-2005/04-173 “Regarding the complaint of Mykolas Vitkauskas against the Kaunas City Municipality”, Vilnius, 25-02-2005.

the guarantee letter is not taken without any important reasons during a certain term, it is possible to think that the owner or the tenant misuse their right. Therefore, there is a basis for the establishment of certain constraint of their rights. Currently there is a draft law amending and supplementing Article 9 of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate that suggests the provision that the non-signed state guarantee shall enter into force after signing of it of the representative authorized by the municipal executive institution and after informing the possessor (possessors) of the state guarantee via registered letter or publication. The latter guarantees are implemented following the same established order as they have been signed38.

The Association on Apartment House Owners of the Republic of Lithuania as well as single citizens complain that the rent payment of the specification of the market value of the returnable apartments for the rent of these apartments has not been and is not calculated, although, the apartments took a jump even twice39. The rent payment is calculated from the old value of the apartment. Implementing the state guarantees, referring to the Decision No 793 of the Government of the Republic of Lithuania as of 5 July 2000 “On the Implementation Procedure of Article 9 of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate”40 approved by the provisions of paragraph 3 of the succession of the implementation of the state guarantees for the owners and tenants of the dwelling houses, their parts, apartments, accountancy and control, the market value of the residential premises leased by the tenants is specified not earlier than 3 months before the implementation of the state guarantee. According to the owners, referring to the fact that currently the market value of the residential premises is significantly higher, they should receive bigger rent payment, calculated from the updated value. However, the rent payment for the owners is calculated referring to the provisions of Paragraph 125 of the Implementation Procedure of the Law of the Republic of Lithuania on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate approved by the Decision No 1057 of the

38 Explanatory letter regarding the draft law on the amendment and supplement of Article 9 of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate [interactive]; [referred to on 30 August 2005]. Internet search: http://www3.lrs.lt/cgibin/preps2?Condition1=259768&Condition2=.

39 The official letter of the Ombudsman of the Seimas of the Republic of Lithuania for the Deputy Chairman of the Human Rights Committee of the Seimas of the Republic of Lithuania No 4D-2005/04-173/30-1016 “On the establishment of the amount of lease payments for the owners by the tenants living at the houses, their parts or apartments”.

Government of the Republic of Lithuania as of 29 September 1997 “On the Terms and Conditions of the Law of the Republic of Lithuania on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate”\textsuperscript{41}. Following this paragraph, the executive institution of the municipality approves the maximum monthly rent payment, referring to the market value of the leased premises that is specified in the state guarantee document issued for the tenant. Before implementation of the guarantee for the tenant, after the specification of the value of the rented residential premises by the guarantee document, issued for the tenant, the specified value is not changed as there is no regulatory or any other legal grounds for this. Therefore, the maximum rent payment approved is not changed and at the same time – it is not recalculated. Moreover, the recalculation of the rent payment may take a few months. Therefore, the state guarantee for the tenant will be implemented faster than the recalculation of the rent payment. Seeking to solve the problem of the rent payment, it is important to change the provisions of the aforementioned legal acts. Part of the tenants-possessors of the state guarantees wish to receive monetary compensation, but not by other real estate. The currently valid Law of the Republic of Lithuania on the Restoration of the Ownership Rights to the Extant Real Estate No VIII-359, adopted on 1 July 1997 provides the possibility that the state may provide the compensation for the real estate for the owner in different ways: in-kind, other real estate, securities or money. Whereas, the tenants have no possibility to receive from the state the securities, money. For them the municipalities purchase other real estate from the means allotted by the state, first of all register it in the name of municipality and only then provide it for the tenants. Therefore, it is not expedient to load the self-governance institutions with the additional work when looking for the accommodation meeting the needs of the tenant, when the tenant can and wishes to take care himself of this. Moreover, part of the tenants have other real estate or could live at the relatives. Therefore, monetary means are more needed than the real estate. The tenant, willing to turn the object of the state guarantee into the money, face many problems, wastes lots of time as well as experiences huge monetary losses. Some guarantee possessors sell the guarantee letters for smaller price that the evaluated least premises and others simply engage into the resale. The means for the implementation of the state guarantees, when implementing the state or municipal guarantee of the rent of the residential premises, including the value of the leased premises into the rent payment, are provided by the law only for covering the rent payment and the usage of the means allotted for the implementation of the guarantee is not provided for the purchase of the leased residential premises. Whereas the municipalities have no free residential premises that could lease for these tenants and cannot implement the latter state guarantees. Seeking to solve the mentioned problems the draft law on the amendment and supplement of Article 9 of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the

Restoration of the Ownership Rights of the Citizens to the Extant Real Estate has been submitted for the discussions at the Seimas that will help to simplify the implementation of the state guarantees.\(^{42}\)

Apart from the aforementioned reasons, due to which the restoration of the real estate for the citizens is lasting too long and is not smooth, the citizens often complain both about the bureaucracy of the officials or misuse. Having analyzed 100 of the citizens by the Ombudsmen of the Seimas from 2001\(^{43}\) and the press releases, it is possible to exclude the main problems, the analysis of which is provided below.

Due to the inaction of the officials of the planning division the restoration of the ownership rights is delayed, the terms provided by the regulatory acts are not followed during which the applications regarding the restoration of the ownership rights have to be analyzed and decisions made, and from the day of submission of documents confirming the ownership rights to prepare the case for the restoration of the ownership rights, the issue of the documents proving the ownership rights is delayed. There have been a few cases established when the court judgment is not implemented for the restoration of the ownership rights, due to different reasons it is delayed to return the ownership after the restoration of the ownership rights. Namely such violations have been established also by the European Court of Human Rights, analyzing the case of S. Jasiūnienė.\(^{44}\) The court, based on the provisions formulated in the previous judgments regarding the protection of the ownership, related the right to the ownership with the rights to the fair hearing of the case. Referring to the complaint that the government institutions have not implemented the judgment of the court of 1996, the Court has noted that the requirement may correspond to the concept of the ownership provided by Article 1 Protocol 1 of the Convention, in case it is sufficiently defined for its implementation. As the court judgment of 1996 has obligated the government institutions to provide the compensation for a complainant in land or money, the Court has acknowledged that by such judgment the complainant has been granted the enforceable right of demand, corresponding the concept of the ownership of Article 1 Protocol 1. The Court has decided that the circumstance that the judgment with respect to the complainant has not been implemented, is treated as interference to her right to exercise her right to the ownership without any hindrance. The government institutions, being incapable to implement the judgment have prevented the complainant to receive the compensation that she could reasonably expect for (as, for example, such compensation has been granted for her sister). As the Government has not provided any justification for the

\(^{42}\) Explanatory letter regarding the draft law on the amendment and supplement of Article 9 of the Law on the Amount, Source, Payment Terms and Procedure of Compensations for the State Redeemable Real Estate also the State Guarantees and Privileges Provided by the Law on the Restoration of the Ownership Rights of the Citizens to the Extant Real Estate \[interactive\]; \[referred to on 30 August 2005\]. Internet search: http://www3.lrs.lt/cgibin/preps2?Condition1=259768&Condition2=.

\(^{43}\) Complaints are provided in the newsletters of the Ombudsmen Office of the Seimas of the Republic of Lithuania \[referred to on 10 May 2005\]. Internet search: http://www.lrski.lt/index.php?p=0&l=LT&n=54. The work contains the summarized complaints acknowledged by the Ombudsmen of the Seimas as grounded and different violations stated.

\(^{44}\) Case of Jasiūnienė v. Lithuania. Application No. 41510/98.
reasoned intervention into the usage of the right, the Court has acknowledged Lithuania having violated Article 1 Protocol 1 of the Convention. Moreover, considering that the right to the fair hearing of the case provided by Article 6 of the Constitution cannot be efficiently protected, in case the court judgment is not implemented, the Court has acknowledged also the violation of Article 6 of the Convention.

There is no defined procedure following which the citizens would have the right to get acquainted with the list of the land plots transferred unrequitedly for the citizens; the planning officials do not provide the persons with the comprehensive information related to the right to the monetary compensation for the state redeemable land, forest and ponds. Currently in Lithuania there is the area of land fund of more than 0.5 million ha of free state land. Solving this problem, from February 2005 it has been decided to publish the information about the free public land plots of the cadastral areas of the regions of the country on the webpages of the head administrations of the districts. This information is needed for the applicants willing to restore the ownership rights to the possessed land, when transferring into the ownership unrequitedly the equivalent land, forest plots or ponds for the natural and legal persons, willing to buy or rent the state land plots. In such a way it is sought to ensure that all the inhabitants of the country as well as the legal persons could timely get the precise and comprehensive information about the Free Public land plots on the whole territory of the country.

The decisions on the restoration of the ownership rights to the real estate are being adopted by violating the procedure established by the laws, due to what the institutions having adopted the decision or controlling it must initiate the annulment of the decision following the judicial proceedings, the ownership rights are being restored with the mistakes made, by the wrong interpretation of regulatory acts. That partially relates to the plentitude of the amendments of the legal acts regulating the restitution process that impedes the proper application of them.

Artificial obstacles are formed for the restitution of the land. The part of the inherited land is distributed for other persons, after the applicants submit the application for the restitution of this land in-kind, the land plots are wantonly formed for persons who have no inherited lands on that territory and in such a way violating the rights of the applicants having the priority rights to choose the place of the land plots on the territory of the free land fund. The notices appear in the mass media that the land with the falling constructions in Vismaliukai polygon, in Vilnius region, Vilnius city municipality started selling (although until that time the issues of the restoration of the ownership rights to it have not been solved for many years). Therefore, the applicants cannot restitute the mentioned land in-kind. This issue has been analyzed by the temporary committee of the Seimas of the Republic of Lithuania. On 7 July 2005 the Seimas of the Republic of Lithuania made a

resolution where it stated that on the territory of the former Soviet Army Polygon in Vismaliukai street, Vilnius city, have not been restored until now for the citizens who lawfully claim for the restitution of the ownership rights to the land of the former Vismaliukai village, however, lately the State Property Fund even started selling the land on this territory. Forming the buyable public land plots, the publicity was avoided – the boundaries of the buyable land plots have not been marked in the detailed and special plans as this is provided by the legal acts. Therefore, the inhabitants could not take part in the discussions of these plans and could not provide their claims regarding the sales of these land plots. The proposal has been provided for the Government in this resolution to take all the measures seeking to return in-kind for the lawful owners the land on the territory of the former Soviet Army Polygon in Vismaliukai street, in Vismaliukai. Not to provide obstacles for the Vilnius city municipality and Vilnius District Head and delay the restoration of the ownership rights as well as expeditiously solve the issue of the restoration of the ownership rights of the citizens, following the procedure established by the laws, to the land in Vismaliukai, including the land on the territory of the former Soviet Army Polygon in Vismaliukai street46. There are cases established that the planning officials under exceptional circumstances operatively privatize the land plots from the point of view of recreation-ecology in valuable places, in such a way violating the lawful interests of other citizens for the restoration of the land (forest) in-kind or validate the land of the private farming. The planning officials first of all solve the problems of their own farming economy for account of inhabitants of the district-applicants for the restoration of the ownership rights.

There are quite many cases when certain land plots are groundlessly attributed for the state redeemable land, due to what the ownership cannot be returned in-kind for the owners. That happens when the process of the restoration of the ownership rights has been already started as well as the requirements of the legal acts are not followed regulating what land (forest) has to be redeemable by the state. The publications have appeared in the press that the minor leafy forest of approximately 500 ha of the area in Trinkûnai village, Saldutiškis district, Utena region, nearby Aisetas lake, has been formalized in the documents without the knowledge of the owners as the forest park, to which the ownership rights are not restored in-kind. The owners found out about this only after 15 years from the time they have submitted the documents for the restoration of the ownership in-kind. Upon the order of the Ministry of Environment the plans have been prepared and the mentioned forests attributed to the parks by Lithuanian Forest Management and Inventory Institute and about such decision neither the land planning officials nor the land-surveyors and the head of Utena District have been informed47.

There are cases established that after the receipt of the money from the Government, the municipality purchases the apartments for persons who live at the returnable houses

for the owners, violating the Law on Public Tenders and paying the bigger amounts that these apartments are worth of and in such a way misuse and waste the means allotted for the restoration of the ownership rights⁴⁸.

To sum it up the conclusion could be drawn that there are still cases when the restoration of the ownership rights happens by violating the legal acts, ignoring the established priorities, succession and terms, without the clear implementation plans, programmes and without the needed control.

The taking of the ownership for the public needs

The ownership right as other human rights is not absolute as it should be used without violating the rights of other persons. Therefore, the limits of the ownership rights relate to the necessity of the implementation of subjective rights of other persons. The ownership right could be limited by the law due to the type of the ownership object, due to the contrary criminal acts committed against the right or due to the public need that is important and constitutionally grounded⁴⁹. In the sense of the protection of the ownership right it is especially important how and in what way the object could be alienated following the private ownership right. Article 23 of the Constitution of the Republic of Lithuania provides that the ownership may be taken only following the procedure established by the law for the public needs and fairly compensated. Taking of the ownership for the public needs – that is the relation of administrative type the parties of which are: the state and the owner of the private ownership. The Constitutional Court of Lithuania has developed the aforementioned provision by specifying that the taking of the ownership for the public needs is: a) in each case an individual decision made following the procedure established by the law regarding the taking of the property belonging for the private ownership; b) when adopting the decision on taking of the ownership for the public needs at the same time the concrete payment for the taken ownership has to be established, the procedure of payment of such payment for the owner; c) the owner has to be informed about taking of the ownership and about the amount of compensation for it as well as other terms before the decision is made regarding the taking of the ownership for public needs; d) the ownership cannot be taken from the owner until the institution, intending to make a decision regarding the taking of the ownership, and the owner reaches an agreement regarding the compensation for the ownership to be taken or until the settlement of their dispute by the court⁵⁰. The latter

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guidelines of the Constitutional Court must be followed both for the legislator, adopting the legal acts regulating the taking of the ownership for the public needs, and practical employees, implementing the procedure of taking of the ownership for the public needs. In Lithuania, the main provisions of taking of the ownership for the public needs and the compensation procedure is provided by Civil Code, Article 4.100, which provides that taking of an object or property, belonging for a person following the private ownership right, is possible only in exceptional cases and only following the procedure established by the laws, by compensating the owner of that object (property) taken, following the market price of that object (property), and by transferring another object (property) upon the mutual agreement of the parties. Article 4.94 of the Civil Code of the Republic of Lithuania regulates the temporary usage of an object for public needs against the will of the owner. Part 2 of this article obligates the compensation of costs and harm for the owner that arose during the temporary use of the object. In 1964 of the Civil Code of the Republic of Lithuania there was no such obligation. Therefore, the owners used to face difficulties when claiming for the recovery of the harm caused when temporarily using the property for public needs. The special laws and post-regulatory legal acts regulate the terms and conditions of taking of the concrete ownership for public needs.

The need of the social function of the ownership right arises first of all out of the need to meet the interests of other society groups, when meeting the needs for construction, city planning, environment protection, state regulatory functions in the economy sector, state defense, competition guarantee and other needs. The understanding of the ownership right as an absolute and unlimited would contradict the understanding of the human rights themselves. Therefore, the rights of the state institutions to take the private ownership for the public needs are not questioned by anybody. Irrespective of this, different problems arise when implementing the procedures of taking of the ownership (especially land) for the needs of the public in Lithuania. Responding to the mentioned above, on 7 February 2005, the Government of the Republic of Lithuania formed a standing committee for solving the issues of land acquisition, territory planning and taking of land for public needs. Upon the initiative of the latter committee the working group for the taking of land for public needs has been formed the main aim of which is to solve the issues and make proposals for the improvement of regulatory base regarding the taking of the land for public needs.

Analyzing the taking of the ownership for the public needs in the context of the protection of human rights, there are two important aspects. First of all, it is important properly

interpret the concept of public needs as the lawfulness of taking of the ownership from the owner depends from that. Secondly – to establish whether the compensation for the taken ownership is fair as this is required by the Constitution of the Republic of Lithuania and the European Convention for the Protection of Human Rights and Fundamental Freedoms as the fair compensation is the most important guarantee of the protection of the human rights when taking the ownership for the public needs. As the ownership for the public needs is taken irrespective of the will of the owners, in practice there are cases that people being unsure that they will succeed in claiming for bigger price are forced to dispute not the amount of the compensation, but the reasoning of taking of the land for the public needs.

The interpretation of the concept of the “public needs” causes lots of discussions both in theory and in practice. Article 45 of the Land Law of the Republic of Lithuania specifies in detail the cases of taking of the land for the public needs and despite of the comprehensive list of them, it is evident when analyzing the content of each of them that in each case the public need could be interpreted very widely. Referring to such situation, a proposal has been provided for the working group of taking of ownership for the public needs to make more concrete the cases of taking of the land plots into the public ownership by the law and these proposals have been referred to by the draft law on amendment and supplement of Articles 6, 29, 41, 45, 46 and 47 of the Land Law of the Republic of Lithuania. Article 45 of which provides more concrete cases of taking of the land for the public needs. It is thought that the concretization of the concept of the public needs will not solve the problems as such needs could be very different. Therefore, it is impossible to provide all the cases. Seeking to protect the ownership of a person from the groundless alienation, when analyzing the concrete case related to taking of the ownership for the public needs it is expedient to follow the concept of public needs analyzed within the jurisprudence of the Constitutional Court of the Republic of Lithuania. After the summary of the judgments of the Constitutional Court of the Republic of Lithuania interpreting the concept of public needs it is possible to exclude the following moments: 1) the interests of the whole public or part of it, for the safeguarding and implementation of which the state is constitutionally obligated when performing its functions. Whether the needs for which the ownership has been taken are public needs it has to be decided each time individually, referring to the socially important aims are sought when taking the ownership at that time; 2) when taking the ownership for the public needs the balance should be sought among all the different lawful interests of all the public and its members; 3) it is possible to take the ownership

55 The following are the cases: 1) national and state border defense; 2) public airports, ports and their devices; 3) for public railways, public roads and magistral pipelines, high voltage wiring; 4) development of social infrastructure of residential territories; 5) public recreation; 6) exploitation of natural resources, scouted out funded from the state means; 7) performance of the municipal functions; 8) common (public) use; 9) protection of territorial complexes and objects (values) of natural and cultural heritage; 10) implementation of economic projects the public importance of which is acknowledged by the decision of the Seimas or the Government.
by fair compensation) only for such public needs that objectively could not be met in case
the certain concrete ownership object is taken; 4) the fact whether the ownership is taken
for the needs of the public is not predetermined by the fact what subject (the state, municip-
ality, legal or natural person) later on will become the owner of this ownership, but by the
fact whether the ownership that has been taken from the owner, has really been taken as it
has been needed for meeting the public needs, i.e. for socially important aims that could be
sought only through the use of the concrete taken property; 5) when taking the ownership
for the public needs, the legislator, irrespective of the subject becoming the owners of this
ownership, gets an obligation to establish such legal regulation that this ownership would
be really used for the needs of the public57. The jurisprudence of the European Court of
Human Rights has noted that the concept “public interests” (in the context of Article 1 First
Protocol) is inevitably wide. Taking of the ownership, carried for the sake of the regulatory
social and economic policy, may be explained by “public interests” even when all the public
does not directly use the taken property (cases James and others against the United Kingdom
(1986)58, Litghgow and others against the United Kingdom (1987)59. Namely such criteria
should be followed when establishing whether the private ownership could be taken into
the public ownership. However, in practice there are cases when such criteria are ignored.
It is specified in the official letter of Lithuanian Municipal Association at the Ministry of
Justice that very often after assessment of the time and costs needed for carrying of the
procedure of taking of the land for the public needs the municipalities discuss other possi-
bilities for the expansion of the recreation zones60. If there are also other possibilities for
meeting the public needs then in such cases taking of ownership of the citizens for public
needs is not tolerated. There are also cases when the public needs for which the ownership
has been taken are not clearly expressed. The ownership rights to the land have not been
restored in the case analyzed by the Supreme Administrative Court of Lithuania motiva-
ting that there is a public need for that land. The land plot, that has been claimed by the
applicants, has been marked in the general plan of the city as of the common use and the
descriptive part of the detailed plan that by this land plot it is sought to enlarge the green
areas around the swimming pool. Therefore, the concrete objective purpose of the land
plot in dispute has not been decided and the concrete public need has not been specified
for that land plot. Out of the description of the detailed plan it is evident that the municip-
ality planned to make a decision regarding the use of the concrete land plot in the future.
The court has stated in this case that despite the aim of the local government to expand
the green recreation zones in the resort meets the public needs, however, following the

57 2 April 2001 of Judgement of the Constitutional Court of the Republic of Lithuania “On the Restoration of the ownership
Rights to the Land” // Valstybës žinios (Official Journal). – 2001, No. 29-938; 4 March 2003 the judgement of the
Constitutional Court of the Republic of Lithuania “On the Restoration of Ownership Rights” // Valstybës žinios (Official
58 Case of James and others v. the United Kingdom. No. 3/1984/75/119.
59 Case of Litghgow and others v. the United Kingdom. No. 2/1984/74/112-118.
60 The official letter of Lithuanian Municipal Association to the Ministry of Justice “On the Provision of Information”
No. (4)-SD-130, 24-02-2005.
principles of lawfulness and justice in each concrete case this issue has to be solved seeking to coordinate the interests of the community and separate members of it\textsuperscript{61}. The concern is caused by the suggestions of certain institutions to regulate by the legal acts that the immediately needed land plots for especially important economic objects of the state the should be transferred into the public ownership, despite of the fact that the compensation matters have not been agreed with the owner of the land plot. Following the proposed procedure, the owner would receive the primary compensation, specified by the decision of the head of the district. The object would be under the construction (built) and the disputes regarding the bigger compensation would be solved in the court\textsuperscript{62}. The draft law amending and supplementing Article 6, 29, 41, 45, 46 and 47 of the Land Law of the Republic of Lithuania\textsuperscript{63} seeking to avoid the disputes regarding necessity of taking of the private land plots for the public needs and the lawfulness of the decisions made by the head of the district for taking of the land for the public needs, solved in the judicial way, a similar way has been chosen. It is suggested to supplement Article 45 of the valid law in the project by part 3, providing that the Seimas may approve by the law the lists of the private land plots taken for the public needs, needed for the object of public purpose, specified by paragraph 10 Part 1 Article 45, i.e. for the implementation of the economic projects important for the state the state importance of which is acknowledged by the decision of the Seimas or Government, the private land plots for the construction (installation) of the latter objects and exploitation of them. In such a way the lawfulness of taking of the land for the public needs would be safeguarded by the powers of the laws. The provisions of the latter project cause serious doubts as after the consolidation of such legal regulation the person’s right to know beforehand for what concrete purpose is his land taken would be infringed as well as his possibility to dispute the lawfulness of the taking of the land for the public needs at the court. Moreover, as it has been explained by the Constitutional Court, together with the issue of taking of the land the compensation amount and type should also be solved and the ownership cannot be taken from the owner until the agreement is reached regarding the compensation for the ownership taken or until the settlement of the dispute by the court. Following the provision of the mentioned draft law this requirement would also be violated.

When carrying the procedure of taking of the ownership for the public needs the majority of disputes arise due to the taken land plots (part of them) or the establishment of the value of other real estate and fair compensation for the owners. Both the Civil Code and other regulatory acts provide two main ways of compensation of alienable property: the provision of the adequate property for the owner or monetary compensations, corresponding the real (market) value of the alienable property, payment for the owner and recovery

\textsuperscript{61} Administrative case No A7-914-04 of the Lithuanian Supreme Administrative Court.

\textsuperscript{62} The official letter of Lithuanian Road Administration under the Ministry of Transport and Communications, as of 14-02-2005 “On the Committee meeting” No. (6.1)-2-340.

of damages caused. When establishing the amount of the fair compensation in each concrete case it is important to keep the balance between the public and private interests, i.e. the amount of compensation is provided following the proportionality requirements and referring to the possibilities of the owner to purchase the equivalent property. When establishing the amount of the compensation for taking of the ownership for the public needs not only the special provisions of the Civil Code and other laws should be followed, however, it is important to refer to the concrete circumstances, the common principles of honesty, justice, discretion (Article 1.5 of the Civil Code) as well as the principles of legal regulation of civil relations (Article 1.2 of the Civil Code), i.e. to evaluate whether the amount of compensation does not contradict the principle of proportionality, whether such compensation does not mean the misuse of the rights of the parties and etc. The issue of establishment of the ways and measures of the fair compensation for the taking of the property for the public needs is solved differently in the international practice. Therefore, when establishing the amount of the fair compensation, the compensation procedure established by the national laws should be followed as well as the actual circumstances of the case. It is acknowledged in the international practice that when establishing the amount of fair compensation for the taken property for the public needs in each case it is important to preserve the balance between the public and private interests, i.e. the amount of compensation is provided following the proportion requirements. The European Court of Human Rights has noted that the legislators have the right to provide the rules limiting the possibilities of the owners of the property by the public interests, however, the measures applied by the states are controlled by the Court following the proportion requirements. As the ownership is taken for the public needs irrespective of the will of the owner, he is always concerned to receive as bigger compensation as possible. Whereas the state institution has the limited financial possibilities. Therefore, the conflict in such cases is nearly inevitable. According to the experts, the owners very often misuse the negotiations regarding the compensation for the taken ownership. In case there is no free public land besides the taken land plot, then the place of the suggested another equivalent land plot does not satisfy the owners. For the land in the rural area, the land plots in the city centers, resorts are requested. The institutions implementing the procedure of taking of the land for public needs complain that the owners of the land due to the favorable provisions of Part 3 of the Land Law usually do not themselves appeal for the court the decisions of the heads of the district to take the land for the public needs. They wait until the state institution, upon the request of which the land has been taken for the public needs, addresses the court in a course of 3 months from the moment of the decision is made to take the land for the public needs regarding the lawfulness of the decision itself to take the land and the amount of the compensation for the taken land plot (i.e. until it itself appeals its activities). Whereas following Part 1 Article 5 of the Civil Procedure Code of the Republic of Lithuania, each party concerned has the right, following the procedure established by the laws, to address the court, seeking to protect his violated or disputed right or the interest safeguarded by the laws. Following the currently

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valid laws, the owners do not need to justify their requirements for the amount of the compensation for the ownership taken for the public needs. In such a way the owners are left with the unlimited possibility to disagree with the specified amount of the compensation and groundlessly accuse the property assessors hired by the person concerned in the taking of the land with non-objectiveness. Following Articles 4.100 – 4.102 of the Civil Code, Part 1 Article 47 of the Land Law, paragraph 9 of the procedure of submission and analysis of applications for taking of the land plots for the public needs and compensation of losses arising from taking of the land plot, the real value of the land plot taken for the public needs is established following the procedure established by the Law of the Republic of Lithuania on the Fundamentals of the Property and Business Evaluation. When assessing the land plots that are provided to be taken for the public needs, the property assessors establish the different price of the property. There are cases in practice when the value of the land plot itself (part of it), provided by different property assessors, differs by 3–7 times, although all of them applied the same method of comparative value (the analogues of the sales price). The experts acknowledge that it is impossible to ensure the equal evaluation. However, such huge difference in the value also speaks about the lack of competence of the property assessors or even a misuse. Therefore, it is expedient to consider the possibilities for the improvement of the property evaluation by providing the responsibility of the property assessor in case of the dispute. The draft law amending and supplementing Article 6, 29, 41, 45, 46 and 47 of the Land Law of the Republic of Lithuania refers to the problems of the amount of the compensation for the land plot taken for the public needs and for the constructions and equipments (under construction and already built) on that land plot as well as other real estate, as well as compensation of other losses related to the taking of the land plot for the public needs. The positive evaluation was given for the fact that it is suggested to specify the provisions granting the right for the institution interested in the taking of the land plot and the owner of the private land or other user to sign the agreement regarding the way and amount of the compensation on the basis of the evaluation report provided by the owner or another user.

After the situation assessment where the owner appears after the start of the procedure of taking of his ownership into the public ownership, it is clear that it is hardly possible to reach the peaceful agreement with the institution adopting such decision. Irrespective of this, it is needed to refer to the fact that in the process of taking of the ownership into the public use the weaker part is the owner of the ownership. In case of any doubts regarding

67 The official letter of Lithuanian Road Administration under the Ministry of Transport and Communications, as of 14-02-2005 “On the Committee meeting” No. (6.1)-2-340.
the amount and terms of the compensation, they should be interpreted in behalf of the weaker party of the dispute, unless it would be established that the weaker party has misused its rights. Although the laws grant the right for each person, following the procedure established by the laws, to address the court seeking to protect one’s violated rights, a person having made a decision regarding the alienation of the property, in case of the disputes, should upon his initiative immediately address the court and during the court proceedings to ground the necessity for the alienation and the measures of the suggested compensation as well as its amount. Such recommendations have also been expressed by Lithuanian Supreme Court during the examination of the civil cases of this category in a cassation order. That would be not only the facilitation of the process for the owner, but also the aforementioned cases of misuse would be prevented. In case of any doubts, only the court could (but is not obligated) to adopt a decision to carry the expertise of the report of the property assessors and in such a way solve the problem of the establishment of the wrong value of the property. The attention should also be paid to the circumstance that most often the land is taken in the rural areas where people are not legally sophisticated so well that they could properly defend their rights. Very often the owners face the additional problems related to the purchase of other residential premises, its legal registration, execution of the documents and etc. All this only increases their negative attitude and unwillingness to cooperate with the public institutions, when implementing the procedure of taking of the ownership for the public needs.

Another, not less important problem is related to the long term procedure of taking of the ownership for the public needs. The latter process is long due to the aforementioned circumstances – disputes on the establishment of the property value, due to the fact that the public institution upon the request of which the land is taken into the public ownership in case of any disputes avoids immediately addressing the court, the problems arise when submitting the claims for the court regarding unregulated the specific jurisdiction of such disputes. Moreover, the majority of experts specify that following the valid laws, the procedures of taking of the land into the public ownership are very complicated and later on preparing the project for taking of the ownership for the public needs the procedures repeat, the drafting methodology of the land planning projects is complicated, the preparation of the project is expensive. The procedure is running on due to the compulsory land interchange (Part 1 Article 46 of the Land Law), the reform of the land plots (Part 3 Article 48 of the Land Law) as well as due to the necessity to refer to the requests of the owners regarding the place of the provided land plots for the ownership (Part 4 Article 48 of the Land Law). There are cases when the owners of neighboring land plot delay the process: do not adjust the boundaries of the land plots, claim for the cadastral measurement of their land plots, do not agree with the measured land plot, although the variance is within the legal limits. The registry centers require, following the different orders of the heads of the districts, to register the specifications after the cadastral measurements (in case they were

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The Judgment in the civil case No. 3K-3-959/2002 of Lithuanian Supreme Court.
preliminary ones) of the land plot belonging to the owner according to the ownership right, as well as the land plot taken for the public ownership, although that could be carried by one order only following different paragraphs. Whereas, refering to the application of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of the Constitutional Court, also the provisions of the Civil Code, it is important to provide by the laws a very clear procedure of taking of the ownership and in practice (actually) it would applied as soon as possible when adopting a decision regarding the taking of the ownership rights and solving other therein related issues (the decision regarding the taking of the ownership rights should not be delayed). However, as much as it relates to the procedure of analyzing of applications and the issue of compensation of damages, so that is not even regulated by the law itself, but it is redirected to the post-regulatory acts. The rights of the owner, in case the delayed procedure of taking of the ownership for the public needs, are first of all violated due to the fact that after the start of this procedure the owner has no right to transfer, mortgage or otherwise encumber his right in rem. Moreover, seeking to prevent the misuse by the owners, the provided restriction by the draft law amending and supplementing Article 6, 29, 41, 45, 46 and 47 of the Land Law of the Republic of Lithuania not only to transfer the property that is taken for the public needs, mortgage it or otherwise encumber the rights in rem, but also to reform the land plot (to divide, to separate, to connect, to carry amalgamation) regarding which the decision has been made to start the procedure of taking of the land for the public needs and the owner of the land has been acknowledged with the latter decision, i.e. a person’s right to dispose of the property belonging to him is being limited for a long time. Another problem that arises in practice is related to the fact that during that time when the procedure of taking of the ownership for the public needs is taking place, very often its value changes. Neither the Civil Code valid in 1964 nor currently valid one directly provides the rules following which the market value of the property could be established, when the moments of the decision regarding the taking of the property, actual alienation and payment of compensation for the owner do not coincide. Nevertheless, the analysis of the Civil Code and other legal acts, regulating the taking of a separate property for the public needs and terms as well as conditions of the compensation for it, allows the conclusion that the legislator relates the establishment of the value of the property to the actual moment of alienation of the property. For example, Part 4 Article 4.100 of the Civil Code provides that the ownership right to the real estate taken for the public needs is transferred from the moment of the full settlement with the former owner of it. Virtually such provisions are provided also by Article 32 of the Land Law as well as the Decision of the Government No 65 as of 20 January 2000 “On the Approval of the Procedure of the Submission and Analysis
of the Applications for Taking of the Land for the Public Needs and Compensation Procedure of Losses Incurred during the Taking of the Land Plots for the Public Needs” 72. Moreover, Article 7 of the Investment Law 73 provides that the amount of compensations for the taken object of investment has to correspond the market value of repayable taking of it or before the public announcement about that, what happens first. Lithuanian Supreme Court has been analyzing the case following the cassation procedure where during the establishment of the amount of compensation for the ownership taken for the public needs the market value of the ownership was followed, established by the adoption of the decisions by the municipality regarding the necessity of taking of the premises belonging for the claimant into the public ownership. The court has not agreed with such compensation amount as the market value has changed from the moment of the decision to take into the public ownership of the real estate (nearly 3 years have passed from the decision made). The jury has decided that in this case the amount of the fair compensation has to be related to the actual moment of alienation, i.e. to the actual taking of the property as such establishment of the price of the alienated property corresponds the principles of proportion, justice and lawful expectations 74. The court has made a conclusion in this case that the risk of the increase of the value of the property taken into the public ownership during the period of making of the decision till the actual alienation of it falls on the institution that has made a decision on taking of the ownership for the public needs.

Recommendations

The right to the ownership is one of the main human rights provided by the main international documents as well as the Constitution of the Republic of Lithuania. Referring to the international obligations, the protection guarantee of the constitutional right in Lithuania is applied during the protection of the wider field of the lawful interests of a person. Following the constitutional provisions of the protection of the ownership the lawful interests of persons are also protected, the ownership rights of which have been discontinued by the occupational government. Despite of the noticeable positive changes in this field, the continuous improvement of the legal regulation, the process of the restoration of the ownership rights to the extant real estate is still not over. The smallest number of applications regarding the restoration of the ownership rights has been satisfied in the biggest cities of Lithuania where the ownership is most valuable. Therefore, it is suggested for the responsible institutions to exercise more control over the processes of the restoration of the ownership rights to the extant property on these territories seeking to prevent the violations of the restoration of the ownership rights of the applicants.


74 The civil case No 3K–3–959/2002 of Lithuanian Supreme Court.
The problems hindering the restoration of the ownership rights to the land in the cities arise also due to the timely unprepared land plots for the individual constructions that could be transferred for the citizens into the unrequited ownership for the land possessed in the cities, the lack of the detailed plans, the delay to approve the prepared plans of the land plots returned in-kind, delay of the preparation of the plans of the land plots of the household and besides other constructions. Therefore, it is recommended for the municipalities immediately look for the ways how to solve the latter problems.

The process of the restoration of the ownership rights to the dwelling houses where the tenants live is also not sufficiently fast. Due to the lack of means the state guarantees for the owners and tenants are not implemented to the full extent. The specification payment of the market value of the returnable apartments (houses) is not recalculated for the rent of these apartments, although their market value has significantly changed. Part of the tenants, possessors of the state guarantees wishes to receive the monetary compensations, but not another real estate. However, willing to turn the object of the state guarantee into the money, the tenants need to face a lot of problems as well as to experience huge material losses. The tenants and owners, by not taking the state guarantees, delay the process of the restoration of the ownership rights. The latter problems could be solved by changing the provisions of the respective legal acts and allotting the means for the implementation of the state guarantee.

There are many cases of misuse of functions by the officials during the restoration of the ownership rights into the extant real estate. Therefore, the work of the officials responsible for the restoration of the ownership rights to the extant real estate should be more properly organized by stiffening the control and responsibility.

Solving the different problems of taking of the ownership for the public needs as well as drafting the amendments of legal acts it is recommended to strictly follow the requirements of the protection of the ownership right of the persons. When taking the ownership for the public needs it is obligatory to follow the concept of the public needs explained in the jurisprudence of the Constitutional Court of the Republic of Lithuania and when solving the issue regarding the fair compensation it is obligatory to follow proportion requirement as well as to refer to the possibilities of the owner to acquire the equivalent property.

Currently the procedure of taking of the ownership for the public needs is long and complicated and that causes difficulties when implementing the important projects of the state significance, requiring the taking of the ownership of the private persons for the public needs. In practice more problems arise due to the establishment of the value of the taken property into the public ownership. Despite of the misuse of the rights by the owners as well as cases of delay of the procedure of taking of the property into the public ownership, it is recommended to refer to the fact that namely the owners are the weaker party in this process. When improving the regulatory base it is obligatory to ensure that the mentioned problems would not be solved on behalf of reducing the guarantees for the owners.
COPYRIGHT AND RELATED RIGHTS

Introduction

Intellectual property is one of the types of property within the scope of Article 23 of the Constitution of the Republic of Lithuania. The individual types of intellectual property, i.e. copyright, industrial property, etc., are regulated by special legal acts or international agreements of the Republic of Lithuania. Copyrights as one of the main types of intellectual property have been one of the most vulnerable areas of the human rights in Lithuania.

Before the restoration of Lithuania’s independence the copyright protection was given little attention, there was no participation in the development and implementation of the international copyright system. Therefore, after the restoration of Lithuania’s independence the rebuilding of the system of copyright and related rights started from its very fundamentals. In 1992 the Republic of Lithuania joined the Convention for the World Intellectual Property Organization, in 1994 the ratification of the main international agreements and conventions in that field was launched, including the Bern Convention for the Protection of Literary and Artistic Works, on 18 May 1999 the Law of the Republic of Lithuania on Copyright and Related Rights was adopted, wherein the respective provisions of the Civil Code of the Republic of Lithuania in compliance with the international obligations were reflected as well as the Law of the Republic of Lithuania on the Legal Protection of Computer Programs and Databases of 30 January 1996 was integrated. In 2003 a new version of the Law of the Republic of Lithuania on Copyright and Related Rights harmonized with the international obligations and the European Union directives was adopted.

It is generally agreed that over the recent years the updated regulatory base for the protection of copyright and related rights has been set up in Lithuania, which is now compliant with the respective legal regulation of the European Union and international treaties. Apart from the new version of the Law on Copyright and Related Rights of 2003, with effect from 1 January 2003 the new version of Article 214-10 of the Code of Administrative Violations of the Republic of Lithuania regulating the infringements of copyright and related rights and the new Penal Code of the Republic of Lithuania came into force as well, wherein the grounds and provisions for the liability related with copyright and related

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Rights are regulated in more detail and are expanded in compliance with the requirements of the European Union directives. Also, with implementation of the Law on Copyright and Related Rights the respective accompanying legislation was passed: the Procedure of Payment of Remuneration for the Lending of Books and Other Publications Through Libraries⁷, the Procedure of Distribution and Payment of Remuneration for Reproduction of Audiovisual Works or Phonograms for Personal Purposes⁸, the Procedure of Payment of Remuneration for Reprographic Reproduction (by photocopying or in any other manner reproducing on paper)⁹ approved by the Resolutions of the Government of the Republic of Lithuania; in the responsible collective administration institutions (Agency of Lithuanian Copyright Protection Association LATGA-A, Lithuanian Neighboring Rights Association AGATA) the practice of collection and distribution of remuneration was launched; with the aim to ensure the protection of moral rights upon the author’s death the Procedure of the Protection of Moral Rights of Authors and Performers¹⁰ was established. In view of the copyright harmonization progress within the European Union, particularly in the field of the measures for the protection of copyright and related rights, and the problems that have come to light in relation to the copyright protection in the digital environment, the Ministry of Culture of the Republic of Lithuania has drafted a new version of the law amending and supplementing the Law of the Republic of Lithuania on Copyright and Related Rights.

In 1995 the Ministry of Culture of the Republic of Lithuania was commissioned to coordinate the issues relating to the copyright implementation and protection, later on a special Copyright Division was established within the Ministry to deal with those issues. In 2002 the Department of Investigation of Objects of Intellectual Property was set up in the Forensic Science Center of Lithuania. In seeking to slow down the piracy of intellectual production in 2002 the Intellectual Property Protection Unit of the Criminal Investigation Supreme Board of the Lithuanian Criminal Police Bureau was established, from 2004 it was reorganized into the respective Intellectual Property Protection Division (hereinafter – LCPB CIS Intellectual Property Protection Division). The anti-piracy activity indicators reported by the Division employees illustrate increasingly active work of the enforcement authorities: in 2003 the officials of the Division and local police officials detected in total 85 cases of criminal activity and 171 cases of administrative offences, seized more than 142 800 units of the material media with illegal recording of intellectual property objects; whereas in 2004 the number of the cases of criminal activity and administrative offences revealed by the officials was higher by 46 and 40 respectively and the number of seized media was higher by 158 000 units versus 2003.

The improvement of the knowledge and qualifications of the state officials in the field of copyrights was one of the key directions in line with implementation of the protection of copyright and related rights. The strategy of the protection of copyright and related rights and the action plan for its implementation in 2000–2003\(^{11}\) provide for and implement the measures to develop the administrative skills of the officials – the specialization of the Prosecutor’s Office and police officials in the copyright protection has been established, the implementation of the training programmes undertaken by the state officials has been continuing so far.

Next to the public institutions the role of the collective administration associations is of particular importance in the system of copyright and related rights. The associations uniting the subjects of copyright and related rights (the authors of the works, performers, phonogram producers, etc.) on the grounds of agreements with the rightholders collectively implement copyright and related rights transferred under administration – they enter into license agreements with users and distribute author’s remuneration. Currently the collective administration functions are performed by the Agency of Lithuanian Copyright Protection Association LATGA-A established in 1991 and the Lithuanian Neighboring Rights Association AGATA established in 1999. Copyright and related rights are also represented and defended by other professional unions, for example, the Business Software Alliance, Infobalt Copyright Agency, Lithuanian Music Industry Association, Film Distributors Association, Film Showers Association, Phonogram Producers and Distributors Association, etc. The recent years report increasingly active and effective work in the area of the protection of copyright and related rights. For example, according to the statistics provided by the Associations, the Agency of Lithuanian Copyright Protection Association LATGA-A collected LTL 6.3 million of remuneration in 2002, LTL 8.3 and 9.3 million in 2003 and 2004 respectively\(^{12}\); the respective data provided by the Lithuanian Neighboring Rights Association AGATA suggest LTL 0.7 million (in 2002), LTL 1.2 million (in 2003) and LTL 1.9 million (in 2004). The intensive anti-piracy activities are carried out by the Anti-piracy Center of the Lithuanian Music Industry Association – the Center reported seizing a total of 8890 units of unlicensed production in 2004, 15 enterprises and outlets were inspected as well as some other associations. Since 2004 the Associations have taken the actions against infringements of copyright and related rights in the Internet.

Legal education of the public is one of the main directions in the area of copyright protection both in Lithuania and throughout the world. In Lithuania it was launched in 2000 upon adoption of the aforesaid Strategy of the Protection of Copyright and Related Rights, and from 2004 upon approval of the Programme for Communication to the Public of the Issues Relating to the Intellectual Property Rights and Measures for its Implementation

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in 2004–2005\textsuperscript{13}. With the implementation of these Programmes seminars for target groups (entrepreneurs, schoolchildren, librarians, enforcement officials) have been organized so far, public-open scientific conferences have been held, publications on issues relating to copyright and related rights have been issued and distributed.

Despite the positive developments in the copyright and related rights protection system the level of infringement of the rights remains rather high in Lithuania. According to the data of the International Intellectual Property Alliance the piracy level in Lithuania was up to 85\% in 2004 (up to 90 percent in 2003)\textsuperscript{14}, in the area of computer programs – 58\%\textsuperscript{15}. The Lithuanian institutions report a lower level of infringement: the findings of the analysis “Illegal market production” made by SIC Rinkos Tyrmai (Market Research) in 2001 evidence the level of illegal trading in sound recordings representing 45–50\%\textsuperscript{16}; according to the data of the Lithuanian Music Industry Association of 2004 the piracy level stands at 30–40\%\textsuperscript{17}. The mismatch of the data is likely to have resulted from different calculation methodologies.

**Analysis of the problems related with the protection of copyright and related rights**

**Economic-social and technological circumstances.** The widespread public opinion that the inadequate economic-social situation of the country is one of the main reasons for illegal use of the works should be supported – a certain part of persons have no financial possibilities to buy legal production, particularly that imported from abroad, the same as a certain part of the works are not distributed legally at all in Lithuania (for example, sound recordings of African music or scientific literature of Western countries), i.e. there exists no physical possibility to receive legal copies. On the other hand, up-to-date technologies enable easy and much cheaper (or practically free of charge) reproduction of the works (both by reprographic reproduction and reproducing digital sound, video recordings, computer programs), which is economically more attractive even to those persons who earn adequate income.

With the aim to solve these problems it is recommendable, primarily, to give more attention to expansion of the reserves of public libraries (in particular at education establishments) – to collect not only fiction, but also scientific literature, as well as sound and video recordings that would be available to persons with inadequate earnings, develop the systems.


\textsuperscript{17} LMIA suggests bringing judicial proceedings against persons who malignantly smear Lithuania [interactive; referred to on 15 February 2005]. Internet search: http://www.ebiz.lt.
tem of cooperation with foreign libraries and foundations for exchange of the works, the lending of works. It is recommendable step-by-step to make the library reserves accessible via computer networks (Internet) by ensuring the protection of the rights and interests of the rightholders. At the same time it is very important to inform the public about the possibilities offered by the libraries already now and encourage using the resources available in them.

The problem related with technological possibilities could be tackled, firstly, by further developing the compensatory mechanisms the implementation of which has started already (the model of collecting remuneration for reproduction for private purposes and others). Secondly, it is necessary to encourage application of technical protection measures (encrypting, digital water marks, etc.), which would assist in protecting the works from serial reproduction or other illegal use, as well as in implementing the respective technologies designed and used by other countries – so-called digital rights-management systems.

**Lack of information and legal awareness.** Despite the fact that considerable attention has been given to communication of the intellectual property issues to the public and its separate groups over the recent years the problem still remains topical. Besides the economic-social factors the members of the public lack legal awareness and tradition promoting the respect for copyrights and deterring from illegal production use. According to the experts of the Lithuanian Neighboring Rights Association AGATA entrepreneurs as the subjects, who cause the highest damage to the rightholders by infringing on copyright and related rights, often evade making agreements with collective administration institutions on use of the works, and if those agreements are made they avoid paying remuneration; not a rare case, particularly in regions and in small business, when entrepreneurs misunderstand the implication of author’s remuneration and the work undertaken by the collective administration institutions (they consider that to be state taxes and the like). The experts of the collective administration associations note that the understanding of the courts about the importance of copyrights is also inadequate – in many cases infringements on copyrights are considered as minor, and the fines imposed for them are often below the minimum established by the legal acts.

The public also lacks information about copyright protection programmes under implementation, activities carried out by enforcement officials, achievements in this field, economic and social harm caused through the illegal activity\(^\text{18}\). The interest in the problems related with the protection of copyright and related rights is not adequate on both the scientific level and the level of introducing innovations – a continual analysis of the situation is lacking, as well monitoring, suggestions regarding legal, business-related and technological issues – a poor number of scientific researches prevent from the search of effective anti-piracy measures and hold a constructive dialogue between the legislator, the expert and the public.

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\(^{18}\) For example, BIRUTIS, Šarūnas. Lithuania cannot get rid of the label of pirates [interactive; referred to on 15 May 2005]. Internet search: http://birutis.lt/lt/ziniasklaida/pranesimai-spaudai. The article provides inaccurate information about the implementation of the policy of copyright protection in Lithuania.
In seeking to resolve the problem with the lack of communication to the public and legal culture it is necessary to further implement the measures for communication to the public. It is recommendable to look for the most effective sanctions to assist in making the public to treat copyrights with respect and adopt a negative attitude to piracy phenomena, for example, to organize public and informatory campaigns, involve non-government organizations in the search for piracy prevention measures, as well as the authors themselves (particularly those who are popular in the public) and users with a particular focus on young people. Also, it is important to continue implementation of the measures oriented to individual target groups. Besides, it is recommendable to collect in a structured way, summarize and distribute information about the achievements in the field of the copyright protection and with the help of IT tools to make information more available to as wider as possible audience. Also, ongoing international cooperation should be promoted through informing the public about the copyright protection in foreign states (what measures are under implementation and how successful they are, for example, in the practical application of the compensatory mechanisms), carrying out co-projects on information dissemination and scientific cooperation that would assist in taking a positive approach to the copyright protection and encouraging more significant attention of the scientific community (lawyers, economists, IT specialists) to this area.

Lacking legal knowledge and passiveness of the rightholders. A majority of the rightholders as the subjects of copyright and related rights seem to know their moral and main economic rights; an increasing number of agreements on transfer of these rights for administration are made with the collective administration institutions every year (according to the data of the Agency of Lithuanian Copyright Protection Association LATGA-A in 2003 the number of registered members was 2850, in 2004 – 3077)\(^\text{19}\). However, according to the experts of the association and the Ministry of Culture the rightholders themselves do not tend to protect their own rights, their reaction to infringements is passive. That is presumably influenced by the lack of deeper legal knowledge, non-confidence in the legal system potential to ensure the copyright protection, unawareness of protection measures and procedures, fear of legal expenses, and low confidence in courts. The rightholders do not tend to search for more effective ways of protection, innovative business models allowing guaranteed receipt of income from the works, also in many cases the rightholders presumably lack elementary entrepreneurship skills.

As the duty of the rightholders to take care of the protection of their own rights is becoming increasingly important, it is necessary to promote initiatives of the rightholders. To this effect, it is recommendable, firstly, to create the appropriate awareness of the rightholders and organizations representing the same of the necessity to take care of their own rights (for example, by informing about legal, economic, technological possibilities to take

care of the protection of rights on an individual or collective basis, initiatives of the foreign rightholders and their efficiency in this field, and by contributing to this goal through implementation of the measures indicated below). Secondly, it is recommendable to implement pilot measures for legal education – to inform how to make agreements, where to seek for fee-free legal advice and take advantage of fee-free legal assistance, how to protect the rights before courts, promote the alternative and less formal ways of dispute settlement in the out-of-court procedure (mediation, arbitration). Also, it is recommendable to seek for and implement the alternative (simpler and cheaper) ways of legal advice and settlement of legal disputes (for example, consulting via Internet). Thirdly, participation of the rightholders in initiating, considering, taking of legal decisions should be developed – it is necessary to create proper conditions for participation and inform about participation possibilities, ensure that suggestions are taken into account properly in the decision-taking process and the balance of interests is maintained. Fourthly, it is recommendable to promote the rightholders’ cooperation with the business and technologies development sectors with the aim to design and implement alternative business models and technologies allowing the protection from illegal exploitation of the works and ensure income from distribution of the works. Fifthly, it is advisable to develop international cooperation by taking over the experience in the various fields of the copyright protection – legal (for example, implementation of the alternative compensatory mechanisms), economic and technological (for example, successfully implemented projects on e-business in distributing the works or application of the digital rights-management systems with the aim to protect the works).

**Inadequate system of sanctions.** Though the system of sanctions and its implementation established in both the Law on Copyright and Related Rights, the Penal Code and the Code of Administrative Violations is harmonized with the European Union requirements and international obligations it could be claimed, as it is as well noted in 2005 Special Report on Lithuania of the International Intellectual Property Alliance\(^2\), that this system does not properly perform the functions of fair sanctioning, preventing and deterring. Article 214-10 of the Code of Administrative Violations provides for a fine from one thousand to two thousand Litas for infringement of the named copyright and related rights in seeking for financial benefit, including seizure of illegal copies of a work or phonogram and devices or equipment for their production. That amount penalty cannot be considered adequate or act as a deterrent. The fact that an infringer is usually an entrepreneur originating regular income namely from illegal reproduction and/or distribution should be taken into account, therefore the fine amount established by law is not intimidating enough that it would be economically beneficial for those persons to terminate piracy activities. In addition, only a private individual is liable in the administrative procedure. Also, the fact that the legislator links the liability for infringement of copyright and related rights with the purposes of illegal activity should be considered a gap in law.

The issues relating to the amount of sanctions, their differentiation disregarding the purposes of infringement should be re-considered. When establishing the limits on sanctions a large scale of this type of infringements and harm caused should be also taken into consideration.

**Problems with the protection of copyright and related rights in the Internet.** The protection of copyright and related rights in the Internet is a comparatively fresh problem on both local and global levels. The provisions of the new version of the Law on Copyright and Related Rights and Articles 193–194 of the Penal Code implement the Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonization of certain aspects of the copyright and related rights in the information society aimed at dealing with the challenges of the information society, including the Internet, to copyrights. The issue of the liability of the Internet service providers is regulated by the Directive 2000/31/EC of the European Parliament and Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on Electronic Commerce) implemented by the Order of the Minister of Economy of the Republic of Lithuania of 10 April 2002. In Lithuania the practical anti-piracy measures in the Internet were launched a year ago: on 26 April 2004 the cooperation agreement was signed between the associations representing copyright and related rights and the Internet service providers; in January 2005 the associations representing the rights demanded the main Internet service providers of Lithuania to remove any information infringing on the rights from ftp (files transfer protocol) servers used for commercial purposes.

It should be acknowledged that the problem of the copyright protection in the Internet has not been resolved yet on the global level. It causes both legal problems (related with the applicable law, determination of the location of the infringer and infringement, applying and limiting the liability, etc.) and technological challenges (how to detect and monitor illegal use of the works technologically). The international nature of the Internet primarily forces to seek for international solutions to this problem, therefore in dealing with the issues relating to the protection of rights in the Internet it is recommendable to cooperate with foreign states as actively as possible – to exchange information about the regulatory base built and court practices followed by foreign states, make joint scientific researches in contributing to the development of the legal doctrine and international legal regulations, inform about successfully implemented economic and technological models of digital rights administration. The other characteristic of the copyright protection in the Internet is “cooperation” between the law and technologies in achieving the goals of protection. Upon establishment of the legal protection of technical measures to control use of the works in the Internet in both the international and statutory legislation technical protection measures in

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the digital environment become a fundamental mechanism to guarantee the authors’ rights. Thus next to improvement of the legal mechanisms it is necessary to promote development of technical protection measures, communication of information about their possibilities and practical implementation. Up-to-date technologies already allow designing of business models controlling access to the works with differentiated pricing for different ways of using the works, different purposes, different time and the like. It is necessary to inform the authors and potential entrepreneurs about those models and possibilities of their implementation.

**Recommendations**

In order to resolve the problems related with the protection of copyright and related rights it is advisable to follow three main principles – active involvement of various interest groups in designing and implementing the mechanisms for the rights protection, maintenance of the balance of interests and taking a complex approach covering information, legal, economic and technological measures.

Firstly, it is recommendable to solve the economic-social problems by supplying the public with easily accessible and inexpensive (fee-free) information resources – expanding the reserves and infrastructure of public libraries in facilitating the access and ensuring the protection of the rights and interests of the rightholders in line with that.

Information dissemination remains one of the priorities that should be oriented to both the general public and specific interest groups and should cover not only legal education, but also information about a possibility to participate in legal solutions, implement digital technologies, and develop innovative business models related with distribution of the works.

The legal system should be improved through tightening the sanctions for copyright infringements and implementing the alternative compensatory models of use of the objects of copyright and related rights.

The active feedback of the rightholders should be promoted through defense of the rights infringed and participation in developing the legal protection mechanisms, application of technological measures to implement infringement prevention and development of new business models. Also, cooperation of various sectors (legal, social, economic and technological) should be encouraged in seeking for complex solutions to the protection of copyright and related rights. In line with that continual international cooperation and sharing of experiences at different levels is necessary.
**Introduction**

Today work is one the main income sources of the population in Lithuania. According to the data of the research of monthly employment income of households (the account of social benefits has been relatively decreasing) it constitutes LTL 267 (67% of total disposable income) per household\(^1\). Following the provision recognized by the United Nations an hourly pay rate below USD 3 is not allowable, as it sets an employed person outside the boundaries of his life activity, behind which labour potential of the country starts to degrade, and motivation to work efficiently disappears. In Lithuania the average hourly pay was LTL 6.7 or 2.4 of the US dollar in 2003, i.e. even though it is approaching the set limit it is rather influenced by the fluctuations in the US dollar exchange rate than by the growth of the labour pay rate.

In quarter I of 2005, the gross domestic product was LTL 4 289 per capita (at current prices) (LTL 4 175 at constant prices of 2000)\(^2\). That is more by 10.6% versus the relevant period of the previous year.

According to the data of the Labour Exchange at end-2004 there were 126.4 thousand of unemployed in Lithuania. Over the year, if compared with 2003, the number of unemployed decreased by 32.4 thousand. At the close of the year the registered unemployed to able-to-work population ratio was 6.0%, last year it made up 7.7%\(^3\).

Article 48 of the Constitution of the Republic of Lithuania establishes that every person may freely choose an occupation or business. Dr. Genovaitė Dambrauskienė, Professor of Labour Law, constructs the right to work not as the subjective right, but as the precondition: “the Constitution declares the right to work, but neither ensures the right to get a particular job by profession or activity area chosen nor guarantees the personal right to hold one or other office in a certain locality, undertaking, office, organization”\(^4\). Thus the State’s duty to ensure the human right to choose a job means to create all conditions in order to qualify for doing preferred and possible work (to enter a profession, gain a qualification, re-qualify, acquire work experience, etc.) and create pre-conditions (guarantees) in seeking for employment and maintaining labour relations. However, the analysis of the situation in Lithuania suggests that after opening the borders of the European Union an increasing number of people emigrate in search for work overseas. Therefore, there is a task ahead for

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\(^2\) Ibid.

\(^3\) Lithuanian Economic Review Quarter IV of 2004. The Statistics Lithuania.

the State to implement such the (active) policy of employment and human resources development that every individual of this country, who is willing and able to work, would find a job worth of him in his homeland.

In 1994 after renewed membership in the United Nations and their International Labour Organization, the tripartite principle of reconciliation of labour interests, which is typical of the International Labour Organization, and in seeking for the European Union membership – the principle of the social dialogue and the autonomy of social partners, has become relevant to the labour relations in Lithuania.

The Labour Code of the Republic of Lithuania (further on referred to as the Labour Code) in effect from 1 January 2003 establishes more modern principles of the regulation of labour relations, such as: freedom of association; state aid to persons in realizing the right to work; stability of legal labour relations; uniformity of labour laws and their differentiation on the basis of working conditions and psychophysical qualities of employees; freedom of collective bargaining for the purpose of reconciliation of the interests of employees, employers and the State, etc.

Lithuania’s accession to the European Union has produced a material impact on labour legislation and practice. Adoption of the Labour Code and regulatory acts accompanying the same allows assuming that the Lithuanian labour laws are substantially harmonized with the EU legislation regulating labour relations, however, problems cannot be avoided in enacting individual legal acts.

On 15 May 2001 the Seimas ratified and accepted the obligations under almost the whole European Social Charter (revised), which has strengthened the guarantees for the human right to work to a great extent as well as the right to appropriate working conditions, fair remuneration for work, and especially the right to be informed and to be consulted, to take part in the determination and improvement of the working conditions and working environment.

The right to work in the present chapter of the report is understood and analyzed as the right to work on the basis of an employment contract, public service, membership in partnerships. Work under agreements on contractual works, copyright agreements and other agreements are not the subject matter of the present analysis.

The purpose of this chapter of the report is to overview and assess what legal preconditions for work were created in the country in 2001–2004, what is the conception of labour in Lithuania, and how the right to work was realized, to provide proposals for improvement of the Lithuanian labour laws, their approximation with the international labour law standards, and to assess the outcome of the first year of Lithuania’s integration into the European Union.

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Guarantees for finding employment and working to socially vulnerable persons

The Lithuanian legal acts regulating the protection of socially vulnerable persons are harmonized with the European Union legislation, and Lisbon Strategy as one of them. The Council has adopted the Resolution on the Actions to Combat Long-term Unemployment, which requires the Member States to collect information on the extent of the problem within the country for the purpose of clarification of the relevance of the problem. Employment institutions must assist long-term unemployed to the largest possible extent in becoming full-fledged competitors in the labour market, undertake prevention activity by predicting in advance what employees are likely to become long-term unemployed in the future, and take efforts in order to prevent that. The Council also encourages development of an employment policy for elderly people by promoting the cooperation among the Member States and social partners. The International Labour Organization Convention No. 159 concerning vocational rehabilitation and employment (disabled persons), which is also ratified by the Republic of Lithuania, regulates the commitment of the states to organize vocational rehabilitation of disabled persons, to periodically review the rehabilitation programmes in seeking to ensure equal opportunities for disabled persons in labour relations with other employees.

When discussing the employment problems in Lithuania encountered by socially vulnerable persons it is important to point out what people fall under this category. They include:

- Disabled (persons whom 30–40% work ability level is established (until 1 July 2005 – disabled of groups I and II), 45–55% work ability level (until 1 July 2005 – disabled of group III) or average disability);
- Persons from 16 to 25 years old, commencing employment for the first time;
- Long-term unemployed whose unemployment lasts for more than two years from the registration day with the territorial labour exchange;
- Persons who have no more than five years left until the retirement age;
- Women under pregnancy, a mother or father and other persons raising a child under eight years old;
- Persons who have returned from imprisonment when the imprisonment period was longer than six months;
- Graduates from vocational, high and higher schools commencing employment by qualification.

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7 In seeking for implementation of Lisbon Strategy (see: http://www.std.lt/uploads/1099663060_2004-1866-EN-complet.pdf) the project on development of the training network of the labour market for vocational rehabilitation of disabled persons is carried out with the aim to integrate as many as possible disabled persons into the labour market. The project covers not only accommodation of the infrastructure to disabled persons, but also psychological assistance and development of new adapted training programmes.
These persons are assigned to the category of socially vulnerable persons due to their physical, psychological qualities if they have lost their occupational or general ability to work, are inactive economically and due to those reasons cannot compete on the labour market under equal conditions.

The State seeks to protect socially vulnerable persons and create as much as possible favourable environment for their employment. In accordance with the effective Law of the Republic of Lithuania on Support to the Unemployed\textsuperscript{13}, the unemployed who have registered with the Labour Exchange (including those who are additionally supported in the labour market) are established individual employment plans in the set procedure, which provide for the active labour market policy measures most suitable for their integration into the labour market. Also, in the cases prescribed by the law the State guarantees to its citizens free of charge vocational guidance and consultation as well as information on job vacancies; free of charge services of the Labour Exchange in finding employment; free of charge vocational training in case of unemployment; a possibility in case of unemployment to do public works and works supported by the Employment Fund. In case they fail to get a job within 3 months from the registration day and in case their participation in the active labour market policy measures is not scheduled job creation (accommodation) is organized for the purpose of their employment\textsuperscript{14}. When established or accommodated institutions enter into an employment contract with an employee he is paid a wage stipulated in a collective agreement and/or employment contract and is provided with other social guarantees irrespective of the occupational support subsidy amount paid by the Labour Exchange to the employer.

One of the ways-out in seeking to increase employment opportunities for socially vulnerable persons is their vocational informing, consulting and training. These functions are performed by the Training Agency of the Labour Market (further on referred to as TALM). According to the data of this Agency disabled persons upon completion of training under special training programmes get employment successfully. It should be noted that TALM gives considerable attention to dealing with the most socially vulnerable groups of persons having special needs, which in accordance with the laws\textsuperscript{15} do not belong to the

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group of socially vulnerable persons, including convicted persons\textsuperscript{16}, roma people (due to their specific situation to compare with other national minorities), sexually abused women, prostitution victims, single mothers, elderly people, Russian-speaking employees of Visaginas Electric Power Plant\textsuperscript{17}. Inadequate attention is paid to vocational education and guidance of persons from 16 to 18 years old, as well as to problem resolution in seeking to create satisfactory conditions for children to develop in the families without causing situations when children are forced to work in order to maintain themselves or even their families. However, on the other hand, according to Rita Lazauskienë, Consultant for support of the Labour Exchange occupational programmes, if socially supported schoolchildren are employed to do public works their families lose privileges, benefits, schoolchildren would not be provided with free of charge catering\textsuperscript{18}. Furthermore, employers are not willing to employ young citizens\textsuperscript{19}, especially under sixteen years old, as rather tough work limitations are applicable with respect to under-aged\textsuperscript{20}. In such a way the preconditions for illegal work, which is difficult to control, are created, consequently, the conditions for exploitation of children are set, which is in conflict again with all provisions of the protection of the child and the welfare state principles. In 2004 TALM had four programmes\textsuperscript{21} prepared for individuals having no link with the labour market. According to the data of the research on the social and economic efficiency of vocational training carried out by TALB only 27\% of the long-term unemployed, who took part in the measures for the purpose to get familiar with an occupation or upgrade the skills lost due to long-term unemployment, has got jobs\textsuperscript{22}.

\textsuperscript{16} In Panevėžys women’s penitentiary institution 257 convicted women participated in the session under the psycho-intervention probation programme for convicted women, followed by the vocational training programme undertaken by 241 women. During the group sessions under “Know yourself profiles” and “Correction of inadequate behaviour” 210 convicted women were consulted. In Pravieniškės treatment and corrective labour institution consulting was provided to 263 convicted individuals and 51 employees. The group sessions on “Active job seeking and preparation for changes in the life”, “Management of stress and conflict situations” were organized, vocational consulting on vocational suitability, training on “Disclosure of personal potential and internal resources”, the questionnaire survey of convicted persons was carried out. The psychological assessment of applicants to security officers was conducted. In cooperation with Leonardo da Vinci Fund a publication “How to come back to the society and the labour market” was issued // Social Report 2003. The Ministry of Social Security and Labour [interactive]; [referred to on 5 May 2005]. Internet search: http://www.socmin.lt/index.php?-1526392050.

\textsuperscript{17} Labour market vocational training and consulting 2004 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.darborinka.lt/.


\textsuperscript{19} Young individuals under 18 are recognized as a socially vulnerable group, as they are likely to be more exposed due to their age, lack of experience, also they are more sensitive to environmental factors. Due to these reasons the rights of youngsters are protected: in getting and being employed (by setting a less busy working schedule, longer rest hours, longer annul paid holidays, by ensuring more safety at work, health care, and by granting additional guarantees).

\textsuperscript{20} E.g.: With the aim to ensure the interests of a young employee the laws establish a possibility for him to terminate an employment contract at any time (LC Art. 136, paragraph 1, sub-paragraph 5 and item 21 of the Government Resolution No. 138). Whereas the employer may terminate an employment contract with a person under 18 years only in exceptional cases (LC Art. 129, paragraph 4), and in case of dismissal must give at least 4-month notice to an employee (LC Art. 130, paragraph 1).

\textsuperscript{21} “Improvement of communication skills for socially vulnerable persons”, “Development of self-confidence”, “Development of self-confidence and adaptability to changes”, “Disclosure of personal potential and internal resources”.

In seeking to increase the possibilities of socially vulnerable individuals to find employment, social enterprises are established in Lithuania, their activities are regulated by the Law on Social Enterprises\(^\text{23}\). About 900 thousand of such enterprises are operating in the European Union. They account for almost 10% of the gross domestic product and employment. The statistical researches illustrate that the budget expenses for maintenance of one unemployed are five times higher than support of one working place in a social enterprise\(^\text{24}\). Since the Law on Social Enterprises has been passed in 2004 the Lithuanian Labour Exchange granted the social enterprise status to 26 enterprises and paid a partial compensation of nearly LTL 2 million for wages and state social insurance to 25 of them. At the end of the first quarter of 2005, 21 enterprises had the social enterprise status, of which 7 – the status of a social enterprise of disabled persons\(^\text{25}\). The employees of these enterprises belonging to the target working groups make up at least 40% of the annual average number of listed employees. Social enterprises of disabled individuals may be also established, where disabled persons represent more than 50% of the annual average number of listed employees, of which disabled of groups I and II – not less than 40% of the annual average number of listed employees. These enterprises may receive additional aid from the State\(^\text{26}\). An enterprise must repay any financing received in case it uses financial support dishonestly and in violation of the procedure for granting and using of subsidies. Due to the special status and related subsidies the specifics of labour relations is established for an enterprise seeking to employ socially vulnerable persons. Paragraph 2 of Article 109 of the Labour Code provides for conclusion of fixed-term employment contracts if work is of a permanent nature, except for the cases prescribed by the laws or established by collective agreements. One of those laws is the Law on Social Enterprises providing that fixed-term employment contract by mutual agreement may be entered into with an employee belonging to the target group, but for no shorter than a 12-month period. When making employment contracts no trial period can be agreed. That is not aimed at ensuring longer labour relations, but at longer retaining of the social enterprise status, as all persons, except the disabled ones, belonging to the target group may retain the guarantees under this law only for one year after finding the first employment, irrespective of whether they have been dismissed at least once or not. Thus, if after a year a person will not acquire any work experience and motivation in seeking for a job he will become unemployed and a burden on the State again. In the procedure set by the labour laws lower work quotas may be established for the target group employees, however, wages cannot be reduced because of that, and additional costs of the employer are compensated by the State.


\(^{26}\) In 2005, the amounts of subsidized expenses of social enterprises: a subsidy for creation or accommodation of jobs in social enterprises (to all employees belonging to the target groups, including disabled persons) – 65%; a subsidy to general training of employees belonging to the target groups of persons – 80%; a subsidy for the working environment of disabled persons, accommodation of manufacturing and recreational premises (only to social enterprises of disabled persons) – 70%; other subsidies.
Bureaucratic interferences that appear most frequently in the way of interested persons when organizing social enterprises of disabled individuals are mentioned among the complaints about the purpose of social enterprises and the policy pursued by the State, i.e.: a vicious concept of unsupportable activities adopted by the Government (too tough and irrational); a too bureaucratic procedure for enterprise registration, which requires to provide a lot of certificates and documents; failure to enforce the priority status of social enterprises in public procurements, etc.\(^\text{27}\) It should be mentioned that the aforesaid barriers have been removed upon enforcement of the Law on amending and supplementing the Law on Social Enterprises with effect from 14 July 2005.

The right to have appropriate (normal), safe and healthy working conditions

The international labour standards and other international acts regulating the human rights at work enforce the principles of work stability and work flexibility meant for implementation of the employment policy. In Lithuania labour relations are usually formalized on the basis of a written employment contract whereby the parties agree on essential conditions. The survey data of 2003\(^\text{28}\) suggest that in 2003 3.1% of workers were employed based on verbal agreement, 7.2% were employed temporarily (for a fixed-term), 9.5% worked part-time. According to the data of the State Labour Inspectorate\(^\text{29}\), in 2004, 8,936 inspections were carried out and 29,435 violations of the labour laws were found during them. The analysis of violations of the labour law shows that the total number of these violations has been increasing over the recent year\(^\text{30}\). To compare with 2003, violations of employment contracts went down by 3.2%, but increased those of payment for work – by 14.7%, working and rest time regulation – by 26%, working time recording – by 36.8%, other issues relating to the labour law – by 13.7%.

The provided figures reflect that in Lithuania there is quite a great deal of violations at work. One of them is non-executed employment contracts or violated requirements of their execution. In exercising the control and prevention of illegal employment the State Labour Inspectorate in 2004 carried out 4,544 inspections in undertakings and their structural subdivisions and established 1,580 illegally (unlawfully) employed persons. According to the data of the Statistics Lithuania informal employment reaches 10–15 %, which means not

\(^{27}\) Associations “Lithuanian forum of disabled persons” [Commentary on the Law on Social Enterprises]; [interactive]; [referred to on 5 May 2005]. Internet search: http://www.lnf.lt/docum/soc_imon.doc.

\(^{28}\) Dr. Boguslavas Gruževskis, Dr. Inga Blažienė. Labour Market Flexibility and Employment Safety in Lithuania [research work]. 2003. P. 70.


\(^{30}\) In 2001 22,800 violations were found, in 2002 their number was higher by 7.7%, in 2003 – by 13.3%, in 2004 – by 29.1%. The structure of violations of the labour laws in 2004 was as follows: violations of employment contracts account for 29% of total violations of the labour laws, violations of the procedure for remuneration for work – 14 %, violations of the working and rest time regulation – 24%, violations of working time recording – 17%, violations related with other issues pertaining to the labour law – 16%. For more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.vdi.lt/.
only hidden taxes, but also failure to ensure the guarantees of employees. To put it otherwise, individuals who have agreed with the employer on illegal employment and wages are not only unsafe in terms of the stability of labour relations (an employee may be asked to leave at any moment, not receive the agreed payment, etc.), but also in terms of the health and life of an employee (in case of an accident at work or an illness an employee will not receive any established social support, he will have to pay for health check-up and treatment services, etc.). The research data show that men are employed without employment contracts much more frequently\(^{31}\). When inspecting the undertakings the State Labour Inspectorate found frequently recurrent cases when workers are not given the second copy of the employment contract, employee’s identity card, when the contract is not signed, and employment contracts are not registered in the employment contacts record book. There are single cases when employment contracts are concluded according to the other than the sample form of the employment contract, data about agreed working conditions, e.g.: a wage\(^{32}\), performing of additional work, part-time work, amendments to the employment contract are not entered, and the reasons for expiry of the employment contract are formalized incorrectly.

Over the recent decades in seeking for more modern work organization and more flexible employment procedures the so-called untypical employment forms are becoming increasingly popular in the European countries, i.e.: employment under temporary (fixed-term) employment contracts, part-day or part-week employment, also employment under agency agreements, etc. The specifics of application of these employment forms contained in the legal regulations\(^{33}\) of the European Community (further on referred to as the EC) should be related not only with increased efficiency and competitiveness of the undertakings, but also with maintenance of the balance between flexible work organization and protection of the rights of employees. The flexibility in labour relations is also typical of Lithuania. The research data\(^{34}\) reveal that in Lithuania in 2003 about 10% of employed worked part-time, of which even 53% worked part-time due to the fact that were not able to find a full-time job. And this tendency is prevailing among men, as women usually choose that form of employment voluntarily. Though Article 146 of the Labour Code establishes the employee’s right to agree with the employer (oferta) on part-time work, however it does not regulate the very procedure and cases when the employer refuses to ensure that right for the

\(^{31}\) Dr. Boguslavas Gruževskis, Dr. Inga Blažienė. Labour Market Flexibility and Employment Safety in Lithuania [research work], 2003, p. 70.

\(^{32}\) E.g.: UAB Joniškio Duona, UAB Spekra – Panevėžys county, UAB Konsole in Klaipėda county.


\(^{34}\) Dr. Boguslavas Gruževskis, Dr. Inga Blažienė. Labour Market Flexibility and Employment Safety in Lithuania [research work], 2003, p. 70.
employee (accepta). On the other hand, the procedure set by the post-regulatory act\textsuperscript{35} is imperfect, as it does not provide for the employer’s duty established by the EC Council Directive No. 97/81/EC\textsuperscript{36}, i.e. the duty to inform about vacancies for full-time and part-time jobs.

The representative survey of inhabitants made by the Public Opinion and Market Research Centre “Vilmorus” on 11–14 November 2004 (the survey was ordered by the United Nations Development Programme “Support to Implementation of the National Human Rights Action Plan”) illustrated that 46.8\% of respondents claim that employment activity is not transparent and clear. Thus, not always employees can feel calm and sure that the conditions agreed and established in their employment contracts will be as they have expected, the employer will stick to the agreement and all statutory guarantees for which employees are eligible, etc. Following Article 99 of the Labour Code the employment contract shall be deemed concluded when the parties have agreed on the conditions of the employment contract as established in Article 95 of the Labour Code. As the reference to the other article of the Labour Code does not specify separate paragraphs of the article, thus “the conditions of the employment contract” mean a set of conditions agreed upon between the parties. The deficiencies in the legal regulation cause negative consequences for both parties to the employment contract. For example, in accordance with Article 119 of the Labour Code upon agreement that employees in the same workplace will perform certain additional duties or will do certain additional work (not agreed upon in the contract), a covenant concerning additional work must be included among other conditions of the employment contract. On the other hand, additional work given to an employee not only supposes the employer’s duty to ask for the employee’s consent to additional functions, but also to pay for that properly.

Uncertainties primarily arise when individuals commence to work being unaware of all their employment conditions, also later on when the employer tries to change them or seeks to transfer the employee to another job. The EC Council Directive No. 91/533/EEC on the employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship\textsuperscript{37} establishes an obligation to inform employees in writing about both original and thereafter amended conditions of the employment contract or employment relationship; a necessity for each employee to provide documents (e.g.: a written employment contract, commitment letter or one or a few additional written documents), summarizing information about the main elements of his contract or employment relationship, and persons who are sent to work to another country – apart from the essential conditions of his employment contract or employment relationship, must be provided with information related with performance of his duties in a foreign state. The requirement


\textsuperscript{36} EC Directive 97/81/EC EC Directive 97/81/EC concerning the framework agreement on part-time work concluded by Union des Industries de la Communauté Européenne (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and European Trade Unions Confederation (ETUC) // Official Journal, 1998, L 014.

established by the Labour Code that the employment contract must be concluded in writing according to the sample form and signed by both parties in two copies (Article 99 of the Labour Code and amendment thereto regarding a requirement to inform an employee being employed about the conditions of his future work and all documents and have him sign in acknowledgement of that), at first sight seems to ensure the Directive requirement, but if to go deeper into the matter, it becomes clear that it is not so: the rights of employees are not ensured, as establishment of particular work quotas is not binding even in collective agreements (Paragraph 2 of Article 188 of the Labour Code). Failure to meet this requirement gives the basis for abuse caused by the employer, as then the employee would fulfil all additional tasks given and could not contest his infringed rights based on the established/approved workload or work quotas. On the other hand, if no workload or work quotas are established employees may envisage discrimination against each other, when the ones fulfil tasks given by the employer during working hours, and the other need more time for that (work overtime). On the other hand, this unregulated situation prevents the employer from imposing disciplinary penalties for failure to fulfil those tasks.

In view of the content of inspections and complaints received it should be noted that illegal work manifests itself in other forms more and more often: employees are forced to work on days-off and public holidays or those employed to work part-time must work the entire working day, and sometimes even more than twelve hours. In 2004, 14 741 inspections were carried out, in 4 812 (in 2003 – 3 972) undertakings 7 146 (in 2003 – 5673) violations of the working and rest time regulations were found. To compare with 2003, 16% more inspections were conducted and 26% more violations were found 38.

In the European Union overtime work is regulated by Directive No. 93/104/EC 39, which does not prohibit that work, but established a week of 48 working hours, including overtime work. In Lithuania overtime work is limited (Article 150 of the Labour Code). This provision is aimed at protecting employees from too heavy workload, however, a desirable goal is reachable not always and additional barriers to the activity of undertakings are created. Not a rare case when employees work overtime though it is prohibited. Due to this provision the work of that nature is not legally formalized, thus it is unpaid. After liberalization of overtime work it would be easier to reveal violations of remuneration for this work (employees would not be afraid to complain, as their work would be legal). As a consequence, violations of the rights of employees would decrease. Overtime work is useful when there is a necessity to increase operational volumes and it is not always possible to find additional workers, especially if a need is short-term. Lithuanian undertakings being unable to adapt to the changing market requirements not only make losses, but also become less competitive versus their competitors in other states 40. Meanwhile often employees themselves would agree to work overtime if they received appropriate payment for that. Among the amendments to the

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Labour Code there is a proposal to supplement Article 151 by paragraph 7 providing that overtime work is not prohibited if that is stipulated under the collective agreement.

One more problem is related with work schedules which are not approved and announced in a due manner. Given absence of a possibility to know precise working and rest time the basis for violation of other rights and guarantees for which employees are eligible is created. Primarily, that manifests itself in overtime work organization in breach of: paragraph 6 of Article 161 of the Labour Code – on days-off; on public holidays – paragraph 2 of Article 162 of the Labour Code. In these cases the set daily uninterrupted rest, weekly uninterrupted rest is often not ensured. Abuses of organizing overtime work inevitably forces to commit other violations: not to register actual working time, not to pay for it. The cases when the employer hires an employee for a part-time job, but actually he works much longer hours, are established. Though according to the working time registers 8 hours were worked, however the registers kept by the watchmen evidenced that the working time was much above that limit. There is a number of violations relating to the aggregate recording of working time. When working according to the aggregate recording of working time all types of violations of the provisions regulating working and rest time are established. Violations committed when making work (shift) schedules regularly precondition violations of other regulations for the working and rest time. Time worked on days-off and public holidays, at night is not registered in the working time recording sheet. Time unrecorded in the sheets is not paid for and that already constitutes a separate violation of the labour laws. The requirement of p. 2 of Art. 149 of the Labour Code for ensuring the daily and weekly uninterrupted rest is violated respectively and compensation for the working time exceeded over the reporting period is not provided for. The following violations are established, e.g.: application of the aggregate recording of working time to employees who work part-time; those employed according to the aggregate recording of working time are not given two successive days-off. The cases of violation of the procedure for breaks to rest and to eat are established. E.g.: a break is shorter than 30 minutes or it is not provided for in the schedules at all.

The limitation on the working time means that an employee not only would avoid too much workload, but also that he would be in a working mood all the time and could work efficiently and without mistakes and losses. Following the general rule that the general provisions of the labour law regulate termless employment contracts, and other employment contracts are regulated by special rules, it is possible to assume that the maximum working time within a 7-day period, as a general standard, stipulated in paragraph 3 of Article 144 of the Labour Code, is applicable only to those who work under a single employment contract, as the exceptions provided for by paragraph 5 of Article 144 of the Labour Code are applicable to those employed under two and more employment contracts both in one undertaking and in more than one undertaking. In other words, the level established in paragraph 5 is the special one in terms of the level set in paragraph 3. Due to this reason different discussions take place: on the one part – that is aimed and protection against exploitation of employees, on the other part – employees themselves agree to work more and longer when they are paid more for that.
The implementation of the Council Directive 97/81/EC concerning the framework agreement on part-time work concluded by Union des Industries de la Communauté Européenne (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and European Trade Unions Confederation (ETUC) should be ensured in Lithuania. Part 2 of Art. 5 of its Appendix establishes that employers have to consider to the most appropriate possible way duly presented information about vacancies for part-time and full-time jobs available within the undertaking, so facilitating transfer from one part-time job to another full-time job and vice versa. Thus, employees are entitled to receive information about available full-time and part-time jobs. In Lithuania it is established that the employer or a person authorized by it informs the State Labour Inspectorate under the Ministry of Social Security and Labour (in the form and in the procedure approved by this Inspectorate) about employees working part-time when their work duration is shorter than half a working day (shift), or working part of the week when their work duration is shorter than 3 working days per week. Thus this resolution of the Government does not enforce the employer’s duty to inform an employee about full-time job vacancies in the undertaking, and the duty to inform the State Labour Inspectorate about employees working part-time, and the set minimum working time limit restricts the right of both employees and employers to choose the form of work most acceptable to them.

The Labour Code in effect over the recent years, the adopted new wording of the Law on the Safety and Health at Work as well as other legal acts encouraged the employers and employees, organizations representing them, the State Labour Inspectorate as well as other interested departments to react more actively to the issues relating to the safety and health at work.

The Labour Code establishes that the employer must ensure the safety and health at work. Although the long-term programme for implementation of the legal acts on the safety and health at work prepared in accordance with the requirements of the European Union Directives in undertakings was completed in 2004, violations were not avoided. Violations of Article 41 of the Code of Administrative Violations (further on referred to as AC) regarding violations of the labour laws, legal acts on the safety and health at work constituted a major part of recorded violations of the administrative law in 2004, i.e. 859 or 56.5% of all

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recorded violations. Out of all violations of the legal acts on the labour and safety and health at work in 2004 (82,268) violations of the implementation of the labour laws (29,436) account for 36%\textsuperscript{45}. The inspection data suggest that not only working tools acquired by all undertakings are in conformity with the requirements of the technical regulations, but the managers of undertakings give inadequate attention to danger identification and risk assessment, and internal control, particularly in small undertakings, is still very poor\textsuperscript{46}.

The surveys of employees show that the employers do not provide the employees with appropriate personal safety measures (Article 271 of the Labour Code), which frequently results in accidents and occupational diseases. On the other hand, the Labour Code obligates the employer to provide them only when the collective safety measures are not sufficient to protect employees against risk factors. The employer’s freedom to assess the extent of the safety of works and decide on providing one or other measures create the basis for abuse caused by the employer, as the standard ensures the safety of employees to an inadequate extent. It is proposed to establish a stricter liability of the employer for inadequate providing of employees with safety measures.

The right to receive fair remuneration for work

A wage is remuneration for work performed by an employee under a contract. In accordance with Article 141 of the Treaty establishing the European Community\textsuperscript{47} pay means an ordinary basic or minimum wage or salary and any other consideration (whether in cash and in kind) which the worker receives directly or indirectly, in respect to his employment, from his employer. That is remuneration for work in the wide meaning. A wage established in p. 2 of Article 186 of the Labour Code of Lithuania\textsuperscript{48} comprises the basic salary and all additional payments, also remuneration in the event of non-conformity with the normal working conditions, for work on days-off and public holidays, at night and overtime work, etc. Guaranteeing the right to fair remuneration is crucially important to ensure the employee’s welfare. The right to fair remuneration means as follows: pay which guarantees a decent living standard for employees and their families; increased pay for overtime and

\textsuperscript{45} Out of 52,833 violations of the safety and health at work: organizational make up 76%, technical – 24%. Versus 2003, violations of working place installation decreased by 2.8%, by 2.6% – condition of working tools, by 0.9% – condition of PnP, and increased violations in relation to hazardous factors of the working environment – by 3.8%, by 2.3% – use of hazardous chemicals. In 2004, works were suspended in 563 workplaces, and use of 221 working tools, 83 potentially dangerous working tools, 31 personal safety measures was prohibited. For more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [refered to on 5 May 2005]. Internet search: http://www.vdi.lt/.

\textsuperscript{46} 3.6 thousand (24.5%) cases were established when the working environment risk assessment was not carried out, in 2.2 thousand of undertakings no lists of employees who must check their health are made, in 1.3 thousand of undertakings employees work without having check-ups, in 1.2 thousand of undertakings violations in relation to hazardous factors of the working environment were found, etc. For more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [refered to on 5 May 2005]. Internet search: http://www.vdi.lt/.


extraordinary working conditions; equal remuneration for women and men for equal work; proper prior notification of dismissal from work; time limitation on deductions from pay. Issues relating to a pay are one of the most relevant for employees.

When considering an issue whether remuneration received by employees guarantees a decent living standard for employees and their families the ratio of net to gross wages should be looked at, as well as the amount of non-taxable income (currently – LTL 290), tax share deductible from the gross pay to employees.

Due to a too heavy tax burden some part of employers being interested in substituting the labour relations for other relations (by executing assignment, service, contract works, copyright, etc. agreements) takes risk to employ individuals illegally, and supports the settlement system of “pay-in-envelope”, etc., due to which the black economy is still very viable in Lithuania. The black economy means an opposition of human activity against the institutions and standards enforced by the public authorities. Each new prohibition or limitation only creates more space for the black economy, and consequently for its particular scales and forms. It is obvious that one-fifth of the economy seems quite a lot to be called a “natural” size of the black economy. If the conditions for carrying out economic activities were favourable a risk to stay in the shade would not be beneficial. According to the research carried out by the Lithuanian Free Market Institute the black economy will not shrink substantially as long as there exists a deficit of the freedom of legal activity. In the spring of 2004, the market participants effected by positive expectations with regard to the European Union accession and in anticipation of long-waited tax reform for the first time after a three-year break projected a decrease of the black economy from steady 20% in 2002–2003 down to 18.6% in 2004. However, half a year ago the estimations of the black economy were increased by almost one percent. According to the data of the most recent research in 2004 the black economy constituted 20.8% of the gross national product. It should hardly change this year – to the opinion of the market participants, in 2005 it will make up to 20.6% of the total national economy.

A decline in the black economy is prevented by an increasing – and presumably likely to increase – tax burden, inconsistency and unpredictability of the tax policy, tough regulations for labour relations, cigarette and fuel excises, deteriorated conditions for business operations of private enterprises.

50 In 2004 a major part of complaints received by the State Labour Inspectorate, i.e. 46.5%, are about pay for work, for more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.vdi.lt/.
51 Individual income tax – 33% of income received from labour relations: taxes to Sodra – 34%, contributions to the Guarantee Fund – 0.2%. 67.2% in total, and the share paid out to an employee makes only 32.8%.
52 For more information see: Deficit of Legal Freedom. Aneta Piasecka. 04-12-2003; [interactive]; [referred to on 5 May 2005]. Internet search: http://www.delfi.lt.
In seeking to correctly fix a wage for work performed by an employer the rates of the minimum wage (further on referred to as MW) is taken at a starting point: the minimum hourly rate (further on referred to as MHR) or the minimum monthly wage (further on referred to as MMW). In 1994, after ratification of the International Labour Organization Convention No. 131 concerning minimum wage fixing with special reference to developing countries\(^{55}\) Lithuania committed itself to comply with the provisions, including those established in Article 2: minimum wages shall have the force of law and shall be subject to abatement; and failure to apply them shall make the person or persons concerned liable to appropriate penal and other sanctions.

Until 28 May 2005 sub-paragraph 4 of paragraph 1 of Article 4 of the Labour Code established “the labour laws shall determine the amount of the minimum wage...“. Thereafter that provision was deleted. Article 187 of the Labour Code establishes that the Government, upon the recommendation of the Tripartite Council, shall determine the minimum hourly pay and the minimum monthly wage. Thus the rate of MW is established not by law, which would be difficult to amend in a fast manner due to its complicated procedure of adoption, but by resolution of the Government. The statement of this fact causes discussions and doubts about the legitimacy of the establishment of this rate. That means that MW has no force of law, though with respect to implementation of this provision Art. 41-4 of Code of Administrative Violations establishes the administrative liability of employers or persons authorized by them, who fail to comply with the procedure for wages calculation and payment (Note: Art. 41-4 of the Code of Administrative Violations provides for the ineffective Law of the Republic of Lithuania on Wages).

In accordance with p. 3 of Art. 187 of the Labour Code of the Republic of Lithuania the hourly pay or monthly wage of an employee may not be less than the minimum rates established by the Government. During inspections it was established that 1091 employees in 51 undertakings received wages that were less than the minimum wage established by the Government\(^ {56}\).

The specialists have been criticizing the right of the Government to establish the minimum wage claiming that in such a way it unnecessarily interferes with the labour market and causes its disbalance. However, determination of the minimum wage helps to ensure the right to the wage meeting the individual needs. If no minimum wage is determined employers would acquire the right to abuse this situation, as a result of that wages of part of employees are likely to decrease considerably.

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\(^{56}\) The comparison with the previous years (in 2001 the number of undertakings where employees were not paid the minimum wage was 46, in 2002 – 44, in 2003 – 33) suggests the conclusion that the number of violations has been decreasing, and an increase in the number of violations in 2004 can be presumably explained by the fact that the minimum wage was increased.
In Lithuania the minimum wage (MW) was changed rather often due to the changing economic conditions. The assessment of the effect of the minimum wage increase on the profitability of undertakings showed that an increase of MMW up to LTL 600 would not produce any material effect on the economic state of undertakings, as the recent development tendencies of the Lithuanian economy suggest that currently there exist all assumptions for increasing of the wages to employees in Lithuania (including the minimum wage): only in 2000–2003 the gross domestic product of Lithuania augmented by 24%, working efficiency of employees – by 20%, profits of non-financial undertakings – by 520% (!); whereas the average wage went up by 9%, MW – by 5%. One more important aspect is that by hiding behind the increase of income to employees with the lowest earnings the increased MW is used for additional revenues to the budget, i.e. the greatest benefit of the increased MW is felt not by those who earn the least income, but by the state and Sodra budgets. Employers’ representatives have been insistently emphasising that the necessity to reduce the individual income tax and increase the share of non-taxable income, which is reasonable, as the calculations made evidence that given the current share of non-taxable income and the current level of the rates of taxes and contributions, if MMW is increased from LTL 500 to LTL 600 per month, the employer’s costs for the minimum monthly wage would grow by LTL 131 – LTL 64 would go directly to an employee, LTL 67 would go to the State Social Insurance Fund budget and the state budget.

57 From 1998 to 2003 MW of LTL 430 was established. In 2003 it was increased up to LTL 450, and in 2004 – up to LTL 500. The Government by Resolution No. 361 of 04-04-2005 On Increasing the Minimum Wage [Valstybės žinios (Official Journal), 2005, No. 45-1444] with effect from 1 July 2005 established the following rates of the minimum wage: the minimum monthly wage of LTL 550 and the minimum hourly pay of LTL 3.28 for employees working in undertakings, offices and organizations without regard to the form of ownership, and other individuals who are applicable the minimum monthly wage in the procedure prescribed by laws; the minimum monthly wage of LTL 430 and the minimum hourly pay of LTL 2.57 for state politicians, judges, state officials, soldiers and civil servants.

58 Scientific research carried out by the Labour and Social Work Institute “Research on the Assumption and Consequences for Increasing the Minimum Wage” under contract No. 232/95 (17-09-2004) signed with the Ministry of Social Security and Labour.

59 The arguments provided in the research suggest that, even given the situation of 2002, such increase of MMW would reduce profits of undertakings by on average 0.3 percentage point or ~10%, whereas in view of the recent economic growth and the fact that in 2002–2004 a profit of undertakings before tax increased almost twice in Lithuania (or 100%), it is obvious that there is no point to speak about inability of undertakings to pay the minimum wage higher by LTL 100. On the other hand, the increase of the minimum wage in effect from 01-05-2004 (the minimum monthly wage (MMW) up to LTL 500, a minimum hourly pay (MHP) up to LTL 2.95) did not cause materially adverse consequences for business: a) according to the data of the State Labour Inspectorate after 01-05-2004 the cases of non-payment of Bankruptcy MMW/MHP did not increase, vice versa, less those cases were registered; b) according to the data of the Company Management Department under the Ministry of Economy after 01-05-2004 in Lithuania not only the number of initiated bankruptcy cases did not increase, vice versa, that number relatively decreased.

60 MMW increase form LTL 500 to LTL 550 costs for the employer LTL 65.50 per working place. Of which LTL 33.5 is paid to the state and Sodra budgets. A minor part of LTL 32 goes to an employee//Inevitable, but Ignored Damage of the Increased Minimum Wage. Giedrius Kadziauskas. [News agency ELTA 26 01 2005]; [interactive]; [referred to on 5 May 2005]. Internet search: http://www.lrinka.lt/Straipsn/Ek9.phtml.

61 Scientific research carried out by the Labour and Social Work Institute “Research on the Assumptions and Consequences for Increasing the Minimum Wage” under contract No. 232/95 (17-09-2004) signed with the Ministry of Social Security and Labour.
The wages of state politicians, judges, state officials and civil servants are regulated by the Law of Public Service. Article 23 of the Law establishes parts the salary of a civil servant is comprised of, and Art. 24 establishes that a basic salary is calculated by multiplying the minimum monthly wage from the coefficient of the basic salary. Due to these reasons state officials and other persons indicated in the Government resolution are established a different minimum wage.

The employer must pay equal pay for work of equal value. The principle of equal pay for work of equal value is also enforced in the International Labour Organization Convention No.100 concerning equal remuneration for men and women workers for work of equal value as ratified by Lithuania. The states having ratified this Convention must ensure equal pay for men and women for work of equal value. This principle is also enforced by Paragraph 1 of Art. 141 of the Treaty establishing the EC. For the purpose of its implementation the European Council Directive 75/177/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women was adopted. The principle must be enforced in the national legal acts, collective agreements, and wage-fixing machinery. In Lithuania this principle was enforced by p. 3 of Art. 186 of the Labour Code and p. 5 of Art. 5 of the Law on Equal Opportunities, which establishes the employer’s duty to ensure equal pay for work of equal value. However, the differences in men and women’s wages, though gradually decreasing, still exist.

Article 192 of the Labour Code provides for remuneration in the event of non-conformity with the normal working conditions. Under those working conditions the increased wage rate must be paid. Specific rates of this payment are established in collective agreements and employment contracts. The State Labour Inspectorate received 8 complaints about payment for work in event of non-conformity with the normal working conditions. However, 6 of them were not reasonable. In view of only the number of complaints

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63 Approved with effect from 1 July 2005: Minimum hourly wage of LTL 3.28 and minimum monthly wage of LTL 550 for employees in undertakings, offices and organizations without regard to the form of ownership and other individuals who are applicable the minimum monthly wage in the procedure prescribed by laws; a minimum monthly wage, except state politicians, judges state officials and civil servants for whom a minimum hourly wage of LTL 2.57 and a minimum monthly wage of LTL 430 are established. [The Government by Resolution No. 361 of 04- 04-2005 On Increasing the Minimum Wage // Valstybės žinios (Official Journal). – 2005, No. 45-1444.]
67 In 2002 women’s salaries represented 74.9% of men’s salaries, in 2003 – 75.2%. In the private sector this difference was lower – 83.8% in 2003, see: Report on implementation of the measures of the National Programme 2004 for Equal Opportunities for Women and Men in 2004. [interactive]; [referred to on 5 May 2005]. Internet search: http://www3.lrs.lt/pls/inter/DBA_INTRAW3_VIEWER.ViewTheme?p_int_tv_id=3543&p_kalb_id=1&p_org=0.
filed it is possible to draw the conclusion that the number of infringements of the rights of employees in this area is not significant.

Payment for overtime work and night work is not less than one and a half of the fixed hourly pay (monthly wage). Payment for work on days-off or public holidays, unless that is established under the schedule, is not less than double or at employee’s request he is granted another day-off per month or that day is added to his annual holiday. Art. 8 of the previously effective Law of the Republic of Lithuania on Wages\(^{69}\) regulating work on days-off and public holidays established that work on a day-off or public holiday, unless that is established under the schedule, is compensated by giving another day-off per month or at employee’s request he is paid not less than a double hourly or daily rate without giving an extra day-off. It is considered that the existing regulation is fairer as the employer is left less possibility of self-activity in encouraging employees to work on days-off and public holidays. However, violations are not avoided, e.g.: police officers who worked on public holidays and days-off as well as overtime and at night did not receive increased pay as established in Article 197 of the Labour Code, \textit{inter alia}, when the extent of employee’s work is increased versus the established work quota he is paid for proportionally more. On 13 December 2004 the Constitutional Court of the Republic of Lithuania issued a ruling, which states that non-making of this payment constitutes infringement of the right to fair remuneration for work\(^{70}\).

In accordance with p. 2 of Art. 150 of the Labour Code overtime work is usually prohibited, however, according to the Lithuanian Labour Federation to work overtime in Lithuanian is normal, but to receive additional pay for overtime work is unusual. It is supposed that an employee has not managed to fulfil a task due to his personal inability to perform work in a proper and due manner. Whereas, it is unquestioned whether the workload given by the employer is really not too heavy.

Another problem is that employers delegate to perform work that has not been agreed under the employment contract, but is related with the work done, its administration, e.g.: instructing employees to carry out an inspection of goods once per month, clean and tidy the premises, clean the windows, etc., and to do all that between the shifts, i.e. at night. It is possible to draw the conclusion that this problem is rather relevant among employees, as quite a great deal of complaints is filed\(^{71}\), though almost half of them are not reasonable. That means that whether employees are apt to complain for the sake of complaining or they incorrectly understand the labour regulatory provisions for these issues. Employees address quite a lot of issues to the consultants of the Trade Unions relating to remuneration for overtime work and work on days-off and public holidays, therefore it is possible to draw a


\(^{71}\) 897 inquiries were made to the State Labour Inspectorate in 2004 about payment for work. Of which 149 about payment for work on public holidays and days-off, overtime work and work at night. 71 complaints did not prove true. For more information see: Activity indicators of the State Labour Inspectorate at 31 March 2005 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.vdi.lt/Pagrveiklrodikliai_20040630.htm.
conclusion that employees receive too little information on these issues in the undertakings. Therefore, employers are recommended to better inform employees about remuneration for overtime work and work on days-off and public holidays as well as at night. It is rather complicated to individually solve the problems related with payment for work, therefore as one of the solutions could be more active establishment of trade unions or labour councils as representatives of employees in defending their rights.

Pay for idle time is established in Art. 195 of the Labour Code. During idle time the employer must pay the minimum hourly rate (MHR) not less than established by the Government of the Republic of Lithuania. The exceptions are applicable when the employer may transfer an employee to another job position within the undertaking, but in any case the minimum hourly pay cannot be lower than MHR established by the Government. The same conditions are applicable also to employees who do not go on strikes, but who are unable to perform their work by reason of the strike (p. 3 of Art. 82 of the Labour Code). Payment for idle time is made in the same procedure as the wage.

The right to receive pay for work in due time is one of the most relevant in Lithuania. Out of all violations of payment for work 979 violations or 24.4% (in 2003 – 1 131 violations or 32.27%) of total violations of payment for work were established with respect to delayed payment of wages\textsuperscript{72}. The number of violations of the procedure for payment of wages are quite large, therefore solutions to this problem need to be sought. As one of the “incentives” for employers to pay wages when due is calculation of penalties for delayed payment of wages and making of other payments related with labour relations (Art. 207 of the Labour Code). The Order of the Minister of Social Security and Labour of the Republic of Lithuania On Approval of the Amount of Penalties\textsuperscript{73} establishes penalties in the amount of 0.06%. Penalties are paid in the procedure\textsuperscript{74} set by the Law of the Republic of Lithuania on Establishment of Penalties for Delayed Making of Payments Related with Labour Relations\textsuperscript{75}. A person violating the procedure for calculation and payment of wages may be imposed the administrative liability in accordance with Art. 41 (4) of the Code of Administrative Violations\textsuperscript{76}.

Another provision forcing the employer to settle accounts with an employee being dismissed when due is the amendment to the Labour Code supplementing p. 3 of Art. 141 of the Labour Code with effect from 28 May 2005, which restores the rule of Art. 41 of the Law on Employment Contract\textsuperscript{77} been in effect before the Labour Code: when payment is delayed due to reasons other than employee’s fault the employee is paid the average wage

\textsuperscript{72} For more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.vdi.lt/.
\textsuperscript{75} Article 2 of this Law provides that penalties are paid for each delayed calendar day starting calculation after 7 calendar days from the day on which any payments established by the legal acts or collective (or employment) agreement or at the time fixed by the employer had to be paid and ending calculation on their payment day inclusive.
for delayed time. The judicial practice before the Labour Code suggests that this sanction does not intimidate the employer, especially in case of insolvency, therefore violations of the rights of employees are unavoidable.

The legal acts do not regulate the case when funds are insufficient to make payments at the same time to employees and the tax administrator, therefore it is necessary to evaluate the cases with respect to the priority right whether to make payments to employees or to the tax administrator without violating the human rights and maintaining the unity principle of the duties.

The right to rest and leisure time, as well as annual paid holiday

The purpose of the rest and paid holiday is to give free time for an employee to recover physically and psychologically. Effective implementation of this objective increases employee’s working efficiency.

Duration of rest, leisure and holiday in the European Union is regulated by Directive 93/104/EC\(^78\). The provisions of this Directive are transferred to the Labour Code of Lithuania\(^79\).

An employee working with the same employer and performing a few other (additional) duties is eligible for the privileges and guarantees established by laws, collective agreements and other post-regulatory acts for these duties/work, e.g.: the right to extended or additional holiday (Art. 167 and 168 of the Labour Code), compensations for mobile work (Art. 216 of the Labour Code), etc. Problems arise when under separate employment contracts different duration of paid holiday is guaranteed. E.g.: an employee with long uninterrupted employment is eligible for additional two-day holiday, and total duration of holiday of an employee who has been recently employed in a secondary job is 28 calendar days. In which case additional days of holiday will be paid for only as compensation, as an employee will not be able to use them, as after 28 calendar days of holiday he will have to return to do his secondary work.

Violations of the holiday procedure are established as well. E.g.: a schedule of annual holiday has not been made, as a result of that employees are not offered this holiday for more than one year of employment. Though Article 177 of the Labour Code provides for a possibility, upon termination of labour relations, to receive compensation for all unused holiday, but the right to holiday is intended for restoration of employee’s strengths and working efficiency in each year of employment as well as for rest that often cannot be replaced by any money.

The Directive establishes that every employee has the right to no shorter than four weeks paid holiday. However, the EU legal acts do not regulate the conditions and procedure for paid annual holiday. The Labour Code of the Republic of Lithuania specifies the issues defined in the Directive. It is complemented by employment contracts or collective agreements between employers and employees. For example, Article 169 of the Labour Code


regulating the procedure of granting annual holiday establishes that annual holiday is granted in the procedure established in a collective agreement, and where such an agreement is not made, the schedule of granting annual holiday is made by mutual agreement between the parties. To the opinion of the Lithuanian Free Market Institute, these issues are regulated in too much detail and too little freedom is left to the participants of labour relations. However, that regulation is aimed at protection of employees who are considered as a weaker party in labour relations. The Supreme Court of Lithuania presented its position in case 3K-3-352/2001.

The Labour Code regulates the employee’s right to go on unpaid holiday. The list of cases when that is possible is exhaustive and to go on holiday for other reasons is possible only in case that is established in the collective agreement. Employees may face problems related with unpaid holiday due to the reasons not provided under the law in case no collective agreement is made in the undertaking, and employees do not have their own representatives. However, to establish a possibility of unpaid holiday is risky not only in the cases provided by the laws and collective agreements, but also on the basis of individual agreements between the employer and employee, as that may cause a possibility of abuse caused by the employer, which will result in violation of the rights of employees. Therefore, in that case employees may be offered to make an agreement on this issue between the employer and employees of the undertaking.

Violations in the area of work and rest organization are investigated by the State Labour Inspectorate. According to the data of the State Control citizens apply to this institution rather often for possible violations of the labour laws. These issues are not within the competence of the State Control, therefore, complaints are forwarded to the

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80 For example, Article 172 of the Labour Code regulates granting of annual holiday in parts with a limitation prohibiting granting of annual holiday in parts if any of these parts is shorter than fourteen calendar days. However, this regulation expresses the wish of the legislation body to protect employees from violations when the employer forcibly divides holidays and so interferes with the right to rest (Economic Effect of the Regulation of Labour Relations and Reform Guidelines. LFMI 2004 [interactive]; referred to on 31 March 2005). Internet search: http://www.lrinka.lt/Tyrimai/Darbas/ESdarbas.pdf.

81 In the recital it is claimed that when no schedule for granting holiday is made within the undertaking the conclusion should be drawn that in that case an agreement on the start and end of holidays between the employer and employee is necessary. An agreement is establishment of relations, reconciliation (Dictionary the Contemporary Lithuanian Language. Vilnius: Science and Encyclopaedia Publishing Institute, 2000. P. 778). By that agreement the parties must clearly reconcile their will regarding the start and end of holiday. In the reconciliation process the employer must not violate the rights of employees, and the employee – the rights of the employer, besides, the principle of the equality of the contractual parties as established by Article 2 of the Law on Employment Contract must be taken into account, which supposes that the start and end of holiday must be established in view of the rights and legitimate interests of both the employee and employer. The right to annual holiday is exercised by the employee independently, and forced granting of this holidays is not possible. (Ruling of the Supreme Court of Lithuania of 26 March 2001 in civil case No. 3K-3-352/2001. [interactive]).

82 Danutė Kazlauskienė. Citizens are Most Concerned about the Land and Work (Director of the Legal Department of the State Control, Rūta Vižiniene, Senior Specialist of the Operational Audit Department No. 1) [interactive]; [referred to on 3 April 2005]. Internet search: http://www.vkontrole.lt/dokumentai/leidiniai/nr3/01.shtml.

83 Issues relating to unlawful dismissal from office, correctness of calculation of wages, payments and compensations related with labour relations, infringement of the rights of employees, change of the wording of the reason for dismissal, recovery of unpaid wages as well as other issues concerning labour relations.
State Labour Inspectorate. The fact that complaints are submitted to the wrong institution means that employees have too little information about the institutions having the capacity to defend their rights.

In seeking to ensure the rights of individuals to the rest it is important to set a work and rest schedule at the very start of employment. Unavailable possibility to know the precise work and rest scheduling establishes the grounds for violating the rights to the rest and guarantees employees are eligible for. The number of complaints filed with the State Labour Inspectorate is not large, but most of them are reasonable, thus it is possible to draw a conclusion that employers are still violating the employees’ rights to holiday.

**The right to join organizations and collective bargaining.**

*Collective disputes, their meaning (strike)*

The right to join organizations is one of the fundamental rights of employees. Subparagraph 1 of paragraph 1 of Article 2 of the Labour Code enforces the principle of freedom of association. Employees have the right to join trade unions, conclude collective agreements.

According to the data of the Statistics Lithuania at start-2005 364 trade unions from 1,369 registered ones were operating in Lithuania. That drop in the number of trade unions is determined not only by certain restrictions of the legal regulation on representative bodies, but also by a still negative attitude of employers to them. If there is no trade union within the undertaking employees may be represented by labour councils. Among the institutions having the right to collectively represent employees there is a conflict, as the imperative law provisions establish that labour councils are established only in case there is no trade union functioning within the undertaking or the employees of that undertaking.

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84 Primarily, that manifests itself in the organization of overtime work on days-off (Saturdays), public holidays, in the cases no provided by LC Art. 151. In those cases the established minimum uninterrupted rest is often not ensured. Abuses of overtime work organization inevitably encourage employers to register not all working time or not to register actually worked time at all and not to pay for it. Frequent violations are when the employer hires an employee to do part-time work, but actual work is much longer. There are single cases when one time is marked in the working time recording sheets (as it should be done), however, in other documents related with working time recording different time is shown. Among other rather prevailing violations in the area of work and rest organization there are violations of the procedure for breaks to rest and to eat. For more information see: State Labour Inspectorate. Annual Report 2004 [interactive]; [referred to on 5 May 2005]. Internet search: http://www.vdi.lt/.

85 According to the data of the Inspectorate 53 complaints about holiday issues were filed in 2004. Of which 34 complaints about annual and target holiday (8 unreasonable), 11 complaints about forced unpaid holiday (3 unreasonable) // Activity indicators of the State Labour Inspectorate at 31 March 2005 [interactive]; [referred to on 31 March 2005]. Internet search: http://www.vdi.lt/Pagrveiklrodikliai_20040630.htm.

86 It is enforced by the International Labour Organization Conventions: No. 87 concerning freedom of association and protection of the right to organize, Right to Organize and Collective Bargaining Convention No. 98, No. 135 concerning protection and facilities to be afforded to workers’ representatives in the undertakings, No. 144 concerning tripartite consultations to promote the implementation of international labour standards, No. 154 concerning the promotion of collective bargaining; Art. 5 of the European Social Charter (revised) “Right to join organizations” and Art. 6 “Right to collective bargaining”; Art. 12 of the Charter of Fundamental Rights of the European Union ensuring the freedom of assembly and association, Art. 28 guaranteeing the right to conclude collective agreements.


have not transferred the right of representation and defence to the trade union in the respective activity area. Due to this reason employees lose the right to choose their representatives. Therefore, it would be worth considering a proposal that it should be permitted to establish labour councils independently of whether a trade union exists within the undertaking. Social partnership must develop naturally and subject to the needs of a particular undertaking. Employees must decide on establishment of a labour council or trade union in the undertaking, which in its turn would join the main trade union. The labour council of the undertaking may unite much more employees than the trade union, therefore it would represent a larger part of them, due to which the representation would become more effective. Employee’s free choice about what associations to establish is enforced by Article 2 of the International Labour Organization Convention No. 87: workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The State has no right to interfere with the implementation of the organizational rights of associations. Thus that provision has to obligate also the Republic of Lithuania to create conditions to freely establish employees’ associations and to freely choose what of them to join. Therefore both trade unions and labour councils should be equal by their legal status.

It would be worth considering the possibilities of collective representatives to effectively function in undertakings and represent employees. The Law on Labour Councils establishes a number of obligations of employers in connection with the activity of councils in undertakings. Due to these reasons employers may avoid establishing labour councils in their undertakings. It is possible to postpone setting up of labour councils also due to procedural matters. Therefore, establishment of trade unions is considered to be a better way-out. However, establishment of a trade union requires more founders.

Effectiveness of collective bargaining should be considered. Not always employees are listened to and their opinion is disregarded in decision-taking. Not a rare case when it is difficult to reconcile the interests of employees themselves. One party of the collective relations may be not interested in starting bargaining, therefore there is no possibility to reach an agreement. According to the Chairman of the trade union of AB Snaigë, a lack of diplomacy and excellent negotiation tactics determines a negative outcome in reaching a consensus, and failed decision-taking. Therefore it is important to change the attitude of

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90 Employers must cover operating costs of the labour council, to pay salaries to the labour council members as long as they have their sittings, to cover qualification upgrading expenses.

91 If the number of candidates proposed to labour councils is too low elections will be postponed for three months.

92 For example, according to Liutauras Labanauskas, President of the Lithuanian Physicians’ Union, the discussions with the Government have been continuing four years already. In 2004, 3 thousand of medical staff members organized a picket. The then Prime Minister and the Minister saw no point in meeting with them, therefore no compromise was reached. Currently when preparations for a strike of medical people the Tripartite Council must provide the Government with a conclusion about who will provide minimum health services to patients during a strike. To this effect, a meeting of the Tripartite Council must be held, however in this case it failed to take place due to the inadequate number of persons present. Those actions can be explained only by the unwillingness of the parties to cooperate.
the parties to collective agreements towards each other and become social partners in the full sense of the word. First of all, the Tripartite Council functioning in Lithuania must find solutions to the cooperation so serving an example to bilateral agreements that are made at a lower than national level\(^93\). During bargaining agreements and promises of the parties must be fulfilled in order to achieve its efficiency.

When discussing the fulfilment of collective agreements it is important to mention that during 207 inspections carried out by the State Labour Inspectorate with respect to the issues relating to collective agreements 7 cases were established when the procedure for signing and fulfilling of the collective agreement\(^94\) was violated. So, it is possible to draw a conclusion that the number of violations of collective agreements being made and already made is low.

In Lithuania the employee information and consultation institute, which is crucially important in the European Union\(^95\), is rather weak. Art. 47 of the effective Labour Code\(^96\) establishes the right of employees to information and consultation. However, granting of this right most frequently means that practically it is not enforced, therefore an amendment was made to Art. 47 of the Labour Code\(^97\), which provides (p. 3 of Art. 47) not only for the employee’s right to be informed and consulted, but also for the employer’s duty to inform employees and liability\(^98\). The amendment to this article also presents the definitions of

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\(^93\) The complaint of the Motor-Transport Workers’ Federation to the Committee on Freedom of Association of the International Labour Organization states that upon prohibition of the strike in August 1999, the latter was postponed until January 2000, as the negotiations continued. However, the promises to pay salaries when due remained just promises. After organization of the strike on 18 May 2000 it was agreed that the negotiations between the employees and municipality representatives would be started on 22 May. That agreement was not fulfilled again. For more information see: Complaint against the Government of Lithuania presented by the Motor-Transport Workers’ Federation (MTWF) Report No. 324, Case(s) No(s). 2078.


\(^98\) The employer (employers’ organization) must provide free of charge written information in a due manner to employees and their representatives and are liable for the correctness of this information. Employees or their representatives upon submission of a written commitment not to disclose the commercial (industrial) or professional secret have the right to get familiar with information which is considered as the commercial (industrial) or professional secret, but which is necessary for performing their duties. Without regard to the location of employees and their representatives and expiry of the labour relations or representation authorizations they are prohibited to use the known information which is considered as the commercial (industrial) or professional secret for other than stipulated purpose or to disclose the same to third persons. The employer (employers’ organization) may refuse in writing to provide information, which is considered as the commercial (industrial) or professional secret, if that information due to its nature according to the objective criteria materially damaged or could damage the undertaking or its activity. In case of disagreement with the employer’s (employers’ organization) decision the employee or employees’ representative may apply to court within one month. If the court establishes that refusal to provide information is unreasonable the employer (employers’ organization) who has provided refusal is obligated within a reasonable period to provide that information.
information and consultation, however, it does not imperatively indicate what information and conditions is covered under information and consultation. A new wording of the article is supposed to assist in ensuring more efficient enforcement of the employees’ right to information and consultation.

In seeking to increase the operational activity of trade unions the unification of trade unions should be promoted\(^9\). Multi-party agreements facilitate the cooperation of employers’ representatives in problem resolution, create conditions for faster exchange of information.

The right to join any organizations in Lithuania covers the negative right as well, i.e. the right not to join any organizations. However, under p. 2 of Art. 18 of the effective Labour Code an individual is represented without special expression of the will. The obligations accepted during such representation are binding on all employees, even on those who separately did not grant any special authorizations to the collective representation entity. The proposals of the Lithuanian Free Market Institute (further on referred to as LFMI) to the Seimas for amendment of the Labour Code recommend enforcement of a provision that the obligations provided for in the collective relations would be binding only on employees who have assumed them. According to LFMI, the current regulation is unreasonable imposing of obligations on third persons\(^1\). Amendment to Art. 59 of the Code is proposed on the same basis, its second paragraph enforces the provision that the collective agreement made in the undertaking is applicable to all employees. Voluntary agreements between the employer and some employees or their groups on additional working conditions should be considered to be a collective agreement. To the opinion of LFMI experts, collective agreements should be binding only on the parties who have signed the agreement, but not on all employees. However, the general provisions of the Labour Code and the enforced prohibition to deteriorate the employee’s situation versus the one established in the Labour Code, laws, collective agreement do not place any limitations for the employer and employee on making an individual agreement on different working conditions than those established in collective agreements.

The parties may settle collective labour disputes in conciliation commissions and the Labour Arbitrage or third-party court. These ways of dispute settlement provide possibilities for the parties to cooperate in seeking for the best solution to eliminate disagreements.

Upon failure to settle a collective dispute in the aforesaid ways strikes may be declared. Amendment to paragraph 1 of Article 77 of the Labour Code cancelled a discriminating provision with respect to labour councils establishing that strikes could be declared only by trade unions. Strikes in Lithuania is a rare phenomenon though recently it has been manifesting itself more actively.

In 2001, the Supreme Court rejected a claim presented by Autobusų Parkas for recognition of the strike as unlawful, as the organizational issues were resolved without violation

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\(^9\) Lithuanian Labour Federation, Lithuanian Trade Unions Confederation and Lithuanian Trade Union “Solidarumas” signed a cooperation agreement based on the common goals of all trade unions and their confederations, i.e. to represent the interests of Lithuanian employees.

of the regulatory provisions. On the other hand, in any case the State must ensure the employees’ right to go on strike and comply with the rules on strike organization101; the strike of medical workers for increase of wages is not discontinued, it is postponed until October 2005, i.e. until satisfaction of the demands. Therefore, if the agreed results are not achieved there is a possibility that the strike of medical workers will take place102.

On February 28, 2005 the trade union of the Pre-trial Investigation Institutions of the Republic of Lithuania filed an application103 to the First Administrative Court of Vilnius District for return of the part of wages as indexed and unpaid over the period of 2002–2004 to police officers104. Upon failure to reach a satisfying result the trade union of the Pre-trial Investigation Institutions of the Republic of Lithuania may initiate a strike as a solution to the problem.

The specialists recognize strikes as ineffective measures for settlement of collective disputes. Employers often cannot satisfy employees’ requirements due to economic reasons. Therefore, the demands of strikers, for example, a demand to raise wages objectively cannot be met. Furthermore a certain undertaking and industry loses income as a result of a strike105.

101 The Supreme Court of Lithuania in case 3K-3-32/2001, where the claimant SP UAB Vilniaus Autobusu Parkas applied for recognition of the strike organized by the Workers’ Union of SP UAB Vilniaus Autobusu Parkas on 18 May 2000 as unlawful, claims that a strike or its threat may be the only real legal sanction imposed by employees on the employer, encouraging the latter to seek for compromises and satisfy the collective demands of employees. On the other hand, strikes cause negative consequences to the employer, employees and other public social groups. Therefore, the legislation body in seeking to maintain the balance between the employer and employees’ interests and to protect the society estimates strikes as ultima ratio (ultimate, exceptional measures), and establishes the grounds, limits, procedure for legal application of these collective sanctions and liability for unlawful striking. // Ruling of the Supreme Court of Lithuania No. 3K-3-32/2001 of 6 March 2001.

In 2001, ILO Committee on Freedom of Association investigating violations of the right to strike and resolving the complaint of the special purpose company UAB Vilniaus Autobusu Parkas and the Motor-Transport Workers’ Federation of the Lithuanian Workers’ Union claimed that the Republic of Lithuania violated the provisions of the Convention under consideration, as it did not provide for a possibility for the conflict parties to solve the issues of strike organization by way of bargaining. RL Government was obligated to eliminate those violations. However, the Ministry of Health comes back to the previous situation again and violates the right of employees of healthcare institutions when the managers of healthcare institutions unilaterally establish which employees will have to provide minimum services. // An appeal of the Lithuanian Physicians’ Union, Lithuanian Healthcare Employees Trade Unions for violations of the right to strike. 21-04-2005 No. SR-29/65 [interactive]; [referred to on 31 March 2005]. Internet search:  http://www.lgs.lt/kreip/kreip1.doc.

102 On 3 May 2005 an agreement on increase of wages to medical employees was made by the Chairperson of the Committee on Health Affairs of the Seimas, Ministry of Health – the representative of the Government, Lithuanian Physicians’ Union (LGS) and Lithuanian Healthcare Employees Trade Unions (LSADPS) and associations of physicians’ managers. For the first time in Lithuania it was achieved that the wages of the health system workers will be increasing in view of the requirements of medical people. LGS and LSADPS: for the first time in Lithuania it was achieved that the wages of the health system workers will be increased in view of their demands [interactive]. [referred to on 31 March 2005]. Internet search: http://www.nac.mf.vu.lt/streikas/atsisiusti/kreip7.doc.

103 481 police officers of Lithuania applied to the Trade Unions with a request to represent them before court, most of them – more than 200 of them are those of Vilnius city. In 2002–2004 the national police officials used to lose monthly from LTL 100 to LTL 300 of net income (10–20 % share of the wage). See: Efforts to get back the wages of police officers are accompanied by court precedents, promises of politicians and critics of the international organizations... [interactive]; [referred to on 31 March 2005]. Internet search: http://vpk.5ci.lt/default.aspx?Element=1_Manager2&TopicID=338&IMAction=ViewArticles.


Institutional defence of the rights of workers

In implementation of control over the compliance with the Labour Code and other labour laws the State Tax Inspectorate paid more attention to the coordination of control over illegal activity tendencies and their prevention, control of labour relations, work and rest regimes, payment for work in undertakings as well as control of elimination of deficiencies found, consultation to employers and employees as well as organizations representing the same on issues relating to application of the legal acts regulating labour relations, consultation to undertakings on issues relating to conclusion of collective agreements, control over the compliance with the regulatory provisions of collective agreements in the area of the safety and health at work.

In implementation of control over the compliance with the requirements of the legal acts on the safety and health at work and elimination of deficiencies found in undertakings, when inspecting the entities an occupational risk was taken into account and it was aimed at identification of the actual conditions of the safety and health at work and monitoring of elimination of violations found, implementation of the joint programmes with the working environment agencies and other organizations of the states of the European Communities meant for the safety and health at work. The programmes for the Control over the Implementation of Preventive Measures for Accidents at Work Due to Falling, Implementation of the Occupational Risk Assessment, Internal Control of Workers’ Safety and Health in the Undertakings, Construction of the Legal Acts on Safety and Health at Work Drafted in Accordance with the Requirements of the European Union Directives, and Consultation on Issues Relating to Their Practical Application in the Undertakings, Implementation Control carried out by the State Labour Inspectorate continued.

In order to increase the efficiency of the activity of the State Labour Inspectorate professional skills of labour inspectors, the structure and work organization of the State Labour Inspectorate were improved, the information system of the state of the safety and health at work as well as its analysis was developed. In cooperation with the European Safety and Health Agency joint measures were implemented by informing the state institutions, employers’ and employees’ organizations about the legal acts adopted by the institutions of the European Communities, application of good practises in the area of occupational safety and health.

According to the data of the Statistics Lithuania at start of 2005 160 800 undertakings were registered, of which 72 330 are operating. According to the data of the Agricultural Information and Rural Business Centre, at the same date 76 545 farmers were registered. 237 130 entities in total are registered throughout the country. In 2004, 14 563 undertakings and their structural sub-divisions (further on referred to as undertakings) or 7% more versus 2003 were inspected with respect to the safety and health at work, compliance with the labour laws, investigation of complaints and achieved the ratios of 2002. In 2004, more undertakings with a larger number of workers were inspected. Over the year 3 658 or one
fourth of all undertakings inspected were inspected repeatedly. If compared with 2003, the total number of repeatedly inspected undertakings increased by 3%. The annual limit of working hours of labour inspectors was used for those inspections. That illustrates that the capacities of inspectors are not large, therefore it is proposed to increase the number of job positions in the inspectorates in order to exercise more effective control and proper preventive policy.

If compared with 2003, the total number of inspections went up by 12%, with respect to responding to complaints – by 22%, illegal work prevention – by 27%, systemic and thematic inspections – by 22%, investigation of accidents at work – by 12%, investigation of occupational diseases – by 10%, and the number of inspections in investigation of requests of social partners decreased from 127 to 101.

According to the data the State Labour Inspectorate, the proportion of issues relating to the labour law in complaints and applications (7 117) stabilized having reached the limit of 90%, and on issues relating to the safety and health at work though slightly but is increasing, however stands at about 4%. That means that ensuring of the rights to work is incomparably more important for people today than the safety and health requirements. On the other hand, with a very high probability it is possible to claim that no required attention will be paid to not less important safety and health issues as long as no major turning point is made in the area of violations of the labour law.

In 2004, 4 520 complaints and applications were examined, of which 1 256 or almost every third is anonymous. They dealt with 7 117 issues. If compared with 2003, the number of complaints was higher by 36%, the number of anonymous ones was higher 3.4 times and more by 51% issues were raised. Out of 6 554 issues relating to the labour law 2 358 or about 36% were unreasonable. If compared with 2003, the number of raised issues increased by 53%, and the unreasonable ones – by 49%. The data suggest that the number of unreasonable issues is decreasing and that allows estimating that the legal education level of applicants is increasing little by little.

In 2004 labour inspectorates handed in 12 586 orders to inspected undertakings with 82 268 recommendations for elimination of the violations found. Orders were handed in to 59.7 % of inspected undertakings (in 2003 – 58.5%).

Violations of Article 41 of the Code of Administrative Violations regarding the labour laws, legal acts on the safety and health at work constituted a major part of violations of the administrative law in 2003 – 665 or 50% of all recorded violations, 241 or 18.1% of all recorded violations of Article 413 of the Code of Administrative Violations regarding illegal work, 158 or 11.9% of violations related with failure to fulfil the requirements of the labour inspector, 129 or 9.7% of violations related with working time recording, 115 or 8.6% of violations of the procedure for payment for work. The State Labour Inspectorate officials in 892 cases took resolutions to impose penalties for the amount of LTL 529 230, of which to employers in 887 cases for the amount of LTL 528 270. If compared with 2002, 5% of viola-

tions of the Code of Administrative Violations were recorded, the number of cases when resolutions were taken by the State Labour Inspectorate to impose penalties was higher by almost 2%, the amount of imposed penalties was higher by 11.3%.

The commentators of the newly adopted Law on Equal Opportunities claim that the legal base is imperfect and causes problems in ensuring equal opportunities for men and women in labour relations. For more effective implementation of the laws it is necessary that: the law would increase the relevance of the problem and would raise the information level; the law must be effectively applied to those who despite the efforts fail to comply with it. Implementation of the first task allows people to understand the content of the law and promotes willingness to comply with it. The second one is mostly related with an institutional issue and must guarantee more efficient legal assistance to victims of discrimination. The report also claims that in its activity the Office of the Equal Opportunities Ombudsman faces considerable difficulties with investigation of complaints about sexual harassment. The Office is granted too few procedural rights: the Office cannot make witnesses give evidence in cases of that type, and if possible witnesses give evidence they cannot be warned about the liability for misleading evidence. This problem should be solved by expanding the possibilities of the procedural actions of the Ombudsman. Also, the Report on Implementation of the Measures of the National Programme 2003–2004 for Equal Opportunities for Men and Women in 2004 mentions the Ombudsman’s right to record a violation of the administrative law and impose administrative penalties, however, the Office faces considerable difficulties in collecting evidence and investigating circumstances, therefore it is recommendable to increase the cooperation of the Office with the pre-trial investigation institutions, such as the Prosecutor’s Office, which would assist in comprehensive case hearing and taking a fair decision.

The activity report of the Equal Opportunities Ombudsman 2004 indicates that in 2004 57 complaints were filed and 17 investigations were carried out on the Ombudsman’s initiative. The analysis of complaints suggests a conclusion that a major part of the applicants filed their complaints according to the Ombudsman’s competence. From the decisions taken by the Ombudsman 19% of complaints were rejected given unreasonable violations, and 17% were cancelled given absence of objective information about a violation committed, therefore it is possible to conclude that there exists the problem of substantiating a complaint. So, it is proposed to define more specifically evidence which may be used in cases of that type as well as encourage the cooperation of workers in substantiating cases of discrimination.

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Paragraph 2 of Article 36 of the Labour Code establishes that the labour rights shall be protected by the court or any other dispute resolution body in accordance with the procedure established by laws and in one of the following ways:

1) by recognising the said rights;
2) by restoring the situation that existed before the violation of the right and preventing performance of the acts which violate the right;
3) by obligating to perform the duty in kind;
4) by terminating or modifying the legal relation;
5) by making the person guilty of violation of the right repair the property or moral damage inflicted or, in the cases prescribed by law, also exacting from the above person penalty or default payment;
6) in other ways established by laws.

The person whose right was violated may claim for compensation of the damage inflicted to him unless the labour laws establish otherwise. Self-defence of labour rights is permitted only in the cases prescribed by LC.

The labour dispute resolution procedure and peculiarities are regulated by the Labour Code. Article 286 of the Labour Code establishes two types of labour disputes:

1. Individual labour disputes shall be heard by:
   1) labour disputes commission;
   2) court.
2. Collective labour disputes shall be heard by:
   1) Conciliation Commission;
   2) Labour Arbitrage or third-party court.

An individual labour court is described by defining its parties, content (subject) and origination of a dispute as well as hearing procedure. An individual labour dispute is considered to be only such a disagreement which has the following set of features: 1) disagreement is persistent; 2) it has not been resolved (settled) by direct bargaining of the employer and employee (Article 287 of the Labour Code); 3) a disagreement between the employer and employee; 4) a disagreement has originated from the employment contract or due to employment. A common opinion is that individual labour disputes are legal, as usually they arise due to application of the different regulatory provisions. Bargaining is considered to be a certain stage of development of the disagreement between the employer and employee, the negative outcome of which preconditions a labour dispute. The main purpose of bargaining is preventive in seeking to resolve a disagreement prior to its becoming a labour dispute\(^\text{112}\). However, the legislation body by not establishing the requirements for the bargaining procedure in the Labour Code, which would accelerate solution of issues or would assist in avoiding a dispute, underestimates the importance of the bargaining stage. Bargaining is purposeful only when the legal labour relations between the parties are not discontinued. Besides, due to many disputes the negotiations may not take place

as they are not advisable. Bargaining is possible only in case the employer fails to perform his duties, for example, has rejected to hire, has not paid a salary, has not granted holiday, etc.

If a dispute has not been resolved by way of negotiations it must be investigated in the procedure prescribed by the Labour Code in the Labour Disputes Commission (further on referred to as LDC) which is considered a mandatory primary body for dispute resolution (Art. 289 of the Labour Code). The Labour Disputes Commission is a standing institution. Though the Labour Code does not provide for a list of categories of individual labour disputes, which must be heard in the Labour Disputes Commission, however, the incompliance with the said provision causes legal consequences, for example, if a person has applied to court without being compliant with the out-of-court settlement procedure the court refuses to accept a claim or leaves it unheard and explains the right to use the out-of-court settlement procedure to the claimant (p. 1 of Art. 412 of the Civil Procedure Code). At present there is no institution which would collect, analyze and summarize data about the activity of Labour Disputes Commissions in undertakings, offices or organizations, therefore, there is no possibility to illustrate the inefficiency and advisability of their activity based on statistical data.

Taking into account the state of violations of the legal acts regulating labour relations and their increasing tendency, a decrease in legal cases shows that workers avoid to apply to court for defence of infringed labour rights. That situation can be explained by non-confidence in courts and fairness, unwillingness to spoil the relationship with the employer or lose a job.

The international and the European Union legislation regulating labour relations is of rather a general nature, establish only fundamental human/worker’s rights and work principles the implementation of which must be dealt with by the national legal acts. The international legislation does not establish any requirements or recommendations for establishment and activity of specialized courts for hearing labour cases, also there is no direct requirements to defend the workers’ rights only in court. It is always outlined that the human rights must be equally defended in both general competence and specialized courts.

Now when the court hears labour cases the principle of social partnership and seeking for social peace is hardly applicable, therefore for the purpose of more effective defence of labour rights the stage of pre-trial hearing of labour disputes, which can be characterized namely by implementation of this principle and the partiality of the labour disputes commission and dependence on the employer, should be transferred from undertakings, offices or organizations to the level of district courts. For the purpose of judicial defence the range of activity peculiarities of courts should be expanded and the stage of primary case hearing should be established in the judicial process – conciliation, including shorter procedural terms and enforcement of a non-formal procedure with the participation of non-professional lawyers as well. Therefore, the procedure for hearing of labour cases in specialized

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court should be based not only on the general principles of the civil procedure (competitiveness, procedural equality of the parties, publicity of court hearing, social partnership and other principles), but also a special law of the Republic of Lithuania should regulate establishment of such court divisions or appointment of judges, procedure for hearing of labour cases and peculiarities in view of the principles applicable to labour relations and settlement of disputes arising out of them. These characteristics of hearing of labour cases would determine more effective defence of the human rights in labour relations and would increase people’s confidence in courts.

Recommendations

In resolution of the problems related with employment and occupation of socially vulnerable persons primarily “additionally supported persons” should be defined so that they include part of persons with specific needs, who in accordance with the laws do not belong to the group of socially vulnerable persons, e.g.: convicted persons, roma people, sexually abused women, prostitution victims, elderly people, Russian-speaking employees of Visaginas Electric Power Plant, etc. It is recommendable to promote local initiatives in implementation of the programmes prepared by the Lithuanian Labour Exchange and the Training Agency of the Labour Market for integration of socially vulnerable groups into the labour market in order to considerably increase participation of persons belonging to this category. In order to reach a desirable effect programmes must be prepared with participation of the representatives of socially vulnerable people. When resolving the problems of various social groups it is proposed to strengthen the cooperation of social organizations, state institutions and organizations by building up a general base for communication of data/opinions/experiences. Also, it is recommended to involve the mass media in this process to a larger extent, which would assist in promoting the persons to better adapt to the existing labour supply and to take more active part in requalification programmes, establish social enterprises, etc. For elimination of the deficiencies in the legal regulation it is necessary to simplify the bureaucratic procedures (e.g.: to facilitate the procedure for registration of social enterprises), to seek for comprehensive and systematic regulation of regulatory legal acts within the competence of different institutions in order to promote persons to take action on the basis of certain legal acts without discouraging initiatives and opportunities by the other (e.g. to enforce a priority status of social enterprises in public procurements). Vocational guidance and training should purposefully be developed among persons from 16 to 18 years (if possible – practical introduction to a certain occupation at industrial premises). For persons from 16 to 25 to find a job in Lithuania not only the cooperation between training and education institutions and enterprises would be beneficial, but also mediation of the Lithuanian Labour Exchange in seeking to employ schoolchildren-students as trainees as well as LLE cooperation in prevention with respect to unpopular professions and in calculation of a need for jobs of the respective professions financed by the State.
Illegal work manifest itself in different forms more often: employees are forced to work on days-off and public holidays or those employed to work part-time must work the whole working day and sometimes even twelve hours. Abuses of the organization of overtime work inevitable cause other violations: non-recording of actually worked time (work schedules are not approved and announced when due) and non-payment for it. Liberalization of overtime work would allow easier revealing of violations committed by employers with respect to payment for this work (employees would not be afraid to complain as their work would be legal).

In seeking to ensure the right to appropriate (normal), safe and healthy working conditions it is recommended to give more attention to the employer’s duties (lack of binding regulations) with respect to both employee information (e.g.: about job vacancies, even for part-time work, or fixed-term employment relationship), and supply of safety measures.

In 2004, the long-term programme for implementation of the legal acts on the safety and health at work prepared in accordance with the requirements of the European Union Directives in undertakings was completed, new laws were adopted and their amendments encourage different interested authorities to take actions with respect to issues relating to the safety and health at work, however, violations were not avoided. The survey of employees shows that employers are not concerned about appropriate personal safety measures for employees (Article 271 of the Labour Code), which frequently result is accidents at work and occupational diseases.

The number of violations of the procedure for payment of wages is really large, therefore solutions need to be sought to this problem. The provision of the Labour Code establishing that “when payment is delayed due to other than employee’s fault the employee is paid the average wage for delayed time” does not intimidate the employer as a sanction, especially in case of insolvency, therefore violations of the rights of employees are unavoidable. In solving the problems of fair remuneration for work it is recommended to ensure the principle of “pay which guarantees a decent living standard for employees and their families” and to adjust the burden of taxes deductible from earnings-individual income tax (including the share of non-taxable income), contributions to SODRA in order to avoid the black economy, “pay-in-envelope” and other tax evasion ways as an increasing negative tendency. Also, it is important to evaluate the cases of the priority right to make payments to employees or to the tax administrator without violating the human rights and maintaining the unity principle of the duties.

In seeking to ensure the rights to rest it is important to make a work and rest schedule at the very start of employment. Unavailable possibility to know the precise work and rest scheduling establishes the grounds for violations of the employees’ rights to rest. It is recommendable to increase the control of working time recording sheets for the purpose to ensure information to employees on the rest and leisure time given to them.

In resolution of the problems of freedom of association it is proposed to treat equally the legal status of labour councils and trade unions with the aim to ensure the right of the employees’ free choice about their representatives. Also, it is recommended to expand
the range of legal possibilities for employees’ representatives to control the employer’s actions or participate in taking of crucial decisions in implementation of the right of employees to appropriate (normal), safe and healthy working conditions.

In its activities the Office of the Equal Opportunities Ombudsman faces major difficulties when investigating complaints about sexual harassment. The Office is granted too few procedural rights: the Office cannot make witnesses give evidence in cases of that type, and if possible witnesses give evidence they cannot be warned about the liability for misleading evidence. This problem should be dealt by expanding the range of the possibilities of procedural actions of the Ombudsman. Also, it is recommendable to define more specifically evidence that can be used in the cases of that nature, also to promote the cooperation of employees in cases of discrimination. It is recommendable to increase the Office’s cooperation with other pre-trial investigation institutions, such as the Prosecutor’s Office, which would assist in comprehensive case hearing and taking a fair decision.

The cooperation of controlling institutions (State Social Insurance Fund Board, State Tax Inspectorate, State Labour Inspectorate, Office of the Equal Opportunities Ombudsman, police, etc.), setting up a uniform base for data exchange and various work methods should compensate for the drawbacks of the activity of one institutions with respect to others.
Introduction

Lithuanian health care system becomes oriented towards the citizens-patients being aware of their rights, implementing them and looking for the legal protection of the violated ones. The latter gradually becomes the focus of the attention. It should be mentioned that the rights of patients, on the whole, could be grouped into two different categories: individual and social. The first rights of the patient are related to the protection of his freedom and private life. Very often the right to health care is acknowledged as the most important out of the specified group of the rights of the patients that is moreover divided into the right to the protection and care of health as well as the right to access the healthcare services. The implementation of the mentioned individual and social rights of the patient as well as difficulties related thereto are analyzed in the present Chapter.

As the right to health care is attributed to the positive rights that mean the obligation for the state to take active measures in formation of the proper conditions, seeking for the highest possible level of health and maintaining it, the problems of implementation of constitutional obligations of the state in the field of health care of people are being emphasized. It should be noted that the health care system cannot function for its good, only by creating and solving the problems that are important only for it – it should turn to the patient and form such society where the healthcare and commercial interests would be preceded by the health.

The legal analysis of the situation on the implementation of the rights of the patients is impeded by the correlation of the health problems of the patients with the common Lithuanian social-economic problems. The annual report of the National Health Council, also the Council activity report of 01-01-2004 – 31-12-2004, state that “it is evident that the common Lithuanian social-economic problems – unemployment level, comparatively low income of people, huge unevenness of Lithuanian and the EU economy, low purchasing power and others – influence the healthcare problems”.

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Thinking of this topic, the opinion of the society itself becomes important. According to the data of the representative survey of people, carried on 11–14 November 2004, by the market and opinion research center “Vilmorus”, the number of people assessing the protection of the right to the timely and qualitative medical aid in Lithuania as bad or very bad remains bigger (36.7% of the interviewed) than the number of those assessing the situation as good or very good (24.6% of the interviewed)\textsuperscript{6}. The emerged contradiction that the respondents rely on the healthcare system, however, the right to the timely and qualitative medical aid, in their opinion, is not safeguarded, is explained by the understanding of people how weak is the material base of the healthcare system. However, there is still trust in doctors themselves (that is one of the most respected professions in Lithuania)\textsuperscript{7}.

**The overview of the common rates of Lithuanian inhabitants and negative tendencies**

From 1 May 2004, after Lithuania’s accession the European Union and becoming the party to the Agreements on which the European Union is based, with the changes or amendments\textsuperscript{8}, the activities of the state of Lithuania in the field of the policy of the protection of health, following Article 152, the Title Part XIII of the Consolidated Treaty on European Community, is supplemented by the Community in certain fields of public health policy. However, the Community in its activities, in the field of the public health, fully acknowledge the responsibility of the member states for the organization of health care and provision of health services.

Part 1 Article 152 of the Consolidated Treaty on European Community\textsuperscript{9} provides that the protection of the high level of human health is safeguarded by establishment and implementation of all tendencies of policy and activities of Community. The same high level health protection requirement is also consolidated by Article II-95 Part II “The Charter of Fundamental Rights of the Union” of the Treaty on the Constitution to Europe\textsuperscript{10} stating that by emphasis and implementation of the whole policy and activities of the Union the

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\textsuperscript{7} See chapter of this book “Sociological Aspects of Human Rights Monitoring”.

\textsuperscript{8} The Treaty of the Kingdom of Belgium, Kingdom of Denmark, Federal Republic of Germany, Republic of Greece, the Kingdom of Spain, Republic of France, Ireland, Republic of Italy, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, Republic of Austria, Republic of Portugal, Republic of Finland, Republic of Sweden, the United Kingdom of Great Britain and Northern Ireland (European Union member states) and the Chzech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia, Slovak Republic on the accession to the European Union by Chzech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia and Slovak Republic // Valstybës þinios (Official Journal). – 2004. No.1-1


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high level of the protection of human health is safeguarded. The mentioned level is assessed on the base of common indicators of the public health statistics such as the lifetime and main reasons of deaths, by establishing whether these indicators are not lower than the European average; the mortality rate of babies and mothers is also important that has to be as close as possible to zero.

The importance of the mentioned factors in Lithuania reveals certain positive tendencies of the period analyzed by the report on the situation of human rights.

The annual report of the National Health Council has stated that the structure of reasons of deaths of Lithuanian inhabitants is virtually close to the structure of other developed countries of the world. In 2002 the reasons of chronic, non-contagious diseases and external deaths clearly predominated within the structure of reasons of deaths of Lithuanian inhabitants (in this structure of mortality reasons 54.4% formed blood circulation diseases; 19.2% cancer and 12.9% external reasons).

However, the National Health Council emphasizes that through the assessment not of the proportions but absolute numbers of problems caused by the chronic non-contagious diseases as well as comparing Lithuanian rates to the rates of the member states of the European Union the unfavourable and significantly more complicated situation of chronic non-infectious diseases in Lithuania comes clear. The data provided by the National Health Council show that blood-circulation diseases of Lithuanian inhabitants (especially ischemic cardiac disease), cancer (especially cervical cancer must cause special concern, the mortality rates of which are the highest among the countries of the European Union) as well as exterior reasons of deaths (especially accidents and suicides the mortality rate due to which is the highest in Europe).

The main reasons of deaths of men and women in 2003 remained the same as in 2002: following the data of Statistics Department under the Government of the Republic of Lithuania, the most often deaths relate to the blood-circulation diseases (46% of men and 64% of women); cancer (19.8% of men and 18.4% of women); traumas and intoxication (18.6% of men and 6.1% of women) as well as respiratory diseases (5.2% of men and 2.6% of women).

Referring to the annual report of the National Health Council, Lithuania based to the mortality rate of babies aged up to 1 year among 25 European Union member states takes seventh place. When introducing the National Health Council Activity Report for the period 01-01-2004–31-12-2004 in the Seimas of the Republic of Lithuania, it has been mentioned with pleasure that thanks to the well organized Programme of Child and Mother the decreases in mortality rates of newborns and babies have been reached.

In 2003 the mortality rate of newborns in Lithuania (per 1000 of lively born – 6.8 still-born) was lower than the average in Europe (9.67 of the stillborn per 1000 lively born), however, higher than the average of the European Union member states until 1 May 2004 that in 2003 formed 4.74 of the still born per 1000 of lively born.

The mortality rate of pregnant women and women in child-birth in Lithuania in 2002 was 20.4 per 100 000 lively born, in 2003 reduced more than six times – it formed 3.3 per 100 000 lively born.

Following the data of the World Health Organization provided in the annual report of the National Health Council when assessing the average lifetime of people, Lithuania, in the context of 25 European Union member states is in the 22 place; and when assessing the average lifetime of people from 65 years of age Lithuania is found in 27 place. Advised by the members of the National Health Council, the rate of the lost life, highlighting the influence of certain early deaths (when the person lived shorter than the average lifetime of the country) over the public health from the social and economic point of view, still shows that during 1992–2001 in the age group of 1–64 more than 2 million (2,300,78) of life years lost due to the untimely deaths (earlier than 65 years of age).

Thus, out of all common public health rates, the mortality rates of babies and mothers, best correspond the scale of Europe and the European Union, whereas the rates of the main reasons of deaths (i.e. absolute numbers of deaths from the chronic non-contagious diseases: mortality from ischemic cardiac diseases, cervical cancer, accidents and suicides) as well as the rates of the average lifetime of people still cause concern.

The problems of implementation of the state constitutional obligations in the field of health of people

Establishment of the provision of unpaid medical aid. Part 1 Article 53 of the Constitution of the Republic of Lithuania consolidates the constitutional obligation for the state to take care of the constitutional value – human health and guarantee the medical aid and services in case of illness. The latter obligation is treated as the function of the state. The understanding emerges out of the provision that the state takes care of the health of people that the protection of human health is a constitutionally important aim, public interest. It comes out of this obligation that the concrete health care services have to be guaranteed in case of disease of a person, also services of medical aid. The requirement of the guarantee of the latter is even more intensified by the second sentence of the mentioned article, stating that “law provides the procedure of provision for citizens of medical aid at the state health care institutions free of charge”.

Moreover, the obligation of the legislator provided by Part 1 Article 53 of the Constitution is also related to the mentioned obligation of the state to take care of the health of people.
people and guarantee the medical aid as well as services in case of illness of a person, stating that the legislator should regulate by laws the unpaid medical aid at the state health care institutions for the citizens by highlighting in such a way that the lawful regulation of the provision of unpaid medical aid for the citizens at the state health care institutions is one of the most important guarantees of the constitutional right to the health protection.

Part 1 Article 53 of the Constitution consolidates the social right – the right to the unpaid medical aid at the state health institutions – that is formulated without mentioning the special economic guarantees. Therefore, it should be treated as the state “obligation”; having the constitutional obligation to provide by law the procedure of realization of this right, the legislator in this field has a quite wide discretion, together, imposing the respective legal regulation, he could refer also to the real state economic, financial possibilities.

That means that following this constitutional requirement, the legislator may choose and consolidate by the law the model of the provision of the unpaid medical aid at the state health care institutions (the fields of provision of such aid and terms of its provision). However, seeking for the clear consolidation of the right to the unpaid treatment and for the clear definition of the scope of the unpaid treatment, the faulty practice is considered the one that the Law of the Health System actually just specifies the fields of the state guaranteed (unpaid) medical aid and the more detailed regulation is provided by the orders of the Minister of Health. Therefore, it is suggested to consolidate by the law the basis (not only the fields of this aid, but also the terms of its provisions) of the procedure of the unpaid medical aid at the state health institutions.

The problems of compensation for medicine. The issues of compensation of costs of the purchase of medicine get into the scope of the provision of the unpaid medical aid at the healthcare institutions for the citizens as following Paragraph 8 Part 2 Article 47 of the Law of the Republic of Lithuania on Health System the compensation for the insured of the medicine and means of medical aid from the approved list by the Ministry of Health, compensated from the budget of the compulsory health insurance, is attributed to the state guaranteed (unpaid) health care.

The whole of the limitations of compensation of costs of the purchase of medicine forming the current model of the procedure of compensation for medicine (compensation for medicine that are enlisted in the list of compensatory medicine; compensation of the base price of medicine; compensation of the whole base price or certain part of it for the patients of certain social groups or (and) following the list of diseases, syndromes and conditions; compensation of a base price of medicine of a certain level (percent) for the patients of separate social groups or (and) following the list of diseases, syndromes and conditions) virtually is a mechanism intended for balance of the possibilities of the budget.

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of the compulsory health insurance through the legal means to cover the costs of the purchase of medicine with the factual need of such means (prescription of the compensated medicine for the patients). With the help of this balance it is sought to solve the issue of allocation of limited means for the health protection (health care).

The mentioned balancing in Lithuania is the huge problem as every year the planned means for compensation of the purchase of medicine and medical aid are not enough, the number of medicine and medical aid means prescribed for the patients is much larger18.

In March 2004 upon the commission of the State Patients Fund under the Ministry of Health (upon the approval of the Ministry of Health) the public opinion and market research company “Spinter Research” has carried an opinion survey of Lithuanian inhabitants and patients on the valid procedure of compensatory medicine and accessibility of them19. The results revealed that the model of compensation for medicine applied should be adjusted. According to the opinion of the majority of the interviewed inhabitants of Lithuania (49%) the compensation should be differentiated following the severity of the disease; and 36% state that referring to the income of the patient: the level of compensation should be higher for people with lower income and for those with higher income – the compensation should be lower; 48% of the interviewed patients think that compensation first of all should depend on the severity of the disease without providing any privileges for separate groups of people, 44% of them stated that it should be referred to the income received by the patient. Thus, upon the request of the majority of inhabitants and patients the more preferable model of compensation is the one following which the primary criterion for compensation would be the severity of the disease.

The existing model of compensation procedure for medicine (medicine are compensated following the list of them) is criticized also by the specialists. The main envisaged problems by them are divided into two groups: existence, formation and change, of the list of compensatory medicine and excess fares for compensatory medicine.

The State Patients Fund under the Ministry of Health as other state institutions solving the problems of health policy suggests changing the system of compensation for medicine by refusing from the list of medicine and introducing the compensation for all the medicine intended for treatment of certain diseases20. The representatives of the Ministry of Health acknowledge that the current system of compensation for medicine is very uneven and misbalanced as some groups of patients are treated based on the priority, whereas others are totally forgotten21. According to the Association of Medicine Producers22, improper is the

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22 Valius K. The cooperation will be practiced // Gydytojø þinios, 13 January 2005, No. 1 (371), p. 5.
formation of the list of compensatory medicine. Medicine that are compensated 100% are expensive medicine that “consume” all the means. Therefore, other diseases do not fall under the group of compensatory ones. The proposed idea by the Association of Medicine Producers for the formation of the list of compensatory medicine is very simple – in case the medicine has the indication to treat any disease included into the compensatory list, then this medicine has to be included. According to the opinion of the experts of Lithuanian Free Market Institute23 the compensation for medicine when the list of compensatory medicine exists and the patients pay the full price for certain medicine is discriminatory and causes problems very well known for all: non-transparency and induces corruption when forming the list of exceptions; technological details – the principles of formation of the list of compensatory medicine when some medicine are included and others not also induce the non-transparency24.

The aim to establish the periodicity of the change of the list of medicine25 is provided by the Paragraph 37 of the Order of the Minister of Health “On the Descriptive List of the Procedure of the Change of the List of the Diseases and Compensatory Medicine for Their Treatment, of the Compensatory Medicine and Compensatory Medicine Aid Means” following which medicine and medical aid means are included into the lists for the period of 3 years. Since 1999, applying the medicine prescription limits, the more often change than 3 years of the lists of compensatory medicine is noticed: the lists are nearly every year supplemented with the new medicine or certain medicine are stricken off. The situation has become slightly more favorable as medicine are enlisted using the appellative name. Thus, patients may choose medicine according to the amount of excess fares for compensatory medicine.

The prohibition of the setting of the so called “quotas” for the compensatory medicine. Following the judgment in the administrative case I(11)-18/200226 of the Supreme Administrative Court of the Republic of Lithuania as of 15 October 2002, the paragraphs providing the procedure of calculating of means for the compensatory medicine of the Order No 85 of the Minister of Health as of 15 February 2002 “On the Agreements regarding the Formation and Implementation of the Scope of the Compensatory Medicine for the Health Care Institutions”27 have been eliminated.

The fact of the provided excess fares for the compensatory medicine is positively assessed by the experts of the Lithuanian Free Market Institute (the demand for the compensatory health services and medicine should be limited not by quotas or by queues at the health care institutions, but by the excess fares paid by a person that normally should be covered by the private insurance fund; excess fares are important also for understanding of

the patients about the price of medical treatment, the chosen level of health services) it is acknowledged that any change of the compensation model, when a person is motivated to pay himself at least part of the price and even better – the bigger amount would be the reform promoting efficiency in medicine\textsuperscript{28}. Moreover, the representatives of the State Patients’ Fund are of the opinion that the best solution would be to withdraw the excess fares for the compensatory medicine and prevent the control by the drugstores\textsuperscript{29}. Instead of this it is suggested to have discussions that excess fares are the measures motivating the patients rationally take medicine. One of the concrete measures is to maintain excess fares in the group of medicine where a few producers are, having entered their medicine by the same name, and also to preserve the minimum excess fare for the cheapest medicine. However, following representatives of the Ministry of Health\textsuperscript{30}, the difference in prices that a patient has to pay as excess fare at the drugstore, is paid by the so-called “charitable organization”. Therefore, a huge possibility is that any covering of excess fares will be prohibited – that is a second measure that would force reduction of prices till the realistic level. According to the representatives of the Ministry, the Ministry of Health already possesses the opinions of lawyers that the current procedure of covering of excess fares contradicts the laws of Lithuania: a person gets medicine without paying for it, no taxes are paid, although, the law as well as the order of the Minister of Health provide that excess fares must be and no reference is made to any dismissal from excess fares.

Based on the aforementioned opinions, the existence of excess fares for the compensatory medicine is evaluated as a positive thing.

The lack of information by Lithuanian inhabitants (patients) on the compensation of costs related to the purchase of medicine and medicine aid means may be indirectly related to the problems of compensation for medicine which is also specified as problematic. The representatives of Vilnius city Territorial Patients Funds by noting that the majority of complaints relate to the medicine and medical aid means the costs of which are covered from the budget of the Compulsory Health Insurance Fund for the in-patients and out-patients, prescription and payment as well as payment for the medical rehabilitation services from the budget of the Compulsory Health Insurance Fund, state that most often the complaints do not prove out due to the lack of the information about the compensation for medicine (for example, the complainants know that they have to pay for the medicine that is 100% compensatory as not full but the base price of medicine is compensated).

The lack of the information about the procedure of compensation for medicine is evident also from the results of the opinion survey of Lithuanian inhabitants and patients about the effective procedure of prescription of compensatory medicine as well as accessibility of these medicine, carried by the public opinion and research company “Spinter


\textsuperscript{29} Valius K. The cooperation will be practiced // Gydytojø žinios, 13 January 2005, No. 1 (371), P. 7.

Research” in April 2004 upon the request of the State Patient Fund under the Ministry of Health (upon the approval of the Ministry of Health)\(^{31}\). It has been established that the majority of people acknowledged that they are badly informed about the compensation procedure effective during the time of the survey: 45% of the respondents have not heard anything about it; 43% have heard, however, do not know how it has changed; one tenth of the respondents have stated having enough information about the new procedure of the establishment of the base price of the compensatory medicine. The worst informed in Lithuania are men, youngest inhabitants, the respondents having specified the biggest income, students/schoolchildren, inhabitants of regional cities, rural areas. The situation of the information possessed by patients about the compensation procedure for medicine in force is better: half of them have specified (49%) that they have heard about this procedure, however, do not know how concretely it has changed; one third of the interviewed has not heard about the changes in medicine compensation procedure.

It is possible that namely inconsiderable or insufficient information about the medicine compensation procedure predetermines the limitation of possibilities to choose the latter medicine. The survey has also revealed that the patients are not provided with the possibility to choose among the medicine of different producers or analogous effect as the doctors, despite that they are obliged to\(^{32}\), do not provide such information when prescribing the compensatory medicine (43% of the interviewed Lithuanian inhabitants have stated that doctors only sometimes inform about the different producers and 37% have specified that the patient does not receive such information from a doctor; 39% of the interviewed patients have specified that sometimes they are informed about the different producers and 36% of the patients have stated that doctors do not do that).

The conclusion is made that there is a need of the provision of more information for Lithuanian inhabitants about the compensation procedure of the purchase of medicine that would form preconditions more actively use the rights provided by legal acts.

**The insufficient implementation of the state obligation in the field of prophylaxis of diseases.** Part 1 Article 53 of the Constitution provides the obligation of the state to take care of the health of people and guarantee the medical aid as well as services in case of illness of a person. Part 2 of the latter Article provides the obligation to initiate the physical culture of the public and support sports, that allows the statement that it is sought not only to ensure the treatment of consequences of diseases but also consolidates the obligation of the state actively propagate and engage in the prophylaxis of diseases (preventive activities) and support it (motivate health improvement, evasion of diseases or their elimination).

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\(^{31}\) Public opinion survey of Lithuanian inhabitants, carried in March 2004 regarding the procedure and accessibility of medicine prescription [interactive]; [referred to on 16 May 2005]. Internet search: http://www.vlk.lt/vlk/pr/files/komp_vaist/040331.htm#virus.

\(^{32}\) Such obligation is provided by Paragraph 62 of the Rules Approved by the Order of the Minister of Health Protection of the Republic of Lithuania on Prescription and dispensation (sales) of medicine that provides that a doctor when prescribing the compensatory medicine should inform the insured about the prices and excess fares established of medicine of the same appellative name included into the pricelist of the base prices // Valstybės žinios (Official Journal). – 2002, No. 28-1013.
The sore issue is the organization of prophylaxis of non-contagious diseases and funding of prophylaxis programmes. As noted by the National Health Council it happens very often that when establishing the priorities, there are no resources left for the prophylaxis programmes, though the medicine and economy sciences undoubtedly show that to avoid the disease is more efficient and cheaper; however, the latter principle is followed: “the prophylaxis is more important, however, to cure it is easier”. The Council states that the gaps in the conditions for the organization of prophylaxis of diseases are obvious violations of human rights; thus, talking about the relations of prophylaxis and clinical medicine and especially when allocating the means, the wise balance is important. According to the Council, the scientific researches have proved that well organized preventive means may redirect the change of the level of the lifestyle habits, social environment, biological risk factors and the mortality rate caused by the chronic non-contagious diseases towards the better health. It is important to form the health policy, the activity plan of implementation of it (the strategy of the fight against the chronic non-contagious diseases) and adequate human and financial resources.

The report for the period 01-01-2004 – 31-12-2004 contains the conclusion of the National Health Council that during 1999–2003 the implemented State Programme of Prophylaxis of Cardiovascular Diseases (the priority state health programme as the vascular diseases are the most often reason of deaths and the increasing number of elder people will predetermine the increase of morbidity of the mentioned diseases in the future; the impact of the following proved risk factors for the development of cardiovascular diseases is stressed: smoking, increased arterial blood pressure, overweight, the increased cholesterol, insufficient physical activity, glucose disorder, immoderate usage of alcohol) has not reached the planned effect as the programme is implemented not towards the prevention of diseases but just diagnostics and treatment of them. Moreover, it has been stated that the misbalance of the programme investments is noticed between the improvement of the treatment quality and preventive measures as nearly all the means allotted for the programme have been used just for the improvement of the infrastructure of health care institutions and the quality of treatment, however, there has been no integrated, coordinated activity plan for the prophylaxis of all the chronic contagious diseases.

When implementing the State Programme 2003–2010 of Cancer Prophylaxis and Control the positive change should be mentioned that the approved methodology of implementation of the Selective Women Memographic Examination seeking to avoid the most often oncology disease – breast cancer and to establish it in a most efficient examination way used for the identification of the preclinical and early stage breast cancer.

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The National Health Council suggests the analysis of the possibilities of the general practitioners to be more actively involved in the prophylaxis of the chronic non contagious diseases and provide the stimulants for this activity; it recommends to motivate the preventative work of the primary health care institutions by paying attention to the insufficient funding of the primary health care and thus appearing lack of the preventive work (as well as the services of diagnostics and nursing).

The problems of implementation of recovery of harms caused for the patients

If the state does not care or improperly cares about the health of people (i.e. improperly performs its functions), a person whose constitutional right to the proper health protection is violated has the right to address the court; thus, following the law, a person may claim for recovery of material and moral harms caused for him (Article 30 of the Constitution). The Constitutional Court, interpreting the obligation of a legislator provided by Part 2 Article 30 of the Constitution to issue the law or the laws providing the recovery of material and moral harms for a person, has stated that the laws must ensure the real protection of the violated rights and freedoms of people, it should be in coordination of the protection of other values consolidated by the Constitution.

The substantiality of the protection of the violated rights and freedoms of patients means also the necessity of functioning of the institutions authorized for the protection of them. The pretrial institution analyzing the disputes regarding the recovery of harm caused for patients arising between a person and the health care institution (except the disputes arising from the civil insurance; also when establishing the material and moral harm and the amount of it following the claim of a patient (his representative) or other parties concerned) – the Committee of the Establishment of the Harm Caused – malfunctioning till 2005. Although, following the wording of the Law of the Republic of Lithuania on Recovery of the Rights and Harm Caused for the Patients, that was in force till 31 December 2004, the committee had to exist that would establish the scope of the harm caused for the health of a patient.

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39 Although the composition of the Committee was approved on 8 December 2004 (see Valstybės žinios (Official Journal). – 2004, No. 178-6601), still the actual functioning of it is related to the approval of the provisions of the mentioned Committee as of 10 February 2005 (see Valstybės žinios (Official Journal). – 2005, No. 22-678).
40 Part 1 Article 15 of the Law provides that the scope of the harm caused for the health of a patient by lawful activities of a doctor or by nursing personnel is established by a Committee (see the Law of the Republic of Lithuania on the Recovery of Harms Caused to the Rights and Health of Patients [interactive]; [referred to 5 May 2005]. Internet search: http://www3.lrs.lt/cgi-bin/preps2?Condition1=57628&Condition2=).
As it was pointed in the Introduction of this Report, though it is more common to link the protection of social rights with the implementation of the positive rights of the state in social field, in a course of late years in certain European countries, following the case-law provided by Article 13 of the amended European Social Charter developed by European Social Rights Committee, the tendency is spreading to treat the social rights (the right to medical aid) as individual ones but not collective ones by acknowledging the possibility to directly protect them at the court. Thus, the social rights in the Constitution should also mean that each concrete person has the right to the proper protection of the social rights (not only the laws of the social rights should be applied at the courts but also the concrete social rights should be protected)\textsuperscript{41}.

The rights to the health protection, referring to the number of persons having experienced the harm caused at the health care institutions, is protected as individual right. Following the data of the carried survey of UAB “Rait” – “The Patients on the Experience at the Health Care Institutions”\textsuperscript{42}, 380 out of 1050 of inhabitants aged 16–74 have stated having suffered harm at the health care institutions. That forms nearly 25%. Most of the harm according to the patients have been caused by the out patient health care institutions (53.9%), at the inpatient (42.1%), at the emergency medical aid (10.5%), at the private outpatient institutions (5%). The impression of the suffered harm the patients describe using the following criteria: harm caused to the health (56.5%), financial costs (39.8%), suffered moral trauma (38.7%), life danger (23.8%), humiliated honor and dignity (15.4%). The reasons due to which the harm has been caused according to the patients: improperly treated disease (30.4%), untimely provided services (30.1%), wrongly diagnosed disease (27.5%), inappropriately prescribed medicine (26.4%), undiagnosed disease (18.8%), badly performed work (4.2%). Although nearly one fourth of those 380 of patients have suffered injustice only 7.3% claimed for the recovery of harm. The patients evaluate the possibility to receive compensation for the suffered harm pessimistically – 76.7% do not expect anything – neither material nor moral recovery of harm.

The obstacles for the implementation of the compulsory insurance of the health institutions civil liability for the harm caused for the patients

After the insurance of the Health Care Institutions of the civil liability for the harm caused for the patients by the compulsory insurance the patients will be able to claim the recovery of harms for their health or life (in case their health has been disorganized or death caused), by direct communication with the health care institution or insurance company, in case there is no need to address the court. The problem arises: in case the insurance company does not fully cover the harms, shall the aggrieved have the right to claim for the remaining part from the health care institution?


On the whole, the development of the civil liability as an additional system for harm compensation (existing alongside the civil liability, social insurance and other systems) shows the more efficient defense of the interests of the aggrieved: the aggrieved has more guarantees to hope for the recovery of harms as that is safeguarded by the especially huge payment potential of the insurance companies as well as with the help of this insurance the expedition of harm recovery is guaranteed\(^\text{43}\).

The fact of the civil liability insurance is assessed as one of the objective criteria of quality proof of the field where it is applied. Following Part 2 Article 2 of the new wording of the Law of the Republic of Lithuania on the Patients’ Rights and Recovery of Harm for the Health\(^\text{44}\), that came into force on 1 January 2005, the health care is acknowledged as qualitative if it is provided at the health care institutions \textit{inter alia} having insured their civil liability for the harm for the patients. Part 1 Article 16 of the mentioned law provides the obligation of the health care institutions to insure their civil liability against the harm caused for the patients. As specified in the latter article, the procedure of the civil liability of the health care institutions against the harm caused for the patients is established by the compulsory insurance rules of the civil liability of the Health Care Institutions against the Harm Caused for the Patients, specified by the Order V-6 of the Minister of Health of the Republic of Lithuania as of 6 January 2005 “On the Approval of the Inventory of the Procedure of the Civil Liability Insurance of the Health Care Institutions”\(^\text{45}\).

Part 2 Article 16 of the aforementioned law provides that the insurance obligation remains valid for the whole insurance amount (the latter forms LTL 50 000 per one health care institution for each insurance incident) without recounting the paid insurance benefits when the insurer pays the insurance benefit due to the insurance incident.

The real situation witnesses that the main reason preventing the formation of the market of insurance companies insuring the services of the health care institutions namely is the shifting insurance amount – “according to the representatives of “Lietuvos draudimas” none out of six biggest reinsurance companies of Europe have agreed to reinsure the contracts of the insurance companies following procedure of the compulsory insurance of health care institutions currently approved in Lithuania: it is not clear how many times the insurer may have to pay for the same mistakes of medical personnel and to provide the latter service without the reinsurance it is too risky. It is noticed that when insuring the liability of medical personnel by the voluntary insurance after the payment of insurance benefit by the insurer, his obligation remains further valid only for the remaining insurance amount. The aforementioned regulation provides the conditions that only one insurance company – Russian capital “Reso Europa” is meantime offering the services of the civil liability of the health care institutions against the harm caused for the patients, though, it also has not concluded any insurance agreements of this type.


Therefore, in case the health care institutions are unable to insure their civil liability against the harm caused for the patients at the insurance companies (due to the non-reinsurance of the latter), the implementation of the civil liability insurance is impeded and therefore, no additional guarantees are provided for the aggrieved patient for the compensation of harm. It is suggested to amend the latter situation.

Organization and management of the health care as well as the deficiencies of organization of the provision of health care services

The State Medical Audit Inspectorate under the Ministry of Health, seeking to insure the equal economic and organizational accessibility to the primary and specialized health care services, carries the control of the quality of the health care services. Having summarized the data of the carried researches in 2003 at 162 institutions during the planned and unplanned control\textsuperscript{46} as well as the data of the carried research in 2004 of 180 of institutions\textsuperscript{47}, the Inspectorate has established that respectively 87\% and 59.5\% of cases the violations of the valid requirements and the deficiencies of the organization and management of the health care activities determine the dissatisfaction and/or harm for the health of the patients – not provided procedural requirements for the services of diagnostics, treatment or rehabilitation with the measured rates of the assessment of activities. There are no requirements to perform the activities timely at the internal quality documents of the institutions, there are no responsible executors specified, measures (structure) and medical documents.

In the field of development of the Primary Health care, the recommended strengthening of the institution of the general practitioner recommended by the 2000 annual report of the National Health Council \textit{inter alia} manifests in the increase of the number of general practitioners. According to the data of the State Service for the Accreditation of the Health Care Activities under the Ministry of Health, during the period from 1999 till 2003 the number of general practitioners increased at the state and private health care institutions and currently they form 50\% of the primary health care doctors\textsuperscript{48}. However, the representatives of the Center of Health Law and Economy note\textsuperscript{49} that the increase of the number of general practitioners still drag behind in some cities, for example, Vilnius city, since the approval of the Restructurisation Strategy of Health Care Institutions by the Government on 18 March 2003\textsuperscript{50}.

\textsuperscript{46} The data provided by the State Inspectorate of Medical Audit under the Ministry of Health Protection is from the 2003 Annual Report of the State Inspectorate of Medical Audit under the Ministry of Health Protection.
\textsuperscript{47} The data provided by the State Inspectorate of Medical Audit under the Ministry of Health Protection is from the 2004 Annual Report of the State Inspectorate of Medical Audit under the Ministry of Health Protection.
It is noticed that continuously increasing migration of specialists, especially young ones, abroad influence the number of general practitioners.

Following the results of the published project “The Development and Planning of the number of Lithuanian Doctors for 1990–2015” of Lithuanian Open Society Fund51, when planning the number of doctors it is important to evaluate also the influence of migration that becomes more and more relevant. The research has been carried seeking to evaluate the intentions of Lithuanian doctors and residents to go abroad for work at the countries of the European Union. The interview has showed that out of the residents the average age of whom was 27.4±2.5 and doctors the average age of whom was 50.6±10.4, there were 60.7% of people who intended to work in the European Union or other countries based on the gained profession. It has appeared that 14.5% of residents and 5.4% of doctors planned to leave for work to the European Union or other countries forever. The majority of the respondents has been resolved for such step, i.e. have taken concrete activities for its implementation. More than a half of those intending to leave for work to the European Union have planned to do this after Lithuania’s accession to the European Union. The main reasons for leaving for work in the European Union or other countries were the bigger salary, wider professional possibilities and better quality of life. According to the opinion of authors of the research let us think that after the improvement of the current living and professional conditions the improvement of which is the main reason for leaving, the escape of doctors abroad may be not so noticeable.

The Difficulties of Practical Realization of the Rights of a Patient to the Information and Confidentiality 52

After entering into force of the new wording of the Law on the Patients’ Rights and Recovery of Harms for Health on 1 January 200553 (prepared following the Civil Code of the Republic of Lithuania54 that has entered into force in 2001 providing the more strict regulation of safeguarding the right of the patient to the immunity of the private life) lots of discussions arose in mass media and the public regarding the application of the provisions provided by the Law. However, most of the attention has caused the requirement for the procedures of written consent and disclosure of information about health. Lots of examples have been provided by the TV, newspapers and magazines when medical personnel and patients have complained about the requirement to sign for many procedures or get the written consent of a person for disclosure of information about a patient. The concrete cases have clearly shown that there is a lack of explanation how to apply the provisions of the Law in everyday practice.

52 The chapter is prepared following the information provided by Lithuanian Bioethics Committee.
For example, Part 1 Article 8 of the mentioned Law does not specify the form – oral or written consent – should be received from the patients, including the juvenile patients aged from 16 till 18, in relation to their treatment or some other provision of health care or nursing. It is seen from the second wording of the part of the same article that the choice of a patient is executed in a written form: “when following the norms of health care there is a possibility to chose the methodologies of diagnostics and treatment, the patient has to be acknowledged with the peculiarities of these methodologies and he should be provided with a possibility to choose. The choice of the patients, including juvenile patients aged from 16 till 18, has to be executed in a written form”. Therefore, it is not fully clear whether in case of all the procedures it is important to receive the written consent.

Moreover the Supreme Court of Lithuania\(^5\) generally gives special importance for the consent of a patient: the obligation of a doctor is to inform and receive the consent of a patient, it is sought to calm down the patient, encourage him and warn about the danger and provide the conditions for the patient to decide should he or not resolve for a certain procedure, operation, whether it is expedient to agree to apply a certain treatment. After the establishment that a doctor has provided medical aid without the receipt of a consent or exceeded the given consent, also in case he has not properly informed the patient that is considered to be the violation and the ground for the application of civil liability.

It should be noted that very often the requirement to get the consent of the representatives for the treatment of juveniles is problematic. The cases are often when a grandmother or a nanny brings a child to the institution and the parents are abroad without leaving any authorization or consent. Officially, such a child should not receive a medical assistance in case the latter assistance is not urgent until the written consent of the lawful representatives. When demanding for a written consent it is not clear whether the representatives necessarily have to take part when the service is provided and sign before each service is provided or it is possible to prepare the “principle” consent for certain procedures. That is not discussed and such form has not been provided.

According to the opinion of Lithuanian Bioethics Committee the implementation of certain provisions of the law, regulating the protection of the private life, is also problematic, for example, Part 3 Article 10 of the Law providing that “All the information on the stay of the patient at the health care institution, his treatment, health state, diagnosis, prognosis and treatment, also all other information of personal type about the patient has to be confidential, even after the death of a patient”. Lithuanian Bioethics Committee provides the situation when a son of the elderly man who has appeared at the health care institution, having missed the non-arriving father who has not called, having arrived at the health care institution and provided the personal document proving his identity and kindred, has not been informed whether his father has been hospitalized. The issue is raised how, following the requirement of Article 10, should the doctors and receptionists behave in case of badly

injured during the accident patient, who is treated at the intensive therapeutics division if the relatives call to the hospital or arrive without having any personal documents.

Complicated is the implementation of articles of the new Law of the Republic of Lithuania On the Recovery of the Harm and the Violated Rights of the Patient related to the guarantees of the immunity of the private life of the patient as well as the necessity emerging out of this to adopt the legal act explaining the application of this law, may be also proved by the conclusions of the specialists of the carried pilot qualitative research “The Situation Analysis of the Implementation of the Rights of a Person to the Privacy and Confidentiality Principle within the Health Care System”\textsuperscript{56}, carried in 2004 by the Civil Initiatives’ Center. This research uses the data received through the personal interviews with the representatives and doctors of hospitals of Kaunas, Klaipėda and Vilnius as well as discussions with the groups of patients and nurses as well as doctors and it has been stated that seeking efficiently implement the right of a person to the privacy and ensure the confidentiality principle in the field of health care \textit{inter alia} is impeded by the faulty interpretation of legal norms and ethic principles. The research has shown that at the health care institutions “certain inertia of previous habits prevail when the information about a person has been more open and accessible. The personnel of the health care institutions is inclined to reason and explain the possible violations [of the right of a person to privacy] by different dominating interpretations of “everyday work”, respect towards the inquiring person, humanity and kindness, etc. The patients are inclined to think that following the principle of confidentiality more depends from the personnel, different doctors, “internal culture” at the health care institution, but not from the defined work procedure or principles of functioning of the whole health care system”. The research has also revealed that training of personnel of the health care institutions is needed on how to ensure the privacy of a person within the health care system as in the current situation not only one health care institution but also each division and its employees individually solve the problems arising in everyday work, related to the safeguarding of the personal privacy; (although official requirements raised for safeguarding of the immunity of the private life of the patients are known for them, there is a lack of knowledge and possibilities for their implementation).

To sum it all it is suggested:

1) more detaily describe the unclear norms of the Law of the Republic of Lithuania of the Recovery of the Rights of the Patients and Harm, regulating the issues of the form of the consent of a person and of the disclosure of information about the health of a patient, with the help of the post-regulatory acts (by recommendations, description of a procedure etc.) that would help to eliminate the difficulties of their practical realization by providing the mechanisms of the implementation of the aforementioned norms;

2) by ensuring the training of the personnel of the health care institutions, related to the adopted legal acts, seeking to unify the existing practice of the provision of information about the patient.

\textsuperscript{56} Information provided by the Civil Initiatives’ Center.
The violations of the right of a person to the immunity of the private life should not be left unnoticed in the mass media. The inspector of ethics of journalists, having made the decisions regarding the publications in the press that have caused huge resonance, where the principle of immunity of a private life is violated, makes a conclusion that the data on incapacity, health\textsuperscript{57} are among the protected personal data by the Law on the Legal Protection of Data of a Person\textsuperscript{58} often published due to the absence of public interest at the mass media.

Moreover, following Part 3 Article 25 of the Constitution, the regulatory limitation of the disclosure of information (also the information about the patient) is possible in case it is important for the protection of the private life of a person. Following the latter constitutional requirement it is provided that the information about the private life of a person (health information is the part of the private life of a person) may be made public upon his consent (Part 1 Article 2.23 of the Civil Code of the Republic of Lithuania\textsuperscript{59}; Part 2 Article 14 of the Law of the Republic of Lithuania on the Provision of Information to the Public\textsuperscript{60}; Article 53 of the Code of Ethics of Journalists and Publishers\textsuperscript{61}). Therefore, the patient draws the line when, whom, what information about the stay at the health care institution, his treatment, health situation, diagnosis, prognoses and treatment should be provided and not provided on the whole.

**Recommendations**

The necessity of solving of problems of the implementation of the constitutional obligations of the state in the field of health protection is noted – establishment of free of charge medical aid and insufficient implementation of the obligation of the state in the field of prophylaxis.

Therefore, seeking to clearly consolidate the right to the free of charge medical aid and clear definition of the scope of the free of charge medical aid, it is suggested to consolidate by the laws the fundamentals of the procedure of the provision of the free of charge medical aid at the public health care institutions (not only the field of this aid but also the terms of its provision).

The more active implementation of the state constitutional obligation is induced to take care of the health of people by ensuring the underlying organization of prophylaxis of diseases from the point of view of chronic non-contagious diseases.


\textsuperscript{60} Valstybës žinios (Official Journal). – 2000, No. 75-2272.

It is important to provide more information for Lithuanian people about the compensation procedure of medicine purchase costs that would provide the preconditions to more actively use the rights provided by the legal acts (such as to choose the medicine following the prices of the medicine included into the price list with the same common name as well as to be informed about the provided excess fares for this medicine).

The attention should be paid also to the need of overcoming the difficulties of organization of health care system.

It is suggested to adjust the formed situation (seek to provide the conditions for the appearance of the wider circle of the insurance companies, providing the services in the analyzed field), when due to the fact that the health care institutions cannot insure at the insurance companies their civil liability against the harm caused for their patients (due to the non-reinsurance of the latter), the implementation of the civil liability insurance is impeded and therefore the additional guarantees for compensation of harms caused for the aggrieved patient are not provided.

It is suggested to eliminate the deficiencies specified by the State Medical Audit Inspection: to establish the procedural requirements for the provision of the diagnostic, treatment or rehabilitation services with the measured assessment rates and to provide in the internal quality documents of the institutions the requirements to perform the activities timely, specify the responsible executors, measures (structure), medical documents.

Other relevant problems should also be solved. Seeking to safeguard the practical realization of difficulties of the provisions of the Law of the Republic of Lithuania on the Recovery of Patients’ Rights and Harm for the Health, regulating the form of consent of a patient and issues of disclosure of information about the health of a patient, it is suggested to describe in a more detail way the unclear provisions of the Law by the post regulatory acts (recommendations, procedural descriptions and etc.) that would provide the implementation mechanisms of the provided aforementioned norms. It is also suggested to ensure the training of the personnel of the health care institutions, related to the newly adopted Law of the Republic of Lithuania on the Recovery of Patients’ Rights and Harm for the Health, seeking to unify the existing practice of the provision of the information about the patient.

Moreover, the violations of the right of a patient to the immunity of the private life in the mass media should also be reduced.
THE RIGHT TO HEALTHY ENVIRONMENT

Introduction

People’s health greatly depends on the environment they live in. The condition of health is determined by many environmental factors – water, air, soil, etc. The quality of the latter environmental components is determined by a number of factors – business operations of industrial and energy companies, agriculture, tourism, transport and pollution caused by it, planning and infrastructure of housing developments, waste of anthropogenic activities and its treatment, natural environmental characteristics. In implementation of the right to healthy environment it is important to ensure establishment of tough pollution standards, to control their observation as well as to bring actions of damages against violators.

The measures to guarantee the right to healthy environment are not regulated by the legal acts in a consistent manner. Neither the Constitution of the Republic of Lithuania nor laws clearly define the content of the rights to healthy environment. That can be done through systemizing the provisions of different legal acts.

Paragraph 1 of Article 53 of the Constitution of the Republic of Lithuania establishes that the State shall take care of people’s health, paragraph 3 of the same Article says that the State and each individual must protect the environment from harmful influences; Article 54 establishes that the State shall take concern of the protection of natural environment, its fauna and flora, separate objects of the nature and particularly valuable districts, and shall supervise sustainable unitization as well as renewal and augmentation of natural resources. The exhaustion of the land and entrails of the earth, pollution of waters and air, production of a radioactive impact as well as impoverishing of the fauna and flora shall be prohibited by law.

Article 2 of the Law of the Republic of Lithuania on Environmental Protection establishes that the law shall regulate public relations in the environmental protection field, define the main rights and duties of legal and natural persons ensuring amongst other healthy and clean environment. Article 1 of the Law of the Republic of Lithuania on Public Health Care indicates that the law establishes the foundations of public health safety and control.

The principal institutions ensuring the right of Lithuanian people to healthy environment are as follows: the Ministry of Environment of the Republic of Lithuania, the Ministry of Health of the Republic of Lithuania as well as institutions under them, other Ministries of the Republic of Lithuania (the Ministry of Transport and Communications, the Ministry of the Interior, etc.) and municipal institutions.
Various strategic plans, action programmes and other documents of the institutions give rather significant attention to the measures ensuring the right to healthy environment. For example, as one of the key commitments of the coalition Government for 2004–2008 established by Resolution No. X-43 of the Seimas of the Republic of Lithuania on the Programme of the Government of the Republic of Lithuania\(^5\) of 14 December 2004 is to harmonize the laws regulating economic development and environmental protection with the priorities for health protection and its strengthening. The right to healthy environment is also entrenched in the Lithuanian Environmental Protection Strategy\(^6\), the Lithuanian Health Programme\(^7\), the National Public Health Care Strategy of Lithuania\(^8\), the Plan of Strategic Activities 2004–2006 of the Ministry of Environment of the Republic of Lithuania\(^9\), the Plan of Strategic Activities 2003–2005 of the Ministry of Health of the Republic of Lithuania\(^10\), the National Action Programme for Environmental Health Promotion\(^11\).

However, the real state of environmental factors and public health as well as their development have to show whether the measures provided for in these programmes and objectives are implemented in an appropriate manner.

The right to use clean water

**Drinking water.** The situation assessment in the National Programme for Environmental Health Promotion\(^12\) shows that the principal source of fresh drinking water in Lithuania is underground (groundwater and pressure) water. About 2/3 of Lithuanian people consume water supplied by the central water supply system, and about 1/3 of inhabitants (mostly from rural and suburban areas) consume water from dug mine wells.

Lithuanian people are supplied with groundwater of appropriate quality. The quality of water may deteriorate due to both natural and anthropogenic factors. Though over the recent decade quite a great progress has been made in the area of the reduction of water pollution and qualitative water supply, the quality improvement of drinking water is still one of the most relevant problems in the country\(^13\).

The main cause for pollution of water from surface bodies is inadequately treated or untreated waste water of cities, small towns, industrial plants and villages, as well as pollution dispersed from the neighbouring territories of water bodies.

Most centralized water locations lack installations for improvement of the quality of drinking water, and water supplied to inhabitants (particularly due to the obsolete networks of pipes) contains quite a lot of iron and sometimes manganese. Iron concentration in half of tested water samples from the water supply system exceeds the hygiene norms. By this indicator 40 percent of supplied water meet the requirements of the European Union and about 60 percent of supplied water needs to be disposed of iron compounds. The quality of drinking water is most frequently determined by the condition of the water supply system. About 58 percent of the water distribution network is obsolete.

One of the major current problems related to drinking water is the quality of water in mine wells. The quality of groundwater (mine wells) is poor, this water is not safe to consume primarily due to its microbial contamination and a great deal of nitrates.

Following the Order of the Minister of Health of the Republic of Lithuania of 30 May 2002 testing of water of mine wells consumed for food by women under pregnancy and babies under 6 months was started in all counties of Lithuania. In 2003, in Vilnius district 92% of tested mine wells were recognized unsafe to consume by infants, 55% – by adults. In 2002, in Šalčininkai district a case of poisoning of half a year (half-year) baby with water from mine well, where the nitrate concentration exceeded the permissible level 69 times, was recorded. In 2003, in Vilnius city 1-month baby died when he was fed with water from mine well with the nitrate concentration exceeding the permissible level 17 times.

In an effort to solve some of the aforementioned problems the Law of the Republic of Lithuania on Drinking Water Supply and Waste Water Treatment is to be adopted. The draft Law indicates that it will be aimed to ensure supply of drinking water meeting the requirements for public health safety to as many persons as possible and to treat waste water in compliance with the environmental requirements so that public water supply throughout the country is carried out in compliance with the set requirements and under equal or similar conditions, to increase the efficiency of the public water supply economy in order to ensure uninterrupted and perpetual water supply and waste water treatment across the

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17 Water of mine wells in Kaunas county is contaminated with nitrates [interactive]; [referred to on 4 March 2005]. Internet search: http://www.kvsc.lt/04_sveikata/b_sveik_aplinka/nitritai%20kaune.html
country, to build the regulation system of pricing for water supply and waste water treatment, which would ensure optimal prices to subscribers and compensation of the costs of water suppliers required for appropriate public water supply as well as to implement the “polluter-pays” principle with the goal to defend legal interests of subscribers.  

**Bathing water.** The quality of water used for recreational purposes is controlled basically by the Bathing Water Quality Monitoring Programme approved by Resolution No. 1380 of the Government of the Republic of Lithuania of 20 November 2001.

When making researches public health specialists follow the requirements of HN 92:1999 of Lithuania “Beaches and bathing water,” which enforce the technical content of the European Council Directive 76/160/EEC.  

There are 243 beaches in Lithuania, of which 159 are legalized by the municipal councils. The Law of the Republic of Lithuania on Local Self-government obligates the municipal institutions to ensure that the territory is sanitary, to develop the industry of recreation and tourism. The municipal institutions have to legalize beaches and bathing areas, ensure their proper maintenance in order to avoid any harmful effects on people’s health. The National Action Programme for Environmental Health Promotion establishes that a major part of beaches has been so far cleaned irregularly, they lack sanitary installations, regular maintenance is unavailable, and they are incompliant with the hygiene requirements. The findings of the recent researches made by the public health care centres illustrate that the microbial pollution indicators of bathing-places are frequently exceeded in the Nemunas near Kaunas and Alytus, as well as in other open bathing waters. According to the data of Kaunas Public Health Centre in all open waters tested in the summer season of 2003 the water quality did not exceed the hygiene requirements except in the 1st beach of Kauno Marios (Kaunas Lagoon) and in the Nemunas near the footbridge. The quality of only half of bathing water tested in Raseiniai, Kaisiadorys, Prienai, Jonava and Kėdainiai districts did not exceed the hygiene requirements; in some bathing water the exceeding of the set level was really significant, e.g. the number of fecal streptococcus in the river Dotnuvėlė in Kėdainiai district in July 2003 exceeded the hygiene requirements even 9 times, in Kiemelių Lake in Kaisiadorys district – 4 times, in Žeimių pond in Jonava district – 6 times. Such situation is caused by the fact that the municipalities pay inadequate attention to pollution prevention, as they say, due to the lack of resources.

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Liability for water pollution, as in other cases of environmental pollution, arises from the “polluter-pays” principle. Particular polluters are liable in accordance with the Code of Administrative Violations of the Republic of Lithuania\(^{25}\), hereby executive orders for elimination of deficiencies of the environmental requirements may be issued, persons may be prosecuted for violations, decisions on restriction of economic activities may be taken or a license to carry out certain activities may be withdrawn. In accordance with the Procedure for Issuing of Permits for Utilization of Natural Resources and Setting of Limits on Utilization of Natural Resources and Permissible Levels for Discharge of Pollutants to the Environment LAND 32-99\(^{26}\), permits are issued, adjusted and cancelled by the Regional Environment Protection Department (REPD) of the Ministry of Environment of the Republic of Lithuania. In 2003, the officials exercising the state control of environmental protection within the country revealed 1878 water protection violations in total.

**Right to healthy ambient air**

The main law to ensure people’s rights to healthy air is the Law of the Republic of Lithuania on Ambient Air Protection\(^{27}\). It indicates that the municipalities and the Ministry of Environment of the Republic of Lithuania within their competence must take required measures to ensure that the limit values for pollution and danger thresholds are not exceeded. In accordance with the Law the Ministry of Environment of the Republic of Lithuania sets a total permissible amount of pollutant emissions from stationary pollution sources throughout the entire territory of the Republic of Lithuania and implements environmental pollution reduction programmes; the municipalities draft, approve and implement environmental pollution reduction programmes, and the Ministry of Environment of the Republic of Lithuania with the aim to protect people’s health and environment, given unfavourable conditions for dispersion of pollutants or in case of any danger that the limit values for pollution are likely to be exceeded, upon coordination with the municipality, is entitled temporarily in a certain territory to limit or ban car traffic, limit the activities of stationary pollution sources as well as to apply other procedures to reduce the pollution of ambient air. To this effect, under the initiative and pressure of the Ministry of Environment of the Republic of Lithuania and institutions reporting to, the number of boiler-houses and other plants combusting polluting fuel has decreased significantly in Lithuania, biofuel and gas have been replacing that fuel, which decreases emissions of pollutants every year. On the other hand, due to biofuel consumption emissions of solid particles is increasing. Transport has never been banned for this purpose, but activities of enterprises have been suspended for a number of times.


Following the Lithuanian Health Programme\textsuperscript{28} carried out by the Ministry of Health of the Republic of Lithuania the emissions of mobile pollution sources and energy plants have a major impact on the atmospheric and air pollution in Lithuania today. Each year mobile pollution sources discharge into the atmosphere more and more carbon monoxide, hydrocarbons, nitric oxides, even small concentrations of which, if they remain for a longer time, cause the risk to people’s health. According to the information provided in the publication “State of Environment 2003“ of the Ministry of Environment of the Republic of Lithuania, cargo volumes carried out by road transport increased to the largest extent in Lithuania that year. By size, the transport sector has become second largest energy consumer and, at the same time, it is one of the major sources of atmospheric pollution\textsuperscript{29}. A majority of the states gives priority to railway transport when designing transport development models, in some states traffic of cargo vehicles is forbidden at least at weekends.

Environmental pollution of the transport sector can be controlled in two principal ways: by limiting transport traffic (e.g. expanding the railway infrastructure, improving the quality of public transport services, etc.) and by setting more stringent requirements for technical condition of vehicles and exercising its actual control. Currently, the first measure practically has not been implemented. However, the control of the technical condition of heavy vehicles and buses is scheduled, as technical condition checks during the state technical check-ups are not adequate. The control of technical condition of the transport in the roads of the Republic of Lithuania will be executed by the officials of territorial and specialized police divisions, which are delegated with supervision of traffic safety. Also, they will be assisted by the official of the State Road Transport Inspectorate under the Ministry of Transport and Communications. For the purpose of transport control, vehicles will be stopped at random, irrespective of their country of registration. The most significant attention will be given to those means of transport, the technical condition of which is obviously likely to be technically poor\textsuperscript{30}.

Sulphur dioxide, carbon monoxide, hydrocarbons are major emissions from stationary pollution sources. In major cities with increasing transport the concentration of nitric dioxide frequently exceeds the set limit and is continually increasing\textsuperscript{31}. In 2003, \(\text{NO}_2\) concentration in Vilnius exceeded the annual limit value to come into effect in 2010, but the effective annual limit was not exceeded in that year. In 2003 \(\text{SO}_2\) concentration was measured by seven stations for air quality research in five cities of Lithuania, and the limit values were not exceeded in any of them. In 2003, the cases of exceeding the limit values of SP10 (solid particles) with the allowable margin of tolerance were recorded in all cities, but their

\textsuperscript{28} Lithuanian Health Programme [interactive]; [referred to on 8 March 2005]. Internet search: http://www.sam.lt/lt/sam/veikla/programos-projektai/programa/.

\textsuperscript{29} Environmental situation 2003 [interactive]; [referred to on 17 February 2005]. Internet search: http://www.am.lt/LSP/files/Aplinkos%20bukle%202003.pdf.

\textsuperscript{30} Control of the technical condition of heavy vehicles and buses to be strengthened [interactive]; [referred to on 20 June 2005]. Internet search: http://www.transp.lt/Default.aspx?Element=IManagerData&DL=L&TopicID=12&ArticleID=1107&page=1&page2=0&action=0&searchTXT=.

number in most air quality research stations was not above the permissible level. Only in Vilnius, near heavy traffic streets, the concentration exceeding the permissible level established by the legal acts was recorded more frequently in 2003. When assessing the air quality by criteria as in effect from 2005 it was established, that SP10 concentration in the largest cities of the country, as well as in Jonava and Kėdainiai, exceeded the limit value more frequently than established by the legal acts.32

Similarly as in case of water pollution the “polluter-pays” principle is followed. However, as concerns air pollution often it is also difficult to name a particular polluter or oblige the same to terminate harmful activities. For example, increased air pollution by solid particles is determined by emissions from motor transport and stationery pollution sources – industrial and energy plants – as well as long-range trans-boundary pollution. The research data suggest that meteorological conditions have significant influence on the air quality. In case of weaker wind pollutants accumulate at their discharge locations, i.e. near heavy traffic streets and in urban districts where a majority of premises is heated individually using as a rule solid fuel, and during the cold season emissions into the atmosphere increase due to increased combustion.33 Based on the conclusions made by the Environmental Protection Agency pollutants discharged by motor transport accumulate near the place of their emission. Particularly high concentration of SP10 accumulates near heavy traffic streets in case of weak wind and decreases considerably in case of stronger wind. In winter when the weather is cold the concentration is higher when the heating is on, especially if that coincides with unfavourable air conditions for dispersion of pollutants. In spring after the snow has melted when the weather is dry and clear the air becomes full of dust coming not only from exhaust pipes of vehicles, but also from inadequately cleaned streets and green areas that are not yet green. In these cases increased concentration of SP 10 is recorded even if the wind is strong and gusty not only near heavy traffic streets. The conclusions of the Environmental Protection Agency provided that part of the cases of exceeding the limit values for solid particles would be avoided if after the snow goes off streets and their surroundings are cleaned faster so that spring winds do not spread the dirt, sand and salt mix left after the winter season. Besides, green areas near heavy traffic streets should be better maintained, fostered and expanded.34 These tasks are delegated to the municipalities which in accordance with Article 7 of the Law of the Republic of Lithuania on Local Self-government perform the limited functions. The plan of Strategic Activities 2004–2006 of Vilnius City Municipality provides for development and maintenance of green areas and other natural objects in Vilnius city36 as one of the tasks. However, according

to the representative of the Ministry of Environment of the Republic of Lithuania green areas in Vilnius city are actually decreasing. It seems that the national authorities are more concerned about the development of green areas than the municipalities. The recent “illness” of the major cities of Lithuania manifests itself more and more clearly, particularly in Vilnius – to build multi-storey houses instead of the squares and green areas. Urban development and arrangement of green areas at the same time is within the competence of the municipalities. Alas, the managers of certain municipalities do not consider green areas to be an important urban component. The so far effective procedure for change of the master plan solutions was very simple and not able to prevent from destruction of green areas. It is noted that the Law of the Republic of Lithuania on Territorial Planning\(^\text{37}\) in effect from 1 May 2004 devotes much more attention to development of green areas and provides for setting up a system of green areas of common use as one of the tasks in preparing the master plans.

**Microclimate in pre-school institutions.** Lithuanian Hygiene Norm HN 75:2002 “Preschool education institutions. Hygiene norms and rules”\(^\text{38}\) establishes that the temperature in the premises of these institutions must meet the set levels: the air temperature in the nursery group rooms must be 21–22°C (except music and physical training premises), in the kindergarten group rooms – 19–21°C. However, according to the data of Vilnius Public Health Centre and the Public Health Care Service by its decision Vilnius City Municipality approved that the temperature in the rooms of preschool institutions and schools must be at least 17°C. Based on the statement of the Ministry of Culture and Science of the Republic of Lithuania on the state of preschool education in Vilnius county (30-04-2003 No. (73)-13-5)\(^\text{39}\), in 45 percent of the group rooms the air temperature was below the norm. In a majority if other premises used by the children of pre-school education groups the air temperature was below the levels set by the Hygiene Norm. The Hygiene Norm indicates that the manager of the institution and each employee, who is appointed to be in charge of a particular area by order of the manager, are responsible for the compliance with the hygiene norms and rules. Nevertheless, in this case it is difficult to blame the institution’s manager for maintenance of inadequate temperature in the rooms, as heating agreements, as a rule, are made with the service provider by the municipality following the abovementioned decision approved by the council.

**Environmental tobacco smoke.** The situation in which non-smokers are in the same room with smokers is called environmental tobacco smoke (ETS). ETS is a complex mixture of over 4000 components consisting of more than 50 known or suspected carcinogens\(^\text{40}\).


The State Programme for Tobacco Control\textsuperscript{41} indicates that in Lithuania tobacco causes more than 7000 deaths each year, and according to the data of the World Health Organization, about 3 million worldwide. Those data suggest that in Lithuania the killed by tobacco caused diseases make up even 0.2 percent of total population of Lithuania, worldwide it is hardly 0.05 percent, i.e. in Lithuania the mortality from tobacco caused diseases is 4 time higher that the worldwide average.

The Tobacco Free Initiative of the World Health Organization (2001) indicates that “though good ventilation may help to reduce smoke it cannot prevent from all poisonous materials. When the common ventilation system is used in smoking and non-smoking areas smoke spreads everywhere. Smoking areas help to protect non-smokers only when the smoking area is totally isolated and have a separate ventilation system installed in them with a straight lead-out from the building and is not used for air recirculation inside the building.”\textsuperscript{42}

The report of the Health and Safety Authority and Office of Tobacco Control Ireland on “The health effects of environmental tobacco smoke in the workplace” (December 2002) declares: “The scientific researches show that widely-used ventilation technologies, including convection and air-conditioning systems, cannot prevent from the staff exposure to ETS. Whereas wide implementation of new technologies, replacement of those ventilation systems may reduce the level of ETS to 90 %. … However, forbidding of smoking remains the only perspective measure enabling to protect the personnel and visitors of bars, night clubs and restaurant from poisoning by tobacco products”\textsuperscript{43}.

The legal approach to passive smoking in European countries varies a lot. In a majority of European counties smoking in public places is forbidden or partially forbidden, in some countries smoking is prohibited even in bars and restaurants. The legal base of this area is further developed. According the data of the World Health Organization over 80% of the old-timers of the European Union report the statutory prohibition or strict limitation on smoking in most public places, such as healthcare, education, and governmental institutions, theatres, cinemas and public transport; however, only a few articles are intended for the workplaces though a majority of workplaces are also public places\textsuperscript{44}.

Article 19 of the Republic of Lithuania Law on Tobacco Control\textsuperscript{45} establishes that in the Republic of Lithuania it shall be prohibited to smoke (consume tobacco products) in residential and other premises designated for general use, where non-smokers may be forced to breathe smoke-polluted air. The liability should arise in accordance with Article 185(1) of the

\textsuperscript{41} Resolution No. 954 of the Government of the Republic of Lithuania on approval of the National Programme for Tobacco Control // Valstybės žinios (Official Journal). – 1998, No. 69-2010
the Code of Administrative Violations of the Republic of Lithuania. Based on the data of the Police Department under the Ministry of the Interior, in accordance with Article 185(1) of this Code 669 administrative violations were recorded in 2003, in 2004 – 821.

However, the aforementioned Law ensures the right of persons to breathe clean and tobacco smoke free air not in all cases. Article 19 of the Law also establishes that in restaurants, cafes, bars and in other premises designated to provide services for people, where smoking is not prohibited, separate premises (places) must be set aside for smokers. Premises where smoking is not prohibited must be set up in such a fashion that the clients (visitors) and staff members would be protected from tobacco smoke. The requirements for setting up and use of these premises (places) are established in Lithuanian Hygiene Norm HN 122:2004 “The requirements for setting up and use of premises (places) designated for smoking in undertakings, offices and organizations, as well as restaurants, cafes, bars and in other premises designated to provide services for people, where smoking is not prohibited, and premises (places) designated for smoking”. However, the said Hygiene Norm is of a very abstract nature, it does not make clear whether, e.g. in cafes, must be premises or places for smokers. Also, it indicates very abstractly that “the clients and visitors served would not be forced to breathe tobacco smoke polluted air”. According to the above-said researches carried out by the World Health Organization and the Health and Safety Authority Ireland, by setting aside not separate premises, but places for smokers, even if ventilation technologies are used, it is not absolutely possible to ensure tobacco smoke free air if there are smokers in the premise. Besides, in fact this norm has not been effective so far, as the part of the article establishing the liability is applicable only with effect from May 1, 2006.

The right to noise-free environment

The legal framework for noise prevention is established by the Law of the Republic of Lithuania on Management of Environmental Noise adopted on October 26, 2004. As one of the main principles of noise management it mentions the protection of people from noise (none person must be exposed to such level of noise which causes danger to his life and health) and ensuring of the person’s life quality. On the State’s level noise management is implemented within their competence the Government of the Republic of Lithuania, Ministries of the Republic of Lithuania (the Ministry of the Interior, the Ministry of Health, the Ministry of Environment, the Ministry of Transport and Communications, the Ministry of Agriculture), county governors, municipal institutions, and the Noise Prevention Council. However, so far not all legal acts required for implementation of this

47 Order No. V-311 of the Minister of Health of the Republic of Lithuania on approval of Lithuanian Hygiene Norm HN 122:2004 “The requirements for setting up and use of premises (places) designated for smoking in undertakings, offices and organizations, as well as restaurants, cafes, bars and other premises designated to provide services for people, where smoking is not prohibited, and premises (places) designated for smoking” // Valstybės žinios (Official Journal). – 2004, No. 77-2695.
Law have been adopted, though Article 34 of this Law establishes an obligation of the Government by December 31, 2004 to draft and approve them. Therefore, the officials representing the institutions indicated in the Law still are not able to implement the tasks assigned to their competence in the real life.

The measurements of noise caused by transport in Vilnius city were made in 1989 and 2000. A significant increase in the noise level is observed, though already in 1989 the noise level frequently was above the permissible level: e.g. in July 1989 near the house at Jasinsko str. 39 the noise was 60 dB(A), in July 2000 in the same location – 70 dB(A) (norm – 55 dB(A)); in July 1989 near the house at Justiniškių str. 27– 62.5 dB(A), in July 2000 – 70 dB(A), i.e. the norm exceeded by 15 dBA. According to the representatives of the Ministry of Environment of the Republic of Lithuania currently the noise monitoring is not really functioning, therefore the data in order to make judgment regarding further changes of the situation is not sufficient.

Various measures may be used to reduce the level of transport noise: the level of noise caused by transport means as a noise source may be reduced by using constructions – screens (e.g. the garages on Ukmergės street in Vilnius); using noise screens (Kaunas, Kalantos street), building streets in the tunnel, using special windows with glass packages. A transport noise screen may reduce the noise level behind the screen by 9-12 dBA, windows with glass packages – by 32 dBA, third additional glass – by 9 dBA, an ordinary window with two glasses – by 18-25 dBA.

At the moment the right to noise free environment is ensured only in accordance with Article 183 (Public peace disturbance) and Article 42 (Violation of the hygiene regulations and the Law of the Republic of Lithuania on Prevention and Control of Communicable Diseases in Humans) of the Code of Administrative Violations of the Republic of Lithuania, also following Order No. V-180 of the Minister of Health of the Republic of Lithuania of March 21, 2005, which allow cancelling of a permit-hygiene passport provided that in the county of the public health centre the manager or a person authorized by it receives reasonable information that the conditions (including noise) of business-commercial activities carried out do not comply with the requirements for the public health safety or that business-commercial activities produce a negative effect on public health. The conditions regarding noise are established by Order No. V-520 of the Minister of Health of the Republic of Lithuania of September 3, 2003. Also, the requirements for protection from noise are

52 Order of the Minister of Health of the Republic of Lithuania No. V-180 on approval of the list of types of business-commercial activities for which a permit-hygiene passport is required from natural and legal persons engaged in these activities and the rules for issuance of a permit-hygiene passport // Valstybės žinios (Official Journal). – 2005, No. 41-1319.
established by the Order of the Minister of Environment of the Republic of Lithuania of December 27, 1999\(^{54}\). According to the Representatives of the Ministry of Environment of the Republic of Lithuania, as it was mentioned before, no real control mechanism is available, therefore the latter requirements are not functioning in practice.

The problems are encountered in the practical implementation of the protection of noise. Although the aforementioned Law of the Republic of Lithuania on Noise Management and in the aforementioned Hygiene Norm establish the permissible level of night noise, the police officials upon arrival cannot measure the noise level and the specialists of the Public Health Care Centre cannot arrive and measure the noise level at night, as their working procedure rules do not provide for night work. Usually in these cases the police officials warn or impose a fine on noise-causing private individuals, however, they cannot do that when a noise source is a legal person (e.g. a night club). In practice there was a case when the employees of the Public Health Centre, though without being authorized to do that, measured the noise level at night at a night club and after establishment once and again that the noise level exceeds the permissible level a permit-hygiene passport was withdrawn (the club “Cozy” in Vilnius).

As the Public Health Centres are not public administration institutions their specialists are not authorized to record administrative offences (in accordance with Article 42 of the Code of Administrative Violations of the Republic of Lithuania\(^{55}\)), therefore the managers of the Public Health Centres have to do that, who are granted those authorities. Major practical difficulties arise when violations are committed not in the county centres – e.g. after establishing a violation in Biržai district it is necessary to go to Panevėžys Public Health Centre in order to record that administrative offence. It should be noted that this problem is relevant not only in case of noise prevention, but also in any case when violations are revealed by the staff members of the Public Health Centres. On the other hand, if other employees of the Public Health Centres are granted the authorities to record administrative violations the work nature of these employees would materially change, as they are entities only exercising control and not imposing the liability. Besides, a possibility to generally reduce the range of the entities entitled to impose the administrative liability (particularly those whose key functions usually do not cover examination of administrative offences – as in this case), as a large number of those persons causes other problems – practical inconsistency, higher possibility of bribing and the like. Therefore, primarily, closer cooperation between the public health centres and the officials (e.g. the police) imposing the administrative liability should be improved in compliance with the procedure that if the staff members of the public health centres and their branches have established certain violations any material concerning them would be immediately transferred to the police or officials of other institutions.


The right to healthy environment in the light of environmental impact assessment

Assessment of the environmental impact of planned economic activity is one of the most complicated parts of regulation of the legal relations of economic activity, which plays an important role in ensuring the right to healthy environment. The main purposes of environmental impact assessment are to set, define and assess a direct and indirect environmental effect of planned economic activity and to ensure that the environmental protection aspects will be taken into account prior to launch of this activity. Environmental impact assessment is carried out in accordance with the Law of the Republic of Lithuania on Assessment of the Environmental Impact of Planned Economic Activity⁵⁶ and related post-regulatory acts.

As concerns ensuring of the right to healthy environment it is important to evaluate the compliance with the health requirements and ensuring of the public involvement in the process of environmental impact assessment.

The public involvement in the process of assessment the environmental impact of planned economic activity is regulated by the said Law and by Order No. D1-370 of the Minister of Environment of the Republic of Lithuania of July 15, 2005⁵⁷. They establish that the public must be informed about the screening conclusion whether it is obligatory to assess the environmental impact of planned economic activity, about the environmental impact assessment programme prepared; the public must be publicly informed about a report on assessment of the environmental impact of planned economic activity as well as about a decision taken with regard to planned economic activity. Attention should be paid to the fact that much wider involvement of the public is provided for in this document versus the previous procedure approved by the Order of the Minister of Environment of the Republic of Lithuania of July 10, 2000⁵⁸. The new procedure provides for participation in the process of environmental impact assessment not only by the public, but also the interested public (i.e. the public on which planned economic activity will make or is likely to make an effect, or which is interested in planned economic activity. According to this definition non-governmental organizations participating in resolution of environmental protection problems and acting in compliance with the requirements of the laws of the Republic of Lithuania are also considered to be the interested public⁵⁹), which is granted wider rights versus the public.

Environmental impact assessment is carried out prior to preparation of a project on planned economic activity, i.e. when preparing a reasoning for construction of a building or other documents evidencing activity advisability and carrying out research works. The Law of the Republic of Lithuania on Territorial Planning\textsuperscript{60} establishes that in those cases when in accordance with the Law of the Republic of Lithuania on Assessment of the Environmental Impact of Planned Economic Activity environmental impact assessment of planned economic activity must be carried out, but has not been carried out, this assessment is carried out in the course of drafting a detailed or special plan. The specialists of Vilnius Public Health Centre draw attention to the fact that environmental impact assessment of planned economic activity is not always effective, as it is not established in which preparation stage of the plan it must be carried out, i.e. the situation is possible when environmental impact assessment is carried out only formally after drawing up of the detailed or special plan and upon conducting researches.

Also, the specialists of Vilnius Public Health Centre note that the Regulations for Preparation of the Environmental Impact Assessment Programme and Report approved by Order No. 262 of the Minister of Environment of the Republic of Lithuania June 30, 2000\textsuperscript{61} gives very little attention to public health assessment – they only mention that possible environment impact of planed economic activity on people’s health must be assessed (e.g.: environmental quality changes, noise increase, deterioration of the quality of food products, etc.). Besides, environmental impact assessment in accordance with the aforementioned Regulations may be made very superficially as no requirements for assessment quality are established.

The right to clean living environment

According to the publication “State of Environment 2003”\textsuperscript{62} of the Ministry of Environment of the Republic of Lithuania a majority of currently functioning dumpsites do not comply with the environmental protection requirements. In the country there exist many illegal and negligent, but so far not re-cultivated dumpsites. As the system of municipal waste treatment, primary sorting of domestic waste are poorly developed, recycling of secondary raw material is insignificant (25% of paper and carton, 18% of glass, 6% of plastic waste), the prevailing way of waste treatment is its accumulation in dumpsites.

In 2003, 737 dumpsites were in 8 regions, of which 42 were closed down, liquidated, recultivated. With the aim to increase the efficiency of the waste treatment system the municipalities are recommended setting up regional waste treatment systems the building and developing of which are state-supported. It is provided for to set up regional waste treatment systems and instead of a number of dumpsites to set up large regional dumpsites in separate municipalities. Until end – 2009, setting up of 10 regional dumpsites and 1 dumpsite of hazardous waste instead of 737 dumpsites functioning in 2003 is scheduled. Though in 2003

\textsuperscript{61} Order No. 262 of the Minister of Environment of the Republic of Lithuania on approval of the environmental impact assessment programme and regulations for its preparation // Valstybës žinios (Official Journal). – 2000, No. 57-1697.
42 dumpsites were closed down in Lithuania, and no new ones were identified these rates of closing of dumpsites are not sufficient in seeking to achieve the set target until 2009\textsuperscript{63}.

According to the Environmental Health Promotion Programme\textsuperscript{64}, in Lithuania 130 thousand of tons of hazardous waste is accumulated over a year. A major part of it is waste containing heavy metals, including galvanization waste, as well as old unusable pesticides. Hazardous waste also covers medical waste, about 1.8 thousand tons annually. This waste should be incinerated, and there should be one or several regional incineration plants. Quite a big problem is unusable drugs of about 6 tons. At present they are kept in basic storage facilities.

In accordance with the Law of the Republic of Lithuania on Local Self-government\textsuperscript{65}, ensuring of cleanness and order in public places, implementation of municipal waste treatment systems, organization of collecting and recycling of secondary raw materials and setting up and maintaining of dumpsites are covered by the functions assigned to the municipality. The municipalities have approved the rules on the city cleaning and cleanness, the rules on organization, development and maintenance of the waste treatment system, the rules on waste management as well as other rules.

The Rules on Management and Maintenance of the Places for Containers of Municipal Waste and Secondary Raw Materials, and Containers in Vilnius City\textsuperscript{66} establish that in the places for containers big-size containers (4.5 – 7.5 m/3) must be put not nearer than 10 m from the staircase, which is followed frequently. However, the Rules on Setting of the Limits for Sanitary Protection Zones and Treatment\textsuperscript{67} approved by the Minister of Health of the Republic of Lithuania on August 19, 2004 establish that the places for containers beside living houses must be arranged not nearer than 20 m, not further than 50 m. The liability for incompliance with the decisions on waste treatment approved by the municipality councils is imposed in accordance with Article 161\textsuperscript{1} of the Code of Administrative Violations of the Republic of Lithuania\textsuperscript{68}, however, in accordance with the said Rules approved by the Minister of Health no liability is imposed in certain cases, unless the activity falls within the scope of application of Article 51\textsuperscript{3} of the said Code (it is necessary to prove environmental pollution).

The Environmental Health Promotion Programme\textsuperscript{69} indicates that animals are walked in the places not designated for that purpose, they are not cleaned after them and they are not

vaccinated and cured of helminthiasis. Keeping of animals is regulated by the Law of the Republic of Lithuania on the Care, Keeping and Use of Animals\textsuperscript{70}. Animal raising and keeping rules are approved by the municipality councils. For example, the Rules on Animal Raising and Keeping in Vilnius City\textsuperscript{71} approved by Vilnius city municipality establish that dogs can be walked only in the places designated for that purpose and remote places or other places rarely visited by people. It is forbidden to walk dogs in mass gathering places, cemeteries, territories of schools, healthcare institutions, crèches and kindergartens, beaches, squares, etc. It is established that when walking dogs, cats and other animals (carting and riding a horse, race horse) in public places and if they leave some excrements after them, also if they do so in the corridor, lift, balcony of a house, other places designated for general use, transport means, their owners or responsible persons must possess required means in order to immediately clean after them. Upon refusal to do that responsible persons are liable in accordance with Articles 110, 161 of the Code of Administrative Violations of the Republic of Lithuania\textsuperscript{72}. However, nobody imposes the liability on violators neither regarding violations of the rules on animal keeping nor the rules on cleaning and cleanness. The duty to clean the environment is also applied to the persons whose duty to do that is established under agreements with the municipality\textsuperscript{73}. The administrative liability for failure to fulfil the duties should be imposed on them under Article 161 of the Code of Administrative Violations.

In certain cases environmental cleaning is regulated by separate rules, and special entities are responsible for the compliance with them. For example, Hygiene Norm HN 75:2002 “Preschool education institutions. Hygiene norms and rules”\textsuperscript{74} establishes the rules on cleaning the land plot and territory, e.g. it establishes that the territory must be fenced and planted by 5 m width green area; it is forbidden to plant thorn bushes and bushes growing poisonous berries; the territory must be cleaned daily before children’s coming to it. In winter paths must be gritted. It is established that the following persons in a preschool institution are responsible for the compliance with the hygiene norms and rules: the manager of the institution and each staff member appointed to be in charge of particular area by order of the manager of the institution. However, based on the statement of the Ministry of Science and Education of the Republic of Lithuania on the state of preschool education in Vilnius county\textsuperscript{75}, the situation in preschool education institutions of Lithuania does not conform to the set standards in many aspects.

Recommendations

In resolution of the problems related with ensuring the right to healthy environment, primarily, the legal regulation must be improved. Unavailability of the regulations for implementation of the law provisions causes one of the major problems in implementing the right to healthy environment. For example, there are no post-regulatory acts adopted with regard to implementation of the Law of the Republic of Lithuania on Noise Management, implementation of the Law of the Republic of Lithuania on Tobacco Control is not complete. Imposing of the liability for infringement of the right to healthy environment causes difficulties as well: based on the “polluter-pays” principle the objectives with regard to the right to healthy environment are not always achievable, as not a rare case when the state of environment depends not only on particular polluters whose names are known, but also on different other conditions. Besides that, the application of the “polluter-pays” principle in the environmental area is not adequate in order to ensure the right to healthy environment, as the latter area is wider. It should be noted that the objectives set in the environment quality improvement programmes are not reachable and that offers supposition that implementation of the established measures needs to be improved. Also, there exists no system between the legal acts issued by the State and the municipality. Not a rare case when one procedure is set by order of some minister, and by decision of the local self-government institutions a different procedure is set. As the constitutional system of our State does not allow the central administration authorities to control municipal activities to a larger extent there is a need to search for optimal ways of the cooperation between the State and municipal institutions.

Also, the measures should be taken in order to improve the system of ensuring the institutional right to healthy environment. This system is far from being perfect due to inappropriate distribution of the functions among the institutions. For example, as the Public Health Centres are not public administration institutions their specialists are not authorized to record administrative offences, therefore, that must be done by the managers of the Public Health Centres, who are granted those authorities. However, the main function of the employees of the Public Health Centres is not to impose administrative penalties, but to carry out checks of the environmental quality. Therefore, the functions of control (in terms of administrative coercion) and research should be segregated or redistributed, as well as the possibilities of closer communication of these employees with the law enforcement officials should be discussed. Besides, a majority of the functions to improve the environmental quality is delegated to the municipalities, and the failure to reach a desirable result means that the functions are performed inadequately. In an effort to reach better results the responsibility or reporting of the authorized institutions for implementation of the right to healthy environment should be established.
CONSUMER RIGHTS

Introduction

Consumer protection is one of the important areas of the national economic and social policy. Paragraph 5 of Article 46 of the Constitution of the Republic of Lithuania establishes as follows: “The State shall protect the interests of the consumers”\(^1\). Therefore the State is constitutionally obligated to set standards as well as other requirements to be met by products and services placed on the market, also to monitor the compliance with these standards and other requirements. The legal acts establish various measures for the protection of consumer interests. Consumer protection in Lithuania covers a system of legal, organizational and economic means.

By its Resolution No. 1404 of 11 November 2003 the Government of the Republic of Lithuania approved the National strategy for consumer rights protection\(^2\). This Strategy establishes the goal of consumer protection, priority trends and tasks for 2003–2006. So, the policy on consumer protection in Lithuania is pursued in the following key directions:

- Safety of food products;
- Safety and quality of non-food products and services;
- Protection of economic interests.

The pending tasks established in the National strategy for consumer rights protection can partly be named as the problem aspects in the field of consumer protection. Currently Lithuania has to deal with the relevant issues relating to the following: improvement of the legal base for consumer protection, enhancement of the institutional system of consumer protection, increase of the role of public consumer organizations, development of consumer education.

It should be noted that the same Resolution of the Government of the Republic of Lithuania approved the National consumer education programme of Lithuania\(^3\), which sets out the following priorities:

- Development of a consumer education system;
- Consumer education;
- Consumer information and consultation.

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Consumer legal base, its improvement

Consumer Policy Strategy 2002–2006 set out in the Communication from the Commission of the European Communities provides for a high common level of consumer protection as one of the key strategic objectives of the new consumer policy. “Central to this is the establishment of common consumer protection rules and practices across Europe. This means moving away from the present situation of different sets of rules in each Member State towards a more consistent environment for consumer protection across the European Union”4.

The Lithuanian legal acts regulating the protection of consumers’ interests are essentially harmonized with the requirements of the European Union legislation (the European Parliament, the European Council directives)5. The State has been successfully adopting the principles of consumer protection in the European Union.

The following legal acts of the Republic of Lithuania elaborate on the constitutional provision to protect consumers’ interests and establish the means and methods for consumer protection: the Civil Code of the Republic of Lithuania6, the Law of the Republic of Lithuania on Consumer Protection7, the Law of the Republic of Lithuania on Prices8, the Law of the Republic of Lithuania on Competition9, the Law of the Republic of Lithuania on Alcohol Control10, the Law of the Republic of Lithuania on Associations of Multi-Family Apartment House Owners11, the Law of the Republic of Lithuania on Construction12, the Law of the Republic of Lithuania on Metrology13, the Law of the Republic of Lithuania on Tobacco Control14, the Postal Law of the Republic of Lithuania15, the Law of the Republic of Lithuania on

5 List of the main legislation of the European Union under implementation in Lithuania:
Lithuania on Tourism\textsuperscript{16}, the Law of the Republic of Lithuania on Product Safety\textsuperscript{17}, the Law of the Republic of Lithuania on Payments\textsuperscript{18}, the Law of the Republic of Lithuania on Food\textsuperscript{19}, the Law of the Republic of Lithuania on Advertising\textsuperscript{20}, the Law of the Republic of Lithuania on Electricity\textsuperscript{21}, the Law of the Republic of Lithuania on Natural Gas\textsuperscript{22}, the Law of the Republic of Lithuania on Heating Economy\textsuperscript{23}, the Law of the Republic of Lithuania on Drinking Water\textsuperscript{24}, the Law of the Republic of Lithuania on Financial Institutions\textsuperscript{25}, the Law of the Republic of Lithuania on Insurance\textsuperscript{26}, the Law of the Republic of Lithuania on Electronic Communications\textsuperscript{27}; the resolutions of the Government of the Republic of Lithuania on approval of retail trade rules\textsuperscript{28}, on approval of the procedure for application of market restriction measures\textsuperscript{29}, on provision of financial support to consumer protection associations\textsuperscript{30}, the Order of the Minister of Environment of the Republic of Lithuania on approval of the minimal list of obligatory information which must be presented in the description of provided residential premises and the contract on acquisition of the right to make use of residential space on a timeshare basis\textsuperscript{31}; the Orders of the Minister of Economy of the Republic of Lithuania on approval of the rules on return and exchange of products\textsuperscript{32}, on approval of the rules on marketing of products away from business premises\textsuperscript{33}, on approval of the rules on marketing of products and delivery of services when contracts are concluded by means of distance communication\textsuperscript{34}. This list is not exhaustive.

\textsuperscript{31} Order of the Minister of Environment of the Republic of Lithuania on approval of the minimal list of obligatory information which must be presented in the description of provided residential premises and the contract on acquisition of the right to make use of residential space on a timeshare basis// Valstybės žinios (Official Journal). – 2001, No. 22-753.
\textsuperscript{34} Order of the Minister of Economy of the Republic of Lithuania on approval of the rules on marketing of products and delivery of services when contracts are concluded by means of distance communication // Valstybės žinios (Official Journal). – 2001, No. 73-2583.
The Code of Administrative Violations of the Republic of Lithuania\textsuperscript{35} includes about 30 articles whose rules establish the liability for violation of consumers’ interests. It should be noted that the Criminal Code of the Republic of Lithuania\textsuperscript{36} establishes the liability for manufacturing or marketing of food products causing harm to the human health or life.

**Right to information**

Article 6.353 of the Civil Code of the Republic of Lithuania\textsuperscript{37} and Article 5 of the Law of the Republic of Lithuania on Consumer Protection\textsuperscript{38} establish that the consumers have the right to obtain full information on the goods and services they are buying or using, their price, quality, way of consumption, safety, safe shelf life. Information on goods and services and their sale conditions on the market must be correct, complete and transparent. Also, the legal acts indicate that information on goods that are sold cannot be misleading. The producer, seller, service provider must indicate the sale price of each product or one type of goods and the price of one standard unit of those goods. The sale price of a product and the price of a standard unit may be omitted only when goods are provided when providing services and they are sold at auctions, or they happen to be art works and antique items. The standard unit price of goods may be omitted on goods the price whereof does not depend on their weight or content; if it coincides with the sale price; goods or their groups whose list shall be approved by the Government of the Republic of Lithuania or an institution authorized by it. For goods which are not packaged and whose amount is determined in the consumer’s presence, the price must be indicated by the standard unit price only. The sale price and the standard unit price must be well visible, clearly legible, simple to understand and distinguish.

Besides, the mentioned legal acts establish that the buyer has the right prior to conclusion of he contract to inspect the goods and demand to check the goods in the buyer’s presence or to demonstrate how to use them unless that is not possible considering the nature of goods and the retail trade rules.

Where the seller has failed to provide the buyer with a possibility to immediately obtain the said information at an outlet where goods are sold the buyer has the right to demand the seller to compensate damages incurred as a result of avoiding to make a contract, and if the contract has been made – within a reasonable period to unilaterally terminate the contract and demand refunding of the price and reimbursement of other damages. The seller who has failed to provide a possibility to obtain the respective information on goods is responsible for defects of the goods occurred after their delivery to the buyer if the buyer has proved that the defects have resulted due the fact that he had no respective information.

However, the survey of Lithuanian residents on issues relating to consumer rights carried out in 2003 revealed that 36% of consumers-respondents were lacking adequate information on food products they were buying, 35% – on non-food products and services. More than one fourth (27%) of residents were lacking information about medical products or health care goods they were buying.

Labeling plays a crucial role in implementing the consumer’s right to information. The legal acts regulating labeling of goods establish the mandatory and special details of labeling. The general details of labeling include as follows: the name of a good, the name and address of the producer, the country of origin of a good if it does not coincide with the production country, the name and address of an importer, safe shelf life. Special labeling details must be indicated as well (e.g. food additives, additional marking of genetically modified organisms). The rules on marking of the goods sold in Lithuania and indication of the prices are approved by the Government of the Republic of Lithuania or an institution authorized by it.

The Lithuanian consumer not always obtains the information as required by the legal acts. The State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania and the State Food and Veterinary Service of the Republic of Lithuania in the activity reports of 2002, 2003, and 2004 indicate that one of the most frequently infringed consumer rights is inadequate information when labeling the goods. The most recurrent violations include improper indication of ingredients of a product and references to the special properties of a product, details are written in very small letters and the like.

Also, it should be noted that so far there are no information centers in Lithuania, which could provide the consumer with information on goods or services prior to their acquiring not from the seller, producer, supplier, but from the independent expert. It is particularly important to provide the consumer with information on a possible (potential) harmful effect of dangerous products or services on the health, about the legal acts regulating the health safety.

### Right to safety and quality

The consumer’s rights to safety and quality are regulated by the Civil Code of the Republic of Lithuania, the Law of the Republic of Lithuania on Consumer Protection, the Law of the Republic of Lithuania on Product Safety, the Law of the Republic of Lithuania on Food, Technical Regulations on Toy Safety and Machinery Safety as well as many other legal acts.

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Differently from the European Union law, the Lithuanian law establishes the requirements and liability not only for the safety of products (goods), but also for the safety of services. A safe product means any product which, under normal conditions prescribed by the manufacturer or reasonably foreseeable conditions of use does not present any risk or only the minimum risk for the safety and health of consumers which is not greater than the risk provided for in legal acts. The characteristics of the manufactured goods, including their composition, packaging, instructions for assembly, use and maintenance, the effect on other goods, the categories of consumers at serious risk (e.g. children, elderly people) are taken into consideration when evaluating the safety of products. A service which while providing it or after does not present any risk or presents a risk not exceeding the level permitted by the legal acts may be considered as safe.

The producer, distributor and supplier of services must provide consumers with the relevant information before supplying the good to the consumers to enable them to assess the risks inherent in a manufactured good throughout the indicated, normal or reasonably foreseeable period of its use. Upon discovering that a manufactured good is dangerous, inform, without delay, the consumer, the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania 46, and appropriate monitoring authorities and to withdraw the manufactured good from the market in the manner prescribed by the Government of the Republic of Lithuania. The Government of the Republic of Lithuania, governmental institutions of the Republic of Lithuania, ministries, departments established under them as well as other institutions within the competence assigned to them in the areas of public governance establish mandatory requirements for the safety and marking of products harmonized with the requirements of the United Nations Organization, European Union, World Trade Organization and approve the procedure for their conformity with the requirements 47.

The State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania, the State Food and Veterinary Service of the Republic of Lithuania, the National Consumer Rights Protection Board under the Ministry of Justice have the right to apply market restriction measures in case the producer, distributor or the supplier of services places dangerous goods or services on the market, provides inappropriate information to the consumer or violates other obligations established in

46 For more information see: www.nvtat.lt [referred to on 15 September 2005]. Internet search: www.nvtat.lt.
47 The Ministry of Health of the Republic of Lithuania in harmonizing the statutory legislation with the requirements of the European Union set 10 hygiene standards of the safety of food products, which enforce the requirements of the European Union directives: Food hygiene, Food products allowed for use, Special purpose food products, Food products. Maximum levels of contaminants and pesticides residues, Requirements for safety and quality of drinking water, Materials and goods for contact with food, New food products and new food ingredients, Food substances and products. Maximum level of microbial contamination, Natural mineral water, spring water and mineralized drinking water. Quality requirements and programme-based monitoring, Labeling of food products.
the legal acts\textsuperscript{48}. From 01-06-2004 the authorities of the Republic of Lithuania have been using RAPEX (rapid alert system) and have been exchanging information with the European Commission on dangerous non-food and food products throughout the European Union.

The aforementioned institutions may apply the following market restriction measures: to subject product marketing to prior conditions; to prohibit any placing on the market of a dangerous product or service; to demand to withdraw a dangerous good or service from the market; to ban advertising of a dangerous good or service. Usually decisions of the public authorities are published in the information supplement “Informacinių pranešimai” of the “Valstybės žinios” (the “Official Journal”), on the Internet, other mass media. Also, when applying market restriction measures these authorities have the right to impose penalties for placement of dangerous products and services on the market.

In accordance with the Law of the Republic of Lithuania on Product Safety\textsuperscript{49} the content of the state product safety monitoring involves as follows:

- Direct monitoring of product safety (product safety checks, monitoring of withdrawal of dangerous products from the market and destruction of dangerous goods, analysis of the findings of product safety monitoring and periodical communication of the relevant information to the National Consumer Rights Protection Board under the Ministry of Justice);

- Indirect monitoring of product safety (gathering, storing, processing and analysing statistical data about the manufacturing, import and sales of dangerous products, and information about any factors which might result in the increase or decrease of risks involved in the consumption).

The buyer who has been sold a good of inappropriate quality (save for food products) and with defects that the seller has not given notice of the buyer is, at his own choice, entitled to demand from the seller to replace a poor quality good by an analogue of good quality; to reduce the price accordingly; within a reasonable time to eliminate without any payment the defects; to reimburse the buyer’s expenses for the elimination of defects if the buyer has eliminated the defects on his own or with the help of third persons. Actions for reimbursement of the money paid are prescribed by the lapse of two years. In all cases the buyer has the right to compensation of damages caused by sale of an inappropriate quality good. If the consumer has bought a food product of inappropriate quality he is, at his own choice, entitled to demand that a good is replaced by an analogous good of appropriate quality or that the money paid is refunded.

\textsuperscript{48} Free telephone line established by the State Food and Veterinary Service of the Republic of Lithuania, consumers and producers can call all day round and report on dangerous, non-qualitative food products and dangerous services provided by public catering companies.

The findings of the research of 2003\textsuperscript{50} showed that about half of residents (47\%) over the year acquired the goods or used the services of inappropriate quality (31\% of respondents reported that to happen to them once and again).

In 2005 the National Consumer Rights Protection Board under the Ministry of Justice carried out a survey of Lithuanian residents\textsuperscript{51}. The replies of respondents regarding acquisition of goods of inappropriate quality during the year suggest the following: 67\% of persons surveyed responded they had never bought such products (if compared with the survey in 2003 a decrease by 33\%); 17\% of respondents had bought them once; 16\% – more than once. 77\% of respondents mentioned that over the year a service of inappropriate quality was provided to them or their family members. In most cases consumers complained about non-qualitative services related with gas, electricity, mobile and fixed connection, water supply, public transportation.

Consumer claims to the respective public authorities are other sources of relevant information on violations of the Lithuanian consumers’ right to quality and safety.

\begin{table}[ht]
\centering
\begin{tabular}{|l|c|}
\hline
\textbf{Reason for submitting a claim} & \textbf{Percentage} \\
\hline
Quality & 37 \\
Expired terms for use & 19 \\
Hygiene & 16 \\
Other reasons & 13 \\
Marking & 8 \\
Keeping conditions & 4 \\
Safety & 3 \\
\hline
\end{tabular}
\caption{Consumer claims regarding food products by reason of their submission in 2004\textsuperscript{52}}
\end{table}

The State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania analyzed the consumer claims submitted in 2004 for non-qualitative electric and radio devices (183), footwear (143), construction products (54), furniture (48), machinery (19), parts of vehicles (17), etc. This Inspection received 213 consumer

\textsuperscript{50} For more information see: www.nvtat.lt/ [referred to on 15 September 2005]. Internet search: www.nvtat.lt/4-nauj.php\#top.

\textsuperscript{51} For more information see: www.nvtat.lt/ [referred to on 15 September 2005]. Internet search: www.nvtat.lt/4nauj.php\#tyr1.

\textsuperscript{52} Report 2004 of the State Food and Veterinary Service of the Republic of Lithuania.
complaints about the services. A major part of the complaints was about the services of inappropriate quality (127), a good that was damaged or lost while providing the service (33), safety of services (25), failure to provide information (12), default on contractual obligations (5).

In 2004, 34% of consumers who applied to the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania were dissatisfied with the quality of utilities: of which, mostly for inappropriate quality of heating, electricity, hot water supply and the calculation procedure for these services (for example, though consumers had electricity meters in their apartments the service providers calculated fees in proportion to the area of residential premises)\(^53\). In the same year the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania received many claims regarding the quality of housing construction and repairs (for example, bad sound isolation, poor quality windows, heating and water supply system breakdowns). The consumers also complained about advertising leaflets with offers to buy different goods or services emailed to them by individual persons and companies though they had never asked for or agreed to that.

The analysis of consumer surveys, claims to the public authorities and consumer associations and the currently ongoing discussion suggest that amendments to the Law of the Republic of Lithuania on Heating Economy\(^54\), the Law of the Republic of Lithuania on Construction\(^55\), the Law of the Republic of Lithuania on Associations of Multi-Family Apartment House Owners\(^56\) as well as other laws are required.

**Pre-court investigation of consumer disputes**

One of the most effective ways of consumer protection is defense of consumer rights in the out-of-court procedure. If the seller, service provider fails to satisfy a consumer’s claim for acquired dangerous goods or goods of inappropriate quality and services related with them, return of goods, replacement or provision of information the consumer is entitled to apply to the National Consumer Rights Protection Board under the Ministry of Justice of

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53 From 01-07-2003 to 01-07-2004 the Lithuanian Consumer Association carried out a research on analyzing and systemizing of heating consumers’ complaints, claims and suggestions, and preparation of a report on complaints, which was submitted to the Ministry of Economy. The research findings showed that consumers applied to this Association for inappropriate heating system of the building (48%), heating consumption in excess of the tariff when the buildings do not comply with the mandatory requirements (16%), the heating provider’s fault (10%), calculations of fees for housing heating and hot water, which are difficult to understand (9%) and the like.


the Republic of Lithuania or the respective state or municipal institution. These institutions must analyze a consumer claim no later than within 30 days from the day of receipt of that claim unless otherwise provided by other laws (for example, the Law of the Republic of Lithuania on Payments establishes a different term). Upon analysis of the consumer claim the institution draws up a statement on examination wherein indicates whether the consumer’s claim is reasonable and, if reasonable, proposes the seller to satisfy the consumer’s claim within a fixed term. This institution informs the consumer about the examination results by providing a copy of the statement along with that, within 3 working days from drawing up a statement on examination. Disputes arising from contractual relations between the consumers and the sellers, service providers are investigated in the out-of-court dispute settlement procedure by the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania.


In its activity report 2004 the State Inspection of Non-Food Products of the Republic of Lithuania indicates that due to non-qualitative products after its decision the seller terminated a sale-purchase contract, refunded the money paid for a good (44.6%), replaced a good of inappropriate quality for a good of appropriate quality (23.2%), eliminated without any payment the defects of a good or reimbursed the consumer’s expenses for their elimination (18.4%), reduced the price of a good (5%), replaced a good or material damaged by an analogous good or material, or reimbursed the value of a product or material (2.4%). Out of all claims 0.2% is the cases when the seller failed to meet the requirements set in Article 7 of the Law of the Republic of Lithuania on Consumer Protection, 6.2% met other consumer claims (e.g. granted a discount on another good that is acquired). The said Inspection passed the decisions on the inappropriate quality of services following which the supplier replaced the services of inappropriate quality by the ones of appropriate quality (32%), reimbursed the value of services (29%), refunded money paid for a service of inappropriate quality (12%), reimbursed the consumer’s expenses for elimination of defects (1%). Also, upon analysis of the claims it was established that 39 consumers (from 163) were provided with the services of appropriate quality, in 11 cases failure was not related with the service provided.

Table 2. Dynamics of investigation of consumer claims

<table>
<thead>
<tr>
<th>Institution to which a claim was addressed</th>
<th>Number of reasonable claims</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002</td>
</tr>
<tr>
<td>State Food and Veterinary Service of the Republic of Lithuania</td>
<td>881</td>
</tr>
<tr>
<td>State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania</td>
<td>511</td>
</tr>
</tbody>
</table>

Here it should be noted that the consumer not always knows where to apply in case of infringement of his rights (for example, in 2003 almost every sixth resident of Lithuania did not know where to apply, in 2005 – 46%).

The effective Law of the Republic of Lithuania on Consumer Protection provides for a list of prohibited actions in case of emerging whereof the public interest may be defended

59 Table is prepared based on the report of 2002–2004 of the National Consumer Rights Protection Board under the Ministry of Justice.
60 Activity report of 2004 of the State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania.
61 For more information see: Problem with Consumer education (Author’s note).
(for example, a consumer credit, sale of goods away from business premises, unfair terms of consumer contracts, sale of goods based on distance contracts, acquisition of the right to make use, at a certain time, of residential space, quality of goods and buyer’s rights in case a good of inappropriate quality has been sold to him). Also, it defines the right of institutions and organizations of the Member States of the European Union to lodge a claim in Lithuania in defending the public interest of consumers.

**Right to damage compensation**

The Civil Code of the Republic of Lithuania\(^{63}\) establishes the liability arising from goods or services of inappropriate quality and provides for compensation of damage due to provision of misleading advertising. Each person who for his own business purposes imports an inappropriate quality product to the territory of the states of the European economic zone with the aim to sell it, lease or otherwise distribute is liable as the producer. Damage is compensated if an aggrieved person proves that the damage has resulted from the inappropriate quality of a product (service) and that there exists the causative relation between the inappropriate quality and damage. If the damage has been caused by the actions of several persons (for example, the producer of an inappropriate quality product and the person who has incorporated this product into another product) the liability of these persons is solidary. Damage subject to compensation means: damage caused by death or personal injury, including non-pecuniary harm; harm caused the aggrieved person’s property, which was normally used for domestic needs, with the exception of the very product of inappropriate quality, damage caused in the equivalent amount of minimum EUR 500 based on the official Euro to Litas exchange rate quoted in the procedure established by laws\(^{64}\). This amount is not applicable when damage has resulted from services of inappropriate quality. Actions for compensation of damages (harm) caused by the consumption of defective products (services) are prescribed by the lapse of three years from the day on which the aggrieved person became or should have become aware of the damage caused to him, defect and the identity of the producer.

To sum up, it is possible to say that the Lithuanian consumer is, at his own choice, entitled to acquire and use goods and services (to choose a seller, service provider); to acquire safe and appropriate quality goods or services; to obtain correct and full information on goods sold and services provided; to obtain information on the procedure for implementation and protection of their own rights; defense of the infringed rights and compensation of damages (harm) caused by the consumption of inappropriate quality products (services); to apply for protection of the infringed rights to the authorities involved in dispute settlement or court; to join consumer associations; consumer education.


\(^{64}\) Ibid.
Enhancement of the institutional system of consumer protection

Articles 29-31 of the effective Law of the Republic of Lithuania on Consumer Protection provide for the two main groups of consumer protection institutions: the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania (along with the State Food and Veterinary Service of the Republic of Lithuania and the State Inspection of Non-Food Products under the Ministry of Economy of the Republic of Lithuania) and public consumer organizations. The Law of the Republic of Lithuania on Consumer Protection establishes that the Consumer Rights Protection Commission is set up under the National Consumer Rights Protection Board under the Ministry of Justice as a consulting institution. The Members of the Commission include the representatives from the Ministry of Health of the Republic of Lithuania, the Ministry of Economy of the Republic of Lithuania, the Ministry of Agriculture of the Republic of Lithuania as well as other interested state and municipal institutions and public organizations. It is also established that state and municipal institutions support public consumer organizations.

It is obvious that the effective Law of the Republic of Lithuania on Consumer Protection is not fully compliant with the targets and priority trends established in the National strategy for consumer rights protection and the National consumer education programme of Lithuania. It is necessary to enhance the institutional system of consumer protection by defining more clearly and distributing more rationally the functions of state and municipal institutions and consumer organizations in order to ensure their administrative abilities.

The new draft law amending the Law of the Republic of Lithuania on Consumer Protection establishes that the consumer protection in the Republic of Lithuania is guaranteed by the state and municipal institutions as well as consumer protection associations. In the area of consumer protection: the Government of the Republic of Lithuania prepares draft laws and other legal acts and submits them to the Seimas of the Republic of Lithuania for consideration, also every 4 years it approves the National strategy for consumer rights protection; establishes the National Consumer Rights Protection Board under the Ministry of Justice and approves its regulations; the Ministry of Justice of the Republic of Lithuania participates in development and implementation of the policy on consumer protection; organization of consumer protection; the Ministry of Education and Science of the Republic of Lithuania coordinates consumer education and integrates consumer education

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66 Ibid.
67 Ibid.
69 Ibid.
in the formal and non-formal education; approves training programmes for teachers covering the issues relating to consumer education and in cooperation with education institutions implements the policy on consumer education.

The state policy in the field of consumer protection is implemented by the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania. The following functions are assigned to the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania in accordance with the draft law amending the Law on Consumer Protection: to coordinate the activities of consumer protection institutions; represent the Republic of Lithuania in international organizations in the sphere of consumer protection; within its competence to adopt and coordinate legal acts; to implement expert analysis of draft laws and other legal acts, provide conclusions regarding whether these acts conform to the state policy on consumer protection; to carry out analysis of consumer out-of-court appeals; undertake control over practice of unfair terms specified in the consumer contracts; within its competence to apply sanctions established by the laws. The draft law also establishes that the National Consumer Rights Protection Board under the Ministry of Justice must participate in development and implementation of the policy on consumer education; along with the state and municipal institutions, consumer associations to organize consumer education; to ensure exchange of information with the European Commission and other Member States (RAPEX system). Besides that, it establishes the rights of the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania (for example, to obtain from state and municipal institutions responsible for the respective area of governance information related with consumer protection; if needed, to request the producers, importers, sellers and service providers or their representatives to come to the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania and provide verbal or written explanations; to appeal to the court for protection of the public interest against consumer appeals or on its own initiative).

It should be noted that the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania employed 38 persons in 2002, in 2003 – 35, in 2004 – 37. In 2002, the new European Integration and International Relations Division and Division of Consumer Economic Interests and Education were established in the National Consumer Rights Protection Board under the Ministry of Justice. In 2005, the position of Enforcement Attaché was established in the National Consumer Rights Protection Board under the Ministry of Justice, however, no attaché has been appointed so far. This position will assist in ensuring better and more professional representation of Lithuanian consumers’ interests in the European Union and representation of the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania in the European Union institution.

In seeking to bring consumer protection closer to consumers’ residential places, in 2005 the structural divisions of the administration of the National Consumer Rights Protec-

tion Board under the Ministry of Justice of the Republic of Lithuania were established in the counties of the Republic of Lithuania. The employees of these divisions analyze complaints in the consumers’ residential county, meet and hear both parties, explain the situation and promptly solve the problem. Also, 72% of the country’s municipalities have appointed specialists responsible for coordination of the activities with the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania. The License, Permission and Consumer Protection Division has been actively working in the Economic and Strategic Department of Klaipėda city municipality.

Other state and municipal institutions within their competence participate in organization of consumer protection activities. Their powers in the area of consumer protection are defined more precisely by the draft law amending the Law of the Republic of Lithuania on Consumer Rights (for example, any disputes arising out of contractual relations between the consumers and sellers, service providers in the areas of electronic communications, postal and courier services are investigated by the Communications Regulatory Authority of the Republic of Lithuania; in the areas of consumer protection established by the Law of the Republic of Lithuania on Energy – by the State Energy Inspectorate under the Ministry of Economy of the Republic of Lithuania). These institutions constitute a system wherein the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania plays a coordinating role.

It is important to mention that both the National Consumer Rights Protection Board under the Ministry of Justice and other state and municipal institutions protecting consumer rights face the problem related with qualified staff. Therefore it is necessary that the strategic plans of these institutions cover staff training, refresher courses in Lithuania and abroad. These institutions need to develop the cooperation with the similar and analogous institutions of foreign states and exchange the best practices.

However, the means supporting consumer protection are not only the task of state institutions. About 15 consumer associations have been continuously functioning in Lithuania. The Lithuanian consumer associations do not have a leading and coordinating association and have been operating separately.

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72 Except Alytus County (Author’s note).
The functions of consumer organizations, the principles of and procedure for support are defined in the effective law\textsuperscript{76} in an inconsistent manner. However, the draft law amending the Law of the Republic of Lithuania on Consumer Protection\textsuperscript{77} establishes that consumer associations have the right: to analyze the opinion of the consumers on the assortment, quality and trade of goods and services and organization of service provision activities; check the quality of goods and services in test laboratories, also to submit goods and services to competent Lithuanian and foreign organizations for expert analysis and tests; make available to the public information on the outcome of consumer opinion surveys as well as results of expert analysis and tests of goods and services; to offer state and municipal institutions the recommendations for prohibition to produce, sell (supply) goods and services that may endanger the health of consumers; to offer recommendations to the producers, importers, sellers and service providers for improvement of the quality of goods and services; to educate consumers through informing and consulting, issuing publications, presenting programmes, etc.; to represent the consumer in out-of-court dispute settlement; to obtain information from the producers, sellers, service providers on the quality of goods sold and services provided as well as other data required for protection of consumers’ rights and interests, except for commercial or bank secrets; to obtain information from state and municipal institutions; to participate in shaping and implementing of the consumer education policy, to implement consumer information and consultation programmes; to submit recommendations to state institutions for development and implementation of the policy on consumer protection.

Consumer associations may influence monitoring of implementation of the consumer policy measures, therefore the state financial support is of crucial importance here. After adoption of the resolution of the Government of the Republic of Lithuania of 15 July 2005 on provision of financial support to consumer protection associations\textsuperscript{78} and upon approval of the Rules on provision of financial support to consumer protection associations\textsuperscript{79}, the State provides financial support to consumer protection associations. The resolution of the Government of the Republic of Lithuania establishes that financial support to consumer protection associations is provided from appropriations of the national budget of the Republic of Lithuania allocated to the National Consumer Rights Protections Board under the Ministry of Justice of the Republic of Lithuania (for implementation of the strategic action plan measure for support of consumer associations). It is established that financial support may be provided to the programmes of those consumer associations which are registered with the Register of Legal Persons and whose establishment documents indicate

\begin{footnotesize}
\end{footnotesize}
the objective of their activity, which is to represent the rights and legitimate interests of consumers, to protect and educate them, they are free of any business activity as well. Financial support provided for implementation of the programmes makes no more than 75% of the total programme budget. Consumer associations must ensure financing of the remaining part of the programme budget from other finance sources. Support of consumer associations in Lithuania is not only programme-based, but also institutional. It is important that financial support to consumer associations is allocated on the basis of clearly defined criteria and transparently.

**International cooperation with state institutions and consumer protection associations**

The Communication on Consumer Policy Strategy 2002–2006\(^8\) emphasizes the cooperation of the member states of the European Union in implementing the rules, and therefore it is advisable to mention the main projects carried out in Lithuania:

- **The European Union Socrates project on consumer education and teacher training developing consumer citizenship.** The National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania and other institutions joined the project in 2002.
- **RAPEX (the system of rapid exchange of information on dangerous products and products causing damage to the consumers’ health).** In implementation of the requirements of the General Product Safety Directive of 2 September 2003 the National Consumer Rights Protection Board under the Ministry of Justice approved the Procedure for rapid exchange of information on dangerous products and products causing damage to the consumers’ health\(^8\) as in effect from Lithuania’s accession to the European Union. Following this Procedure the market surveillance authorities provide information on dangerous products found on the market to the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania, and the latter reports to the European Commission. The Rules on notification of dangerous products and services by the producers, distributors and service providers\(^8\) were approved by the Resolution of the National Consumer Rights Protection Board under the Ministry of Justice on 6 June 2005.
- **ICPEN (International Consumer Protection and Enforcement Network).** In October 2003 during the meeting in Helsinki Lithuania was accepted by joint agreement to this organization in the capacity of the observer for one year. Lithuania represented by the National Consumer Rights Protection Board under the Ministry of Justice took an active part in the activity of ICPEN and became the real member of this organization in 2004. The members-

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\(^8\) Resolution of the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania on amendment of the Procedure for rapid exchange of information on dangerous products and products causing damage to the consumers’ health // Valstybės žinios (Official Journal). 2004, No. 147-5335.
\(^8\) Resolution of the National Consumer Rights Protection Board of the Republic of Lithuania under the Ministry of Justice on the Rules on notification of dangerous products and services by the producers, distributors and service providers // Valstybės žinios (Official Journal). 2005, No. 74-2703.
hip in this organization is important for Lithuania, as close and flexible cooperation among
the Network members allows sharing of information and exchanging of the good practices,
undertaking of joint initiative in order to prevent from unfair business practices and safe-
guard the violated consumer rights when problems and disputes arise from contracts
under which goods or services are acquired in a foreign state or via Internet.

- **Project “Econsumer.gov”**. In 2004, the Lithuanian institutions joined the project “Econ-
sumer.gov” coached by the U.S. Federal Trade Commission. In the special web site designed
based on this project consumers can report their complaints about goods and services
provided via Internet by the sellers established in other states.

- **PHARE Twinning Project on enhancement of the administrative abilities of the National
Consumer Rights Protection Board and promotion of the activity of public consumer organizations.**
  This project is carried out in Lithuania from 8 March 2004.

- **European Consumer Center**. In December 2004, the National Consumer Rights Protec-
tion Board under the Ministry of Justice of the Republic of Lithuania entered into a financ-
ing agreement for establishment of the European Consumer Center in Lithuania with the
European Commission. The Center was established on 15-03-2005. The European Consumer
Center informs and consults consumers who have acquired a defective good or service
in another Member State, provides assistance in lodging a complaint against the seller or
service provider in another Member State and investigates complaints of other Members
States of the European Union about defective goods or services acquired in Lithuania.

- **Project on consumer education integration in secondary and higher schools in Western
Lithuania through young consumer clubs**. This project is carried out by the Western Lithuania
Consumers Federation in cooperation with the Embassy of Great Britain in Lithuania. The
key objectives of the project are as follows: to prepare methodological and learning mate-
rial for consumer education, organize training courses to the leaders of the young consu-
mer clubs, to establish young consumer clubs in secondary and higher schools. The project
is aimed at enhancement of the consumer education traditions in Lithuanian schools by
integrating them into the coherent education system in educating a demanding and critici-
zing consumer who is well-informed about his rights and duties.

- **Project on E-Cons Network**. The project is under coordination by the National Con-
sumer Federation of Lithuania. Project partners: Western Lithuania Consumers’ Federa-
tion, Marijampolė Vocational Training Center, Venta Secondary School (www.e-cons.net/
home.htm). The project is aimed at improvement of consumer education, promotion of
the cooperation between the Member States of the European Union and development of
education innovations at education institutions.

- **Economic and Social Committee of the European Union**. Alvita Armanavičienė, Presi-
dent of the National Consumers Federation of Lithuania, appointed by proposal of the

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83 Project on E-Cons Network [referred to 15 September 2005]. Internet search: www.e-cons.net.
84 European Network for Consumer Education [referred to on 15 September 2005]. Internet search: www.e-cons.net/
home.htm.
Prime Minister of the Republic of Lithuania represents consumer and civil society’s interests in this Committee.

- **European Consumer Consultative Group.** By Decision 2003/709/EC of the European Commission the European Consultative Group was established on 09 10 2003 in Brussels. In this Group Lithuania is represented by Dr. Zita Ėeponytė, President of the Lithuanian Consumer Institute, and Audronė Rickuviienė, Director of the Western Lithuania Consumers’ Federation. The Lithuanian representatives were appointed by proposal of the Ministry of Justice of the Republic of Lithuania and the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania.

- The international day of consumer protection is commemorated in Lithuania every year (conferences, seminars, different campaigns are launched).

To sum up, it is possible to say that it is advisable to enhance the institutional system of public consumer institutions and social organizations in Lithuania. Currently the representation in the regions of the country is not adequately developed (for example, consumer associations or their sectors are established not in all counties of Lithuania). It is necessary to strengthen the cooperation of state and municipal institutions and consumer associations, to jointly develop and implement the policy on consumer protection.

**Problem with consumer education**

To the opinion of the respondents who participated in the survey85 carried out by the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania in 2005, in order to ensure a high level of consumer protection more active consumer education is important (41%). So, the consumers themselves are aware of and attach particularly significant importance to education.

We should acknowledge that the development of the consumer education system in Lithuania is only in progress. There are no traditions of the formal and non-formal education in Lithuania. The situation is especially unfavorable in the municipalities wherein neither consumer education, information and consultation institutions nor consultants on issues relating to consumer protection are available.

In accordance with the draft law amending the Law of the Republic of Lithuania on Consumer Protection86 the process when consumers are provided with possibilities to acquire the knowledge and abilities needed for acquisition and consumption of goods and services to satisfy private, family, and household needs, for implementation and protection of the consumer rights is considered consumer education in Lithuania. Consumer education covers consumer education, information and consultation. The draft law amending

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85 For more information see: www.nvtat.lt/ [referred to on 15 September 2005]. Internet search: www.nvtat.lt/4-nauj.php#top.

the Law of the Republic of Lithuania on Consumer Protection\textsuperscript{87} establishes that consumer education consists of the formal (primary, basic, secondary education, vocational training, high and higher education) and non-formal (pre-school education and other non-formal education of children and adults). Consumer education trends and objectives are established in the National strategy for consumer rights protection.

Also, the draft law amending the Law of the Republic of Lithuania on Consumer Protection\textsuperscript{88} establishes that consumer centers for consumer information and consultation in Lithuania may be established and carry out their activities as budgetary or public institutions; they provide assistance and consultations regarding out-of-court dispute settlement; provide required information to the European Commission; prepare, collect, systematize, and analyze information on consumer education issues, provide this information to consumers, etc. In 2005, the European Consumer Center was established and has been operating in Vilnius. However, the problem with the consumer education center which has not been established so far still exists.

This part of the report mentions the two opinion surveys, as no more surveys have been carried out in Lithuania. So, the system of collection, analysis and assessment of consumer information is not set up, and no constant surveillance and research on consumer opinions is carried out.

The achievements of consumer associations in the field of consumer education are greater\textsuperscript{89}.

It should be noted that in 2005 the Ministry of Education of the Republic of Lithuania in cooperation with the National Consumer Rights Protection Board under the Ministry of Justice participated in preparation of the training aid for children of comprehensive schools financed by the European Commission under the name “Europe Diary. Choose rationally!”

\textsuperscript{87} Law amending the Law of the Republic of Lithuania on Consumer Protection [referred to on 15 September 2005].

\textsuperscript{88} Ibid.

\textsuperscript{89} Publications issued by consumer associations in 2002–2005:


In 2004 the Lithuania Consumer Association was publishing a magazine Consumer Guide.


The publication provides the information on consumer rights, the safety of products and services, there is some space for personal notes. The Europe Diary also includes methodological material for teachers as well as the hints on how to communicate via Internet on the issues relating to consumer education across Europe.

The national radio and television of Lithuania presents expert commentaries on consumer rights with the participation of representatives of both state consumer protection institutions and consumer associations.

**Recommendations**

Currently it is important to seek for a high level of consumer protection in Lithuania (which covers the entire system of legal, organizational, and economic means in the sphere of consumer protection).

It is necessary as soon as possible to adopt the new law amending the Law of the Republic of Lithuania on Consumer Protection\(^90\) and to ensure its implementation. Also, to effectively implement the rules regulating consumer protection. It is advisable to carry out an analysis of the legal acts regulating consumer rights and establish consumer rights in those fields of the national consumer protection which require their additional regulation and adjustment (for example, the Law of the Republic of Lithuania on Heating Economy\(^91\)). It is necessary to establish a mechanism to ensure effective monitoring of the compliance with the laws and control in the National strategy for consumer rights protection.

Besides that, it is important to strengthen the system of state and municipal institutions and consumer associations protecting the consumer rights. The structural units of the National Consumer Rights Protection Board under the Ministry of Justice of the Republic of Lithuania, sectors of consumer associations should be established in all counties of Lithuania.

It is advisable to establish a consumer education center, to set up a system of collection, analysis and assessment of consumer information, to carry out constant surveillance and consumer opinion survey by identifying the problems faced by the consumers on both the national and regional level; to include consumer education in the strategic plans of the Ministry of Education and Science of the Republic of Lithuania, to coordinate its implementation; to include the issues relating to consumer education in the programmes for teacher training and their qualification improvement; to draft and approve programmes for teacher training and qualification improvement covering consumer education issues. Implementation of the non-formal consumer education in Lithuania is of particular importance. A non-formal training programme informing about consumer rights and duties shall be prepared is necessary to seek for active involvement of state consumer protection institutions and associations in the consumer policy of the European Union.

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THE RIGHTS OF THE CHILD

Introduction

The rights of the children form the constituent part of the human rights system. The level of safeguarding and protecting of the rights of this age range in the country is one of the specific rates in assessment of the situation of human rights in certain state as this is one of the most vulnerable parts of the society towards the social-economic changes. Children form the group of the society that cannot independently fully represent their own rights, protect them, complain when they are violated or ignored, and take political measures for the protection of their interests. The rights of the children greatly depend on the understanding of the rest part of the society as well as on its deliberate and determinate attempts to secure its prosperous future.

Talking about the rights of the child, the safeguarding of the welfare of one fifth of the inhabitants of our country is meant. In the beginning of 2004 there were 775.2 thousand of children living in Lithuania, i.e. 22.5% of the population\(^1\). Improving economic and social situation of the country provides the preconditions for more attention to be paid for the needs of the children, more actively and more efficiently solve their problems. In a course of 15 years of independence there was the primary legislative base formed for the safeguarding of the rights of the children, the main international documents in the field of the protection of the children’s rights were ratified; the system of the institutions for the protection of the rights of the children was formed. The sociologic researches of 2004 show that 33% of the respondents are of the opinion that there is enough attention paid to the protection of the rights of the children in our country, whereas the majority of the interviewed have evaluated the changes in this field positively\(^2\). However, every year the standards for safeguarding of the rights of the children scale up, the rights gain the new quality, their content expand. Moreover, the gaps of legal regulation, developed practice show up the new deficiencies that have not been provided before emerge.

The main aim of this chapter of the present report is to analyze the main problems in the field of the protection of children’s rights in Lithuania and suggest the solutions, the guidelines for the improvement of the system. Referring to the amplitude of the topic, the report contains the overview of the rights of the children that lately receive most of public attention, the protection problems that are relevant when drafting the legal acts, performing the practical work, carrying the specialized scientific researches in the field of the rights of the children and their protection, as well as the system of the institutions implementing the rights of the children and their activities’ trends.

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\(^2\) See: the chapter of this book “Sociological Aspects of Human Rights Monitoring”.

The right to live

Article 6 of the United Nations Convention on the Rights of the Child consolidates the obligation of the states-parties to the convention to acknowledge and safeguard the right of the child to live. The latter right of the child is also provided by Article 7 of the Law of the Republic of Lithuania on the Protection of the Rights of the Child where it states that each child shall have the inalienable right to live and grow. It should be noted that the right to live is the fundamental, birthright of each person, protected by Article 19 of the Constitution of the Republic of Lithuania declaring: “the law shall safeguard the right of the person to life”.

The mortality rate of the infants (up to 1 year of age) in Lithuania is not huge (in 2001 – 7.8 (1000 of the lively born), in 2002 – 7.9 (1000 of the lively born)). However, the number of abortions does not allow making unambiguous assessments (see Table 1). Following the statistical data, the number of the unnatural abortions is decreasing every year in the country. Nevertheless, this is one of the biggest numbers in Europe.

<table>
<thead>
<tr>
<th>Year</th>
<th>Per 100 of the lively born</th>
<th>Absolute numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>60.1</td>
<td>22680</td>
</tr>
<tr>
<td>1998</td>
<td>56.9</td>
<td>21022</td>
</tr>
<tr>
<td>1999</td>
<td>52.1</td>
<td>18846</td>
</tr>
<tr>
<td>2000</td>
<td>48.1</td>
<td>16259</td>
</tr>
<tr>
<td>2001</td>
<td>44.0</td>
<td>13677</td>
</tr>
<tr>
<td>2002</td>
<td>42.5</td>
<td>12495</td>
</tr>
<tr>
<td>2003</td>
<td>37.7</td>
<td>11513</td>
</tr>
</tbody>
</table>

In 2003, 258 children died at the age of 1–17. That is 15% less than in 2002. One of the concerns of the state, seeking to ensure the right of the child to live, should be the prevention of deaths during the accidents or suicides, as in the latter group of age (up to the age of 18) these are the most often causes of deaths. Following the data of the Statistics Depart-
ment, the accidents determine 59% of deaths of the children, whereas among the youth at the age of 15–17 – 75%.

During 2004, there were 1494 (133 accidents more than in 2003) traffic accidents registered where the children suffered. 50 children died during them (in 2003 – 55) and 1664 were injured. There were 12 pedestrians among the children killed (6 of them were killed due to their negligence). In a course of fourteen years of independence our country has lost 895 children in the accidents, more than 17000 of children have been injured. While safeguarding the right of the child to live, it is important to implement the measures that would determine the reduction of the number of children suffering in the accidents.

The significant field related to the safeguarding of the right of the child to live is the number of suicides of the children (see Diagram 1). It is important that the child, having experienced physical, psychological and sexual constraint, could receive the concrete qualified help of the specialists. Very often the causes of the suicides of the children relate to the state of the psychological health of the child that is affected by a number of risk factors: poverty, violence, spread of drug addiction and so on. Thus, one of the activity trends of the state in the field of the protection of the rights of the children should be the reduction of the mentioned factors. The Programme on the Prevention of Suicides for 2003–2005 approved by Decision No 451 of the Government on 10 April 2003 among the provided measures also

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specifies the specialized measures for the children\textsuperscript{11}. However, the implementation of them should be complex, in line with other measures of the programmes approved by the Government for the fight with other problems of the rights of the children (e.g. the National Programme of 2005–2007 of the Prevention of Violence against Children and Assistance to the Children\textsuperscript{12}, 2004–2008 Juvenile Justice Programme\textsuperscript{13} and others). Moreover, more attention should be paid to the measures encouraging the prevention of suicides of the children and qualitatively new measures of assistance.

One more category of deaths of the children that causes concern is the deaths of children from the crimes. During 2004 there were 46 children registered in total who died from crimes (see the section “Children – victims of crimes. Children suffering from violence”).

The right to live together with parents

Article 9 of the United Nations Convention on the Rights of the Child\textsuperscript{14} and Articles 23–24 of the Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Child\textsuperscript{15} consolidate the right of the child to live together with their parents or other lawful representatives of a child. The right of the child to live together with the parents, to the upbringing and care at the family of parents, to communicate with parents, irrespectively whether parents live together or separately, communicate with the relatives, in case that does not impair the interests of the child, is consolidated also by Part 3 Article 3.162 of the Civil Code of the Republic of Lithuania. The Code separately discusses the rights and obligations of the father or mother, living separately from the child, to communicate with the child and take part in his education.

During the implementation of this right in practice a few problems arise. More often parents, leaving abroad, leave their children in the Republic of Lithuania under the care of grandparents, other relatives, acquaintances, neighbors, i.e. legally having no powers to represent and protect the interests of the child at the education, medical care and other institutions. Thus, the problems of legal representation of such children, the establishment of the place of their residence, safeguarding of other rights and lawful interests arise. After Lithuania’s accession the European Union this phenomenon becomes especially often.

The norms of the Civil Code provide that the temporary foster care (social assistance) is assigned for a child, the parents of whom cannot take care of him due to the important reasons: objective ones, i.e. irrespective of the will of parents, or subjective ones, i.e. due to

\begin{thebibliography}{9}
\end{thebibliography}
the fault of parents. It is also noted that the aim of the temporary foster care (social assistance) is to return the child to the family. When assessing the aforementioned phenomenon and the legal norms regulating the institution of the temporary foster care (social assistance) the assumption is made that going of parents to work abroad cannot be treated as the basis for the imposition of the temporary foster care (social assistance) as such decision of the parents of the child is the expression of their will arising not out of their fault but out of the understanding of the obligation to materially support the children and seeking to implement it\textsuperscript{16}. The practice shows that after parents leave for work abroad very often the temporary foster care (social assistance) is being imposed on the child and based on the Law of the Republic of Lithuania on the State Benefits for the Families, Growing Children\textsuperscript{17} the benefit for temporary foster care (social assistance) is paid in the amount of 4 minimum level of living. Such solution of the problem provides the preconditions for the irrational use of the state means and conditions for parents having the possibility to maintain the family to stand off from their maintenance. The experts of the Municipal Services on the Protection of the Rights of the Child suggest amending the Civil Code of the Republic of Lithuania with the provision dividing the temporary foster care of the child into the social one (corresponding the current understanding of care) and non-social (related to the representation), also with the provision specifying that before leaving abroad parents should address the court regarding the imposition of the legal representative of the child\textsuperscript{18}.

There are no provisions in the legal acts based on which it is possible to state that the child most often lives with one of the parents and that due to the objective circumstances it is impossible to get the assent of the second parent to let the child temporarily leave abroad. There are also the regulation gaps in the procedure of the temporary departure abroad of the child approved by Decision No. 302 of the Government of the Republic of Lithuania as of 28 February 2002. One of them is the absence of the concept of temporary departure. When applying the parallel of the Law on the Declaration of the Place of Residence, the concept of temporary departure to the foreign state could be defined by the period of time of six months. However, in practice, the criteria of the temporary departure (counted from a few days till a few months) are very different\textsuperscript{19}. When implementing the task of the Municipal Services of the Protection of the Rights of Children to ensure the protection of the rights of the child and obligation to provide the information about the child for a parent living separately, the Municipal Services of the Protection of the Rights of Children, when issuing the documents regarding the temporary departure of the child to the foreign states, should request the goer to provide the information not only on the aim of departure, term, but also on the safeguarding of the rights of the children and their lawful interests during

\textsuperscript{16} The Activity Report 2003 of the Ombudsmen of the Protection of the Rights of the Child of the Republic of Lithuania
\textsuperscript{19} The 2003 Activity Report of the Ombudsmen of the Protection of the Rights of the Children of the Republic of Lithuania.
the period of departure (the place of residence of the child, living conditions, safeguarding of the right to communicate with another parent, relatives and so on). After defining the term of temporary departure the problem of the validity of the documents issued by the Municipal Services of the Protection of the Rights of Children for the Temporary Departure of a Child to the Foreign States would also be solved.

Guardianship of a Child

Article 20 of the United Nations Convention on the Rights of the Child provides the obligation of the states-parties to the Convention to take care of change of care of a child who temporarily or forever has lost his family environment or who due to his interests cannot be in this environment. The Civil Code of the Republic of Lithuania provides the whole of measures safeguarding the imposition of the guardianship (social assistance) over a child. Through the guardianship (social assistance) of a child it is sought to impose the guardian who would take care of a child, would educate him, represent and protect his rights and lawful interests, it is sought to provide the conditions for a child that would correspond his age, health as well as the development level, also prepare him for an independent family and public life. The guardianship is imposed over children who are under 14 years of age and social assistance – for children who are at the age of 14.

In 2004 there were 14.5 thousand of orphans and homeless children, 55% of which were taken care at the families, 2% household and 43% – at the different children care institutions.

In 2004 6077 families took care of 7987 children. The Regulations of the Organisation of the Foster Care of Children, approved by the Decision No 405 of the Government of the Republic of Lithuania as of 27 March 2002, regulating the principles of the organization of the foster care (social assistance) of the children left without the care of the parents, the selection, preparation, designation, dismissal or removal from the office of the guardian of the child, the procedure for the establishment and termination of the permanent foster care (social assistance) of a child. The latter provisions consolidate the obligation for the Municipal Service for the Protection of the Rights of Children or the social partners authorized by it to organize the readiness of the natural person (except the close relatives of a child) to be the guardian. Until now this is the inefficiently functioning legal norm as there is no list of the approved authorities that ought to organize the training of the guardians, the requirements for them, methodological training recommendations for the guardians. Municipalities lack the social partners, able to properly assess the motivation of the guardians.

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train them, and help the services to work with the families of the guardians. The means allotted by the municipalities are not enough for the development of the services’ infrastructure, training of the guardians.

The experts of the Municipal Service for the Protection of the Rights of the Children state that there could be a team of specialists formed in the district who would evaluate and train the guardians and foster-parents. The current practice, when the service has to select the persons, willing to take care or adopt the child, train them, prepare the conclusion for the court regarding their suitability to become the guardians or foster-parents, and also represent the child by stating that this best meets the interests of the child, should be changed24.

Following the Civil Code of the Republic of Lithuania the priority right to become the guardians shall have the relatives of the child, in case that corresponds the interests of the child. In 2004 there were 1059 children taken for guardianship (social assistance) into the families of the relatives. Most often grandparents undertake the guardianship of them – there have been 674 of such children; elderly brothers or sisters – 142; other relatives (uncles and aunts) – 243 children. There were 309 of children given for the guardianship (social assistance) of other persons in 2004.

The exception provided by the provisions on the organization of guardianship of children regarding the training of the relatives of the child to become the guardians does not correspond the interests of the children as these persons also need to gain the basic knowledge about the status of a child under guardianship (social assistance), his socialization peculiarities, the ways and means used for the implementation of the aims of the guardianship (social assistance) as well as others. Moreover, according to the Municipal Services for the Protection of the Rights of the Children it is important to carry the trainings for relatives-guardians as most of the problems regarding the improper fulfillment of obligations of the guardians relate to the relatives of the children. For example, it is often that in case the grandparents guard their grandchildren the financial problems are being solved through the money for guardianship: upon the mutual agreement of parents and grandparents, children live at the grandparents, whereas parents live from the benefits, grow other children25.

The statistical data also prove that the guardians lack the professional training. For example, in 2004, 83 guardians themselves refused from the guardianship of children, 221 guardian was dismissed following the procedure established by the laws of the Republic of Lithuania, 27 guardians were been removed following the procedure established by the laws of the Republic of Lithuania26.

25 Ibid.
In 2004, there were 6196 children under the guardianship at the institutions. The experts distinguish several problematic aspects related to the guardianship institutions. First of all, the current system of funding of the foster home is oriented to the maintenance of the foster institution (to cover the costs for the maintenance of the buildings, utilities, payment of salaries and so on). Only very small part of means allotted for the child under care by the state reaches him. It is thought that the situation may be improved by the objective programmes funded by the state that would specify how much means and for what purposes are to be allocated (for the improvement of the occupation of children, renovation of the buildings and premises and so on).

Another very sore point related to the foster homes is the personnel. Quite a big number of educators, performing the functions of guardians and educators have no vocational training related to the work with these children, quite a big number of whom belong to the vulnerable group. Moreover, quite a large number of employees look positively towards the corporal punishments\textsuperscript{27}. Children suffer from violence at their families; later on they communicate this experience during the intercommunication. Thus, foster institutions should apply the special methodologies to prevent the spread of violence, pedagogues should be aware of them. Most often the elderly people work at the foster institutions. The resettlement of the new employees into the system of guardianship is very slow: the work at the foster institution for the young employee is not prestigious or perspective. The employees who already work for a long period of time are not concerned to actively engage the young specialists into already existing community.

**The right to education**

Education following the Constitution of the Republic of Lithuania is obligatory in Lithuania until the age of 16. Children and youngsters who have been dismissed from the education system are considered as those non-attending the school. Their number shows the ability of the state social and education systems to ensure the education of all the children. It is also used for forecasting of the number of inhabitants who are illiterate and unable to integrate into the society. The different methodologies of calculations predetermine different data about the children un-attending the school. Thus, the exact number of the children of the schooling age, un-attending the school, is still not known in Lithuania.

According to the population census of 2001 compared to the number of children of the respective age during the population census, in spring 2001 there were 1.2% of children who did not go to school. More than a half (60%) of the unstudying schoolchildren resided in the city; 40% in the village. One fourth of these children are the disabled children\textsuperscript{28}.


The Ministry of Science and Education receives the data about the children dismissed from schools from the municipalities. Following them, the number of children un-attending school is constantly decreasing. Compared to the data provided by the municipalities about the children up to the age of 16 who do not attend school (together with those non-attending due to their disability) during 1999 and 2004 it is noticeable that the number of the non-attending children reduced from 824 to 505, i.e. by 39%. Most of un-attending school children are in the forms 6–8.

According according to the Minister of Science and Education, it is possible to state exactly how many children at the school age do not attend the school as in 2002 the children up to the age of 16 have been granted the identity codes. However, there are still questions arising regarding the children registered in Lithuania, however, having left abroad with their parents.

The number of children nonattending school is not very big, however, the problem exists and that causes concern. Seeking to solve this problem the social pedagogues have been introduced a few years ago at the secondary education schools; every third child gets the free of charge catering, “the student basket” is increased; it is possible to use toll free service and inform about the child un-attending the school. The expansion of the education of possibilities is speeded by the free of charge carriage to the schools (during the school year 2003–2004 there were 91 480 schoolchildren given a ride to school by the yellow buses).

The experts have noticed in their practice that in certain cases the education institutions are in no hurry to inform other social partners (Municipal Service for the Protection of the Rights of the Children, juvenile police officer, day centers and other) about the child nonatending the school, constant missing of the lessons and so on. The experts relate this with the system of “the student basket”, following which the education institution does not wish to lose the means received for the schoolchild.

The youth schools help to recover part of teenagers who have left the schools due to different reasons. During 2003–2004 there were 24 youth schools in Lithuania. Currently, the number of youth schools does not increase, i.e. municipalities do not pay a lot of attention to the teenagers of 16–18 years who form the main part of the schoolchildren at these schools. In case of non-existence of the youth school (the schools for adults enroll the youngsters from the age of 18) there is no possibility for the sixteen or seventeen years old to get back into the educational system after having been expelled from it.

According to the Municipal Services for the Protection of the Rights of the Child the issue of subordination of the social pedagogues and psychologists working at schools should

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be solved. Being subordinate to the administration they cannot be objective and impartial when solving the issues related to a child. According to them, the social pedagogues could be the employees of the pedagogue-psychological service acting within the municipality. That would ensure the expedition and fairness of the information provided on the violations of the rights of the children, would guarantee the elimination of the mentioned violations. On the other hand, when solving the aforementioned problem it is important to ensure that the social pedagogue would remain the member of the school community and would not be an outsider.

The researches of the learning load of the schoolchildren carried upon the initiative of the Ministry of Social Security and Labour have determined that the learning load at schools is very huge, that may cause damage for the health of the schoolchildren. Thus, starting from the school year 2003/2004 the limitations have been introduced at the general education plans related to the imposition of the homework, the number of lessons per day, the programme of subjects and exams have been reviewed.

**The Protection of Children from Intoxicants**

Seeking to protect the children from the illegal taking of drugs and psychotropic materials, the states, following Article 33 of the United Nations Convention on the Rights of the Child, come into the obligation to take all the necessary measures, including legal, administrative, social and educational ones. Moreover, the state takes measures to prevent the involvement of children in the illegal production and distribution of these materials. The Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Child repeats this obligation of the state: the child has to be protected from the illegal usage of drugs, intoxicants, other materials and means strongly influencing the organism, the production of such means and materials, sales of them or other distribution (Article 45).

Seeking to solve the issues of the drug prevention and rehabilitation of persons using the drugs in a purposeful way, the state is implementing the National Programme on the Drug Control and the Prevention of the Drug Addiction where part of the provided measures are dedicated to children.

The European School Survey Project on Alcohol and Other Drugs (ESPAD) was carried by the Council of Europe already for the third time in Lithuania, in 2003. Following

the mentioned data, 3.2% of schoolchildren aged 15–16 tried the illicit drugs in 1995, in Lithuania. In 1999, this rate has increased up to 15.5% (by 5 times). 15.6% of schoolchildren tried some drugs at least once in 2003, in Lithuania (see Diagram 2). When assessing the dynamics of the spread of drugs among the schoolchildren, the level of their usage at least once in a course of late four years remained the same. Although according to the data of the survey, the in-taking of drugs for at least once has stabilized. However, it is still very high among the vulnerable groups of children in the biggest cities.

The schoolchildren have got well acquainted with the drugs, have heard a lot about them, know the names of drugs (up to 95%), places where they could be easily purchased. However, the big number of them does not have the needed knowledge and do not understand the negative effect of the drugs. More than a half of schoolchildren do not understand and do not believe that the dependency appears due to the usage of drugs.

ESPAD survey has revealed the tendencies of the increasing usage of alcohol, tobacco as well as tranquilizers and soporifics. Following the data ESPAD 03 in Lithuania, 81.4% of schoolchildren aged 15–16 have been drunk at least once. During the period of ESPAD surveys the number of schoolchildren who have used alcohol for a few times has been systematically reducing and the number of those who have used alcohol for many times has been increasing. Nearly half of boys and one third of girls have specified having used alcohol for 40 and more times. According to the specialists, this is already dangerous behavior in the teens and might face the dependency.

The majority of the education institutions acknowledge the smoking of children and teenagers as a very relevant issue. The number of smokers is increasing at the higher grades, especially at the education institutions of youth, adults, vocational training institutions. The data of the survey show that the majority of schoolchildren aged 15–18 (80.1%) have tried smoking at least once.

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The solving of these problems, the reduction of the demand remains the priority field of the primary prevention of the usage of drugs and psychotropic materials, other intoxicants of the education institutions, i.e. to prevent people from using drugs and make them feel safe at schools. With the spread of drugs, the number of schoolchildren experimenting, but also depending on the drugs is increasing. However, there are still no respective early diagnostics and intervention systems, thus, the problem of preventative programmes is fragmentary. Seeking to prevent the illicit usage of materials affecting the psychics of children (schoolchildren) and the illicit circulation of these substances at the educational institutions, the Government of the Republic of Lithuania approved by Decision as of 2 April 2002 “The procedure for the establishment of the early usage of substances affecting the psychics of the children (schoolchildren)”38. It regulates the establishment of medical examination (testing) of a child (schoolchild) seeking to establish whether he is using the drugs or other substances affecting the psychics. However, the testing following the mentioned procedure is not carried in practice as tests for the establishment of the usage of drugs are quite expensive. Moreover, the consent of the schoolchild and his parents (legitimate representatives) are needed for carrying of the tests that takes time to receive them whereas the tests must be carried very quickly.

Despite of all the attempts to protect young people from the dependency on drugs, psychotropic substances, still it is acknowledged that drug addiction in Lithuania is the disease of young and midlife people. In 2002 there was 0.1% of the registered persons using drugs up to the age of 14; 11.6% at the age 15–19 at the health care institutions39. In 2003 there was none specialized unit for teenagers and children among the inpatient institutions for the persons suffering from the dependency in Lithuania. There is also not enough attention paid for the development of the specialized infrastructure of the cure and rehabilitation institutions for children using drugs – it has not been created in Lithuania yet. On 17 May 2005 the Government approved by its decision the Concept of the Provision of medical, psychological, social rehabilitation for the Children and Teenagers Using Drugs40. Adoption of the more detailed legal acts is needed for its implementation.

The group of crimes related to the usage of drugs and psychotropic materials is especially important in the structure of juvenile delinquency. Although they form quite a small number in it, however, it causes huge concern in the public due to its potential to spread as well as serious danger caused for health. That is usually the production, purchase, keeping, sales and other distribution of drugs and psychotropic materials. The number of the mentioned crimes, committed by juveniles, was especially unstable from 1996. It was speedily

increasing in 1996–2001 (from 6 to 61), in 2002 the number of the committed crimes was only 14 and formed 0.3% of all the committed crimes by juvenile. In 2004 juvenile committed 45 crimes of this type. It is difficult to assess the variation of the number of crimes unambiguously as not all crimes in practice related to the drugs and psychotropic materials could be grouped according to the statistical data. Thus, it is believed that the real numbers of them are much bigger.

The number of juveniles who have committed crimes being in the kef state is not increasing for the meantime – about 0.3% of all the committed crimes in 2003–2004. Each year 14–16% of juveniles have been insober when committing the crimes.

Seeking to protect the children from their inclusion into the usage of psychotropic substances or drugs as well as drinking, the Criminal Code of the Republic of Lithuania provides the norms preventing the mentioned crimes and distribution of drugs and psychotropic substances for juvenile (Article 261 Criminal Code of the Republic of Lithuania “Distribution of drugs and psychotropic substances for juvenile”). However, in a course of late years the number of the registered crimes is very small: in May-December 2003 the number of such crimes was 8; in 2004 – 4 crimes. This crime is very latent. Thus, it is believed that the real numbers are much greater.

**Children having violated the law**

Among all the rights of the children the protection measures of the rights of the children who have violated the law form a separate group. From 1990 till 2004 the number of the investigated criminal offences committed by the juvenile increased twice (from 2 506 up to 5 021; Diagram 3), the number of juvenile charged with criminal offences – more than twice (from 2 042 up to 4 232; Diagram 4).

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Persons under 14 years of age (preteens) are not punished following the Criminal Code, however, the analysis of their criminal behavior is also very important as every year 1000 of preteens (in 2000 – 1200; in 2001 – 1075; in 2002 – 987; in 2003 reduced to 579) commit the crimes. Nevertheless, they are not prosecuted as they are not at the minimal of the criminal liability age specified by the Criminal Code of the Republic of Lithuania. Thus, officially they are not treated as the subjects of the criminal offences\(^{43}\). Currently the laws do not provide any mechanism following which other sanctions could be applied towards them. In case the preteen does not receive the proper assistance, there are more chances that his criminal behavior will be repeated later on.

**Diagram 4. Juveniles charged with criminal offences**

During 2004 there were 1109 juveniles detected of having committed the criminal acts who have already earlier committed the crimes, i.e. every fifth (22.1%) criminal activity committed by juveniles is not already the first criminal experience of the juvenile. Although during late years the crime of juveniles has partly stabilized, the statistics still show high crime level. It is acknowledged that the public also should take the responsibility that children commit crimes. It is especially noted when talking about the repeatedly committed law violations by the juvenile as the indicator of the deficiencies of the imperfect criminal justice and behavior with the juveniles who have committed the crime.

On 1 May 2003 the Criminal Code of the Republic of Lithuania, the Criminal Procedure Code of the Republic of Lithuania and the Code of the Execution of the Punishments of the Republic of Lithuania came into force. One of the most important accents is the separate chapter of the Criminal Code of the Republic of Lithuania as well as the provisions of other codes regulating the peculiarities of the criminal liability applied towards juveniles with the help of which it is sought to ensure that the liability imposed would correspond the age and social maturity of the persons, would help to change them the way of life and behavior, would prevent them from committing the new criminal activities.

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The exceptional attention is paid in the Criminal Code of the Republic of Lithuania to the educational sanctions: the priority is given to them against the punishment measures – punishments. The possibilities of application of educational sanctions against the juveniles following the valid Criminal Code of the Republic of Lithuania undoubtedly expand. However, the infrastructure for the organization and implementation of these measures has not been created to the end seeking to ensure the effective and real application of them as well as the desirable effect towards the delinquent juveniles.

The experts note that currently there is a lack of the competent social work carried within the juvenile justice system. The children having committed the crimes with the imposed educational sanction – institutionalization, do not receive the proper assistance there. Currently there are 4 special foster homes active in Lithuania, following in their activities the temporary provisions on the Specialized Foster Homes adopted by the Government in 1995. Following them not only the children who have committed the crimes but also other children belonging to the risk groups get there as well as the preteens to whom the criminal liability is not applied. The insufficient number of social pedagogues, psychologists, medical people, and the limited possibilities to improve the qualification in a specialized way, in the field of the work with the children at the risk group, does not ensure the successful reintegration of a child. After the imposition of other educational measures the sufficient attention is not paid seeking to ensure the efficiency of the measure. For example, after the release of the juvenile for the care of parents, the further preventative work with a child is not carried. It is also important in this field to adopt the Law of the Republic of Lithuania on the Minimal and Intermediate Care which is being drafted already for two years. It would regulate the system of juvenile care, social, psychological, pedagogical and other assistance for them.

Part 2 Article 81 of the Criminal Code of the Republic of Lithuania consolidates the provision that the peculiarities of the criminal liability of juvenile could be applied also for the persons at the age of 18–20, in case “the court decides, referring to the type of the committed crime, motifs as well as other circumstances and in case of necessity to the explanations and conclusions of the specialists, that such a person following his social maturity matches the juvenile”. The majority of the systems of criminal liabilities provided by the states of Western Europe provide the “intermediate age” from juvenile to adults. Psychologists and medical people are stating already for long that a person aged 18 is not really grown-up yet and that he might still need a few more years to attain the real maturity. Due to the mentioned reasons it is thought that the behavior with the young grown-ups in the system of criminal justice should be different from that with the mature ones and best of all – intermediary between the provided with the juveniles and adults. However, until the content of social maturity is not clearly defined, the lawyers, psychologists, social workers and specialists of other fields facing its determination for a certain person, may differently interpret it.

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The legal basis for the more efficient juvenile criminal justice system has essentially been created, however, it is important to analyze the efficiency, compatibility of the implementation of these legal norms as well to improve them seeking to create the consistent system. Part of the proposed essential peculiarities of the implementation of the criminal procedure and execution of punishments remained excluded from the new Criminal Procedure Code and the Code on the Execution of Punishments. However, they are important seeking to properly ensure the rights of the juvenile as well as the lawful interests during the criminal proceedings and implementation of punishments (non-consolidation of the imposition of remand measures over the juveniles; specialization of officials and institutions in juvenile cases; insufficient provision of the participation of specialists in the process, etc.).

The solution of the majority of the problems and further improvement of the juvenile justice is provided through the Measures of 2004–2008 Programme on Juvenile Justice. However, the efficiency of this programme causes doubts.

It has become especially important to analyze the provisions of the Administrative Law applied with respect to juveniles after the appearance of the separate chapter in the Criminal Code of the Republic of Lithuania dedicated to the peculiarities of the juvenile criminal liability as well as certain new provisions with respect to juvenile in the Criminal Procedure Code of the Republic of Lithuania. Currently the administrative law violations are being investigated following the Code of Administrative Violations of the Republic of Lithuania adopted in 1984. As the Administrative Law and Administrative procedure are very closely related with the criminal and criminal procedure law (concerning the type of the violations, sanctions and so on), it is important to coordinate the valid norms of the administrative law and to search for the solutions most favorable towards juvenile seeking to balance the sanctions imposed over the juvenile who have violated the law, procedural measures as well as guarantees with regard to juvenile participants of the process.

The criminological investigations in different countries of the world proved that nearly each juvenile has at least once violated the laws, but has not been punished. It has appeared that most often he does not commit any law violations. It happens what is called “spontaneous cure“. Moreover, it has been established that the probability that the juvenile will not commit any law violations is much bigger in case he and his first law violation do not fall under the scope of criminal justice. Thus, in case the violation does not fall under the scope of the administrative justice the latter gets an important role in the prevention of repeated law violations of juveniles. In such a way the concern should relate not so much to the fact that juvenile commits the law violations, but to the fact what is the reaction to the violations.

The number of juvenile for the committed violations of administrative law reported during 1992–2002 remains quite stable. In 1993 and in 2000 the number of the reports exceeded

6 000. The more significant increase is noted in 2001 and 2002 – respectively 7 654 and 8 178. From 1998 the number of cases of administrative violations increased more than twice due to the administrative violations committed by juveniles: in 1998 – 702, in 2002 – 1 633 cases.

The increasing number of the reported administrative violations as well as the number of cases for juvenile violations heard at the court induces to pay attention to the legal regulation of the behavior with the juveniles under the administrative justice that until now has not been essentially reformed. The currently valid Code of Administrative Violations of the Republic of Lithuania provides quite a few peculiarities of the juvenile administrative liability: it is important to inform the parents or persons representing them of juvenile in case of his apprehension (Article 265 of the Code of Administrative Violations of the Republic of Lithuania) in case the prosecuted person or a victim are juveniles, the lawful representatives will have the right to their representation (parents, stepparents, guardians) (Article 274 of the Code of Administrative Violations of the Republic of Lithuania). All other procedural norms of the Code of Administrative Violations of the Republic of Lithuania are applied to the adults as well as juveniles.

Having in mind that the Criminal Procedure Code of the Republic of Lithuania regulates the peculiarities with regard to juveniles: concerning non-publication of the data of the pretrial investigation (Article 177); the interviews of the juvenile witness and victim (Articles 186, 280); and the interviews of the suspected during the pretrial investigation (Article 188); the interviews of the accused (Article 272), it is thought that the total absence of special norms on the respective issues in the process of the administrative violations is ungrounded and provides the conditions for the cases of violations of the rights of the child or his lawful interests. Summing it up it is possible to state that currently there is a lack of the legal norms providing the peculiarities of the juvenile status within the administrative process; there are no detailed regulations of the activities of the officials when carrying the respective procedural activities when the children are involved; the law does not provide the possibility of joining the implementation of these processes by the institutions protecting the rights of the child as well as other services; there are no norms ensuring the confidentiality of the data on the juvenile violator.

The sanctions provided for the juveniles by the Code of Administrative Violations of the Republic of Lithuania have not yet received the attention of the legislator. In practice, the juvenile is most often imposed with the penalties – caution and a fine, however, the application of the latter is not efficient as it is usually paid by the parents and that does not stimulate them to take more care over their children and the poor families become even poorer. Another evident insufficiency of the regulation of juvenile administrative liability


51 The provided statistics is only until 2002 as in 2003 in the statistical data published by the national court administration there is no excluded part on juvenile in the general number of the examined cases. The Center of the Crime Prevention in Lithuania [interactive]. The report on the examination of cases of administrative violations [referred to on 10 March 2004]. Internet search: http://www.nplc.lt/stat/atas/tl/adm/adm.htm.
is the consolidation of the responsibility of the parents for the violations committed by their children. Following the valid Code of Administrative Violations of the Republic of Lithuania, the parents will be liable following the administrative procedure on behalf of the child aged 14–16 who uses drugs un-prescribed by the doctor (Part 3 Article 44); who appears in public being drunk or drinks alcohol in public (Part 4 Article 178); who has violated the rules of the usage of pyrotechnic means (Part 3 Article 176(1)); who causes a disturb in public (Part 3 Article 183) or who ruffianly behaves in public (Article 175).

**Children – the victims of crimes. Children suffering from violence**

The detailed statistics of people as well as children who suffered from crimes or other law violations in Lithuania was started from 1 May 2003. Until now, there are no specialized victimological researches carried in this field. Thus, it was only possible to guess the real number of children aggrieved from crimes or other law violations based on the criminological researches carried in foreign countries as well as following the general victimological researches, carried in Lithuania.

The criminal statistics show that during May–December 2003 there were 1914 children aggrieved; and in 2004 the total registered number was 3864 children (up to the age 18); those suffered from crimes (see Tables 2–5)\(^\text{52}\).

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| Table 2. The age of children aggrieved from crimes in 2004 |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Age                        | 0–2            | 3–6            | 7–9            | 10–13          | 14–15          | 16–17          |
| The number of victims      | 83             | 125            | 218            | 957            | 999            | 1482           |
| Comparative number          |                |                |                |                |                |                |
| from all the children       |                |                |                |                |                |                |
| aggrieved from crimes       | 2.1%           | 3.2%           | 5.6%           | 24.8%          | 25.9%          | 38.4%          |

<table>
<thead>
<tr>
<th>Table 3. Children suffered from:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>232</td>
</tr>
</tbody>
</table>

Table 4. Consequences:

<table>
<thead>
<tr>
<th>Killed</th>
<th>Caused heavy disorder</th>
<th>Caused light disorder</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>81</td>
<td>347</td>
</tr>
</tbody>
</table>

Table 5. The victim experienced:

<table>
<thead>
<tr>
<th>Property harm</th>
<th>Physical violence</th>
<th>Sexual abuse</th>
<th>Psychological constraint</th>
<th>Neglect</th>
</tr>
</thead>
<tbody>
<tr>
<td>1589</td>
<td>1417</td>
<td>158</td>
<td>157</td>
<td>21</td>
</tr>
</tbody>
</table>

Following the criminological researches the conclusion has been made that the children having become the victims of the crimes later on much often violate the laws themselves, especially those who have experienced physical violence or sexual abuse. Violence against the children, especially sexual abuse, is a very latent phenomenon. Although, according to the statistical data, in 2004 there were 1417 persons who have experienced physical violence, 158 – sexual abuse, 157 – psychological violence, it is thought that due to the huge latenticity the number of the registered victims does not reflect the real situation of their spread in our country. In 2002 according to the data of the research “Criminal Activities of Juveniles: victims and culprits” carried by the Law Institute, 32.8% of the schoolchildren specified that during their whole life they have been at least once the victim of violence: 22.5% the victims of robbery or racket; 16.1% the victims of body injuries without using the arm; 2.3% of body injuries, using the arm; 2.1% of the sexual abuse53.

The laws of the Criminal Procedure pay special attention to safeguarding the safety of the victim-child, improvement of the interview procedures of the children, seeking to simplify and even more facilitate the interview of child who has suffered from the criminal activities, to reduce the stress experienced by the interviewed during the investigation process. The legal acts should provide that the juvenile witness or victim should be interviewed in the environment, closest and most neutral to him, without the direct participation neither of the suspected nor of the defender, also by other persons depending on the circumstances by providing them with the technical conditions to observe the procedure of the interview, to participate indirectly (the interview of the child is observed through the TV, in another room and so on). The first rooms for the interviews of the children in Lithuania have been installed at the Child’s Development Center, also the public institution “Vaiko namas”, however, due to the lack of means (usage of equipment, participation of the psychologists and so on) during the pretrial investigation they are being used very rarely, most often during the investigation of cases of sexual abuse of the children, sexual-commercial exploitation.

The implementation measures of the National Programme 2005–2007 of the Prevention of the Violence against the Children and Assistance to the Children provide the establishment of 5 interview rooms for the children at the police commissariats during 2006–200754.

During 2004 there were 335 children who suffered from the criminal activities of parents, foster-parents or guardians, 34 suffered from the close relatives. According to the data of the carried research of the organization “Gelbëkim vaikus“ only 30% of the interviewed stated that they have never experienced violence in the childhood from their parents or guardians55. Out of the experienced punishments, beating with some thing formed 10.2%; slaping at the face – 6.5%; shaking – 4.8%. Most often the children get such punishments for the disobedience and non-fulfillment of the tasks (20.9%); usage of alcohol, drugs or smoking (19.1%); bad learning results (16%); falsehood (14.1%). According to the opinion of the children, parents used to beat them more often when they were drunk (8.7% of the respondents who told that parents used to beat them), angry and tired from completely other things than the fault of the child (8.1%), when they argue between (7.4%); without any serious reason (5.6%). Nearly half of the children are confident that the same results could have been achieved by other measures and only 6% agree that this is the most efficient measure, whereas 29% approve the usage of “switch” in certain cases. 22% of the interviewed children have stated that they still do not know whether they will not strike their children.

The Law on the Amendment of Articles 120, 121, 126 of the Criminal Procedure Code of the Republic of Lithuania and Supplement of it with Article 132(1) was adopted on 9 November 2004. The new measures of suppression are consolidated by it—the obligation to live separately from the victim. It is imposed by the resolution of the judge, in case it is reasonably thought that a person, living together with the victim, will try to illegally influence the victim or will commit the new crimes against the victim or persons living together with him. When imposing the obligation to live separately from the victim, the suspected also could be obligated not to communicate and not to search for the contacts with the victim as well as the persons living together, also not to visit the specified places, where the victim or persons living together stay. These measures of suppression are important to insure the protection of the child, victim from violence in the family. It is sought to make violator leave home, but not the aggrieved child. After the consolidation of the latter measures of suppression, it is important to ensure the efficient application of it. Currently there is no solution how this measure will be realized when the violator has no means and subsistence. That could predetermine the application of that measure.

Meantime, there is no clear position whether physical punishments applied by the parents with respect to the children are justifiable. Only severe forms of violence against the children have been criminalized. Lithuanian legislator allows the discipline of a child,
but prohibits his “physical or psychic torture”, also “humiliation of honor and dignity”. The standpoint of the legislator could be assessed ambiguously. It is possible to understand that physical punishments are allowed in case they do not cause any torments and is just a disciplinary measure with respect to the children.

The adoption of the law of anti-spanking would express the negative attitude of the public and the state towards any kind of physical punishment. The main aim of the “anti-spanking” law is clearly express the attitude of the state concerning the prohibition of the unconditional application of physical punishments towards the children.

The current criminological investigations meantime do not let answering this question whether the mentioned type activity really could reduce the number of physical punishments in families. However, the carried researches allow making a conclusion that the adoption of the “Anti-spanking” law may influence the public opinion. In 1995 the carried researches in Sweden showed that during the period of the validity of the law certain changes in the public opinion had taken place as well. In 1995 the majority of parents in Sweden (89%) stated that they disapprove the policy of application of physical punishments in the family, whereas in 1965 there were 53% of parents who had found other disciplinary alternatives, e.g. to limit the amount of the pocket-money.

There is no systematic approach by the state of solving the problem of rehabilitation of children aggrieved from illegal activities, facing violence or constraint. European Human Rights’ Commissar Alvaro Gil-Robles, during his visit in Lithuania on 23–26 November 2003, has noted the relevance of the aforementioned problem for Lithuania and has paid attention that there is no legal act in our country, providing the concrete measures against violence (he has especially noted the violence in the family). No legal acts for a long time have provided the complex and coordinated activities and measures for the elimination of violence with all its manifestation. Only on 4 May 2005 the Government approved the National Programme 2005–2007 on the Prevention of Violence against Children and Assistance to the Children, with the help of which it is expected to fill this gap.

The practice of dispute resolution without the court would reinforce the prevention of violence. The absence of the institution (intermediary) that is able to help parents to solve the personal and property disputes in a way of mutual agreement as well as the disagreements related to the child abridge the circle of people who are able to solve disputes without court. It is thought that the practice of reconciliation and mediation institute existing in foreign countries should be applied in Lithuania as wide as possible.

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56 The provision prohibiting the application of any type of physical punishments towards the children that is usually being incorporated into the legal act of general nature, e.g. the Law of the Guardianship of a Child, Civil Code and so on. Currently the law of “Anti-Spanking” is adopted in Sweden (1979), Austria (1989), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1993), Germany (2000), Latvia (1998), Norway (1987).
The institutions implementing the rights of the child

A very important link seeking to ensure the safeguarding of the rights of the children form the institutions implementing the mentioned rights. The Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Child provides that the protection of the rights of the children in Lithuania is safeguarded by:

1) the state and its institutions (the Committee on Family and Child Affairs, Consulting Service in the Family and Child Affairs under the President of the Republic, the Ministry of Social Security and Labour, Ombudsman on the Protection of the Rights of the Child are attributed to those);

2) self-governance level institutions (the Service on the Protection of the Rights of the Children, Police Officers on the Juvenile Affairs and others);

3) non-governmental organizations the activities of which relate with the children.

When solving the problems of the rights of the children and their protection it is important to ensure the proper functioning of the mentioned institutions, coordinate their activities. The experts themselves see deficiencies within the formed and continuously improved system of these institutions.

The United Nations Committee on the Rights of the Child after the introductory Lithuanian report about the implementation of the United Nations Children’s Rights Convention on the Rights of the Child has provided the recommendation to establish the central institute at the Government of the Republic of Lithuania that would be responsible for the issues of the rights of the children, would coordinate the activities of different ministries, also would ensure better collaboration between the central and local (municipalities) governments, as well as coordination of the implemented policy, including also the collaboration with the non-governmental organizations. Referring to the mentioned above, in 2002 Articles 59 and 61 of the Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Child have been amended and it has been established that the Government of the Republic of Lithuania shall attribute the field of the management of the protection of the rights of the children to the competence of one ministry. The field of the management of the protection of the rights of the children has been attributed to the Ministry of Social Security and Labour as well as the competence of other ministries has been established in this field. Starting from 1 October 2002 the Family, Children and Youth Department has been established at the Ministry of

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Social Security and Labour that has 2 divisions: Family Support division and Children and Youth division. The latter is commissioned to coordinate the implementation of the policy of the protection of the rights of children and youth in Lithuania\textsuperscript{64}.

According to the experts it is not enough to have such division as the central institution on the policy of the children in our country. According to them it is important legally consolidate the establishment of the central institution by clearly defining its responsibility for the coordination and implementation of the policy on the protection of the rights of the children in our country, by separating the functions of public administration and provision of social services. The Municipal Services on the Protection of the Rights of the Children have noted the lack of the coordination of their activities on the state level. It is not enough to have the methodological coordination, methodological assistance. There are problems for the solution of which the consultancy, assistance and etc. of the institution having experience in this field is needed. It is thought that after the establishment of the central institution on the protection of the rights of the children that would coordinate the activities of the municipal services on the protection of the rights of the children on the state level, the mentioned problems would be solved in a more efficient way\textsuperscript{65}.

The role of the institutions of the district level remains still unclear in the field of the protection of the rights of the children. The office of the specialist of the protection of the children’s rights is needed to be introduced within the structure of the District Head Administration or the establishment of a separate service performing the mentioned functions. In such a way it would be sought to ensure the system of the institutions of the protection of the rights of the children in all levels of governance. Currently, districts have no influence at the municipalities when solving other issues related to the protection of the rights of the children. They collaborate with the self-governance institutions only concerning the children who live and are being educated at the institutions subordinate for the District Head Administration.

One more problem mentioned by the experts is that the municipal services on the protection of the rights of the children do not have a clear space in the system of the protection of the rights of the children and their role is unclear. The municipal services on the protection of the rights of the children stress the variety and abundance of the functions falling under the service. The municipal service on the protection of the rights of the children as the subdivision of the public administration authority cannot and should not provide social services itself. However, in practice it is different – the functions of the social services are interconnected with the administrative functions.

The services for the child and his family must be provided on the municipal level, i.e. at the place of residence of the family, in the environment common and close for the child,


using already existing resources and by inducing the appearance of the new services as well as their development. The Law of the Republic of Lithuania on Social Services provides the possibility for the municipality to conclude the bilateral agreement with the non-governmental organizations, religious communities and natural as well as legal persons providing the social services regarding the terms, control and funding of the provision of social services (Part 2 Article 7)\(^{66}\). The means must be planned when forming the municipal budgets needed for the funding of social services (Part 2 Article 11). According to the municipal services on the protection of the rights of the children the purchase model of the social services is not functioning at the moment, there are no financial and legal preconditions formed for the municipalities to purchase the social services from different suppliers\(^{67}\).

When developing the infrastructure of social services for children and families lots of attention should also be paid for the quality of the provided services. Until now there is no social services control mechanism formed, there are no standards. There is also no licensing procedure of the functioning institutions providing the social services (residential care institutions, day centers, assistance services and others).

Currently, the work of the institutions in the field of the protection of the rights of the children is insufficiently coordinated. The redundancy of functions is noticed, there are no unification of force, exists the lack of interinstitutional communication. It is thought that it is important to induce the interinstitutional collaboration when forming the groups of different specialists (social workers, psychologists, medical people, police officers and others). After the receipt of the information about the child the problem should be discussed by the representatives of all the related institutions, the decision has to be made regarding the assistance for the family, the effect and efficiency of the assistance has to be monitored. There are single attempts to form the inter-institutional collaboration groups, however, the existence of them is exceptional and not as a rule.

Referring to the recommendations adopted during the special session of the UN General Assembly held in New York on 11 May 2002 concerning the preparation of the national plans on the children affairs, on 20 May 2003 the Seimas of the Republic of Lithuania approved the Concept of the State Policy of Children Welfare that provides the fundamental principles and values of the child welfare policy\(^{68}\). Following the mentioned principles and values, the main problems of child welfare in Lithuania are stated, the main aims of the child welfare policy are provided for the next decade in the main fields of the child welfare, child participation and protection, and the strategic guidelines of the implementation of the child welfare policy are specified. On the basis of the Concept-


tion of the state policy on the child welfare, the Government by Decision No 184 as of 17 February 2005 approved the State Policy Strategy for the Child Welfare and the 2005–2012 Implementation Plan of its Measures. These are the first complex documents for the purposeful policy with respect to the children in our country.

There are other specialized governmental programmes implemented and approved in the field of the protection of the rights of the children (Decision No 600 of the Government as of 19 May 2004 “On Approval of 2004–2008 Juvenile Justice Programme”; Decision No 29 of the Government as of 11 January 2000 “On the National Programme Against the Commercial Sexual Exploitation of the Children and Sexual Abuse” and others) intended for the consistent solution of some or other problems. The funding methods of the mentioned programmes cause doubts regarding the efficiency of the provided measures. The majority of the mentioned programmes provide the budget means for the implementation for the institutions that ensure the implementation of the provided measures. Each year, when approving the state budget, the distribution of the assignation of the state budget is provided separately following the approved programmes for the institutions. However, after comparing the numbers, the difference could be noted between the planned and received means approved for the implementation of the programme measures. Moreover, the 2005–2012 plan on the strategy of the state policy of child welfare and its implementation measures provides that the plan shall be implemented from the budget of the Republic of Lithuania of the respective year as well as from the general assignations approved by the Law on the Approval of the Financial Rates of the Municipal Budgets. It is recommended for the municipalities to implement the plan approved by the Government following the financial possibilities. The 2004–2008 Juvenile Justice Programme provides the implementators of measures not only the ministries or other state institutions as well as non-governmental organizations (e.g. Lithuanian Human Rights Center) that do not receive the general state assignations. In case the means for the concrete programme are not provided by the budget, the financial possibilities for the implementation of the programmes coordinated by the institutions and organizations are not ensured, thus the programmes partly turn into the declarative plans.

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Recommendations

The steps one by one are being made in the field of the protection of the rights of the children, however, seeking to better ensure the safeguarding of the rights of the children the trends are noticed for the improvement of the system of legal norms, institutions, provided services.

The legal basis for the more efficient system of the protection of the rights of the children is constantly improved, however, it is important to analyze the possibilities of the efficient implementation of the consolidated legal norms and coordinate them. Seeking to ensure the right of the child to live it is important to implement the measures predetermining the reduction of the number of abortions, also the number of the children injured during the accidents. It is important to implement the prevention measures related to the children suicides in a complex way, together with other measures of governmental programmes approved for the settlement of the problems of the rights of the children.

Having assessed the increasing migration it is important to legally settle the representation of the children in case of the departure of parents abroad, to consolidate the terms for the temporary departure of the child abroad. The legal norms regulating the organization of the guardianship of children should be improved. It is important to explain in a more detail way the implementation of them, by safeguarding the proper selection of guardians, their real readiness for guardianship. Within the system of institutional care it is very important to induce the joining of new employees and improve the funding mechanism of the children care institutions, orient it towards a child but not the maintenance of the care institution.

Seeking for the better education of youth as well occupation it is important to ensure the sufficient number of the youth schools to attract the youth dismissed from the education system.

Within the system of juvenile criminal justice it is important to increase the role of the social work and in such a way ensure the efficiency of the sanctions for the preteens who have violated the laws as well as to decrease the negative effect of this system for the aggrieved children and violators. The changes of the criminal law even more highlighted the inadequate regulation of the status of a child in the process of the administrative procedure by the administrative law, also the insufficient list of administrative sanctions as well as the contradiction of the liability of the parents for the violations committed by a child to the principle of personal liability. Seeking to protect the aggrieved children from violence or crimes it is important to adopt the “Anti-spanking” law, look for the ways to establish the rooms for the interviews of the children, funding of them, and inducement of their usage in practice. It is also important in practice to consolidate the new measures of suppression – obligation to live separately from the aggrieved – seeking to ensure the real functioning; to induce the settlement of disputes without the intervention of the courts as one of the prevention measures of violence in the families.
The weakest field still remains the absence of the rehabilitation systems of the aggrieved from violence, crimes, also rehabilitation of children taking-in drugs. The formation of them and improvement is provided by the programmes approved by the Government; however, due to the existing funding practice the doubts are caused in relation to the possibility of the implementation of the measures of the programmes.

It is important to improve the system of the institutions of the protection of the rights of the children by providing by laws of the central institution coordinating the policy with respect to the child; by establishment of the central authority of the protection of the rights of the children, also by clearly defining the functions of the protection of the rights of the children on the district level, by separating the functions of public administration and provision of social services at the municipal services for the protection of the rights of the children. For the real implementation of different measures for the children following the Government programmes it is important to improve the mechanism of funding of the mentioned programmes.

The majority of experts, both practitioners and theoreticians mention the Law of the Republic of Lithuania on the Fundamentals of the Rights of the Children as outdated from different point of views that does not reflect the relevant issues. On the other hand, the new wording of the law could help to solve the majority of today’s problems in the field of the protection of the rights of the children (consolidation of the clear attitude towards violence, institutional system and others).
THE RIGHTS OF WOMEN

Introduction

After the regain of the independence, the social life in Lithuania has changed a lot – it has been essentially reformed and it is even possible to say that as an outcome of this, the new regulatory base has been formed, the economic conditions changed – the free market relations settled and gained the new typical features, public activity of the residents of Lithuania has also changed – many public organizations have been formed, some of them have become steadily acting, acknowledged by the state and international institutions as well as organizations. In this social context, the social situation of a woman has been also actively changing by emphasizing the necessity to ensure the equal possibilities for men and women. First of all, it has been required to form the regulatory base that would provide the possibilities not only to avoid the direct discrimination but also the indirect one that would not only aim at elimination of violence against women but also would evaluate the specific problems of women. At the moment there is an essentially new, by its quality, regulatory base formed that virtually strives to meet the needs of safeguarding of the equal opportunities of men and women. The new codes that came into force in 2003 aim not only at the consolidation of equality principle as well as to safeguard the equal opportunities of persons, provide not only the general legal provisions but also aim at the disclose in series the content of them. For example, the Labor Code of the Republic of Lithuania that came into force on 1 January 2003 not only provides the general gender equality but also prohibits the discrimination as well as consolidates the special provisions amending the content of common principles such as the consolidated requirement by Part 3 Article 188 of the Labor Code of the Republic of Lithuania to apply the same criteria for men and women when calculating the work payment. The Criminal Code provides the criminal liability for the discrimination based on gender, sexual harassment, also consolidates many norms providing the preconditions for the protection of women from all forms of violence in everyday life. The Criminal Procedure Code provides the new measures of suppression aiming at the protection of victims from the criminal influence by the violator – the obligation of the suspect to live separately from the victim in case it is reasonably thought that the suspected, living together with the victim would try unlawfully influence the victim or would commit new criminal acts against the victim or the person living together with her. The huge special regulatory base has been created: the Law on Equal Opportunities\(^1\) as well as amendments of other legal acts for the application of that law, the continued further

accession to different international legal acts in the field of the protection of the rights of women: the Protocol on the Prevention, Abortion and Punishment for Trafficking in Human Beings, especially Women and Children amending the United Nations Convention against the International Organised Crime\(^2\), Convention 156 Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities of the International Labor Organization as of 1981\(^3\), the Facultative Protocol of the Convention on the Elimination of All Forms of Discrimination against Women\(^4\) that Lithuania signed in 2000 the ratification of which will provide the wider possibilities for the citizens of Lithuania facing the discrimination based on gender and protect ones rights. Many legal acts have been adopted empowering the state to take active steps in solving the problems of women by implementing the following programmes: the Programme of Control and Prevention of Trafficking in Human Beings and Prostitution of 2002–2004\(^5\), the State Programme on Equal Opportunities of Men and Women of 2003–2004\(^6\), the Draft Plan on the Strategy and Measures for the Reduction of Violence in the Family for 2005–2007 as well as the newly adopted Programme of the Prevention and Control of Trafficking in Human Beings for 2005–2008\(^7\). The attention should be paid to the fact that apart from the regulatory base the institutional system has been created: the actively functioning Service of Equal Opportunities of Men and Women has been established which is presently called Office of Equal Opportunities Ombudsman, a separate division has been formed at the Ministry of Social Protection and Labour one of the main objectives of which is the security of equal opportunities of men and women (Labor Market and Equal Opportunities Division), the Equal Opportunities Development Center has been established by the latter Ministry.

Thus, on a state level quite a big attention is being paid to the security of the equal opportunities of men and women, however, the question is how it has helped to change the social situation of a woman in Lithuania.

Occupancy of women

While analyzing the social situation of women in Lithuania the main problem remains the inferior possibilities for women to ensure the living source for herself and children.

First of all, the level of working activities of women is still lower than that of men. During 2000–2003 only 66.3% of women on average sought to guarantee the income source for herself by working, whereas the working activity of men during the same period of time formed 73.5% on average. Such situation has been predetermined not by the fact how difficult it is for women to compete, but by the fact that the initiativeness of women in the field of work is less than that of men. Though during 2000–2003 the level of occupancy of women (averagely 57.2%) was less than that of men (averagely 61.2%). However, during 2002–2003 women formed the majority among the wage-earners (51.5%). Thus, the lower level of the activity of women has nothing in common with the fact that women experience the discrimination during the employment procedure. Women also form the majority among those working as family members on the family farms (approximately 60%). Therefore, it is most probably easier to explain the present situation by the fact that men simply more often start their own business – during 2002–2003 men prevail among the employers and those working independently – they formed averagely 62%.

The smaller activity of women is also revealed by the differences of the registered level of unemployment of men and women: the level of the registered unemployment among women was lower (during 2000–2002 it balanced from 14.7% to 12.9%) than that of men (during 2000–2002 it balanced from 19.9% to 14.6%) and only in 2003 the level of unemployment among men and women nearly equaled – became approximately 12.5%. It is doubtful that the number of women is less due to the fact that it is easier for women to get employment. The lower level of the registered unemployment cannot be explained by the fact that women more often choose other ways of search of work than addressing the state labor market. Following the data collected by the Statistics Department in 2003 namely women were more inclined to make use of the services of the state labor market than men. Thus, the most likely explanation of the lower level of unemployment of women is that women simply take less initiative in solving the unemployment problems.

Namely the ways of the employment search conditionally portray the lower initiative of women: differently than men who more often choose the independent ways of employment search, women are more inclined to make use of the services by the others. Searching for employment women give the priority for the services of the state labor

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market and then inquire their acquaintances, relatives, regularly follow the advertisements in the mass media. Whereas men are more confident in their attempts – apart from those most popular ways of employment search they will try to take their chance by directly addressing the employer before addressing the state labor market.

However, the unequal situation of women is defined by the vertical and horizontal segmentation of the labor market.

![Picture 1. The unemployed according to the ways of the employment search in 2003 (%)]

<table>
<thead>
<tr>
<th>Method of Employment Search</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Looks for work in other ways</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>Addressed the employers</td>
<td>39</td>
<td>59</td>
</tr>
<tr>
<td>Addressed the acquaintances, relatives</td>
<td>57</td>
<td>56</td>
</tr>
<tr>
<td>Regularly followed the advertisements</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Announced in the media about their search for work</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Addressed the private labor market</td>
<td>53</td>
<td>62</td>
</tr>
</tbody>
</table>

Namely the elimination of vertical segmentation of labor market is the most important task seeking to ensure the equal opportunities for men and women in the social life and, namely here mostly reveal the unequal possibilities of men and women. And how strange it would be from this point of view, women are more often discriminated at the public sector – during 2000–2003 the average monthly brutto salary of women if compared to that of men formed only 75.9% on average. Namely in public sector, irrespective of the approved implementation of the programmes of safeguarding of the equal opportunities of men and women for the examined period of time, the tendency of the decrease of the average monthly brutto salary of women if compared to that of men is the most evident.

The present situation most often is explained by the fact that women just hold the lower posts. This explanation is proved also during the considered period of time – 2002–2003 the number of women among the legislators, senior officials or managers was the smallest – they averagely formed 40%, whereas among the specialists, junior specia-
lists and technicians women formed averagely about 70%. Women formed about 80% among the junior servants\textsuperscript{10}. However, the attention should be paid to the fact that even the salary of women in the same office compared to that of men is lower: in 2000 the average monthly brutto salary of women among the legislators, senior officials or managers was the smallest and just averagely formed 74.6\%, among the senior officials – only 77.4\%, among the directors and senior managers – just 76.7\% of the average monthly brutto salary of men\textsuperscript{11}. We need to acknowledge that the lower salaries of women are predetermined not only by the fact that they hold lower posts, however, there are other reasons as well: either women devote less of their time for work, i.e. work less payable hours, or they are simply conditionally paid less for the same work – there are less premiums or extras paid.

\textbf{Picture 2. The tendencies of the change of average monthly brutto salary of women compared to the average monthly brutto salary of men during 2000–2003}

The segmentation of horizontal labor market is the necessary element of social structure of our society. Thus, at least partial change of it, not discussing even about the removal, is unimaginable for the majority. The economic activity related to the health care and social work, hotel and restaurant business, education remains the type of economic activity which is mostly feminized (in 2003 women in these fields formed about 80\% and more). Women still prevail – form more than 50\% of employees in the fields of economic activities related to the financial intermediation, wholesale or retail, car and motorcycle maintenance, repair of personal and domestic appliances, other


public utility, social or personal service activities. Constructions, transport, storage and communications as well as electricity, gas and water supply remain still the “most masculine” fields of economy – there women do not exceed one fourth of all the employees and in the constructions field form only 1/10 of the employees.\textsuperscript{12}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|}
\hline
Field of economic activity & Men & Women & Total employees \\
\hline
Financial intermediation & 2138 & 1303 & 3603 \\
Legislative and executive activities & 2540 & 1065 & 3605 \\
Public administration, protection, obligatory social insurance & 1836 & 925 & 2761 \\
Electricity, gas and water supply & 1619 & 724 & 2343 \\
Transportation, warehousing and remote communications & 1352 & 602 & 1954 \\
Real estate, lease and other business activities & 1392 & 661 & 2053 \\
Constructions & 1058 & 561 & 1619 \\
Wholesale and retail, car and motorcycle repair, repair of personal and domestic appliances & 1227 & 656 & 1883 \\
Manufacturing & 1264 & 764 & 2028 \\
Education & 1011 & 601 & 1612 \\
Health care and social work & 1081 & 674 & 1755 \\
Agriculture, hunting and forestry & 908 & 576 & 1484 \\
Hotels and restaurants & 706 & 476 & 1182 \\
Fishery & 777 & 504 & 1281 \\
\hline
\end{tabular}
\caption{Segmentation of labor market}
\end{table}

However, the horizontal segmentation of labor market also directly influences unequal opportunities of women and men allowing ensuring the constant income source for oneself and the family – the most feminine economic activities of the country remain the most poorly paid types of economic activities. Economic activity related to the health care and social work, hotel and restaurant businesses, education fall under five fields of economic activities the employees of which receive the lowest salaries. Whereas in top five of the fields of economic activities paid best of all women form not more than 40\% of all the employees.

employees\textsuperscript{13}. Among them there are such most “masculine” economic activities as transport, warehousing and communications as well as electricity, gas and water supply.

The very interesting fact is that women experience least of all discrimination in the fields of “most masculine” economic activities: in the construction field the average monthly brutto salary of women formed 98.2\% in average; in works related to the transportation, warehousing and communications – 96\% of the average monthly brutto salary of men. Whereas these fields where mostly women are employed fall into five economic activities fields where the difference of average monthly brutto salary of women and men is the largest one. The educational field is the exception – the average monthly brutto salary of women compared to that of men forms 95.3\% on average\textsuperscript{14}.

In summary, we could only state that the work of women is still worse paid. That is perfectly reflected by the distribution of the employees according to their income: the wage-earners prevail among women the monthly salary of whom does not exceed LTL 430. Whereas among men, the majority are those the factual salary balances from LTL 601 – 1000\textsuperscript{15}.

It is doubtful that such fact could be explained by the worse quality of work of women as women remain more educated than men. The bigger number of women has the university or further education: 135 of women and only 115 of men with the university education fall to 1000 of residents and 209 of men and only 175 of women having further education\textsuperscript{16}.

Thus, we again need to admit that the equal opportunities of women and men are still not ensured. However, the horizontal labor market segmentation already starts from choosing the study programme – the tendency prevail that women tend more to choose “feminine” professions and that means the less paid ones. For example, in 2003 women form only 40\% of all the students at the vocational training schools, however, those studying according to the study programmes related to the social services form approximately 96\%. The similar situation repeats also when analyzing the distribution of the students according to gender and fields of studies of the students at the further education institutions, colleges and universities. Among those who have graduated the educational institutions the part of women balances between 62–65.5\%, whereas among those who have finished the study programmes related to the health care, social protection they form about 90\% on average. Among those who have finished the study programmes related to the education they form not less than 83\%.

\textsuperscript{13} The only exception is the economic activities related to the financial intermediation where women form 64.8\% of the employees. However, this fact does not change the general situation a lot as namely in this field is the largest difference of the average brutto monthly salary received by women and men (in 2003 the average brutto monthly salary just formed 59.3\% in average of the average brutto monthly salary of men).


Therefore, we need to admit that despite of the formed needed regulatory base for safeguarding the equal opportunities for women and men, women still cannot equally together with men ensure the needed source of living for themselves. Such situation is predetermined not by any other reasons – worse education of women, worse quality of work, but namely the obligations of women to the family and gender stereotypes dominating in the public.

**Women in the family and dominating gender stereotypes**

The attention should be paid to the fact that men dominate among the busy people working full day (they form 51.7%). Whereas, women dominate among those working the short-time (they form 60.8%). In fact, comparatively quite a small number of women work short-time (only 83.5 thousand) and we cannot state that such situation formed only because of the bigger obligations of women to the family. However, the fact that women are more oriented to fulfill their duties for the family than men is not just a myth. The typical and unchanging realia of the social system of Lithuanian society is confirmed by the data collected by the Statistics Department on the different structure of the usage of costs among men and women as well as the planning of the twenty-four hours. The working woman allots nearly twice as more time for the housekeeping and family care than working men. Of course, this could be explained by the fact that women simply more than men tend to spend more time for the housekeeping. However, the differences of the time allotted by women having the spouse and women without the spouse for the housekeeping as well as family prove that nevertheless, the main factor determining the time usage of the married woman is still vital stereotypes about the division of functions in the family. The married woman allots more of her time for the housekeeping, clothing, and bedding and especially much more time is spent for food preparation, dish washing as well as children care up to the age of 18 than the unmarried woman. Especially informative about the different attitudes of men and women to the family obligations are the changes in the usage of time of men and women for the housekeeping and family, having the children at the age of up to 7 years. Men having the children of up to 7 years of age allot averagely 10 minutes more during the day for the housekeeping and family than those men who have no children up to the age of 7 years. Whereas women having the children of up to the age of 7 compared to the women who have no children up to the age of 7 allot averagely 1 hour and 43 minutes more during the day for the family.

As the differences of the usage of time of men and women for the self care, eating, sleeping, traveling and other undefined activities are very small thus it is possible to state that thanks to the fact that women perform the works of housekeeping and family care men could spend more time for their leisure and work.

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The results of the carried research “The Images and Relations of Women and Men in the Press”\textsuperscript{18} also prove the vitality of the stereotypes about the gender roles. The mentioned results revealed that according to the prevailing woman stereotype a woman in Lithuania is prettier and sexier than a man. However, she is less independent. It is sad but talking about the image of a woman first of all and most attention is paid to the external aspects – physical beauty and sexuality of a woman.

It should be noted that the results of the research showed that when discussing about a woman a lot of attention is paid for the coordination of career and family – i.e. when writing about a woman the category of a wife is often applied unless she has no children. The issues of family and home are necessarily discussed in the texts beside work and career, the domestic problems discussed. Very often a woman-mother is opposed against the socially active woman working outside home. Whereas, the image of a man, his problems confine to different fields of man’s activities not related with family, leaving the family problems aside. When the confrontation of private and public fields for women cause very huge specific problems, so men dominate in the public field so strongly that none conflict of public and private fields as far as it relates to the man’s role in the family even can be imagined. Thus, gender identity is grounded by traditionally different categories of activity (in case of men) and passivity (in case of women) attributed to different genders.

The interesting and most probably the saddest fact is that talking about the values, the objective is the beautiful, sexy, young, having a nice family woman as well as more independent, but not so good looking and sexy man giving less attention to the family.

**The health of women**

The statistical data prove the fact that women still live longer than men and the difference between the average future lifetime of men and women in Lithuania was not less than 10 years – in 2000–2003 this difference balanced about 11.5 years: in 2003 the average future lifetime of men was 66.5 and that of women – 77.9 years\textsuperscript{19}.

First of all, the longer average lifetime of women is predetermined by the bigger mortality rate of men due to exterior reasons of mortality such as accidents, accidental alcohol poisoning, accidental drown and so on: because of the mentioned reasons in 2002–2003 there were 3.5 times more men deceased than women\textsuperscript{20}. Women live longer also partially due to the better psychological health – in 2000–2003 there were 5 times more men deceased than women due to the suicide\textsuperscript{21}.

However, the statistical data prove also the opinion spread in the public that women live longer due to better health. When analyzing the mortality of men and women based on the internal reasons it is evident that during 2002–2003 men die 1.4 times more than women,

\textsuperscript{20} Ibid., p. 73.
due to different diseases (except the cardiovascular diseases). There are more men than women among the carriers of human immune deficiency virus, nearly twice bigger number of men suffer from the active tuberculosis\textsuperscript{22}.

The better health situation of women is partially determined by the fact that women more often choose the healthier way of life – use less alcohol and drugs as well as other narcotic or, psychotropic materials. There are nearly 5 times more men than women per 100 000 of residents who suffer from alcohol psychosis and nearly 9 times more men than women suffer from chronic alcoholism; more than 5 times of more men than women suffer from dependency from drugs or psychotropic materials\textsuperscript{23}. Women also smoke less than men do – 13\% of women smoke every day and 44\% of men\textsuperscript{24}.

However, due to biologic differences – reproductive health of a woman – women have the specific health problems. First of all it should be noted that the common state of health of a woman is especially influenced by the problems related to her reproductive health: problematic pregnancy, childbirth, abortions. Thus, during 2002–2003 there were 1.2 times more women than men who died from the diseases of cardiovascular system; in 2002 there were 6 women who died from the complications of pregnancy, childbirth or postnatal period\textsuperscript{25}. Seeking to solve the problems of reproductive health of women it has been provided to prepare the strategy on the National Reproductive Health Policy specifying the underlying objectives, methods and trends for the improvement of the reproductive health as well as to prepare and present for adoption the Law of the Republic of Lithuania on the Reproductive Health. The mentioned draft law has been prepared, however, is still under the discussions at the Seimas. The education of women on the family planning issues is actively carried, the provision of information on health problems is organized with the help of which most probably the reduce of the number of the unnatural abortions has been recorded in 2000–2003. In 2000 there were 16 259 unnatural abortions carried, whereas in 2003 the number reduced to 11 513. The number of the unnatural abortions still remains quite big: in 2003 there were 38.7 of unnatural abortions per 100 of lively born newborns\textsuperscript{26}.

**Violence against women**

The main achievement in this field is that the carried surveys have shown that the problem of violence in the family in Lithuania is already acknowledged. The results of the survey “Human Rights in Lithuania in 2001–2004”, the carried sociologic opinion poll of the residents of Lithuania about the situation and protection of human rights, showed that the Lithuanian residents evaluate the protection of women from violence in the family as

\textsuperscript{23} Ibid., p. 67.
\textsuperscript{24} Ibid., p. 10.
one of 5 most problematic fields of human rights\textsuperscript{27}. In 2002 there were 54\%, in 2004 there were 46\% of the respondents who gave the negative or very negative evaluation of this field. The respondents of the special opinion poll of the residents “Violence against Women”\textsuperscript{28} organized in 2002 provided the stricter evaluation – even 87\% of the participants of the survey acknowledged the home violence. However, still there are persons denying the existence of the problem of violence against women in the family. Most often such are men respondents, having lower education, the residents of regional centers, villages. However, the respondents who acknowledge the existence of the problem of violence against women differently evaluate the different forms of violence. The majority of the respondents acknowledge the physical, sexual constraint as violence\textsuperscript{29}, also the demand for sexual relations, coercion to use alcohol and drugs. The fact that should be mentioned as one of the main positive changes is that emotional constraint is also acknowledged as violence, though, it is least acknowledged if compared to the acknowledgement of other forms of constraint. The saddest fact is that Lithuanian society still does not acknowledge the control of one’s personal life, vulgar larks or remarks as the necessary actions.

Though violence against women is conditionally decreasing, the level of it is still high. There are still many women who experience freedom restraints – prohibitions to meet the family, relatives (more than 1/3 of women had such experience), economic pressure – withholding the money for the purchase of the most necessary things (more than 1/5 of women had such experience), still 1/10 of women experience forcible physical activities in the family. Although the least acknowledged violence is shouting, rating, control of the personal life, the extent of it is very large: only more than one third of women state that they have not experienced the harassment, humiliating lark; only one fifth of women have not experienced the shouting, rating in the family. It should be noted that the surveys have revealed that sexual harassment is spread in all the demographic-social groups of people. In the families having the highest social status the emotional constraint is most often; the emotional, physical, sexual violence is par for the middle class; whereas, physical and sexual violence is spread in the families of lowest class. Psychological constraint in these families is inevitable; it is just very often not understood as the constraint.

At the moment quite much attention is paid to that problem by the public institutions and the majority of the non-governmental organizations of women: the regulatory base is improved (international conventions are being ratified, the new measures of suppression – the obligation of the suspected to live separately from the victim), as well as the institutional system – more and more crisis centers and lodgments are being established; more different programs the aim of which is to solve the problem of violence in the family. However, the largest help for the victims of violence form the consultations of psychologist or social worker as well as the biggest achievement in this field is the acknowledgement of the analyzed problem and the spread of information about it: it is widely discussed in the mass

\textsuperscript{27} See chapter “Sociological Aspects of Human Rights Monitoring” of this book.


\textsuperscript{29} The attention should be paid to the fact that sexual harassment is less acknowledged by the respondents than the physical one.
media, different seminars and conferences. However, we need to acknowledge that the limited efficiency of the variety of measures applied is determined not by the lack of material means, but by the objective limitation of the possibilities to solve the social problems. For example, the new measures of suppressions – the obligation of the suspected to live separately from the victim – will not be able to virtually solve the problems of violence against women in the family not only because it is not clear how the practical problems of the application of the new measures of suppression will be solved, but mainly because the improvement of the criminal justice virtually is unable to solve the most widely spread problem – home violence that has caused the simple health disorder as well as the problem of emotional violence against women. Thus, it is simply needed to induce the stern and activity of women themselves to be intolerant towards the violence in the family. The fact that women not only hesitate to solve the problem of violence in the family in principle, but also are ashamed of acknowledging it, is revealed by the survey “Human Rights in Lithuania in 2001–2004”, the sociologic opinion poll of Lithuanian residents about the situation of human rights and protection. Few women respondents mentioned that they have directly experienced violence in the family – only 1.2%. However, talking about this problem with respect to the acquaintances the number of the women respondents bounces up to 7%. According to the number of the respondents who have experienced the violations of the rights that amounts to one of five fields of human rights that are mostly infringed.

**Trafficking in women and prostitution**

Trafficking in human beings and prostitution are the phenomena best illustrating the vulnerability of the social situation of women – the result of the synthesis of the stereotypes and the insufficient ability of a woman to ensure the means of living for herself. The fact that these phenomena first of all are the results of the stereotypes that have come into force in the public is revealed when analyzing the problems of trafficking in human beings and prostitution the discussions relate only about the women prostitution and trafficking in women relating to the provision of sexual services.

All the researches in this field unanimously specify another main reason of these phenomena – the limited possibilities of women to ensure the needed means of living. According to the data of the public opinion poll, carried during 2002 by the International Migration Organization even 75.1% of Lithuanian residents specify the job search as the reason of leaving abroad by women, 44.6% specify the absence of perspectives in Lithuania. The analogous results are provided also by the surveys of women providing the sexual services and the surveys of social demographic characteristics of victims of trafficking in human beings: „nearly all the interviewed women, self-employed in the prostitution in Lithuania, have specified that before becoming the prostitutes they have been engaged in different activities that have been poorly paid, where there are no possibilities of social rise: canteens

at the kindergartens, garment factories, have been saleswomen at the bars”; “part of the prostitutes engage into the prostitution temporarily, when they do not have other work or other source of living”\textsuperscript{32}. The absolute majority (70\%) of women sold abroad before leaving were unemployed or had a very poorly paid job (13\%).

Following the data of the official statistics the number of the recorded administrative violations due to the engagement into the prostitution as well as the number of the criminal cases for the trafficking in human beings is constantly increasing.

\textbf{Picture 4. The number of the instituted criminal cases for the trafficking in human beings during 1999–2005}\textsuperscript{33}

\textbf{Picture 5. Recorded administrative violations following the Code of Administrative Violations 182}\textsuperscript{34}


\textsuperscript{33}Statistical data is provided following the reports provided by the Statistics Division of Information and Communications Department under the Ministry of the Interior “Data on the Criminal Activities Committed in the Republic of Lithuania”, EK-SAV form, [viewed on 10 August 2005]. Access via Internet http://www.nplc.lt/stat/atas/ird/ekr/ekhtm.

\textsuperscript{34}Statistical data is provided following the reports provided by the Police Department under the Ministry of the Interior “The Report on the Results of the Activities of Municipal Police” [viewed on 10 August 2005]. Access via Internet http://www.nplc.lt/stat/atas/pd/sptarn.htm.
However, does it show that the scope of sexual industry is increasing at a high speed as well as the number of persons involved? It is more likely that these numbers show the increasing privity of the state institutions about these problems, though they still remain very latent. Thus, referring to the still sudden increase of the statistical ratings we need to acknowledge that in Lithuania neither the real extent of this problem nor the typical tendencies of change are still unknown. Based on the evaluations of the experts it is just stated that the degree of trafficking in women in Lithuania is highest among all the Baltic States, however, it is supposed that with the expansion of the geography of sexual industry the number of women involved into the sexual industry increases.

The attention should be paid to the fact that in Lithuania most often Lithuanian girls offer their sexual services, but still even approximately 20% of women, involved into the prostitution, are from other states populated with Slavs (Russia, Byelorussia, and Ukraine). Although the tighter border control may be one of the main means in the fight against trafficking in human beings, the import of the victims into Lithuania, however, due to the geographic situation of Lithuania the prostitution of foreigners is one of the typical features of trafficking in human beings. Thus, within the complex of measures of the solution of problems of trafficking in human beings and prostitution there also should be the measures for solving the problems of legal and social situation of illegal women migrants.

The phenomenon of trafficking in women relates with the violence against women not only through relationship of completeness and partitiveness but also through the relationship of mutual causality. The carried interviews by the International Migration Organization revealed that the majority of victims of trafficking in human beings and women engaged in prostitution usually have experienced violence already in childhood. This circle of violence against women is closed – namely women involved into the sexual industry are the most potential victims of violations of human rights. They are more vulnerable than other women not only due to the conditions of work in the field of sexual industry as well as developed stereotypes in the public, but most often namely due to the fact that the majority of such women cannot make use of the services provided by the state institutions due to the carried policy of the state – due to the strict condemnation of prostitution by acknowledging the engagement into the prostitution as the administrative violation. Women prostitutes more often suffer from AIDS not only because of the fact that when providing the sexual services there is bigger chance to get infected with HIV but also because of the fact that they are afraid of using the services provided by the public health institutions. These women, having experienced violence are not only ashamed or afraid of addressing the state institutions but also cannot objectively do that as instead of becoming victims they will become violators. Due to the closed circle of violence as well as public condemnation the possibility for women involved in the sexual industry to retreat is very little. Analogous situation is with respect to the victims of trafficking in human beings as the majority of women become the victims of trafficking in human beings intending to engage into the provision of sexual services.
Irrespective of that, the state does not give so much attention to any of the criminological problem as it gives to the trafficking in human beings; that the social assistance for the victims of the trafficking in women in the context of the activities of institutions and non-governmental organizations providing the social services gains the status of one of the most important problems to be solved, the society of Lithuania still specifies the lack of attention to this problem – even 37% of the respondents (53% in 2002) of the carried research in 2004 “Human Rights in Lithuania, 2001–2004” state that little or very little attention is paid to this problem\(^{35}\). Thus, it may be that all the legal and social measures applied by the state in solving this problem will not give the needed results not only until at least the partial elimination of the main reason of this problem – unequal possibilities of women to ensure the needed source of income, but also until the change of stereotypes active within the public and namely until the refusal of unconditional and strict condemnation of prostitution as well as the acknowledgement of the engagement into the prostitution of a woman as a violation.

**Recommendations**

The attention should be paid to the fact that the development of social situation of a woman as if repeats the general development of human rights in Lithuania – the problems are already acknowledged and diagnosed, the intolerance towards the problems is increasing the existence of which has not been acknowledged earlier. Irrespective of the quantity and increase of the variety of information the persons demand more and more different information about the different problems. Due to that the common public pressure to solve the existing problems increases. Different scientific researches are being carried, different legal, institutional, economic and other measures for solving the social problems are being adopted and applied. However, irrespective of the civil consciousness – criticism to the situation assessment – increase, the persons still remain indifferent and passive in front of the concrete problem. Thus, although the situation of the protection of rights is improving in the common context of improvement of economic situation, however, the common assessment is quite negative, the results of the applied measures are insufficient.

The development of the social situation of women in Lithuania also records the positive changes – however, these positive changes are more the acknowledgement of the women problems themselves than the tangible positive changes in solving them. Although the consistent regulatory base of solving the problems of women has been virtually reformed and created, the results of the applied legal, economic and other social measures are not sufficient. Thus, at the moment the main measure of solving the social problems of women is the incentive of the activity of women, change of the stereotypes, the incentive of not only the consciousness but also the activities.

\(^{35}\) See the chapter “Sociological Aspects of Human Rights Monitoring” of the book.
The most relevant problem virtually determining or preventing the solving of other problems of women is the limited possibilities of women equally with men ensure for themselves and their families the needed income for living – the existing horizontal and vertical segmentation of labor market. This problem in its turn partially predetermines also other problems of women – due to the insufficient material independence women often have to suffer from violence in the family, to decide to earn the living by providing the social services, due for what they become the potential victims of violations of human rights. Thus, the main attention should be paid to the formation of equal opportunities for men and women in the labor market. By breaking the stereotypes in this field the girls should be encouraged to choose the better paid professions, by increasing the activity of women in the labor market. First of all the initiative of women should be encouraged to start business by respectively adjusting also the political provisions of the state in this field.

Another main task of the change of stereotypes is to change the division of the family obligations of men and women, to encourage women to understand their importance for the family not only being a mother, raising children, but also being a woman, able to ensure the sufficient living.

After the improvement of the possibilities for women to ensure the living for themselves, the respective conditions would be formed by increasing the intolerance of women to violence against women in the family and activity in general when solving these problems. However, now when solving the problems of women in this field it is first of all important to convince women to get rid of the compunction having become the victim seeking to encourage women to express themselves loudly. The breaking of stereotypes is very important also when solving the problems of trafficking in human beings and prostitution that first of all should be started from the rejection of condemnation of prostitution.

The attention should be paid to the fact that the stereotypes of women and men are very vital in the mass media. The mass media not only reflects the social attitude popular within the society but also contributes to their formation. Thus, namely by using it the main steps should be made seeking to change the stereotypes existing about men and women.
Disability is the long term impairment of health, originated out of the disorders of the body state and functions as well as the interaction of the unfavorable environment factors, reduction of the possibilities of participation in public life, also the reduction of the activity possibilities.

The disabled have the same rights as other members of the society. They are provided with the same opportunities for education, work, spending the leisure time, participation in the public, political and community life. The special measures improving the situation of the disabled are provided only in cases when the mentioned conditions and measures are not effective. The legal situation of the disabled persons in Lithuania is regulated by approximately 70 legal acts of general and special nature. The provisions of social integration of the disabled are included into all main legal acts, regulating the health care, pensions, social services, social assistance benefits, prescription of compensatory technique, prosthesis and surgical assistance, transportation privileges, education, environment adjustment and other issues.

Footnotes:
During 2002–2004 the legal base for the implementation of the rights of the disabled persons was supplemented by the very important laws and other legal acts: by the new wording of the Law\textsuperscript{10} of the Republic of Lithuania on the Social Integration of the Disabled\textsuperscript{10}, the Activity Plan for the Year of the Disabled in Lithuania, approved by the Government of the Republic of Lithuania by the Decision No. 159 as of 3 February 2003\textsuperscript{12}, the Strategy of the Supply of the Technical Assistance Means for the Disabled during 2004–2010, approved by the Order No A1-114 as of 30 April 2004 of the Minister of Social Protection and Labor\textsuperscript{13}, the Rules of the Establishment of Special Needs and the Terms for the Meeting of Them, approved by Resolution No A1-283 of the Minister of Social Protection and Labor on 17 December 2004\textsuperscript{14} as well as others. “The National Social Integration Programme of the Disabled for 2003–2012”\textsuperscript{15} (hereinafter referred to as Programme) approved by Resolution No 850 as of 7 June 2002 of the Government of the Republic of Lithuania has the long-term programme effect for the implementation of the rights of the disabled.

To sum it up what has been stated above, the conclusion may be drawn that the proper legal base regulating the rights of the disabled has been formed in Lithuania corresponding to the economic possibilities of the state and seeking to ensure the needs of the disabled. However, the importance of its improvement still remains in the agenda of the state. First of all, it is important to achieve that all legal acts regulating the public life would consolidate the rights of the disabled, provide the safeguarding guarantees. Moreover, the legal acts need to define the responsibility of different management levels (state, districts and municipal) for the implementation of the rights of the disabled, to coordinate the functions of all these institutions as well as to ensure the inter-institutional cooperation. The mentioned requirements are provided in the mentioned Programme as well as Measures for its implementation.

The attitude of the citizens to the situation of the disabled in Lithuania is quite a critical one. The results of the sociologic research carried on 8 June 2003 showed that Lithuanian citizens positively evaluated the certain improvement of the protection of the rights of the disabled. However, the majority of them think that the general situation of the disabled is bad. The main unsolved issues are as follows: bad employment possibilities and conditions for the disabled; especially huge inconveniences in the public transport; insufficient medical care and other. The absolute number of people approves the fact that the state should allocate more means for the improvement of the situation of the disabled from the state budget\textsuperscript{16}.

\textsuperscript{11} The Law of the Republic of Lithuania on Social Enterprises // Valstybës žinios (Official Journal), 2004, No. 96-3519.
\textsuperscript{14} The Order No A1-283 of the Minister of Social Protection and Labor of the Republic of Lithuania as of 17 December 2004 on the Approval of the Terms and Conditions for the Establishment of the Special Needs and Meeting of them // 2004, No. 184-6811.
Situation analysis in Lithuania

The number of persons with the disability in Lithuania is increasing each year and forms approximately 7.5% of all the citizens. From 1990 till 2001 the number of them increased by 1.5 time. Following the data of the Statistics Department in 2001 the number if the disabled in Lithuania formed 263 000 that consisted of: 116 839 of men, 133 467 of women and nearly 13 000 of children. It has been calculated that 91 disabled falls per 1000 of residents at the age of 16 and elder ones17.

The disabled persons are subdivided into those who have been acknowledged as disabled for the first time and those the disability for whom is established repeatedly. The numbers and tendencies of the acknowledged as the disabled for the first time are revealed by the following data18: in 1995 – 24 461, in 2000 – 28 043, in 2001 – 27 989, in 2002 – 31 351, in 2003 – 35 961.

Within the disablement structure the rate of the severity of the disablement is increasing. That is showed by the number of persons who have been acknowledged as disabled for the first time according to the disablement groups19:

<table>
<thead>
<tr>
<th>The year</th>
<th>Acknowledged as the disabled based on the disablement groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I group</td>
</tr>
<tr>
<td>1995</td>
<td>3770</td>
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<tr>
<td>2000</td>
<td>5253</td>
</tr>
<tr>
<td>2001</td>
<td>5605</td>
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<tr>
<td>2002</td>
<td>7016</td>
</tr>
<tr>
<td>2003</td>
<td>8553</td>
</tr>
</tbody>
</table>

The latter data show that the disabled belonging to the I and II groups form more than 70% of all the persons acknowledged as the disabled for the first time and this rate has a tendency to increase.

The most severe form of disability is the full disability. Such disability has been recognized for 8917 persons.

Among the causes of the disability are: disorder of the system of circulation of blood, web and skeleton as well as muscle system diseases, tumors, traumas and psychical disorders.

Constantly increasing number of the disabled and increasing the severity rate of disability have caused more complicated problems for the state when seeking to safeguard the right of this social group of persons to the independence, social integration and participation in the public life as it is required by the provisions of Article 15 of the European Social Charter (amended)20.

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17 Information of the Statistics Department as of 27 July 2004 “Social Integration of the Disabled in 2004”.
19 Ibid.
The right to independence

Seeking to successfully implement the right of the persons to the independence, irrespective of their age and type of disability as well as nature, it is necessary, first of all, to ensure the consulting, educating and vocational training of them, wherever it is possible, within the system of common institutions, whereas in case of absence of such possibilities – with the help of specialized state or private institutions. Such education guarantees the integration of the disabled person into the society.

At the end of 2003 there were 13000 of children at the age of 15 and younger or 1.7% of all the children acknowledged as the disabled in Lithuania. It is calculated that there are approximately 17 children with the disability per 1000 of persons up to the age of 1521.

The underfives, having the special needs who due to the inborn or gained disorders have the limited possibilities to take part in the education process, are being educated at the joint and special groups of the preschool institutions as well as at the special preschool institutions.

In 2003 there were 98 special and other types of preschool institutions in Lithuania having the special groups. There were 4428 children attending them. 2278 (51%) of them were the children having the pronunciation disorders, 645 (14%) of children had visual disorders and 270 (6%) of children had physical movement disorders22.

Also during the school year of 2003–2004 there were 67 special boarding schools and educational centers where most of all the children taught were those with mental disorders – 5877 children or 75% were the children of the special schools. The majority, i.e. 60% of the children were learning and living at such schools23.

One of the essential principles of special education is integration – education of persons with the special needs together with other members of the community and equal participation in its life. In 2003 there were 13360 children with the deviations from the norm of growth whom the corrective or special education is applied at the non-special groups, at the preschool education institutions. In a course of late three years, the number of them at the educational institutions increased by 62% and entirely during 2003 – by 24%24.

During the schoolyear of 2003–2004 there were 107 special, levelling out and development classes at the comprehensive schools for the education of children applying the form of partial integration. There were 826 schoolchildren there. There were 54 thousand of schoolchildren with special needs who studied at the comprehensive grades with the full integration form applied. Compared to 2001, the number of schoolchildren in the mentioned grades increased by 19%25.

The special and comprehensive education institutions have unequal financial conditions for the education of the disabled children (with the special needs). Their education is

22 Ibid.
23 The information of the Ministry of Social Security and Labor, 23-03-2005.
24 The information of the Statistics Department “The Social Integration of the Disabled in 2003”.
25 Ibid.
also impeded by the insufficient meeting of the special needs that appeared due to the
disability, the unfitted environment of the education institutions, the unsuited education
programmes, the pedagogues of the education institutions lacking the additional know-
ledge and skills needed for the education of the disabled. The mentioned deficiencies
decrease the efficiency of the education process of the disabled.

The problem of further education of children with special needs and limited possi-
bilities for choosing the profession is relevant. There are more than 16 main vocational
training programmes for persons with the special needs registered in Lithuania. There
were 2494 schoolchildren learning following the mentioned programmes during 2003–
2004. There is one course programme at the further education schools intended for the
blind and partially sighted. There were 37 students who studied following the mentioned
programme. There were 73 students at the colleges having the I and II groups of disability.

It is important to note that there is no legal regulation of education of the disabled
persons older than 21 year, university and non-university education and that fact hinders
the further organization of education and training of this society group27.

The main vocational training of the disabled is carried in different education institu-
tions – at the Lithuanian Rehabilitation Vocational Training Center, Vilnius Rehabilitation
Center of Vocational Training for the Deaf and Hearing Impaired Persons and others. There
are 7 of such centers all in all. There were 2450 of deaf and 3500 of blind and partially blind
persons using the services of the mentioned centers. The disabled are also being educated
at the comprehensive vocational training institutions28.

To choose and gain the profession the persons are being induced following the pro-
gramme prepared by the Ministry of Education and Science as well as the Ministry of
Health for the comprehensive and special education institutions referring to the aptitude,
abilities, physical and psychic state of the disabled. However, the network of the vocational
training institutions for the disabled is not sufficiently wide and cannot meet all the requi-
rements of the disabled. The current system of vocational training only deals with the
problems of the persons with the development (intellect) disorders, however, does not
include the persons with other types of disabilities. There is no needed relation with other
links of rehabilitation – medical, social, psychological. The vocational training system is
not developed in different regions.

26 Resolution No 850 of the Government of the Republic of Lithuania as of 17 June 2002 on the Approval of the National
Programme on Social Integration of the Disabled during 2003–2012. // Valstybės žinios (Official Journal), 2002,
No. 57-2335.
27 Ibid.
The disabled persons receive too few services of vocational rehabilitation, gaining or restoration of the vocational skills, “organized at the labor market training councils, special education institutions and thus accessible just for the persons having the slight disability”\(^{29}\). The persons, having the severe disability cannot come to such education places. Study programmes are not fully applied for the vocational rehabilitation; there is a lack of special pedagogues. All this predetermines quite poor current situation of rehabilitation of the disabled.

The Law on the Social Integration of the Disabled regulates the cultural activities of the disabled, body culture and sports activities\(^{30}\). Article 15 of the mentioned law provides that County Heads and municipal institutions are responsible for the integration of the disabled into the cultural life, recreation and sports and equal possibilities for their participation in the mentioned fields of life. The Department of Physical Training and Sports under the Government of the Republic of Lithuania is responsible for the organisation of physical education and sports. National and international physical education and sports events for the disabled are organised by the sports organisations of the disabled together with other public organisations of the disabled.

The cultural activities of the disabled manifest in different forms: by organizing the fairs-concerts, orchestras of the disabled, choir and dance festivals, humor competitions of the disabled, actions “Theatre for the Disabled” and others. Several thousands of the disabled participate in such events\(^{31}\).

However, in general the cultural activities of the disabled are not active. The main reason of this is that due to the difficult material situation the disabled persons cannot afford actively realize their right to the cultural life. Cultural events are usually private ones. There is still no strategy for the integration into the general society cultural life. The municipalities allot not enough means for the cultural activities of the disabled persons (to support the music, literature, theatre, museums and handicrafts).

The right of the disabled to the sports is an important part of their rehabilitation and integration. The sports reviews of European countries show that only 3% of the disabled take part in the sports activities.

In Lithuania approximately 1.2% of the disabled go in for sports. Lithuanian Blind, Handicapped and Deaf Federation, Lithuanian Committee of Special Olympics, Paralympics Committee practice more than 20 fields of sports, organize more than 60 different sports events for the disabled every year (championships, cup-ties, international competitions, wellness arrangements and other).

The concern is caused by the attitude of the local municipalities towards the right of the disabled to the participation in sports activities: the municipalities allot only 0.53% of the total budget means for the physical culture and sports activities of the city and region


\(^{31}\) The information of the Ministry of Social Security and Labor as of 23.03.2005.
for the organization of the sports activities of the disabled, whereas the minimal need for this is 4%\textsuperscript{32}. The problems of recreation of the disabled are also worth of attention. The non-governmental organizations of the disabled usually organize the educational, active social rehabilitation camps. However, it is quite difficult to organize the recreation activities as the physical environment is unsuited, there are no specialized organizations that would provide services for the disabled referring to their special needs, there is little support by the municipalities for the organization of such recreation activities.

**The right to social integration**

The social integration system of the disabled consists of the medical, professional rehabilitation services, meeting of the special needs by the means of special assistance, integration of the disabled into the labor market, accessibility to the physical and informational environment. The effective social rehabilitation is accessible only through the consistent activities of all forms of rehabilitation process.

The medical rehabilitation model of the disabled has been implemented in Lithuania. Such rehabilitation is implemented at the multi-profile in-patient institutions, in an ambulant way, at home, at the rehabilitation units of the sanatoriums. Medical rehabilitation means are needed for the 50% of the in-patients and 30% of the patients at the clinics. These means are applied only for the weakest in-patients and the disabled. Each year the number of such persons is not less than 155 000, part of them have the disability. However, the medical rehabilitation services are not enough, there is the lack of specialists for such work: there are 3.8 of rehabilitation places at the hospitals per 10000 of citizens and 1,2 physical medicine and rehabilitation doctors\textsuperscript{33}.

Psychosocial rehabilitation is very important within the system of medical rehabilitation. Following the data of the State Mental Health Center, the disability due to the mental health disorders during late years increased from 27 167 to 31 201. The number of disabilities of children due to mental health disorders is also increasing: from 1864 of the disabled in 2000 up to 2 192 of the disabled in 2003\textsuperscript{34}. The medical rehabilitation services for the disabled suffering from the mental diseases are provided at the centralized health care centers and very rarely at the local communities. Thus, certain problems arise for persons who leave the centralized institutions. They supplement the number of socially maladjusted persons who are left without any medical care and very often degraded. This problem should be solved by significantly expanding the provision of medical services on the community level.

The Technical Assistance Center under the Ministry of Social Security and Labour established in 2004 solves the issues of supply of technical aid means for the disabled following the “Strategy for the Year 2004–2010 of the Supply of the Disabled with the Technical


\textsuperscript{34} The data of the State Mental Health Center as of 06-04-2005.
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Aid Means” approved by the Ministry of Social Security and Labor as of 23-03-2005.

The latter data show that the supply of the disabled with the means of technical aid is insufficient. Lithuanian Association of the Disabled each year requests the Government to improve the supply of the disabled with the surgical and compensatory technique, expand the list of its nomenclature, compensate the retail price of endo-ammunition purchased privately by the disabled (people have to wait for approximately three years to receive these ammunition of coax from the state institutions). Such applications for the Government submitted during the year 2002, 2003, 2004, however, the raised problems have not been solved yet.

The disabled are the persons under the additional auspices in the labor market. The disabled usually have to be employed at the ordinary work place or the work place specially installed for them.

The legal regulation of the integration of the disabled into the labor market provides the supplementary mechanism facilitating and inducing the disabled to work. Following the National programme of the social integration of the disabled it is sought to include the disabled into the labor market, helping them to get employed, developing the outwork, patent work, the appliance of the new information technologies, applying the common and individual programmes as well as ensuring and developing the alternative forms of occupation – work therapy, general occupancy. During 2003 there were 10 270 of the disabled, willing to work, employed, occupied by the work therapy or engaged into the other forms of occupancy. There were 159 new work places established for them, 285 work places were supported, 30 disabled started their own business. 47 disabled were employed after the vocational rehabilitation.

The complexity of the problem of the occupancy of the disabled proves the reduction of the number of the working disabled persons. In 2001 the number of the working disabled retirees was 29 200, in 2004 the number of them decreased up to 24000. Moreover, in 2003 there were 7 900 disabled unemployed persons registered in total. They formed 3.3% of all the registered unemployed persons. In a course of a year 2 046 disabled unemployed were employed or they formed 1.6% of all the employed persons.
The law on Social Enterprises, adopted on 1 March 2004, contributes to the solving of the problem of occupancy of the disabled\(^{39}\). The aim of this law is first of all to employ the disabled persons, having the I–II groups of disability, who have lost the vocational and general efficiency, who are not able to compete in the labor market on equal terms, induce the return of such persons to the labor market, their social integration and reduce the social disjuncture. The state provides the assistance for the legal persons having the status of the social enterprise: grants the subsidies for the establishment of working places, training of employees, working environment, adjustment of production and recreation premises, compensate part of the work pay and social insurance payments. The amounts of the subsidized costs are established from 45% up to 90%.\(^{40}\) In 2005 there were 21 active social enterprises.\(^{41}\)

The Law on Social Enterprises also provides the possibility to establish the social enterprises of the disabled. Such status is granted for the enterprises where the disabled form more than 50% of the annual average number of employees on the lists, where not less than 40% of whom are the disabled of the I and II groups. The social enterprise of the disabled has all the rights and obligations of the social enterprise. However, may also receive the additional state support. At the beginning of the year 2005 there were 7 social enterprises of the disabled.\(^{42}\)

While safeguarding the right of the disabled to the social integration the very important factor is the adjustment of the physical and informational environment to the needs of the disabled.

The adjustment of the physical environment is a necessary condition for the restoration of physical, moral and economic independence. One third of the residents of Lithuania need the adjusted physical environment due to the movement difficulties and limited possibilities to take care of themselves (disabled people, elderly people, mothers with the little children).\(^{43}\)

Physical integration is divided into the public environment (public attendance and infrastructure of service objects, working environment, transport and other) and home environment (dwelling houses, their environment, apartments and other). In Lithuania there are more than 30,000 public objects (trade, public catering enterprises, hotels, sanatoriums, sports institutions, schools, theatres, museums, banks, post office, hospitals and others). Every year the number of persons who accordingly require the adjustment of homes increases by 3,500. In total the number of such persons exceeds 24,000. Following the data of Lithuanian Council of the Disabled, during the year 2000–2003 there were 1,016 of


\(^{41}\) Information of Lithuanian Association of the Disabled, 29-03-2005.


homes adjusted for the disabled persons and approximately 254 homes per year or 18.2% of the demand for the home adjustment satisfied\textsuperscript{44}. That shows that the problem of home adjustment will not be fully solved very soon.

According to the opinion of Lithuanian Association of the Disabled it is important to immediately take measures to adjust the environment for the disabled at the comprehensive schools, higher and university educations institutions, do not apply the equal payment conditions for studies for the healthy as well as the disabled student in case the education institution does not provide the proper conditions for the disabled person to study and live.

The legal base for the adjustment of the physical environment for the disabled is sufficiently formed. The adopted legal acts providing the importance of the adjustment of environment and home for the needs of the disabled when building the new or reconstructing the present objects\textsuperscript{45}. The representatives of the Council for the Affairs of the Disabled take part in the state committees of the acceptance of the objects. However, the implemented measures do not satisfy the needs of the disabled. The onetime activities prevail; there is the lack of common policy, the control of the meeting of the requirements for the environment adjustment, their implementation. There are no methodologies prepared for the adjustment of environment (public and home), transport and its environment. Not nearly all the public road, railway, air and water transport means have been adjusted to the needs of the disabled, the provided public transport services do not meet the nowadays requirements. That limits the participation of the disabled people at the education, sports, cultural activities the possibilities to rest and work, increase their social disjuncture. The problem remains further severe and heavily solved.

Through the development of the information technologies and communication means the information becomes one of the most important tools for the person’s work, means of communication. There are approximately 30,000 persons in the country who due to the disability cannot accept or process the information in an ordinary way: watch TV, read, write, listen and so on. Currently the Information Society Development Committee under the Government of the Republic of Lithuania has prepared the Concept of the Information Environment to the Disabled People that provides the methodical information environment adjustment to the needs of the disabled. The Committee has also adopted the orders “On Methodology for the Adjustment of the Information Environment for the Education of the Disabled and Application of the Electronic Education Means for the Disabled and the Approval of the Methodological Requirements for the Storage”\textsuperscript{46}. Currently the individual TV programmes are being subtitled for the disabled, the school programmes, manuals are

\textsuperscript{44} Information of the Lithuanian Association of the Disabled, 29-03-2005.


adjusted, the adequate compensation technique is provided, the programme for the gestural language users is implemented, the literature in Braille for the blind is being published, the library for the blind is established financed by the state, a few internet homepages of the state institutions and non-governmental organizations have been adjusted to the needs of the disabled, the programme on the mass communication on the emergency response telephone 112 and its adjustment for the disabled. There are many real possibilities for further development of the programmes of the adjustment of the information environment to the needs of the disabled to ensure the possibility for them to use the information, create and adjust the special care technique for the disabled, to supply them with such technique, to apply the information system for them as well as the data funds and so on 47.

The right to the material supply

The person having fully or partially lost the efficiency due to the state of health and functional state has not equal opportunities to take part in the work process, receive equal income as other members of the society and compete on the labor market. The state compensates the income lost due to the disability. Articles 12 and 13 of the European Social Charter (amended) provide such obligation of the state 48 also Article 52 of the Constitution of the Republic of Lithuania. The laws of Lithuania provide certain system of social protection that ensures the living conditions for the disabled.

The main guarantee of the material state of the disabled is the state social insurance benefits for the disabled 49. Moreover, the assistance (social) pensions 50, social benefits are also provided, the certain privilege system (compensations for utilities, supply of the compensatory technique, the necessary things and so on) has been created and is functioning.

During 2003 for safeguarding the material situation of the disabled the following amounts were allotted: 711 905 thousand litas for the disability benefits; 105 713 thousand litas for the relief pensions. That forms 80% of all the amount of monetary payments provided for the disabled.

Currently the average disability pension is 301 litas. Based on the disability groups the pensions are as follows: the pension in the amount of 382 litas is paid for the disabled persons at the I group; the II group disabled persons receive 332 litas, III group disabled persons receive 167 litas. Compared to the year 2002 the disability pensions increased by 14 litas. Referring to the fact that following the data of the Statistics Department the average consumption costs amount to 440 litas, the pensions received by the disabled do not safeguard the living conditions that do not derogate the dignity of the disabled 51.

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The right to the Social Assistance Pension have those disabled persons who have no right to receive bigger or smaller or of the same amount social insurance or state pension. Social assistance pension is of the same amount as the basic social insurance pension, i.e. 172 litas. From April 2004 the social assistance pensions are paid to the disabled children and the young disabled. For the children having the severe disability the social assistance pension is increased up to 344 litas. As mentioned above, during 2003 the social assistance pensions have been paid in the amount of 105,713 thousand litas.

Lithuanian Association of the Disabled already in 2003 requested the Government to increase the social assistance pension for all the disabled children or those who had become disabled less than 18 years of age till such amount that would not humiliate their dignity. They also proposed to insure by the social insurance pension at least one of the parents who nurse the child with the disability.

In 2003 there were 94,626 thousand litas paid for the social benefits. From the middle of 2004 the social benefit paid for the disabled having the full disability was increased from the amount of the basic pension up to 1.25 amount of the basic pension. In cases provided by the laws the nursing pensions paid for the disabled for the payment of which the amount of 22,284 litas was allotted in 2003.

The Government of the Republic of Lithuania acknowledges that the majority of people with the disabilities live poorly. Very few means are being allotted for the vocational training of the disabled, their re-skilling and inclusion of them into the labor market. Due to that more and more means are needed for the provision of the material support. The disability privileges are provided depending of the group of disability but not depending on the loss of person’s efficiency, loss of income and special needs. There is no statistical data on the means spent for the privileges, efficiency assessment system. Inefficient is the model of financing of social services as well as the way of provision of services. The amount of the payment for the social services is not differentiated depending on the person’s income and quality of social services. The system of material support and privileges does not induce the disabled people to work; they better seek for the disability acknowledged and in such a way improve their financial situation or make use of the privileges applied. The Government of the Republic of Lithuania acknowledges the latter problems and seeks to solve them. The implementation measures of the National Social Integration Programme of the Disabled for 2003–2012 provide the reform of the acknowledgment of disability as well as application procedure of the social protection measures for the disabled, to improve the imposition of the pensions and benefits for that category of people.

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52 From 1 July 2005 the amount of the basic state social insurance pension is increased up to LTL 200. // Valstybės žinios (Official Journal), 2005, 67-2411. The amount of the social assistance pension for the disabled will also be respectively increased.


54 Ibid.
The institutions implementing the social integration

The social integration of the disabled is implemented by the institutions provided by Article 16 of the Law of the Republic of Lithuania on the Social Integration of the Disabled. These are: the Government of the Republic of Lithuania, ministries, county heads, municipal institutions, Lithuanian Council for the Affairs of the Disabled under the Government of the Republic of Lithuania, public organizations of the disabled. The law defines their competence and responsibilities. The activities of the Council for the Affairs of the Disabled and that of the public organizations are the most important of all the institutions in the field of the protection of the rights of the disabled.

The function of the Council for the Affairs of the Disabled is to assist the Government in coordination and implementation of the social integration programme of the disabled as well as other measures.

The budget of the latter institution during late years is over 30 million litas. During 2005 it also received 30 million litas that were distributed as follows: 27% for the social services; 20% for the implementation of the accessibility of the surrounding measures; 3.3% for the acquisition of the special transport. The means have also been provided for the financing of the activities of the non-governmental organizations, cultural and other measures. The Council every year finances 46–48 social programmes for the adjustment of the environment for the disabled, creation of the system of vocational rehabilitation, increase of occupation and others. During the implementation of the programmes during 2003 the social services were provided for more than 20 000 of the disabled. However, according to the opinion of the Council the means from the budget satisfy only half of the needs of the social implementation of the disabled55.

The state and public institutions while implementing the social integration of the disabled solve the significant problems of the protection of the rights of the disabled. However, their activities are limited by the insufficient financing from the state budget as well as the humble municipal financial support.

Recommendations

The safeguarding of the right of the disabled to the independence, their integration into the full-fledged public life requires the improvement of their education with the help of the specialised public or private institutions. However, the education process of the disabled, especially children, is impeded by the insufficient level of meeting of the special needs due to the disability (the non-adjusted environment of education institutions, study programmes, the professionalism of the pedagogues at the education institutions, the lack of education authorities and so on). The elimination of the latter deficiencies would make the education process more efficient.

The rehabilitation of the disabled from the vocational training point of view is in a quite poor situation. The network of the vocational training is insufficiently expanded and does not meet all the needs of the disabled. Usually the vocational training is organized at the councils of labor market training or special education institutions and thus, is accessible only for the persons having the slight disability. Moreover, the current system of vocational training solves only the problems of persons having the development (intellectual) disorders, however, does not include the persons having another type of disability. Thus, it is important to take measures to broaden the network of vocational training, prepare and adjust the special training programmes, seek that the vocation training would include all the disabled irrespective of the type of their disability.

Seeking to ensure the right of the disabled to the social integration it is important to properly organize their medical rehabilitation, provision of the proper work, accessibility of the measures of the physical and information environment. Currently it is evident that the medical services provided for the disabled are clearly insufficient. The quality of them does not meet the requirements; the lack of the specialists is felt. The medical rehabilitation services for the disabled having the mental disorders are usually provided at the health care centers and rarely – at the local communities. The disabled having left the centralized institutions often remain without any medical care. Thus, it is important to expand the provision of special medical services at their homes, on the community level.

The supply of the surgical and compensatory techniques of the disabled needs to be improved. Approximately 30% of the disabled who need the mentioned measures do not receive them.

The implementation of the Law on the Social Enterprises has the huge importance on the solving of the problem of the occupation problems of the disabled. The state has to expand the network of such enterprises in all the regions of the country and actively induce their activities with the help of economic means.

The relevant problem is the situation of the adjustment of physical and informational environment to the needs of the disabled. The majority of the public objects, especially transport, roads, education institutions as well as homes are not adjusted to the needs of the disabled and the adjustment of them is very slow.

The most edgy problem used to be and currently is the safeguarding of the material living conditions of the disabled. The Government of the Republic of Lithuania acknowledges that the majority of the disabled live poorly. Too little means are being allotted for the inclusion of the disabled into the labor market. Thus, more and more means are needed for the material assistance of them. It is important to implement the more efficient model of financing of social services, expand the ways of the provision of special services and improve their quality. The mentioned issues should be solved without any delay.

After the implementation of the recommended measures the process of the integration of the disabled into the society would significantly improve as well as the quality of their life.


THE RIGHTS OF THE ELDERLY

Introduction

The relevance of the protection of the rights of the elderly people does not cause any doubts. Such situation is predetermined by the demographic situation developed in the world.

The demographic researches show the steady tendency of the obsolescence of the population of the planet. In the majority of countries the lifetime of people is increasing and thus the number of elderly people is increasing as well. There, in the European countries, people at the age of 65 and elderly ones have formed: in 1992 – 14.3%, in 1997 – 15.2 %, in 2003 – 16.3%\(^1\). Currently there are over 6 milliard people living in the world. Approximately every 10\(^{th}\) of them is at the age of 65 and elder. That is why the international community is constantly worried about the improvement of the quality of life of the elderly people, search of ways to avoid the problems arising due to the obsolescence of people and make use of the new possibilities that are revealed by the lengthened employable age of people.

The international community has done a lot seeking to create the global system for the protection and defense of the human rights and freedoms where the main place is taken by the treatment of the rights of the elderly people.

In a course of late years, the important international legal acts have also been adopted for the protection of the rights of the elderly people. These are: Political Decree of the Second World Assembly on Aging in Madrid, in 2002; and International Madrid Activity Plan on Aging\(^2\). Another international legal act – the Regional Implementation Strategy for the Madrid International Plan on Actions on Ageing 2002 of the United Nations Economic Committee for Europe\(^3\). The mentioned documents highlight the necessity to expand the participation of people in the public life, ensure the reliable protection of their rights.

Lithuania has undertaken the obligation to take measures for solving the problems of obsolescence of the society following the requirements of the international legal acts, implement the International Activity Plan of Madrid and the Regional Strategy of Berlin on the Ageing of the Society\(^4\).

Situation in Lithuania

The same tendencies are typical for Lithuanian demographic situation that are observed also in other countries of the world.

Following the 1982 Resolution of the World Assembly on Ageing the measure of the obsolescence of the society is the part of the residents at the age of 60 and elder ones. There


is no adequate definition of an “elderly person”. The different terms are used in the international as well as legal acts of the Republic of Lithuania: “people at the retirement age”, “old age retiree”, “elderly people”, “people at the pre-retirement age” and others. The present work contains the concept of “elderly person” used, that has been approved by the United Nations Committee on Economic, Social and Cultural Rights. “The elderly people” in the documents of the United Nations Institutions of Statistics mean the persons at the age of 60 and elderly ones. It is not the aim of this work to provide the comprehensive and adequate definition of an “elderly person”.

Following the data of the Statistics Department under the Government of the Republic of Lithuania, the part of the residents of that group of age in Lithuania is as follows:

<table>
<thead>
<tr>
<th>The year</th>
<th>The number of residents at the age of 60 and elder ones, in thousands</th>
<th>Compared to the total number of residents, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>707.3</td>
<td>19.1</td>
</tr>
<tr>
<td>1995</td>
<td>748.3</td>
<td>20.5</td>
</tr>
<tr>
<td>2000</td>
<td>728.8</td>
<td>20.8</td>
</tr>
<tr>
<td>2001</td>
<td>724.8</td>
<td>20.8</td>
</tr>
<tr>
<td>2002</td>
<td>711.7</td>
<td>20.5</td>
</tr>
<tr>
<td>2003</td>
<td>697.7</td>
<td>20.1</td>
</tr>
<tr>
<td>2004</td>
<td>698.3</td>
<td>20.26</td>
</tr>
</tbody>
</table>

The provided data show that the part of the elderly people in Lithuania is increasing. In 2004 the number of them amounted to 698.3 thousand and formed 20.26% of all the residents. That means that Lithuania has already exceeded the limits of high demographic old age, due to which the new complicated economic and social problems arise. In case the present tendencies remain it is forecasted that till 2030 there will be 27% of residents elder than 60 years of age in Lithuania.

The laws of the Republic of Lithuania and other legal acts quite thoroughly consolidate the legal status of the elderly people. All the adopted main laws regulate the social, legal and medical protection of the elderly people, meet their cultural and self-expression needs, and encourage their integration into the public life.

In 2002–2004 the legal base for the improvement of the quality of life of the elderly people has been further improved and developed.

“The National Strategy on the Fight with the Consequences of the Obsolescence of People”7 (hereinafter referred to as Strategy), approved by the Resolution no 737 of the Government of the Republic of Lithuania as of 14 June 2004 has a significant importance. This document thoroughly and comprehensively analyses the tendencies of ageing of people in Lithuania, the significant changes thereof within the demographic situation,

5 The economic, social and cultural rights of the elder persons: 08/12/95. CESCGR General comment 6/General Comments/Thirteenth session, 1995.
7 National Strategy on the Fight with the Outcomes of the National Obsolescence of Residents // Valstybės žinios (Official Journal), 2004, No. 95(1)-3501.
the economic, social, medical, cultural and other problems for the ensurance of fruitful life of elderly people, immediate tasks set and the implementation activities provided. Based on this Strategy the Government of the Republic of Lithuania on 10 January 2005 approved "The Measures for 2005–2013 for the Implementation of the National Strategy on the Fight with the Consequences of the Obsolescence of People".

The latter programme documents of the Government of the Republic of Lithuania undoubtedly shall have the significant importance for the improvement of the development of the human rights of the elderly people and their protection.

However, there are still unsolved problems when developing and improving the regulatory base for the protection of the human rights of elderly people.

The Seimas of the Republic of Lithuania by Law No IX-317 as of 15 May 2001 has ratified one of the fundamental international documents regulating the social human rights – European Social Charter 1996 (amended)\(^9\), however, has not undertaken any obligations to meet the requirements of Paragraph 2 Part 1 Article 12, Article 23, Article 30, Paragraph 3 Part 1 Article 31 of the latter Charter (hereinafter referred to ESC) that obligate the state to implement the social protection system of a proper level, the right of the elderly to social protection, human right to the protection from poverty and social disjunction, to solve the problems of the supply of the elderly people with the proper accommodation.

Due to the repudiation of the provisions of ESC the paradox situation forms: Lithuania has acknowledged the principle provisions specified in Part 1 of ESC including the provision that the elderly people have the right to the social protection. However, it has not acknowledged the requirements for the implementation of this principle provision that are specified in Article 23 of the Charter. Lithuania has also acknowledged the provisions of Article 31 of the Charter that it is important to support the possibilities for elderly people to have the proper apartment, prevent the homelessness and reduce the number of it seeking to gradually withdraw it. However, it has not acknowledged the provision of this article obligating to take measures to make the price of the apartment affordable for those who have not got enough means.

It should be noted that the provisions of ESC, that Lithuania has not acknowledged, are expressed also in other international legal acts: in the UN Principles on Elderly People approved by the UN General Assembly in 1991\(^10\), International Covenant of Economic, Social and Cultural Rights of 1996 of UN\(^11\) and others.

The conclusion could be drawn that Lithuania, by renouncing the important provisions of ESC, at the same time stays irresponsive to the encouragement and recommendations of international community to ensure the implementation of the universal norms of quality.

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\(^8\) Implementation Measures for 2005–2013 of the National Strategy on the Fight with the Outcomes of the National Obsolescence of Residents// Valstybės žinios (Official Journal), 2005, No. 5-112.


of life with respect to elderly people. Such attitude of the state to the implementation of the requirements of international legal acts cannot be explained only by the economic possibilities of the state. Moreover, Lithuania, as the latest resolutions of the Government show, takes practical measures for the implementation of the requirements of ESC. Thus, the issue of the acknowledgement of the provisions of ESC should be immediately solved.

Until now, Lithuania has not ratified Convention No 102 of the International Labor Organization on the Social Protection (minimum standards)\(^\text{12}\), Convention No 128 concerning Invalidity, Old-Age and Survivors’ Benefits\(^\text{13}\).

Certain discrimination of elderly people in the field of labor relations has not been eliminated. Though the Constitution of the Republic of Lithuania provides equal opportunities for all the citizens to enter the official service of the Republic of Lithuania, some laws and other regulatory acts provide the limitations of the age of the employees for performance of certain works or holding of certain positions. Following Paragraph 3 Part 1 Article 9 of the Law on State Service of the Republic of Lithuania the person admitted for the office of the state servant has to be not elder than 62 years and 6 months of age. Whereas, following Article 44 of the mentioned law the state servant is dismissed from the office at the age of 62 years and 6 months (retirement age)\(^\text{14}\). Following Article 57 of the Law of the Republic of Lithuania on the Prosecutor’s Offices, the prosecutor may be dismissed from the office in case he is at the age fitted for the receipt of the state retirement pension\(^\text{15}\). Following Article 35 of the Law on Science and Studies, persons elder than 65 years of age cannot be the members of administration of the science institutions – directors, deputy directors, heads of structural departments\(^\text{16}\). Such inequality of the subjects of labor relations, only referring to their age has the features of discrimination and does not conform to the provisions of Article 6 of International Covenant on Economic, Social and Cultural Rights\(^\text{17}\) on the avoidance of discrimination in the labor relations due to the age of the employee as well as the provision of paragraph “c” Article 25 of the International Covenant on the Civil and Political Rights providing that each citizen has the right and equal possibilities to enter the state service without any discrimination and groundless limitations\(^\text{18}\). The labor laws and other legal acts have to be reviewed, the provisions determining the discrimination of the employee due to the age have to be eliminated.

The income of elderly people

The main means of subsistence of the elderly people is a retirement pension. It forms approximately 65% of all the monetary income.

According to the data of the Statistics Department, 610.8 thousand of people or 17.7% received the state social insurance retirement pensions in 2003. There were 3528 thousands litas allotted for the retirement pensions or 6.4% of the state gross national income (hereinafter referred GNI). If to these costs to add the social assistance and state pensions, compensations for heating, hot and cold water, transportation costs, then the costs for the payment of pensions would amount to 7% of GNI.

It should be acknowledged that according to the amount of GNI allotted for the payment of pensions Lithuania significantly stands behind other European Union states. For example, the amount of GNI forms: in Spain it is 9.4%; in Denmark – 10.5%; in France – 12.1%; in Austria – 14.5% and so on.

The average retirement pension at the end of 2003 formed LTL 345; at the end of 2004 – LTL 400.04 or 40.8% of the average monthly (netto) payment (in the public sector in 2004 it formed LTL 882; in the private sector – LTL 831 (in 2003). Although the retirement pensions in 2002–2004 have been slightly increased and in July 2005 they were more significantly increased, i.e. by 13.2%, however, referring to the fact that the average home economy costs per person forms LTL 487.2 and for the retiree it is LTL 439.1, thus the retirement pensions are too small to ensure the fruitful life for the retirees. That is also acknowledged by the Government of the Republic of Lithuania. It should be noted that Lithuania, due to the amounts of retirement pensions also significantly stands behind other European Union states. There the retirement pension in Belgium forms 66% of the average monthly payment, in Ireland – 81%, in Portugal – 89% 19.

Early retirement social insurance pensions are important for the income and guarantees of people provided by the Law on the Early Retirement Social Insurance Pensions 20, as of 18 November 2003, and are being paid from 1 July 2004. They are allotted for the jobless people, being registered not less than a year; having the record of service of not less than 30 years whom there is not more than 5 years left until the retirement. This pension is treated as the temporary measure, supporting the people at the pre-retirement age until the possibilities of labor market will become equal for them as for other people of other age groups.

The elderly people who due to the objective reasons have not gained the record of service and thus have no right to the social insurance pension or disability pension, receive social assistance pensions that are of the size of the base pension (LTL 152) 21. Approximately 60 000 of residents received the relief pensions in 2003.

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The introduction of pensions’ accumulation at the private pension funds is an important measure to ensure the bigger pensions for the residents during the retirement age and thus mitigate the outcome of the obsolescence of the society.

Through coordination of social insurance pensions and cumulative fund pensions it is possible to reach the better stability of the pensions’ system and wider possibilities for the pension increase.

The cumulative pensions become more and more popular. According to the data of the State Social Insurance Fund there have been more than 556 000 cumulative pension agreements registered until July 2005 and more than 254 million litas have been accumulated at the cumulative pension funds\(^\text{22}\).

The state has taken measures to improve the financial social support. On 1 July 2003 the Law of the Republic of Lithuania on Cash Social Assistance for Low-Income Families (Single Residents)\(^\text{23}\) has been adopted providing the more socially fair system of such assistance: compensations for the most important services will be allotted not only referring to the income of the family (person), but also to the property possessed. In such a way the assistance will be received only by persons who are in most need of it.

The development and improvement of the system of pensions and increase of social benefits as well as other factors show that the state based on its economic capacities take care of the increase of the income of the elderly people and their guarantees. However, the mistakes in this field have not been escaped that have predetermined the violations of the rights of elderly people.

On 8 May 2001 the Seimas of the Republic of Lithuania amended the Law on the State Social Insurance Pensions and provided such legal regulation following which the working pensioners were paid not full allotted retirement pension: in case the insured income exceeded 1 minimal monthly salary, but did not exceed 1.5 minimal monthly salary, then the amount provided by the law on the additional pension amount was paid to the main pension. In case the insured income exceeded 1.5 minimal monthly salary, then just the main (base) retirement pension was paid.

On 25 November 2002 the Constitutional Court of the Republic of Lithuania by its Judgment\(^\text{24}\) stated that the law limiting the payment of pension for the working pensioners had violated their right to the benefit of the respective amount, i.e. the right to the ownership, also the right to freely choose the work and business. Thus, it was acknowledged as contradicting the provision of Part 1 Article 43, Article 23 and Article 52 of the Constitution of the Republic of Lithuania and the constitutional principle of the state.

\(^{22}\) „Respublika“, No. 183 (4635), 9 August 2005.
This limitation of the right to the pension has been made despite the public protest, roughly violated the rights of pensioners of about 11.1% or approximately 70,100 of the pensioners who had the insured income. Although the Constitutional Court of the Republic of Lithuania has stated in its judgment that the Seimas of the Republic of Lithuania must provide the procedure for the liquidation of negative consequences caused through the implementation of the law contradicting the Constitution, the state does not solve this issue and the material harm caused for the pensioners who used to work at that time has not been compensated until now.

**Occupancy of the elderly people**

The complicated problem is the occupancy of people of pre-retirement age as well as the elderly people. The processes of obsolescence of the society cause certain threat for elderly people to stay in the labor market. The changed occupancy conditions require less unqualified and less qualified labor. Thus, elderly people, having not gained the required qualification, are more often dismissed from work as unable to work under new conditions, although, the increase of retirement age does not allow them yet become the retirees.

Following the data of the Statistics Department of 2003 the occupancy of people at the age 55–59 formed 62.3%. With the increase of the age of residents, their occupancy is rapidly decreasing: the occupancy of people at the age of 60–64 formed 27.8%; those at the age of 65 and elder ones – just 5%25.

There is quite a big number of the jobless people among the people of pre-retirement age and elderly people. During 2004 there were 42,800 of jobless people at the aforementioned age registered at the labor markets. The main reason of their unemployment – dismissed from work upon the initiative of the employer (about 4/5). The problem of employment of these persons is hardly being solved. 4–5 thousand are being employed in a course of a year. When implementing the local occupancy programme at the municipalities, there were only 23 pre-retirement age jobless people employed in a course of late years26.

The state takes measures to reduce the unemployment among the elderly people. At the end of 2003, Lithuanian labor markets started implementing the occupancy programme of elderly unemployed 55+. The aim of this programme is to help the elderly people to stay as long as possible in the labor market by reducing their unemployment. The employment plans are being drafted, the vocational training is expanded, the renewal of their practical skills, re-skilling and so on is taking place with respect to this category of the unemployed. However, the implemented measures are not enough for the essential solving of the problem. The unemployment is being reduced too slowly among the elderly people. Their

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26 Ibid.
vocational training (re-skilling) is poorly developed and involves only approximately 5–10% of the persons of this social group (that forms more than 40% at the developed European Union countries)\textsuperscript{27}. There are no conditions provided for those willing to work not full day, in shifts, seasonal works and so on. Moreover, the current regulatory base is not sufficient to induce the maintenance of elderly people in the labor market. In certain cases, as mentioned above, they event prevent the further employment (e.g. to be engaged at the public service).

**Health protection of elderly people**

More attention should be paid to the health situation of the elderly people. People at the age of 60 and elder ones more often suffer from the cardio and blood vessel diseases, stroke, diabetes, oncological, respiratory system and other diseases. The geriatric care is very important for them.

Although the state takes measures to improve the health care of elderly people as well as the provision of social services, there are still many unsolved issues in this field. The medical care is not rightly organized at home, clinics, in-patient for this group of persons. There is a lack of the wellness programmes, the services of geriatrics (in 2002 there were 7 doctors-geriatrists in the country, although following the experience of European countries there should be approximately 100 of doctors-geriatrists). The discontent is caused by the scope of the compensated medicine, huge prices of them. Virtually there are no social services provided for the persons suffering from the senile dementia and similar diseases. It is hard to get the services as there is no procedure and organizational mechanism for the provision of such services. The time is ripe for the Service for the Coordination of Complex Services\textsuperscript{28}.

The elderly people form one fifth of the population and is one of the most active groups of users of social services. The need for the services for them is constantly increasing; however, they are evidently insufficient. During late years the social services at home and in-patient care institutions are provided for only 1.8% of persons aged 65 and elder ones. The need for accommodation at the foster homes for adults is satisfied for approximately every second applicant. The special social services are provided just for 0.9% of people who need such services; the services at home are provided for approximately 0.8%. Whereas, the latter numbers in the Northern Europe are significantly bigger: accordingly 10% and 24%. There are huge social services infrastructural differences within the municipalities: there are approximately 50 persons out of 10000 inhabitants in the country who receive such services\textsuperscript{29}.

The researches have shown that there is a lack of the social services provided for the elderly people, the quality of them is bad, there is no developed infrastructure of the provision of them, the full need for the assistance at home is not met. The Lithuanian Government acknowledges the mentioned problems; however, they are being solved too slowly.

\textsuperscript{27} Resolution No 737 of the Government of the Republic of Lithuania as of 14 June 2004 on the approval of the National Strategy on the fight of the outcomes of obsolescence of people // Valstybės žinios (Official Journal), 2004, No. 95(1)-3501.

\textsuperscript{28} Ibid.

\textsuperscript{29} Ibid.
The possibilities of the life of full value for elderly people

Not only the material means ensure the full value life of the elderly community. It is also important for the elderly people to have a possibility constantly get the education and development (the whole life education), have the accommodation, environment and transport possibilities adjusted for them, access to the cultural life, feel safe.

Under the market economy conditions and especially in the modern information society the gained education in the youth is not enough seeking to ensure the occupancy for the whole period of working activities. Thus, the state seeks to provide the conditions for a person to learn the whole life, meet one’s cognition needs, to improve the gained professional skills or gain the additional qualification. The adult educational network, the system of professional improvement is created for this reason. There is the “Trečiojo amžiaus” (Third Century) university and other education institutions active. The Strategy of the Whole Life Education approved by the Ministry of Education and Science as well as the Ministry of Social Protection and Labour approved on 26 March 2004 as well as the Implementation activities’ plan are very important. The strategy is prepared seeking to ensure the whole life education possibilities, coordinate the formal and informal education of adults, vocational training, and the inclusion of special groups into the system of adult education. The strategy includes the essential issues of the formation of the whole life education policy and the current situation, the most actual problems related to the participation of adults in the education process, the development objectives of the whole life education.

The main obstacle for the achievement of such aims is the absence of the needed regulatory base that would induce the elderly people learn the whole life, would provide certain privileges for them and so on.

The possibilities for the provision of elderly people with the proper housing in Lithuania are quite limited. According to the data of the Statistics Department during 2002 there were 374 houses per 1000 inhabitants; 23 square meters of the living space per one person. That is by one fourth less compared to other states of the European Union. Out of 1250 homeless registered people in the country even 293 persons are at the age of 55 and elder ones. The accommodation conditions of elderly people in a course of the latter 5 years even got worse by 20%. The suitability of homes of the elderly people for their needs is very low and the adjustment works are very slowly proceeding. During 2003 there was the need to adjust homes for 1595 persons. However, only 290 homes were adjusted. The social homes, homes with the social and medical services become relevant. Usually the whole environment, territories nearby the living houses are not adjusted for the needs of the elderly

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31 Ibid.
people. Although Lithuania has not ratified the provisions of Paragraph 3 Article 31 and Article 23 of the European Social Charter requiring supplying the elderly people with the proper living space, make the price of homes obtainable for those who have no sufficient means, the Government acknowledges the necessity to form the well functioning system of the provision of social homes as well as provide the needed financial support for the home maintenance for the low income elderly people. That is promising and in the perspective the ESC requirements to ensure the provision of elderly people with homes meeting their needs and health state will be implemented.

The transport accessibility and suitability for the elderly people who have movement difficulties similar to those of the disabled is insufficient. Following the specialists’ evaluations, there is 8.5–9% of people who need the special transport and its infrastructure adjusted for the people having the movement disability. The road, railway, air and water transport means in Lithuania are hardly adjusted for the elderly people.

The state aims to provide the conditions for the society and each member of it, including the elderly people, to take part in the cultural life, choose the favorite way of leisure, express oneself. However, the accessibility of the cultural life for the elderly persons is quite limited.

The money income of the elderly people limited their cultural costs. During 2002 the costs of this group of people for recreation and culture were less by 36% compared to the average of all the inhabitants. The costs of the countryside people form even smaller part. On the whole, due to the low level of material life the elderly people are less equipped with the cultural and leisure type of equipment: color TV sets – 83%, video players – 5%, personal computers – 2% and so on. The elderly people more rarely attend the cultural centers, public libraries, museums despite of the certain privileges applied for them.

During the obsolescence of the society the needs of the elderly people for the cultural life will increase as well as the requirements for the quality of the cultural services. Thus, the state must constantly be interested in the needs of the elderly people for cultural life and recreation, organize the network of cultural institutions. It should be achieved that all the cultural institutions would apply the privileges for the elderly people.

The safety ensurance for elderly people is a penetrating problem. The criminality in Lithuania is increasing: in 2002 there were 209.4 crimes registered per 10 000 inhabitants; in 2003 – 228.9 crimes. 3–4% of elderly people each year suffer from the crimes. The crimes committed against the elderly people, living in the granges, cause especially huge concern. There they quite often are being murdered, robbed, cheated, and rifled. From the criminality point of view the elderly people are attributed to the group of people of the enlarged risk.

The state must take the effective measures to ensure the reliable protection of the elderly people against crimes, increase the financial support of the police structures acting on the countryside territories, provide and implement the special prevention and control measures referring to the peculiarities of life of the elderly people and peculiarities of the crimes against them.

Recommendations

As mentioned above, there are unsolved problems in the activities of the state when improving the regulatory base for the protection of the rights of elderly people. One of them is the repudiation of certain important international legal acts in Lithuania. Certain articles of European Social Charter (amended) regulating the right of the elderly people to the social protection as well as conventions of the International Labor Organization has not been ratified until now. The provisions regarding the limitation of age of employees for the fulfillment of certain functions or holding of certain posts have not been eliminated from the certain legal acts of the Republic of Lithuania. Such provisions contradict the requirements of the international legal acts to provide the conditions for the elderly people to equally compete on the labor market with younger people referring to the professional skills and not to the age.

The most important task of the state policy with respect to the elderly people – to ensure the income not derogating their dignity. Thus, it is important to significantly increase the state insurance pensions and achieve that the ratio of the pensions with the average pay would correspond the amounts of other European countries.

The state must without any delay take measures to cover the harm caused by the illegal forfeiture of the pensions of the employed pensioners. The judgment of the Constitutional Court obligating the Seimas of the Republic of Lithuania to liquidate the negative consequences of the anti-constitutional law must be implemented.

It is very important to maintain the elderly people in the labor market as long as possible. Having this aim it is important to improve the legal acts that induce them to work longer and the employers induce to take the decisions to employ them, provide the equal possibilities to learn, improve the qualification. With this respect it is very important to develop the network of social enterprises and induce the activities of them.

There are quite many problems when organizing the health care of the elderly people. The insufficiently developed provision of health care services and especially at home and within the community, the low quality of these services, and the provision of the compensatory means do not meet the needs. It is important to review the scope of the compensatory medicine and their prices. The need to be accommodated at the care institutions of the disabled should be met for each person who is in need of it.

Seeking to ensure the possibilities of the full value life for the elderly people the valid legal acts should be supplemented with the provisions inducing the elderly people to learn the whole life, increasing the privileges to participate in the cultural life. The state should be more active in taking care of the adjustment of homes, environment and transport for the needs of elderly people.

The issues on the implementation of economic, social, educational and other measures ensuring the safety of the elderly people should always be on the agenda of the state.
Svetlana Gečenienė

THE RIGHTS OF VICTIMS

Introduction

About the number of victims in Lithuania it is partially possible to judge from the official criminal statistics about the registered crimes that is provided by the Information and Relations Department under the Ministry of the Interior. It should also be mentioned that this possibility has appeared only from 1 May 2003, when the new statistical case-record “Case record of victim-natural or legal person (civil claimant)” has been introduced1. Thus, yet it is impossible to show the number of victims recorded during 2003, how the number of them changed, the type of damage caused and etc. It should also be kept in mind that the statistics includes only the part of victims who have been acknowledged as victims during the criminal procedure, i.e. in case of actual and legal basis.

Another source of information is the victimological researches. There have been a few national representative victimological researches carried in Lithuania of late years. The first researches were carried in 1997 and 20002. Another victimological research was carried on 23–31 October 2003 within the framework of the United Nations Development Programme (UNDP) “Support for the Implementation of the National Action Plan for the Promotion and Protection of Human Rights in the Republic of Lithuania”3. Apart from the aspects of victimization of inhabitants this research also dealt with the opinion of the inhabitants on the human rights’ situation in Lithuania.

In 2004 the Human Rights’ Monitoring Institute carried a research on the implementation of the rights of the victims containing the results on the opinion of the head of Lithuanian pre-trial investigation (police) institutions and the persons subordinate to them about the implementation of the rights of victims at the law enforcement authorities4.

It is important to note that the aforementioned researches and official statistical data mostly reflect the crimes committed against the victims. During the analysis of the valid legal

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acts it is possible to judge how the victims must be treated. Procedural aspects remain in the “shade”. However, there are no more comprehensive and secure data on how the rights of the victims are being implemented in the real life, what violations are committed and etc.

The number of victims is directly related to the general criminogenic situation in the country. The situation has not improved during the last five years. The constant fluctuation of the level of criminality has taken place. More and more crimes are recorded every year (in 2002 – 72 646, in 2003 – 85 130, in 2004 – 93 419)\(^5\). The significant increase of the level of criminality took place in 2003 (compared to 2002 it increased by 17.2%, i.e. from 2094 up to 2465 of crimes per 100 000 inhabitants). In 2004 the tempos of change in the number of crimes slightly slowed (from 17.2% in 2003 until 9.7% in 2004). However, the criminality level remained high (in 2004 there were 2719 of crimes per 100 000 inhabitants). The attention should be paid to the fact that the latter fluctuations of this criminality level took place in the same year when the new criminal laws came into force in Lithuania as well as the recording, accounting and investigation procedure of crimes was changing during the same year. The assumption could be made that the latter factors could have influence over the increase of the number of recorded crimes. However, the latter issues need separate and more intense investigations.

Following the data provided by the Information and Relations Department under the Ministry of the Interior during 2004 there were 61 467 persons victims of crimes recorded (the number of victims per 100 000 of inhabitants – 1789)\(^6\). Natural persons formed 87.8% (53988) of them and legal persons – 13.8% (7451). More than half of the victims (40 962) experienced the property damage; 6978 – physical violence; 300 – sexual abuse and 558 – psychological constraint.\(^7\) However, the data of the new (of the year 2003) victimological research show that during the year approximately 12% of inhabitants of Lithuania have become the victims and in a course of last five years – 26%\(^8\). Thus, the number of victims is significantly bigger than it appears in the official statistics.

The general assessment of the situation of victims in Lithuania

Aforementioned victimological researches also let us see the assessment of the situation of safeguarding the rights of the victims by the inhabitants of Lithuania themselves (both the victims and non-victims of the crimes) and at the same time understand whether they are satisfied with the current situation, whether it corresponds their safety needs.

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Very often the victimological activity of the inhabitants partially describes the situation of safeguarding of the rights of the victims. Among the persons who have specified that of late years they have suffered from the crime, 34% have not addressed the police (the court). That shows that a significant part of the victims even does not try to realize their rights. As earlier (compared to the results of the victimological research of 1997) the predominant reason of misprision is the confidence of the victims that “the police can do nothing” (53%). Another part directly distrust the police (14%), are afraid of threats or revenge (9%) or has found the culprit themselves (3%). 21% of the respondents has specified other reasons.

Having directly asked the respondents (inhabitants) on how they assess the safeguarding of the rights of victims in Lithuania, 47% of the respondents assessed the situation as bad and just 12% – as good. Such big number of unsatisfied is a serious signal that the needs of the majority of victims are satisfied insufficiently. However, the important thing is that a certain improvement of assessment is also being noticed. Compared to the results of the research of inhabitants carried in 2001, the situation slightly improved as then the respective evaluations were 54% and 4%. Having compared the assessments of the victims and those suffered from crimes, the difference of opinions is noticed. The differences of the assessment (good or very good versus bad or very bad) are 45% in the group of the victims and 28% in the group of non-victims. It could be thought that this may also witness a certain improvement of satisfaction. Persons who in a course of late years have become the victims of the crimes already better assess the situation. However, this improved assessment has not yet influenced the general opinion of the inhabitants.

The officials of the law enforcement institutions have similarly assessed the situation of safeguarding of the rights of victims of the crimes. The interview of the law enforcement officials carried in 2004 let us make the latter statement. The majority of the officials agree that the situation of legal and social protection of the victims of the crimes during the last five years has partially improved. However, the general assessment of the situation is low. 68.2% of the officials have assessed the current situation of implementation of the rights of the victims of crimes as bad or very bad. Just 25.6% are of the opinion that the situation is quite good.

It is important to note that the current information about the victims of the crimes is being collected desultory. In case of the need it is being collected from different accessible resources, the statistical data is used that has been collected for completely other purposes. That virtually downgrades our possibilities to objectively assess the

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10 Ibid., p. 87.
11 Ibid., p. 87.
12 Ibid., p. 87.
13 The research was carried by the Human Rights Monitoring Institute. The heads of the law enforcement institutions and persons subordinate to them have been interviewed (N=129).
problems of victims of the crimes. We think that it would be good to pass to the pur-
poseful and steady collection of information on the situation of the victims of crimes. It is
important to form the informational system of victims of crimes with the help of which
the victims of crime could also timely receive all the needed information about the
existing services, support, their specifics and scope).

Positive and negative changes of safeguarding
the rights of the victims of crimes

Although the assessments of the inhabitants and the law enforcement officials them-
soever about the situation of the rights of the victims of the crimes are negative ones, at the same
time it should be acknowledged that during late years in Lithuania there is more and more
attention paid to the problems of the victims of crimes both on the national and local level.

Good attempts are reflected in “The National Programme on Crime Prevention and
Control” approved by Resolution No IX-1383 of the Seimas of the Republic of Lithuania as
of 20 March 2003\(^\text{15}\). The Policy of the social legal protection of the victims of the crimes is
distinguished as one of the main activity trends of the state. The programme provides the
elimination of the existing gaps of the regulation of legal protection of the victims of crimes,
development of the procedural rights of victims; safeguarding the compensation of da-
mage caused by the committed crimes; formation and development of the database of
victimological information about the crime victims and physical, property and moral
damage caused; improvement of the insurance system against the possible crimes and the
basis for the protection of the victims and safeguarding their rights and so on.

The collection and publication of the official statistical information about the per-
sons, crime victims, has expanded. The separate statistical case-record about the per-
sons acknowledged as victims (“Case record of victim natural or legal person (civil
claimant)”) was introduced into the centralised data system in May 2003, that is filled
and sent to the centralised database by the official investigating the criminal activity\(^\text{16}\).
Every month the Information and Relations Department under the Ministry of the
Interior that is the main administrator of the centralized records prepares the statistical
report that is placed on the homepage of the latter institution\(^\text{17}\).


\(^{16}\) Order No 1V-160 of the Minister of the Interior of the Republic of Lithuania as of 8 May 2003 “On the Approval of the Instruction of the Record of the Crimes, the Persons Committed them and the Victims” regulates the recording, procedure of data, filling, recording, sending or maintenance of the statistical case-records.

Until 2003 only the statistical data on victims of violent offences (the total number of them according to the type of violent offences, gender) and aggrieved children (the total number of them according to the type of crimes, gender, and age) have been provided\textsuperscript{18}. Currently the data on all the categories of victims are submitted (their total number, following the socio-demographic characteristics, the criminal activities, type of the harm caused and etc.).

The system of the state guaranteed legal aid has been improved. The significant step seeking to concretely help the victims was made on 20 January 2005 after adoption of amended version (new wording) of the Law on the State Guaranteed Legal Aid\textsuperscript{19}. By this law the provision of the primary legal assistance has been simplified. It has become accessible to all persons irrespective of their proprietary situation (the documents on the property and income are not needed any more) and is provided in each municipality. One more significant improvement is that the law provides the categories of persons who receive the secondary legal assistance (it includes the representation at the courts and other) irrespective of their property and income. The victims of crimes in the restitution cases are also among them, including the cases when the issue of restitution is being solved in the criminal case (Paragraph 2 Article 12). Their right to the secondary legal assistance is substantiated by the decision of the official of the pre-trial investigation, prosecutor or by the court decision by which a person is acknowledged as a victim and (or) court judgment. In such a case the state covers 100% of the costs of the secondary legal assistance.

The more favorable conditions are provided for damage recovery for the victim. The Criminal and the Criminal Procedure Codes form the preconditions to accumulate the means for the recovery of the damage of the victim, providing that an adult indemnified from the criminal liability or the punishment may be imposed with the punitive sanction – contribution to the fund of victims of the crimes (Article 71 of the Criminal Code). The contribution may be in the amount of 5 to 25 minimum levels of living. This measure is already being applied in the court practice, however, insufficiently. During 2004 the contribution to the fund of the victims of crimes was imposed over 45 sentenced\textsuperscript{20}.

On 30 June 2005 the Law of the Republic of Lithuania on the Compensation of Material Damage Caused by the Crimes of Violence providing the cases and procedure following which the state shall compensate the material and (or) non-material damage caused by the crimes of violence\textsuperscript{21}. Following the latter law only the damage caused by the crimes of violence originated after entering into force of the law. The establishment of the fund of the


victims of crimes is also provided; its purpose, legal status and administrative issues are regulated as well. The latter law safeguards the right of the victims to the compensation out of the state means of the experienced damage provided by Article 118 of the Criminal Procedure Code of the Republic of Lithuania as well as the Directive 2004/80/EC as of 29 April 2004 regarding the compensation of damage caused to the victims of crimes is also implemented. The 1983 European Convention on Compensation for the Victims of Crimes of Violence will be ratified in the nearest future.

The possibilities of the compensation for the victims are increased by the new Criminal Code that extends the institute of reconciliation between the culprit and the victim, i.e. the number of crimes increased with the possible application of detention and the terms of detention have been mitigated. If earlier detention has been possible only in case of certain crimes specified by the Criminal Code – 20 crimes in total – so now it is applied over the persons having committed the offences or crimes that are attributed by the criminal law to the careless or deliberate minor and semi-major crimes. Moreover, if previously the culprit had to compensate the damage voluntarily so now it is enough at least to agree on the compensation of damage. All this increases the possibilities for the culprit to compensate the damage caused for the victim of a crime without the legal proceedings.

The more favorable conditions have been formed to protect the victim from further crimes of violence from the side of the culprit. On 9 November 2004 the Law Amending Articles 120 and 121 of the Criminal Procedure Code and Supplement with Article 132-1 was adopted that provided the new measures of suppression – obligation to live separately from the victim. The latter measure could be imposed over the suspected in case it is reasonably thought that he, living together with the victim, would try illegally influence the victim or would commit the new crimes against the victim or persons living together. By imposing the obligation to live separately from the victim, the suspected could also be obligated not to communicate and not to look for the relations with the victim and persons living together, also not to attend the specified places where the victim or persons living together go.

The possibilities of the victim to take more active part in the pretrial procedure have been expanded. Although the catalogue of the rights itself, provided in Part 2 Article 28 of the new Criminal Procedure Code, virtually remained unchanged, by making those rights more concrete by the norms regulating the separate procedural activities, the possibilities for the victims to take active part in the process are much more. That is done by providing the rights for the victim to express his opinion regarding the decisions made in the case; appeal the inappropriate, in his opinion, decisions made; the right of the victim to request in a written form the prosecutor to carry the activities specified by the code is provided.

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the possibilities for the victim to get acquainted with the material of the pre-trial investigation (before the end of the pre-trial investigation) has been provided. The prosecutor provides the permission to get acquainted with the material of the pre-trial investigation (Part 1 Article 181 of the Criminal Procedure Code of the Republic of Lithuania). The attention should also be paid to the fact that the prosecutor has the right to prevent the acquaintance with all the data or part of them of the pre-trial investigation in case such conversance, in the opinion of the prosecutor, could harm the success of the pre-trial investigation. However, such prohibition of the prosecutor could be appealed for the judge of the pre-trial investigation. Moreover, the prosecutor has no right to prohibit getting familiar with all the data of the pre-trial investigation in case the pre-trial investigation is over and the indictment is being prepared (Article 237 of the Criminal Procedure Code of the Republic of Lithuania).

During the analysis of the negative changes of the situation of the victims the experts pay attention to certain novelties of the punitive system. For example, the concern is caused by:

- After the increase of the number of pre-trial investigation institutions (six more institutions have appeared besides the four previous ones), the number of officials carrying the pre-trial investigation also increased. The qualification of the majority of the new officials (part of them are the former interrogators) in the field of the investigation of the crimes compared to the former investigators is much lower. It is noted that the Law on the State Service provides the right to perform the latter work of the investigators for the officials of B level, i.e. persons having no university education. Practically each officer of the statutory service of public security has gained the right to the pre-trial investigation (criminal prosecution). All that has influenced the quality of the investigation of crimes and at the same time has had negative effect over the interests of the victims. As the practice shows the cases are being examined more quickly, the number of the procedural violations, mistakes has increased; the prosecutors more often return the cases for their supplementation25.

- The step back is also the deconcentration of the function of the pre-trial investigation. There is no one person fully responsible for the investigation of the concrete case. Different functions of pre-trial investigation are divided among several officials: pre-trial investigator; the head of the institution; prosecutor; the judge of the pre-trial investigation. That is also complicated by the fact that the new Criminal Procedure Code does not contain any clear procedure of taking into one’s disposal of the case (on making the decision therein) by respectively recording this fact. Due to that it is very difficult for the victim to understand who in a certain period is investigating the crime. In absence of legal regulation of this issue the mechanism of removal of a certain official becomes also unclear26. From the organizational point of view such division provides the preconditions for the situation

25 P. Ancelis. Legal situation of the victim after the change of the criminal laws // Jurisprudence, 2003, T. 49(41), p. 101.; The Head of the Supreme Court is of the opinion that theoreticians have not heard the opinion of the practitioners // the interview of A. Lekavičius, “Lietuvos rytas”, 20 May 2003; the material (stenograph) of the round table discussions “Problems of Organization of the Pre-trial Investigation” / The Committee of the Law and Law and Order of the Republic of Lithuania, 20 December 2004.

when the case is needlessly delayed that prevent the quick protection of the interests of the victim. Moreover, the activity, dynamics of the prosecution has inevitably decreased. It is also important that in such a way the preservation of the secrecy of the investigation that is very often important (for example in cases of rape) for the victim is aggravated.

- The deficiency of the new Criminal Procedure Code is that differently from the former Criminal Procedure Code currently many of the important procedural relations, including the issues of safeguarding the rights of the procedural parties, are regulated by the recommendations, instructions of other institutions approved by the Prosecutor General. For example, “the recommendation concerning the acknowledgement of the procedural parties with the case material during the pre-trial investigation” specifies the form of the submission of the application (i.e. that the application could be submitted in a written form as well as orally); the time for the decision making by the prosecutor and so on. On the one hand, the recommendations may be unknown for the majority of the procedural parties, including also the victim. On the other hand, that causes danger to distort the attitude of the legislator in the field of the protection of the rights of the victims (as well as other procedural parties). It is evident that all the norms (rules) related to the safeguarding of the guarantees of the human rights should be consolidated on the legislative level and certain organizational, coordinational issues could be clarified by the normative acts of recommendation type.

Procedural situation of victims

Only the natural person could be acknowledged as a victim (Part 1 Article 28 of the Criminal Procedure Code of the Republic of Lithuania). The legal person having suffered from the crime in the criminal procedure could be only as the civil claimant. The attention should be paid to the fact that the concept of the victim provided by the Criminal Procedure Code does not fully correspond the concept of the victim used in the Criminal Code. Following the Criminal Code (e.g. Article 178, 179 of the Criminal Code) the victim could be both the natural and the legal person. 

The natural person gains the status of the victim in case of the actual and legal grounds. The actual ground is the physical, material or moral damage caused through the criminal activities against a person (Part 1 Article 28 of the Criminal Procedure Code). Legal ground is the decision of a pre-trial investigator, prosecutor or court judgment regarding the acknowledgement of a victim.

After the acknowledgement of a victim quite comprehensive rights are granted for a person or his representative:

1) To claim for the identification of a person having committed the crime and fairly punishment of him, also receipt of the compensation for the damage caused by the crime (Part 10 Article 44 of the Criminal Procedure Code of the Republic of Lithuania);

2) Provide evidence, e.g. upon ones own initiative provide objects and documents, significant for the investigation of the crime (Article 98 of the Criminal Procedure Code of the Republic of Lithuania);

3) Submit requests, e.g. request the prosecutor in a written form to perform the activities provided by the Criminal Procedure Code of the Republic of Lithuania. Moreover, he has the right to take part in certain investigative activities, ask questions during the interviews, get acquainted with the reports on the carried investigative activities, submit comments in relation to the content of the latter records (Article 178 of the Criminal Procedure Code of the Republic of Lithuania);

4) To contest the arguments of another party and express one’s own opinion to all issues arising during the investigation of the case and that are significant for the fair solution of it (Part 2 Article 7 of the Criminal Procedure Code of the Republic of Lithuania);

5) To claim for removals. The removal may be claimed against the pre-trial investigator, prosecutor, pre-trial investigation judge, a judge, the secretary of the full hearing, interpreter, expert and specialist (Part 2 Article 57 of the Criminal Procedure Code of the Republic of Lithuania);

6) The victims who do not know Lithuanian language are ensured of the right to make statements, provide evidence and explanations, submit requests and complaints, speak at the court using their native or any other language they know. In all these cases, also to get acquainted with the case material, the procedural parties have the right to use the services of the interpreter/translator (Part 2 Article 8 of the Criminal Procedure Code of the Republic of Lithuania);

7) To submit the civil claim against the accused or the persons materially responsible for the activities of the accused for the recovery of material or non-pecuniary damage (Article 109 of the Criminal Procedure Code of the Republic of Lithuania);

8) To claim for the compensation of costs related to the trips to the call out places, also accommodation costs, for the compensation for withdrawal from the customary work and so on (Article 103, 104 of the Criminal Procedure Code of the Republic of Lithuania);

9) To prosecute at the cases of private imputation (Article 34 of the Criminal Procedure Code of the Republic of Lithuania);
10) To have the representative following the law or power of attorney (Article 53, 55 of the Criminal Procedure Code of the Republic of Lithuania);

11) To get acquainted with the case during the pre-trial investigation and at the court. During the pre-trial investigation have the right to get acquainted with the data of the pre-trial investigation at any moment (Article 181 of the Criminal Procedure Code) and since the receipt of the case by the court have the right to get acquainted with the whole material of the case and make extracts or copies of it (Article 237 of the Criminal Procedure Code of the Republic of Lithuania);

12) To make concluding remarks (Article 293 of the Criminal Procedure Code of the Republic of Lithuania);

13) To appeal the activities of the pre-trial investigator, prosecutor, pre-trial investigation judge and court; also appeal the court judgment or ruling, e.g. the victim can appeal the activities and decisions of the pre-trial investigator for the prosecutor controlling the official of the pre-trial investigation (Article 62 of the Criminal Procedure Code of the Republic of Lithuania);

14) The right to appeal (Article 312 of the Criminal Procedure Code of the Republic of Lithuania) and take part in the appeal hearing (Article 322 of the Criminal Procedure Code of the Republic of Lithuania);

15) The right to the cassation (Article 367 of the Criminal Procedure Code of the Republic of Lithuania) and take part in the cassation hearing (Article 367 of the Criminal Procedure Code of the Republic of Lithuania);

16) Take part at the court hearing, also claim for the non-public (i.e. closed session) hearing related to the crimes against the freedom of sexual self-determination and immunity, also other cases when it is sought to prevent the publicity of private life of the procedural parties (Part 2 Article 9 of the Criminal Procedure Code of the Republic of Lithuania);

17) To request the application of anonymity (of the procedural party) (Article 198 of the Criminal Procedure Code of the Republic of Lithuania).

The victim in the criminal procedure also has to perform his duties. Following the duties to be performed, the legal status of the victim is very similar to that of the witness. The victim, as a witness, must arrive upon the summons to the process; he must provide evidence, follow the procedural order and so on. The victim may become liable following Article 163 of the Criminal Procedure Code (the provided fine is up to 30 minimum levels of life, i.e. from LTL 125 up to 3750) for the refusal or avoidance to give evidence, for not arriving to take part in the process without any important reason, not following the lawful instructions of the pre-trial investigator, prosecutor, pre-trial judge or a court, or hindering the investigation of the criminal case. The victim could be prosecuted for the false evidence following Article 235 of the Criminal Code.28

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28 On 30 March 2004 the amendment of Part 4 Article 235 of the Criminal Code was adopted that provided that the victim or the witness is not responsible for false evidence in case following the laws he had the right to refuse from submitting of evidence, however, have not been acknowledged with this right before the interview.
Implementation of the rights of the victims and problems thereto

The basic problem is the acknowledgment of the rights of the victims as one of the main aims of the criminal procedure. We have a paradox situation. Both the criminal and the criminal procedure law provide more and more protection measures of the rights of the victims. However, this defense still has not been acknowledged on the basis of these laws or at least as one of the main aims. That forms the respective attitude of the officials of the criminal justice to the protection of the rights of victims as a facultative aim of their activities. The elucidation of crimes still remains the main aim.

Thus, it is suggested, first of all, to supplement the provision of Article 1 “The purpose of the criminal procedure” of the Criminal Procedure Code that the main function of the criminal procedure should be meeting of the needs of the victims as well as the protection of their interests.

Discussions with the experts, the data of the carried researches show that there are no especially huge obstacles in Lithuania for the victim to submit the civil claim due to the experienced harm or damages, the right to provide evidence is not limited, to dispute the arguments of other party, express their opinion, use the services of the translator/interpreter, demand the covering of the costs of the trip to call out place; to take part at the court hearing, claim for the closed hearing, to make the concluding remark, to lodge and appeal and take part at its hearing, to submit cassation and take part at the cassation proceedings.

The rights of the victims are distantly realized to submit requests, to claim for removals, to appeal the activities of the pre-trial investigator, prosecutor, pre-trial investigation judge and court. According to the experts, the main reasons lie in: 1) victims are not properly informed about their rights, possibility to claim for removals, appeal the activities of the officials; 2) victims are not inclined to claim for removals during the pre-trial investigation or during the court hearing as another official working at the same institution is appointed instead of the removed one; 3) victims, having initiated the removal of the official, experience a negative attitude of the officials and are stigmatized; 4) in the majority of cases the victims are not able independently and properly formulate and submit their claims (due to the lack of knowledge, poor understanding of the procedure, absence of representative (lawyer) and so on) and that form the preconditions to reject the claim or application of the claimant for the removal of the official; 5) victims are not acquainted with certain procedural activities, their termination or results and thus the possibility to appeal them is limited.29

The problem of the acknowledgement of a victim. The victim of the crime during the criminal procedure exists only as “a victim” and the safeguarding of his rights, lawful interests, and needs directly relates to the legal status of the participant of the procedure. Only upon the respective decision made by the pre-trial investigator (or the prosecutor, judge) and having drafted the procedural document (decision to acknowledge the victim) it is stated that the victim of the crime has all the rights specified by the laws (aforementioned). Without the mentioned activities the basis for the efficient legal aid is virtually lost by the victim of the crime.

Differently from the old code, the new Criminal Procedure Code does not separately regulate the procedure of the acknowledgement as a victim; there is no clear description when the acknowledgement of a person should happen. Therefore, as the experts notice, in practice there are cases when the acknowledgement as a victim is often groundlessly delayed. In such a way the possibility for the victim is limited to take the active (the one of the procedural party) position of defense of his lawful interests from the very start of the investigation of the crime. Whereas, the person could use the legal status of the suspected at once.

It is also noticed that it is being avoided to start the pre-trial investigations. For example, the carried research at the County prosecutors’ offices has revealed that during 9 months at one of the police commissariats there have been 3 cases when the pre-trial investigations have been refused to start, in another commissariat of the similar size – about 900 cases. Partially this is related to the fact that the results of the activities of the Lithuanian police are assessed based on the elucidation of the crimes (the number of the elucidated recorded crimes, the number of cases handed over for the court and so on). Therefore, it is sought to record as little as possible of crimes and record so called perspective crimes (i.e. the bigger possibility for elucidation). It is evident that the more consistent control of the procedural activities is needed and the elucidation of crimes should be only one of the criteria of the assessment of work of the police.

The attention should be paid to the fact that following the consolidated concept of the victim by Part 1 Article 28 of the Criminal Procedure Code (“a natural person having experienced physical, material or moral damage caused by the crime shall be acknowledged a victim”) the legal person cannot be acknowledged a victim as it could protect its violated rights only as a civil claimant. The principle of equality is violated by not acknowledging the legal person as a victim. Following the Criminal Code of the Republic of Lithuania under certain circumstances there is a criminal liability of the legal person provided, whereas, it is not possible for the legal person to be acknowledged as a victim and take a respective position during the criminal procedure. In such a way the unequal situation is formed with respect to the legal person. Though, the legal persons in the civil law are acknowledged as equal, like the natural persons, subjects of the civil relations.

The right to information. Victimological research shows that the victims of crimes do not know their rights, the possibilities of their realization. Hardly 5.7% of the victims has stated that before becoming the victim of the crime knew their rights; 38.2% – knew part of them. Moreover, even 63.6% of the interviewed have not received the necessary legal aid at the law enforcement institution. Another victimological research showed that 45.5% of the interviewed did not know whom to address regarding the violated rights of the victim.

The right of the victim to get acquainted with his rights and obligations is safeguarded only officially. Article 45 of the Criminal Procedure Code of the Republic of Lithuania

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provides the obligation of the judge, prosecutor and pretrial investigation officer to explain the procedural parties the procedural rights and ensure them the possibility to make use of them. Usually the getting acquainted with the rights and obligations of a victim takes place when the decision is made to acknowledge a person as a victim. The victim is suggested himself to read the phrasing of Part 2 Article 28 of the Criminal Procedure Code and sign the decision to be acknowledged as a victim, by approving the fact of acknowledgement. The content of the rights is not explained in a more detailed way. It is noticed that not all the rights of the victim are specified by Part 2 Article 28 of the Criminal Procedure Code. The number of them is much bigger; however, they are regulated and described in detail by other articles of the Criminal Procedure Code. The distribution of the rights of the victim through the whole Criminal Procedure Code causes certain inconveniences both for the officials who should make the procedural parties get acquainted with their rights and the victims themselves trying independently get acquainted with their rights and duties.

The possibilities of the victims to be aware of the procedure of the pretrial investigation are also very limited. The Criminal Procedure Code provides only a few cases when the victim has to be informed about certain procedural decisions: it is informed that the pretrial investigation is discontinued; it is informed that the pretrial investigation is over (Article 218 of the Criminal Procedure Code), i.e. concluding the accusation by the prosecutor, it is informed about the possibility to get acquainted with the case at the court and submit applications for the court.

Information about the fact that the pretrial investigation is discontinued the victim receives post factum, after the decision is made. Moreover, the notice (news letter) contains only the minimum information about when, who and what decision has been made. The law does not provide that the copy of the decision should be sent to the victim with the notice. Therefore, it remains unknown based on what motifs the decision has been made. In such a way the appeal of the decision is prevented as it is difficult to appeal the decision the essence of which is not clear.

The attention should be paid to the virtually changed procedure in the Criminal Procedure Code of getting acquainted with the collected material during the pretrial investigation. Earlier practically there was no possibility to get acquainted with the material of the case before the end of the investigation, whereas the new Criminal Procedure Code provides a new rule that it is possible to get acquainted with the data of the pretrial investigation even during the carried pretrial investigation. On the other hand, the new Criminal Procedure Code does not provide any more the obligatory acquaintance with the case by the procedural parties or necessary invitation for acquaintance with the material collected during the investigation. Following the new code the acquaintance with the data collected during the pretrial investigation is understood only as the right of the procedural parties. The law enforcement officials are not obliged to get the victim acquainted (also other procedural parties) with the case material. Part 5 Article 220 of the Criminal Procedure Code provides only the obligation of the prosecutor (after the pretrial investigation) to inform the accused and other procedural parties of the possibility to get acquainted with the case.
Such procedure can hardly be acknowledged as fair. Seeking to optimize the pretrial investigation from the point of view of the protection of human rights, it is important to explain the possibility to the procedural parties, also victims among them, who carries the investigation, who controls it, how to dismiss him. That would be one of the steps with the help of which the procedural party could efficiently protect its lawful interests during the pretrial investigation.

The same should be done in each case when other procedural decisions are made related to the interests of the victim. For example, the Criminal Procedure Code could be supplemented with the provisions that after the change of measures of suppression imposed over the accused, the victim has to be informed about that and the right to the appeal has to be explained.

The non-governmental organizations perform an important role in informing the victims. In 2004 the essential concern about this problem was expressed and a few advanced initiatives were taken. Seeking to improve the informativeness of the victims of crimes the Association of Support of Victims of Crimes prepared a “Handover Notes for the Victims of Crimes” in 2004 that was distributed at the regional police commissariats of Lithuania. The handover notes contain the detailed and clear information about the rights and duties of the victims, pretrial investigation procedures, the rules for the submission of appeals, state guaranteed legal aid as well as organizations providing free of charge legal aid

In 2004 the Crime Prevention Center in Lithuania prepared and started implementing the “Programme of Social and Legal Protection of the Victims of Crimes”. In the framework of the latter programme the following activities are performed: information seminars organized in different regions of Lithuania for people; special trainings of the police officials by implementing the training models how to behave with the victims, how to provide the assistance, aid; improvement of the qualification of the law enforcement officials, additional trainings, attestations where the biggest attention is paid to the rights of the victims of crimes; the summarized, informative material in the press, on the Internet, special radio and TV broadcasts is being prepared.

However, it should be acknowledged that the aforementioned initiatives of the public organizations only partially fill the gaps of information of the victims of crimes. On the whole, there is the lack of support of the mentioned organizations by the state and especially law enforcement institutions. There is no active information about their existence and possibility to receive the needed information there.

The problems of safeguarding the rights of the victims to legal assistance and aid.

Article 55 of the Criminal Procedure Code of the Republic of Lithuania provides that the authorized representatives can protect the interests of the victim and also of the civil claimant, civil defendant. The attorneys-at-law or assistant attorney-at-law upon the commission of the attorney-at-law could perform the mentioned functions, whereas upon the

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34 Ibid.
permission of the pretrial investigator, prosecutor or the judge – also another person having the university education in law. The representative of legal person could be the head of the legal person or the authorized employee or attorney-at-law. The interests of the juvenile victims as well as the interests of the incapable persons could be protected also by the representatives according to the law (parents, foster-parents), except cases when this contradicts the interests of juvenile or incapable person.

As the practice shows the latter measures of legal aid consolidated by the criminal procedure are not enough for safeguarding the rights of victims and their lawful interests. Moreover, it is not enough to ensure the comprehensive protection of the rights of juvenile victim. Usually the lawful representatives of a child (parents, foster-parents) do not have even minimum legal knowledge. The qualitative services of the attorney-at-law are also hardly accessible as the victim must pay for the representation himself and the majority of inhabitants receive quite small income. In this context, earlier the Criminal Procedure Code used to provide the more advanced representation of the rights of the victim that could have been implemented also by the representatives of the non-governmental (public) organizations. The new Criminal Procedure Code does not provide any more the public representation.

We think that it would be expedient to consolidate in the Criminal Procedure Code the necessary participation of the attorney-at-law as the representative of the juvenile victim in the criminal procedure with respect to juvenile victims (especially in cases of crimes of violence).

Comparing the possibilities of the victim, civil claimant and defendant to receive the state legal aid we think that the defendant has more of them. For example, in cases provided by Article 51 of the Criminal Procedure Code the participation of a defender is obligatory and guaranteed irrespective of the will of the accused, whereas the victim has only the right to the state legal aid in certain cases provided by the laws (Part 4 Article 55 of the Criminal Procedure Code). Moreover, the consolidation of the latter right by the law still not necessarily mean the actual possibilities of the implementation of the mentioned right.

The possibilities of persons to protect their rights are unequal due to their material situation. Thus, it has been sought in Lithuania to form such system of the state guaranteed legal aid that would allow compensation of the material inequality and for the disadvantaged provide at least partially equal possibilities to protect their rights and lawful interests.

In Lithuania the state guaranteed legal aid system is functioning from 2001. However, as the practice showed, it was inefficient, insufficiently safeguarded the accessibility and quality of legal aid\(^{35}\). It is possible to exclude several reasons:

- The law on the state guaranteed legal aid of the Republic of Lithuania has provided especially formalized, bureaucratic and complex procedure of provision of legal aid. A person, seeking for such assistance should have submitted lots of documents proving his right to legal aid: the notes, income declarations and etc. The precious time of work has been lost when the legal aid has been organized and the aid itself usually has lost its relevance. Moreover, usually the price for the property and income declarations was bigger for the inhabitants than the legal service itself.

\(^{35}\) See Legal Aid Reform in Lithuania. The material of scientific-practical conference. – Vilnius, 22 April 2004.
• The funding of the state guaranteed legal aid has been insufficient. Although virtually all the attorneys-at-law enlisted into the lists of practitioners had the right to provide legal aid in the criminal cases following the appointment. In case of poor payment for the latter services\(^{36}\), the attorneys-at-law have not been concerned to provide the efficient legal aid. The opinion has existed that these are the “second-rate” legal services. There have been also cases when municipalities could not find the attorneys-at-law willing to provide the primary legal aid and people have been sent from one institution into another. Although such means have been provided in the budgets of municipalities, they have hardly concluded any agreements with the attorneys-at-law.

• The lack of information on the provision of such aid was evident. The Criminal Procedure Code has only consolidated the possibility to make use of the state guaranteed legal aid. Other laws as well as post-regulatory acts have only regulated it in a more comprehensive way. Thus, the implementation of the right to the state legal aid greatly depends on the will of the officials: in case the official has explained the procedure how the legal aid could be received, what documents are needed and etc. Then the victim could make use of it.

Referring to the latter deficiencies, upon Ordinance No. 17 of the Prime Minister of the Republic of Lithuania as of 3 February 2003 the inter-departmental working group was formed for preparation of the guidelines for the improvement of the system of the state guaranteed legal aid and draft regulatory acts related thereto. In the beginning of 2004 the group presented a few projects and on 20 January 2005 the Seimas of the Republic of Lithuania adopted a new wording of the amended Law of the Republic of Lithuania on the State Guaranteed Legal Aid that came into force since 1 May 2005. As from entering into force of the latter law quite a little time has passed, thus, for the time being it is hard to provide the thorough assessment and establish its real influence over the implementation of the rights of the victims of the crimes. According to the primary evaluation of the experts and practitioners the carried comparative analysis of the laws allows the statement that the new law is more advanced, provides more possibilities both for the victims of crimes and other persons to make use of the state guaranteed free of charge legal aid. First of all, the state guaranteed primary legal aid (that includes the provision of legal information, legal consultations and drafting of documents for the state and municipal institutions, except the procedural documents; advice on the dispute settlement not following the judicial procedure; activities in regard to the peaceful settlement of dispute and preparation of peace agreement) may be used by all persons irrespective of their material situation (it is refused from the requirement by the law to verify the material and income level of a person willing to receive the primary legal aid): the citizens of the Republic of Lithuania, the citizens of other European Union states, also other natural persons residing in the Republic of Lithuania or other member states of the European Union or other persons provided by the international agreements of the Republic of Lithuania (Part 1 Article 11). Seeking to receive the primary legal aid one needs to address the municipality according to ones declared place of residence. The duration of the primary legal aid is not longer than one hour; however, could be prolonged upon the decision of the municipal executive institution or its authorized person (Part 4 Article 15).

\(^{36}\) The hourly rate established by the state in the criminal cases upon the appointment is LTL 12–14 per hour.
As previously the secondary legal aid (drafting of documents, defense and representation in cases, including the execution procedure, representation in case of the anticipatory dispute settlement outside the court, in case such procedure is provided by the laws or court judgment. Moreover, this legal aid includes the compensation of litigation costs in cases examined following the civil procedure, the costs related to the case hearing following the administrative procedure as well as of the costs related to the examination of the civil claim submitted in the criminal case) shall be granted for natural persons the property and annual income of whom do not exceed the respective levels of property and income established by the Government of the Republic of Lithuania for the receipt of the legal aid (Part 2 Article 11). The main novelty is that the law provides the categories of persons who are provided with the secondary legal aid, irrespective of their property and income. Among them there are victims of the crimes in the cases of compensation of damage, including the cases when the issue of compensation of damages is solved in the criminal case (paragraph 2 Article 12). Their right to the secondary legal aid is proved by the decision of the official of pretrial investigation, the prosecutor or the court judgment by which a person is acknowledged as a victim and (or) by a court ruling. In such a case the state covers 100% of the costs of the secondary legal aid.

**The problems of safeguarding the rights of the victims to compensation of damages.**

The material damage caused by the crimes (by the crimes prohibited by the criminal laws) has been always recovered to certain extent in Lithuania. Since 2000 after entering into force of the new Civil Code the legal basis appeared for the recovery of the non-pecuniary damage. Part 2 Article 6.250 of the Civil Procedure Code provides that the non-pecuniary damage is recovered in all cases when it is caused due to the crime against a person’s health or due to the murder, also other cases provided by the laws. The civil claim for the recovery of damage may be submitted and analyzed both following the criminal proceedings and the civil procedure.

The Criminal and the Criminal Procedure Codes already form the preconditions for accumulation of means for the recovery of the damage caused to the victim, by providing that the court may impose over the adult, who has been indemnified or released from the criminal liability, the punitive measures – the contribution to the fund of victims from crimes, the amount of which may vary from 5 to 25 minimum levels of living, i.e. from LTL 625 up to LTL 3125 (Article 71 of the Criminal Code).

Moreover, Article 69 of the Criminal Code provides one more sanction forming the conditions for recovery of damages caused for a victim – recovery of material damage or elimination. That is the obligation over the culprit during the period of time specified by the court to recover and eliminate the damage caused for a person, ownership or nature by a crime or punitive offence. The amounts received by the victim from the insurance or other institutions for the recovery of damages (for example, insurance benefits, the allowances in case of death or disease, amounts or property received through charities and so on) are not included into the amount of the damage recovery. The recovery of material damage manifests in the evaluation of the damage caused in monetary expression and the payment of the money
for the victim. Whereas, the elimination of the damage caused may manifest in the elimination of the harmful consequences by one’s work, repairs, return of the same object and so on.

The Criminal Procedure Code provides the compensation of damage from the state means in case the accused or persons materially liable for their activities have no means for the recovery of damage (Article 118 of the Criminal Procedure Code).

Thus, it is possible to state that in Lithuania there are quite good legal preconditions for the recovery of damage. However, the real situation in our country still is not so optimistic.

Following the official statistics of elucidation of crimes in Lithuania, only 40% of all the recorded crimes and thefts that form more than a half (approximately 58%) of all the recorded crimes are being elucidated. The elucidation forms only approximately 26%. It is obvious that the biggest number of the victims of the crimes actually do not receive the actual recovery of damages.

The right to the recovery of damages very often limits to the acknowledgement of it or “melts” in a course of a comparatively long pretrial investigation, court hearing of the case or the period of payment of the imposed recovery of damage. The main problem relates to the safeguarding of the recovery of damages, especially to the expedition of recovery of damages. In majority of cases the sentenced have neither (at least formally) the real estate, nor money and they could be attributed even to the category of socially vulnerable persons, also there are less possibilities to earn the money as the unemployment dominates at the corrective institutions. Due to this the victim has no real possibilities to quickly restore the values lost due to crimes.

There are no especialy huge obstacles in Lithuania for victims of the crimes to submit the civil claims for the recovery of damages or harm. In the practice of the pretrial investigation the victims of crimes usually at the same time are acknowledged as a victims and civil claimants. However, very often it is noticed that the claim is not always drafted following the requirements for such type of documents. The majority of the pretrial investigation institutions in Lithuania do not demand the victims to submit the claims following the requirements specified by the Civil Procedure Code.

The civil claim very often is forwarded for the examination from the criminal proceedings into the civil ones, i.e. the former exception has become a rule. In such a way the possibilities of the victim to ensure the faster recovery of damages are limited.

Until July 2005 the system of recovery of damages from the state means provided by Article 118 of the Criminal Procedure Code was not functioning as the post regulatory acts had not been prepared. Seeking to “fill in” the latter regulatory gaps as well as to implement the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims the Ministry of Justice has prepared the draft Law of the Republic of Lithuania on the


Recovery of Damages Caused by the Violent Crimes that the Seimas of the Republic of Lithuania adopted on 30 June 2005. One of the main gaps of the system of compensation of the provided damages, as it is noticed by the experts, is the fact that the role of the public organizations, protecting the interests of the victims is fully eliminated. The participation of them would allow safeguarding of bigger transparency of the decisions made and, what is especially important, the trust of the victims in the system of the law enforcement.

One more relevant and poorly analyzed problem is the right to the recovery of moral damage. As it is noticed by the experts, the concept of moral damage hardly naturalize in the Lithuanian society. Article 28 of the Criminal Procedure Code provides that the suffered person is acknowledged as a victim only when experiences physical, material or moral damage by the crime. However, the faulty practice has formed in case of certain crimes when the material damage is not suffered or only insignificant one, the moral damage is not assessed as the one to be compensated. Moreover, in cases where the material damages are covered the issue of moral damage is not anymore discussed as it is thought that the compensation for a person is sufficient.

**Institute of reconciliation (mediation institute).** The practice of application of the institute of reconciliation between a culprit and a victim shows that on the one hand that allows broadening the possibilities for the victims to protect their rights and lawful interests, much quicker solve the issues of recovery of damage. On the other hand, the carried victimological investigations in Lithuania show that this is still not the efficient enough way to solve the conflict of the parties. In 35.8% of cases the conflict between the victim of a crime and a culprit is only partially solved, whereas, 25% are not solved. Very often detention is more useful for the official investigating the crime but not for the victim of a crime. That is proved by the fact that even 12.4% of the victims of crimes have experienced the pressure of the investigator for reconciliation.

On the academic level there are already long discussions on the necessity in Lithuania to introduce more advanced (efficient) way of solution of a conflict between the victim and culprit – mediation institute. Partially these suggestions have been referred to in the National Crime Prevention and Control Programme approved by the Government of the Republic of Lithuania that provides the examination of the possibilities to establish the mediation institute in Lithuania both for the investigation of the criminal cases as well as the civil ones (especially solving the family disputes). On 20 May 2005 Lithuanian Court Council adopted decision No. 13 P–348 “Regarding the Pilot Legal Mediation Project” by which

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the pilot legal mediation project and the rules of legal mediation were approved. It is provided that the system of pilot legal mediation will start functioning at the end of 2005 – beginning 2006. It is regrettable that the mediation services will only be provided during the investigation of the civil cases. However, it is possible to expect that this project will be an excellent example that will once again prove that mediation services in our legal system are really important, and also could be applied during the investigation of the criminal cases.

**The most vulnerable categories of victims of crimes.** During the analysis of the situation of safeguarding the rights of different categories of victims of crimes it should be acknowledged that the situation of safeguarding the rights of victims of family violence, trafficking in human beings as well as the rights of elderly people remain the most problematic.

Quite a big number of the society has a negative attitude towards the victims of trafficking in human beings, victims of rapes and certain other groups of victims. The opinion exists that a person having suffered from the mentioned crimes is guilty himself (i.e. usually instigate the respective activities by their own careless or negligent activities). On the other hand, irrespective of the constantly discussed examples in the press that are sad by their consequences, the behavior of the potential victims little has changed: the close communication starts just after getting acquainted on the street, at the public transport, they get into the cars passing by.

It should also be mentioned that the issues of social protection of the victims of crimes in Lithuania are more often discussed on the theoretical level. The National Crime Prevention and Control Programme approved by the resolution of the Seimas of the Republic of Lithuania defines the policy of the social, legal protection of victims of crimes also providing the necessity to organize the social-psychological support for the victims of crimes, advice and help them understand how they should behave in the conflict situations, by avoiding any provocations by their own behavior or by making it easier to commit the crime, to implement the programmes of education and training of people in the field of victimology and crime prevention⁴⁴. However, all these are just the perspective plans for the time being.

The new measures of suppression in the criminal procedure has been introduced following which the suspected or the accused with the committed crime of violence could be obligated to live separately from the victim and, in the opinion of the experts, could improve the protection of the victim from further violent activities from the side of the culprit. It is also unclear how the situation will be solved when the violator has no alternative place of residence, when the victim and the violator live in one solitary grange, when the state will not be able to provide the temporary shelter and so on.

The possibilities to influence the victim or his relatives have not been eliminated (the inquiry of the opinion of the victim is not obligatory when imposing (changing) a respective measures of suppression, when discussing the most operative way of information, the separate waiting-rooms for the parties of accusation and defense are rarely installed and so on).

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Recommendations

Summing the analysis of the problems of the protection of the rights of victims of crimes presented in this chapter, it is possible to provide the recommendations on what measures to take seeking to improve the legal situation of the victims of crimes.

The purposive, systematic (constant) collection of information is needed on the situation of the victims of crimes. Seeking to purposefully and efficiently improve the situation of the victims of crimes, to expediently solve the raising problems one should have precise and comprehensive information. Whereas, the current information on the victims of crimes is being collected inconsistently, upon different occasions. Due to that, we need to refer to the information that has been collected having different aims when describing the situation of victims of the crimes and preparing the measures for its improvement. That virtually worsens our possibilities to objectively assess the problems of victims of crimes.

We think that first of all we should turn to the purposeful and constant collection (monitoring) of information describing the situation of the victims of crimes. It would be useful to form the specialized informational database of the victims of crimes for the realization of this aim that would ensure, organize and implement the constant, complex collection of information on victims of crimes. It should systematically summarize the aforementioned information; prepare periodical summaries of the situation of the victims of crimes in our country. These summaries should help to establish how efficient are the programmes of the victims of crimes, what are positive changes and elucidate the arising problems.

The protection of the rights of victims should be consolidated by one of the main criminal laws (both by the criminal and civil codes). For the time being neither the Criminal nor the Criminal Procedure Codes provide the protection of the victim as one of the aims of the latter laws. Only the separate articles of the law provide certain measures of the protection of the rights of victims.

We think that only after the official declaration of this aim as one of the most important aim of the criminal law, the real conditions will be provided that when performing certain activities the interests of the victims must be referred to. That would enforce the humanistic orientation of the criminal laws directed to the protection of human rights and would form the basis for the implementation of the respective criminal policy and would help to form the attitude of the officials of the criminal justice towards the protection of the rights of victims as the underlying activity trend.

The transparency of the protection of the rights of the victims of crimes should be ensured providing the possibilities of the independent participation in the latter process. The Criminal Procedure Code provides the victims more and more possibilities to protect their interests, however, as the carried analysis shows, the insufficient privity of the victims about the criminal process, decisions made seriously hinder the realization of the latter possibilities. This is especially said about the process of the pretrial investigation.
Seeking to optimize the pretrial investigation from the point of view of the protection of the rights of a person it is important to explain the procedural parties, victims among them, who is carrying the investigation, who controls it and the possibilities of removal. Such comprehensive information will help them understand the procedure of performing of the mentioned activities, possibilities to receive the qualified legal aid. That would be one of the steps with the help of which the procedural party could efficiently protect their lawful interests during the pretrial investigation.

The same should be done in each case when other procedural decisions related to the interests of the victim are being made. For example, the Criminal Procedure Code could be amended with the provisions that in case of change of the measures of suppression over the accused, the victim should be informed and explained the right to appeal such decision.

The legal aid to the victims of crimes should be reinforced. It is important to ensure that the victim (of a crime) could receive the qualified legal aid during all the stages of the criminal procedure (in each case, when it is needed). Our analysis has shown that this problem is especially sore in case of juvenile victims. We think that it would be expedient to consolidate the needed (obligatory) participation of the attorney-at-law as the representative of the juvenile victim in the criminal procedure.

The possibilities of the non-governmental organizations to protect the rights and lawful interests of the victims should be expanded. The experience of foreign countries shows that non-governmental organizations could play a very important role in safeguarding the protection of the rights of victims. Whereas, in Lithuania the possibilities of the latter organizations to take part in the protection of the rights of victims are very limited. The experts interviewed by us have noted this as one of the most important deficiencies of the system of the protection of the victims of crimes.

Referring to the mentioned above, we think that it would be expedient to supplement the Criminal Procedure Code with the provisions allowing the representation of victims by the non-governmental (public) organizations in the criminal procedure.

The public organizations representing the interests of victims should also be included into the activities of Fund of Victims of Crimes. We think that their participation would ensure bigger transparency of the decisions made and what is especially important the trust of the victims themselves in the system of implementation of justice.
Introduction

Freedom is one of the main natural values that in the democratic and rule of law state may be restricted only in the exceptional cases, upon certain grounds and only following the procedures consolidated by the laws. Freedom is the power lying within the mind and willpower to act or not to act, to do one thing or another, to act deliberately and forcefully. The freedom guarantee and its immunity are the necessary conditions, means that a person could easily use also many other natural or granted rights.

Still the freedom of a person is not absolute; it is restricted by the responsibility and freedom of other person. Thus, free, democratic and rule of law state, as a certain form of self-discipline of free persons, establish certain legitimate limits of a person’s freedom, important for the existence of the state and corresponding the objective of common wealth and for the persons violating them may restrict the freedom or even deprive of it for a certain period of time.

The rights of the persons with the restricted freedom


2 It is important to pay attention to the fact that the concept “deprivation of freedom” used in Lithuanian language and contemporary law does not mean the absolute deprivation of the person’s freedom as this is actually impossible, moreover, it is not sought in the democratic and rule of law state. The freedom of a person consists of many more concrete freedoms (conscience, thought, belief, self-expression, social, association, movement and so on) however, in this case “deprivation of freedom” is understood just as a essential limitation of movement of a person (it is not totally deprived, e.g. a person imposed with the deprivation of freedom is allowed to move on a certain territory, go for vacation outside the place of imprisonment and so on), also partial limitation of other freedoms (e.g. freedom of meetings). Part 1 Article 20 of the Constitution of the Republic of Lithuania consolidates the provision that “no person may be deprived of freedom (excluded by the author) except on the bases, and according to the procedures, which have been established by laws” that seems even more imprecise as if to use the concept “deprivation of freedom” it is possible to understand as the deprivation of part of the freedom, then when using the collocation “deprived freedom” it is obvious that deprivation of the whole freedom is presumed. Talking about the deprivation of freedom as the punishment in the sense of the criminal law (most of attention is paid to it in this chapter) the term in English “imprisonment” or in German “Freiheitsstrafe” more likely correspond the essence of this punishment. It is interesting that during the times of the first Republic of Lithuania the valid and amended in 1903 the system of punishments of the Criminal Statute of Russia also provided imprisonment sentences “imprisonment” or “arrest” but not “deprivation of freedom”. The concept “deprivation of freedom” (in Russian “lišenije svobody” (“лишение свободы”) has been consolidated only during the Soviet times. This aspect is important also when implementing the one of the essential principles of imprisonment consolidated also by the European imprisonment rules: “Imprisonment is by the deprivation of liberty a punishment in itself”. In Lithuanian translation, adjusting to the Lithuanian legal system, it is translated as: “Ákalinimas jau pats savaime dël laisvës atëmimo yra bausmë” (paragraph 64 of the Rules).
The categories (conception) of persons deprived of freedom in Lithuania

Deprivation of freedom (here it is implied not only the punishment for a crime but also other forms of deprivation of freedom) of a person is one of the strictest measures applied by the state. However, it is not easy to specifically define the cases and categories of persons, although Article 5 of the Convention of the Protection of Human Rights and Fundamental Freedoms provides the finite list of possibilities of deprivation of the freedom of a person. Referring to the provisions of this Article of the Convention and other legal acts of Lithuania, the following persons are attributable to the category of persons deprived of freedom:

a) Apprehended persons following the administrative procedure (up to 5 or up to 48 hours, Articles 265-267 of the Code of Administrative Violations of the Republic of Lithuania);

b) Persons (adults) executing the administrative arrest for the administrative violations (up to 30 days, Article 29, 338 of the Code of Administrative Violations of the Republic of Lithuania, also Article 314 of the Code of Administrative Violations of the Republic of Lithuania (when the administrative fine has been changed into the administrative arrest due to the evasion of payment of it);

c) Temporarily detained persons suspected of crimes following Article 140 of the Criminal Code of the Republic of Lithuania (up to 48 hours);

d) Temporarily detained foreigners (up to 48 hours, Part 1 Article 114 of the Law of the Republic of Lithuania on the Legal Status of Aliens);

e) Detained foreigners at the Foreigners’ Registration Center (Part 2 of Article 114, Articles 116, 117, 118 of the Law of the Republic of Lithuania on the Legal Status of Aliens);

f) Detained persons (with the imposed measures of suppression) (up to 6 months, the detention imposed at once cannot be longer than 3 months, later, in the exceptional cases during the pretrial period prolonging it up to 12 months for juveniles and up to 18 months for other persons, Article 122, 127 of the Criminal Procedure Code of the Republic of Lithuania);

g) Persons executing the punishment of arrest (from 5 till 45 days juvenile and from 10 till 90 days adults, Articles 49, 90 of the Criminal Code of the Republic of Lithuania, Part 2 Article 303 of the Criminal Procedure Code of the Republic of Lithuania).

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3 Convention of the Protection of Human Rights and Fundamental Freedoms is partially amended by protocol No. 11 with the supplementary protocols No 1, 4, 6 and 7 // Valstybės žinios (Official Journal). – 2000, No. 96-3016.
7 The relevance of detention of foreigners is analyzed in a separate chapter of this publication.
8 Article 46, Part 7 Article 47, Part 10 Article 48, Article 362 (when the punishments of public labour, fines or restriction of freedom have been changed into the arrest due to the avoidance to execute the latter punishments));

h) Fixed term deprivation of freedom (juvenile up to 10 years, others – up to 20 (25) years) or persons executing the punishment of life sentence (Articles 50, 51, Part 5 Article 90 of the Criminal Code of the Republic of Lithuania, Part 2 Article 303 of the Criminal Procedure Code of the Republic of Lithuania);

i) Juvenile placed at the special care institution upon the decision of the court (from 6 months up to 3 years, Article 88 of the Criminal Code of the Republic of Lithuania), also juvenile sent to the special care and education homes\textsuperscript{10} as well as the Center of Juvenile Social Assistance and Prevention\textsuperscript{11};

j) Persons intoxicated by alcohol, constrainedly brought for the detoxication to the health care institutions (Article 2.26 of the Civil Code of the Republic of Lithuania\textsuperscript{12}, Article 27 of the Law of the Republic of Lithuania on Alcohol Control\textsuperscript{13}, also persons constrainedly hospitalized, suffering from certain communicable diseases (up to 7 days upon the decision of the council of physicians, by prolonging the term later on by the court), Article 9 the Law of the Republic of Lithuania on Prophylaxis and Control of People Suffering from Communicable Diseases\textsuperscript{14};

k) Constrainedly hospitalized persons, suffering from the severe mental disease (for one month, by prolonging it after 6 months, Part 4 Article 2.26 of the Civil Code of the Republic of Lithuania, Article 27, 28 of the Law of the Republic of Lithuania on Psychological Health Care\textsuperscript{15}), also temporarily constrainedly hospitalized up to 2 days until the receipt of the court’s permission (Part 4 Article 2.26 of the Civil Code of the Republic of Lithuania, Parts 1-2 Article 28 of the Law of the Republic of Lithuania on Psychological Health Care);

l) Persons whom the inpatient, coercible medical measures are applied (by prolonging the term every 6 months, Paragraphs 2-4 Part 1, Part 6 Article 98 of the Criminal Code of the Republic of Lithuania, Articles 392, 403 and 405 of the Criminal Procedure Code of the Republic of Lithuania), also temporarily hospitalized at the health care institution following Article 141 of the Criminal Procedure Code of the Republic of Lithuania, until the results of the expertise;


\textsuperscript{11} According to the regulations approved by Order No 259 on 7 September 2000 of the Commissar General of the Police Department under the Ministry of the Interior, that have not been published anywhere.


m) Soldiers executing the penitentiary arrest (up to 10 days, Article 42 of the Statute of Military Discipline), also temporarily detained soldiers (up to 24 hours, Article 16 of the Statute of Military Discipline)\textsuperscript{16}.

The persons are not attributed to the category of the mentioned above persons the restrictions of the freedom of which are not so significant (e.g. persons with the imposed restriction of freedom (Article 48 of the Criminal Code of the Republic of Lithuania), such measures of suppression imposed as home arrest (Article 132 of the Criminal Procedure Code of the Republic of Lithuania), obligation to live separately from the victim (Article 132\textsuperscript{1} of the Criminal Procedure Code of the Republic of Lithuania) or written commitment not to leave (Article 136 of the Criminal Procedure Code of the Republic of Lithuania), persons paroled from the imprisonment places\textsuperscript{17}, imposing the respective obligations on them (Article 77 of the Criminal Code of the Republic of Lithuania, Article 157 of the Criminal Code) and so on.

**Main changes in Lithuania**

During last few years in Lithuania lots of changes have taken place, first of all in the legal acts, with respect to the topic analyzed. On 1 May 2003 the new Criminal Code came into force, Criminal Procedure Code and the Criminal Code. On 29 April 2004 the new Law on the Status of Aliens was adopted and at the end of the same year the Government submitted for Seimas the draft of the new Code of Administrative Violations prepared by the Ministry of Justice\textsuperscript{18}. The provisions of these legal acts are directly related to the legal situation of the majority of persons deprived of freedom. It is important that the mentioned codes have been the first national codes of Lithuania in these fields as the previous ones have been based on the Soviet ones “newly built constructions”. The change of legal basis has not been just a formal one. It consolidates lots of novelties that have had lots of influence over the positive changes noticed already now. On the other hand, it is evident that a few years is a very short period of time after which it would be possible to decide on the quality of the new legal acts, efficiency of the system created by them and forecast further results of their application.

\textsuperscript{16} It should be noted that Lithuania, ratifying the Convention on the Protection of Human Rights and Fundamental Freedoms, has made a reservation following which the requirements of Article 5 of the Convention are not applied in case of imposition of disciplinary penalty-arrest- for soldiers of national defense following the Disciplinary Statute (Valstybės žinios (Official Journal). – 1995, No. 37-913). The Ministry of National Defence of the Republic of Lithuania has prepared the draft Disciplinary Statute of the Military Service of the Republic of Lithuania where this penalty is not provided any more, it is also suggested to eliminate the mentioned reservation concerning application of the Convention. Thus, the mentioned issues are not analysed bellow.

\textsuperscript{17} The Criminal Code of the Republic of Lithuania and the Criminal Code of the Republic of Lithuania provide two similar possibilities to release the imprisoned persons from the places of imprisonment before the time: release on probation from the correctional institutions (Article 157 of the Criminal Code of the Republic of Lithuania) and probationary dismissal from imprisonment earlier the fixed term and the change of the left imprisonment punishment into the mild punishment (Article 77 of the Criminal Code of the Republic of Lithuania). In this case both institutes of execution of punishments and criminal law are generally called “dismissal from places of imprisonment on probation”.

\textsuperscript{18} See the draft Code of Administrative Violations of the Republic of Lithuania on the webpage of the Seimas of the Republic of Lithuania www.lrs.lt
This much is certain that together with the adoption of the new codes (as well as other laws) bigger or smaller steps have been made towards the legal, institutional and organizational system in the state which is more effective, based on the respect of a person and preserving his dignity. After the change of the regulatory provisions the organizational decisions have been made on the level of state governance that could improve the situation of the persons deprived of freedom. It is important that legal norms and decisions made would be properly implemented and the monitoring of their implementation would determine further development.

Criminal procedure and criminal law

The limitation of the freedom of a person is possible during the criminal procedure, when applying the measures of suppression – detention for the suspected with the crime and after the prove of committed crime and sentence of a person by imposing imprisonment sentence.

The new Criminal Procedure Code of the Republic of Lithuania and Criminal Code of the Republic of Lithuania in this field have consolidated the number of the important new provisions.

It has been sought in the Criminal Code to limit as much as possible the application of the measures of suppression arrest, to coordinate it with the practice of the European Court of Human Rights. Frequent application of the custody directly determines the increasing number of prisoners and due to the improper criminal procedural norms previously valid or due to the inappropriate practice of their implementation (especially due to the unjustifiably long process of the case) Lithuania has already lost a number of cases at the European Court of Human Rights\(^{19}\). It is sought to reduce the number of detentions in two ways: more strict terms for the imposition of detention have been provided as well as additional (alternative) measures of suppression – document seizure or obligation periodically register at the police precinct (Article 134 and 135 of the Criminal Procedure Code of the Republic of Lithuania), also (from 09-11-2004) the obligation to live separately from the victim (Article 132\(^{1}\) of the Criminal Procedure Code of the Republic of Lithuania)\(^{20}\). The important novelty of the new code – the consolidated possibility at the same time apply a few measures of suppression milder than detention.


As it is seen from Picture 1 the number of the detained persons in Lithuania (at the end of each year) during the last eight years has been constantly decreasing (from 2,576 in 1997 to 1,284 in 2004).21

Still the total number of persons who have newly come to the inquiry ward during the year actually has not changed (see Table 1). According to the data provided by the Prisons Department under the Ministry of Justice of the Republic of Lithuania the average of the time spent in the inquiry ward until the sentence from 1999 used to be averagely 5 months. The same remained in 2004. Only in 1998 it was longer by one month and the data of previous years was not provided.

Referring to the fact that during this year the number of persons suspected with the elucidated committed crimes has been changing very fractionally (see Picture 2) as the severity of the committed crimes22, it is possible to state that the provisions of the new

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21 All statistical data in case there is no separate reference have been taken from homepage of Crime Prevention Center in Lithuania www.nplc.lt from the published statistical tables and statistical reports of the respective institutions.

22 Severity of the crime has effect over the imposition of arrest when a person is suspected of having committed one or a few very severe, severe and certain half severe crimes and it is reasonably thought that until passing of judgment he could commit the same new crimes (Part 4 Article 122 of the Criminal Procedure Code of the Republic of Lithuania). Moreover, severity of the crime has indirect influence over the imposition of the detention also when it is imposed due to the reasonable thinking that the suspected could try to escape (hide) or would interfere with the procedure as such activities of the suspected are predetermined by the strict punishment impending (see Part 1-3 Article 122 of the Criminal Procedure Code of the Republic of Lithuania).
Criminal Procedure Code of the Republic of Lithuania regulating the detention have had the practical effect over the application of detention as have provided undoubtedly more efficient guarantees for the control of detention.

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of newly arrived persons to the inquiry ward during the year</td>
<td>7,857</td>
<td>8,165</td>
<td>7,521</td>
<td>8,650</td>
<td>8,031</td>
<td>6,969</td>
<td>7,624</td>
</tr>
<tr>
<td>Persons imposed with the actual fixed term sentences of imprisonment, life imprisonment and arrest (from 01.05.2003)</td>
<td>7,532</td>
<td>7,457</td>
<td>9,723</td>
<td>9,301</td>
<td>8,677</td>
<td>7,130</td>
<td>6,667</td>
</tr>
<tr>
<td>The number during the year of the newly arrived persons to the penitentiary institutions with the imposed imprisonment/arrest</td>
<td>6,468</td>
<td>6,397</td>
<td>5,334</td>
<td>6,838</td>
<td>6,614</td>
<td>5,427</td>
<td>5,338</td>
</tr>
</tbody>
</table>

The attention should be paid to the fact that the reduction of the number of newly detained during 2003 has most probably been related to the decrease of the total number of persons suspected of having committed the elucidated crime.

![Picture 2. The number of elucidated persons in Lithuania, suspected and sentenced for the crimes, 1998–2004](image)

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23 That means that the execution of the punishment has not been deferred and persons have not been indemnified.
The changes that have taken place in the criminal law have been even more significant. Due to especially frequent application of imprisonment sentence Lithuania has already for a long time one of the biggest number of prisoners per 100,000 of inhabitants among other European countries. In 1991–2002 the actual imprisonment sentence formed from 27% to 47% of all the punishments imposed (see Picture 3) whereas in the majority of other European countries it usually does not form 10%. At the end of 2002 there were 11,070 persons imprisoned in Lithuania, i.e. 320 of the imprisoned per 100,000 of inhabitants (see Picture 1), whereas in Western Europe the average of countries did not form 100, Middle Europe – 150 of the imprisoned per 100,000 of inhabitants.

![Picture 3. The imposed punishments over the sentenced, 1991–2002](image)

It is interesting that according to the number of persons sentenced to the deprivation of freedom per 100,000 of inhabitants, in 1999 Lithuania (249) has been overtaken by such states as Denmark and Norway (respectively 277 and 270). However, the numbers of prisoners per 100,000 of inhabitants have been totally incomparable (in Lithuania 410, Denmark and Norway – 59). That shows that the essential problem in Lithuania is not only the

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frequent application of the imprisonment sentence but also its very long duration. In 2004 the average duration of the actually carried imprisonment sentence was 2 years and 6 months (see Table 2) and in the countries of Western Europe it, as a rule, does not reach even 6 months. It was sought to reduce the huge number of prisoners in Lithuania until coming into force of the new Criminal Code of the Republic of Lithuania by frequent criticized amnesties (the amnesty of the largest extent was declared in 2000, others were smaller)\textsuperscript{26}, through the application of which the transciency of efficiency is innevitable, also discrimination of certain groups of prisoners, the appearance of uncertainty among prisoners, discontent of the law enforcement authorities and public, escalation of social problems.

Table 2. The average duration of the imprisonment sentence in Lithuania in 1998–2004

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004*</th>
</tr>
</thead>
<tbody>
<tr>
<td>The average term of imprisonment imposed upon the court judgment</td>
<td>4 years and 8 months</td>
<td>4 years and 4 months</td>
<td>4 years and 8 months</td>
<td>4 years and 8 months</td>
<td>4 years and 4 months</td>
<td>4 years and 11 months</td>
<td>4 years and 10 months</td>
</tr>
<tr>
<td>The average term of actually carried imprisonment (dismissed persons)</td>
<td>2 years and 3 months</td>
<td>2 years and 2 months</td>
<td>2 years and 1 month</td>
<td>1 year and 8 months</td>
<td>1 year and 10 months</td>
<td>2 years and 5 months</td>
<td>2 years and 6 months</td>
</tr>
</tbody>
</table>

* except arrest punishment.

As the comparison of the number of prisoners in different countries shows\textsuperscript{27}, the huge number of prisoners is not the “faith” of the country predetermined by the objective and irrevocable factors. The criminality dynamics and structure are influencing it only very insignificantly. However, the most important factors are criminal policy, regional traditions and manner of infliction\textsuperscript{28}.

\textsuperscript{26} In a course of 14 years there were 7 of them. For more info see Baranskaitë A. The institutes of amnesty and favor within the system of punitive measures according to the currently valid and new Criminal Codes of the Republic of Lithuania. Teisë, No. 41, p. 7-18.


With the help of the new Criminal Code of the Republic of Lithuania it was sought to form conditions for the imposition of alternative punishments for the imprisonment, provide the proportionate limits of punishments and balance the sanctions. The following (main) changes are important for the reduction of the number of persons imposed with the imprisonment for the committed crimes:

a) the new system of 8 punishments has been created – restriction of freedom, public labour and arrest;

b) partially changed rules of the imposition of punishments (Articles 54–66 of the Criminal Code of the Republic of Lithuania);

c) the limits of the adequate punishment-fine provided (Article 47 of the Criminal Code of the Republic of Lithuania), the latter punishment is more often provided in the sanctions of the articles;

d) sanctions more rarely provide the bottom limit of the imprisonment punishment, the limits of sanctions are proportionately balanced;

e) the possibilities expanded for the reconciliation of the culprit and the victim (Article 38 of the Criminal Code of the Republic of Lithuania);

f) peculiarities of juvenile criminal liability provided in a separate chapter, the possibilities of application of different alternatives expanded; the imposition of the imprisonment sentence limited by additional conditions (Part 3 Article 91 of the Criminal Code of the Republic of Lithuania).

After coming into force of the new Criminal Code of the Republic of Lithuania, the part of the imprisonment sentence among all other punishments diminished (see Pictures 4 and 5) and in 2004 formed nearly 28%, however, after adding 7.6% of the arrest punishment, the difference compared to the year 2002 is significant, however, not so huge. It

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29 The short-term imprisonment receives lots of criticism from the scientific and international point of view as the infrastructure of execution of other alternative punishments in Lithuania are not sufficiently developed yet. It should also be noted that from 13 July 2004 the possibility to delay the execution of arrest and payment of fines was revoked (See the Law of the Republic of Lithuania on the Amendment and Supplement of the Criminal Code as of 5 July 2004 // Valstybës žinios (Official Journal), No. 108-4030).

30 Part 2 Article 54 of the Criminal Code of the Republic of Lithuania consolidates that the court could impose a milder punishment in case the sanction of the Article provide the imposition of punishment that obviously contradicts the principle of justice, Article 55 – usually the court imposes the punishments that do not relate to the deprivation of freedom for a person who is judged for the first time for the minor or semi-major deliberate crime; repeatedness is not any more treated as the circumstance aggravating liability (Article 60) or like a separate qualified form of the criminal activity (the feature of crime composition); unintended supplementary punishments and others.

31 Part 2 Article 47 of the Criminal Code of the Republic of Lithuania provides that the minimal limit of a fine is of the size of one minimum level of life (currently LTL 125) and the maximum (Part 3 of the same article) depends on the severity of crime. From 24-09-1996 till 09-10-2001 the minimal limit of a fine used to be 100 of minimum levels of life (LTL 12,500), and for the venally committed crimes – 200 of minimum levels of life. In such a way the criminal policy was deliberately stiffened, but in the court practice the fine was imposed more rarely. See more information about the previous problems of theoretical and practical application of a fine as punishments at Šulija G. Theoretical and Practical Aspects of Application of a Fine. Teisës problemos (Law Problems). 2001, p. 74-83.

32 Part 1 Article 38 of the Criminal Code of the Republic of Lithuania consolidates one out of a few terms for the absolution from the criminal liability in case the culprit and the victim conciliate, in case a person has not committed the major or outrageous crime, whereas the old code (Article 531) specified a few crimes (insignificant from the statistical point of view) the conciliation was possible after committing them.
Picture 4. Punishments imposed over the sentenced in Lithuania, 2003

- Life imprisonment: 0.1%
- Respite of imprisonment: 21.2%
- Absolution from imprisonment: 4.1%
- Arrest: 4.0%
- Respite of arrest: 4.9%
- Deprivation of public rights: 0.0%
- Actual imprisonment: 36.7%
- Public labor: 5.2%
- Deprivation of rights to Work: 0.3%
- Restriction of Freedom: 2.8%
- Respite of execution of fine: 3.7%
- Fine: 17.1%

Picture 5. Punishments imposed over the sentenced in Lithuania, 2004

- Life imprisonment: 0.0%
- Respite of imprisonment: 19.0%
- Absolution from imprisonment: 1.2%
- Arrest: 7.6%
- Respite of arrest: 8.5%
- Deprivation of public rights: 0.0%
- Actual imprisonment: 29.7%
- Public labor: 4.6%
- Deprivation of rights to Work: 0.3%
- Restriction of freedom: 5.4%
- Respite of execution of fine: 4.3%
- Fine: 19.4%
should be noted that in 2003 and in 2004 the part of such prisoners reduced who had been
sentenced to the especially long imprisonment sentence from 5 to 10 years. In 2002 such
persons formed nearly 29% out of all prisoners and in 2004 – slightly more than 21%. The
number of short term imprisonment sentences (including arrest) increased nearly twice –
from 6.3% (in 2002) up to 10.5% (in 2004).

The positive tendencies in 2004 (also compared to 2003) let us think that the system of
punishment for crimes in Lithuania has changed the direction into the criminal policy
responding the European tradition. At the end of 2004 there were 237 imprisoned per
100,000 of inhabitants in Lithuania, i.e. in a course of two years the latter number reduced by
one fourth. It is important that even after the decrease of the number of prisoners, Lithua-
nia, together with Latvia and Estonia (in both countries the total number of prisoners has
been 339 prisoners per 100,000 of inhabitants at the end of 2004) remained in the top of the
list of European Union countries where the number of prisoners is the biggest. Even among
the countries of the Council of Europe, Lithuania is overtaken only by Moldova (297 priso-
ners at the end of 2003), Ukraine (416 prisoners at the end of 2003) and Russia (532 prisoners
at the end of 2004)\textsuperscript{33}. The positive tendencies related (also) to the coming into force of the
new Criminal Code of the Republic of Lithuania do not yet mean the existence of the
criminal policy corresponding the European tradition.

Penal law

The Penal Law provides the rights and obligations of persons carrying the imprison-
ment sentences, organizational system of penitentiary institutions, the functions of the
latter institutions, personnel structure, penalties’ system and procedure of their applica-
tion and appeal, in other words, it regulates the life of the imprisoned 24 hours per day.
Thus, it is especially important from the point of view of guarantees of human rights.

On 1 May 2003 the new Criminal Code of the Republic of Lithuania\textsuperscript{34} came into force
that changed the old, Soviet, although amended many times, Code for the Corrective La-
bour adopted already in 1971. The Criminal Code of the Republic of Lithuania regula-
tes execution of all the punishments, however, the provisions of execution of imprison-
ment sentence forms the greatest part of it. A number of changes related to safeguarding
the human rights have been made already in the old code\textsuperscript{35} and the new Criminal Code
of the Republic of Lithuania has consolidated the new system of execution of punish-
ments, the main principles of execution of punishments, many other provisions have
been formulated anew, the new system of division of the imprisoned into the ordinary,

\textsuperscript{33} See International Centre for Prison Studies. World Prison Brief: http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/
world_brief.html.

of the Republic of Lithuania on Custody regulates the legal situation of detained persons (with the imposed custody

\textsuperscript{35} After declaring the independence the consolidated right to religious ceremonies at the imprisonment institutions,
participate in the elections, the prohibition to ware one’s own cloths has been revoked and others.
facile and disciplinary groups provided\textsuperscript{36}, the procedure of appeal of activities and decisions\textsuperscript{37}. Several tenths of post-regulatory acts specified in detail the provisions of Criminal Code of the Republic of Lithuania.

The 1\textsuperscript{st} September 2000 was especially important for the institutional reform of the execution of punishments when the management of it from the Ministry of Interior of the Republic of Lithuania was overtaken by the Ministry of Justice of the Republic of Lithuania and the Prisons’ Department under the Ministry of Justice of the Republic of Lithuania was established. In such a way one of the essential provisions of the reform of the system of execution of punishments was implemented, provided in the guidelines of the legal system reform of the new wording as of 1998 (Chapter IV)\textsuperscript{38}. Already in the beginning of 1999 the Training Center for the employees of the imprisonment system was established. During 2002–2003 the demilitarization process of penitentiary institutions was finished. On 22 September 2003 the last functions of security guard of imprisonment institutions carried by the internal services divisions of the active service conscripts have been taken by the administration of this institution\textsuperscript{39}.

At the beginning of 2004 in the whole (i.e. including the execution of all punishments) system of execution of punishments in Lithuania there were 3 733 employees (out of which – 2 558 officials (out of which – 1 677 custodians), 36 other (non-statutory) public servants and 1 139 employees working according to the labor contract), out of which 3 194 persons worked in the imprisonment system. It should be noted that the working conditions of these employees, the guarantees of their rights are closely related also to the rights of the imprisoned. The proper salary, safe atmosphere, guarantees of the improvement of qualification and other factors are important not only for the persons working in the imprisonment system, but also the quality of the work with the imprisoned.

It should be noted that during the last years the Government of the Republic of Lithuania approved several programmes the implementation of which should significantly improve the infrastructure and imprisonment conditions of the penitentiary institutions\textsuperscript{40}.

\textsuperscript{36} The latter amendments are important from the point of view of prevention of sub-culture of prisoners. At the end of 2003 out of 6,701 prisoners 5,158 (77\%) were in ordinary, 626 (9.3\%) facile and 218 (3.3\%) in the disciplinary group (another part (yet) has not been attributed to any group).

\textsuperscript{37} That was one of the essential deficiencies of the old code.


\textsuperscript{39} Main data of the activities of 2003 of the Prisons’ Department and institutions as well as state enterprises subordinate to it, p. 28. See homepage of the Prisons’ Department under the Ministry of Justice of the Republic of Lithuania http://www.kalejimudepartamentas.lt/stat/KD_03ATASK_www_040510.doc

Isolation of mental and other patients

Following Article 2.26 of the Civil Code of the Republic of Lithuania the consent of a person is not needed for a person’s health care in case there is danger for his life or it is important to hospitalize him at the in-patient health care institution seeking to protect the public interests. Article 27 of the Law of the Republic of Lithuania on Alcohol Control provides that the police may constrainedly bring the persons intoxicated by alcohol to the health care institutions only in cases when they by their activities (or inactivity) may cause essential harm for their own or others’ health, life. The possibility to constrainedly hospitalize a person suffering from certain communicable diseases is provided also by Article 9 of the Law of the Republic of Lithuania on the Prophylaxis of Human Communicable Diseases and Control. The council of physicians consisting of not less than three medical specialists make decision to constrainedly hospitalize an ill person for a period not longer than 7 days and later on this term can be prolonged by the court.

From the point of view of human rights the most controversial and complex are such cases when persons suffering from mental diseases must be constrainedly hospitalized due to certain reasons. The Republic of Lithuania has inherited from the Soviet system a very isolated treatment of mental patients (as treatment of all the disabled), their factual separation from the public with the formed stereotypes and social disability to accept and integrate the disabled are eminent until now. Although, during last 10 years the adopted laws and other legal acts have consolidated the system of the rights of the disabled and their implementation based on the international standards, in practice changes are very slow and that is especially noticed in the field of constrained isolation of mental patients. In 2004 there were approximately more than 30 000 people with mental disability in Lithuania that formed approximately 8% of all people with the diagnosed disability.

Mental patients (only upon the court judgment) may be constrainedly treated in Lithuania (thus also isolated) in two cases: a) following the civil procedure according to Part 4 Article 2.26 of the Civil Code of the Republic of Lithuania and Articles 27, 28 of the Law of the Republic of Lithuania on Mental Health Care when their mental disease is serious, however, they refuse from the hospitalization and there is a real danger that they could cause essential danger for the health or life of surrounding people; b) following the criminal procedure when they are imposed with the in-patient (under the conditions of general,
reinforced or strict observation) coercible medical means in case they have committed crimes being irresponsible or having diminished responsibility, also those who having committed the crime or after the imposition of punishment experienced mental disorder and due to this they are not able to understand the nature of their activities or manage them (Article 98 of the Criminal Code of the Republic of Lithuania, Article 392, 403 and 405 of the Criminal Procedure Code of the Republic of Lithuania). In one case or another the temporary isolation of such persons is possible: in the first case for 2 days until the courts’ permission (Part 4 Article 2.26 of the Civil Code of the Republic of Lithuania); in the second case until the results of the expertise, following terms provided for detention (Article 141 of the Criminal Procedure Code of the Republic of Lithuania).

Following the civil procedure, people are constrainedly hospitalized at the in-patient mental hospital and persons with the imposed coercive medical measures, following the criminal procedure are treated at Rokiškis mental home. The fact that there is very little attention paid to the rights of people constrainedly treated at the mental hospitals in Lithuania, literature on medicine and especially law science, even the absence of statistical data show that this topic is just in the periphery of the objective discussions.

Table 3. Persons treated at Rokiškis mental home in 2004 with the imposed coercive (in-patient) medical measures

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Under the conditions of strict observation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under the conditions of reinforced observation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under the conditions of general observation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At women general observation unit</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* the number of women is in brackets

Until restoration of Lithuanian independence Lithuanian inhabitants, having committed the crimes causing danger to the public and acknowledged as irresponsible, have been treated in the city of Chernyakhovsk, Russia. In 1993 the special mental treatment

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47 Several publications on this issue: Survilaitė D. How do we protect the rights of patients? Homepage of Republican Vilnius Psychiatric hospital: http://www.rvpl.lt/Dokai/pac_teises.doc. The results of the research related to the problems of human rights could be found in Samsanavičiūtė Z., Nemanytė M., Ramankevičienė N., Petrašiūnas R., Mažonas E. The activities of patients could improve the quality of services of medical institutions, also the overview of the research of the rights of patients at Švėkšna mental hospital. Webpage of the National Organization of Persons with Mental Disorders and Their Friends “Club” 13 and Co”: http://www.club13.lt/teisiu_gynimas.htm#Pac_teis_1. About the activities of National Organization of Persons with Mental Disorders and Their Friends Club “13 and Co” see http://www.club13.lt/naujas.htm, see the homepage of the center of Mental Health Resource Center also the publication http://www.vrc.vu.lt/. The new research in this field has been carried by the Human Rights Monitoring Institute, see homepage of this institute www.hrmi.lt.

48 Thanks to Algimanas Liausėda, the director of Rokiškis mental health hospital, for the statistical data.

49 This paragraph is prepared according to the information published by Rokiškis mental hospital and the Ministry of Health of the Republic of Lithuania, see: http://www.rpl.lt/, http://www.sam.lt/lt/sam/struktura/pav-kontaktai/rokiskiopsichlig/.
unit was established at Rokiškis mental hospital (following decision of the Government of the Republic of Lithuania as of 1991)\textsuperscript{50}. Mental patients having committed the crimes have been treated in this unit under the reinforced and strict observation conditions. Whereas, the patients under general observation conditions were treated in ordinary mental hospitals of general nature according to the place of residence. Such division of patients did not provide the conditions for the formation of individual treatment programmes, there was no specially trained personnel and conditions for the resocialisation and reintegration into the public of these persons. In 1997 the experts of International Prisons’ Medical Service visiting the hospital recommended to reorganize the activities of the unit of coercively treated patients. However, real reforms started much later. On 16 October 2001 the meeting of the representatives of the responsible and concerned institutions was organized where the guidelines of future activities were provided and it was decided to concentrate the coercively treated patients at Rokiškis Mental Hospital in 2002. Having this aim the investment project for the reconstruction of hospital was formed that would allow the establishment of modern institutions of coercively treated patients containing 270 places. During the same year the project “Reorganization of Judicial Mental Services in Lithuania” was started upon the initiative of “Psychiatry Initiative of Geneva”. The implementation of this project was started in May 2004 together with the Ministry of Health of the Republic of Lithuania and Vilnius University Medicine Department as well as Ministry of Foreign Affairs of the Kingdom of Netherlands. From 2003 the reconstruction works of hospital were started. In 2003 there were 1942 patients treated in this hospital (in total), out of which 682 – upon the court judgment (following the civil and criminal procedure). There were 457 of employees in the hospital.

Picture 6 provides dynamics of the number of persons with the imposed coercive medical measures (in-patient and out-patient) by the courts in Lithuania.

\textbf{Picture 6. The number of persons, imposed with the coercive medical measures for the crimes in Lithuania, 1998–2004}

\textsuperscript{50} Decision of the Government of the Republic of Lithuania concerning the establishment of the special mental division (No. 566, adopted, 17-12-1991, has not been published in Valstybės žinios (Official Journal)).
Administrative detention and arrest

In Lithuania (yet)\textsuperscript{51} there is no centralised way for collection of statistics about the detained persons following the administrative procedure according to Articles 265–267 of the Code of Administrative Violations of the Republic of Lithuania. As only the court can impose the administrative arrest (up to 30 days following Article 29 of the Code of Administrative Violations of the Republic of Lithuania) the latter data is published by the National Court Administration (see Picture 7). Administrative arrest as an independent penalty does not form especially significant part among all the penalties (the rule provided by Article 29 of the Code of Administrative Violations of the Republic of Lithuania that this is an exceptional penalty, moreover, is not imposed over the pregnant women, mothers having children up to the age of 12\textsuperscript{52}, juveniles, disabled persons of I and II groups): in 2000–2004 it was imposed averagely over 3.5% of all the persons who were punished by the court following the administrative procedure (in 1998–1999 averagely 12%). However, after adding also those cases when the fine finally is changed into arrest, the real part of administrative arrest among all the penalties increases up to 25%–49% (in 1998–2002) and from this point of view in practice it is not an exceptional penalty.

The significant amendment of the Code of Administrative Violations of the Republic of Lithuania was made on 15 March 2000 by which the corrective labour was revoked as an independent administrative penalty and the possibility provided for the persons having no property to change the fine (in case a person agrees) into the public labour (earlier it was possible to change it only into arrest)\textsuperscript{53}. However, a person in this case can be imposed of the public labour up to 400 (!) hours (calculating 1 hour of public labour for LTL 10 of a fine), whereas the Criminal Code of the Republic of Lithuania provides maximum of 480 hours for the crime and for the crime – a penalty of 240 hours of public labour that from the international point of view is uncomparatively huge. Still the main problem here is most probably the undeveloped infrastructure of public labour\textsuperscript{54} and the motivation of violators that depends also on the number of obligatory hours for labour, type of labour and the quality of labour/relations with the sentenced by the persons organizing it.

The new Draft Code of Administrative Violations of the Republic of Lithuania suggests consolidating the possibility to perform the arrest during the rest-days. It could be not imposed over the persons growing children up to the age of three, irrespective of the interests of a child (Article 27 of the Draft Code of Administrative Violations of the Republic of Lithuania). The new penalty is provided – public labour up to 100 hours (upon the

\textsuperscript{51} It is planned to introduce such information system at the Ministry of the Interior by the end of this year.

\textsuperscript{52} The latter provision is undoubtedly faulty with respect that having a child is not related to the growing of him and unlimited authority of parents, moreover, the exclusion of women alone undoubtedly contradicts the legal provisions of equal opportunities of men and women.


\textsuperscript{54} The procedure of performance of voluntary public works is regulated (only) by the Instruction of Voluntary Public Works approved by the Order of the Minister of Interior of the Republic of Lithuania // Valstybės žinios (Official Journal). – 2000, No. 43-1237.
HUMAN RIGHTS IN LITHUANIA

Picture 7. The number of persons imposed with the administrative arrest, imposed by Courts in Lithuania, 1998–2004


agreement of a person), into which the unpaid fine could be changed (Articles 24, 26 of the Draft Code of Administrative Violations of the Republic of Lithuania). When changing the fine into the public labour one hour of public labour equated to a fine of LTL 20 (Article 35 of the Draft Code of Administrative Violations of the Republic of Lithuania).

The Administrative Procedure Code of the Republic of Lithuania should be prepared separately and come into force together that would regulate also the issues of administrative detention.

Problems in ensuring the rights of the imprisoned

The rights of the detained. One of the main problems is the overcrowding of the inquiry wards. On 1 July 2002 the filling of all the penitentiary institutions in Lithuania formed 114% (i.e. 100 places for averagely 114 of the imprisoned)\textsuperscript{55}. On 1 January 2004 there was just 84.2%, however, despite of the unfavorable general situation, the inquiry wards, also certain other institutions are overcrowded (see Picture 8)\textsuperscript{56}. The newly opened Kaunas inquiry ward in June 2004 is also overcrowded.

\textsuperscript{55} In all the institutions there were 9,578 places (363 places less than in 2002 as the office and guardhouses were installed there). Main data of the activities of 2003 of Prisons’ Department and institutions subordinate to them, also public enterprises, p. 7. In 1999–2000 supplementation of institutions was even bigger. See Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 23 February 2000. Strasbourg, 18 October 2001. CPT/Inf (2001) 22, p. 29; Annual Report for 2002 of the Ombudsmen of the Republic of Lithuania: http://www3.lrs.lt/pls/inter/w3_viewer.ViewTheme?p_int_tv_id=1990&ep_kalb_id=1&ep_org=0; MacDonald M. Country Report for Lithuania (6–11 October 2003). Research project for the Central and Eastern European Network of Drug Services in Prison CEENDSP in co-operation with the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). University of Central England, p. 13.

\textsuperscript{56} The number of places provided according to: Main data of the activities of 2003 of Prisons’ department and institutions subordinate to them, also public enterprises, p. 32.
**Imprisonment and life imprisonment sentences and human rights.** The imprisonment sentence still forms a significant part in the practice of Lithuanian court. It is thought that this is still the consequence of the strict criminal policy, unexpanded infrastructure of alternatives and respective legal culture. That is perfectly portrayed by the sentence of life imprisonment from which the person even after a certain period of time cannot be indemnified, cannot be changed into the milder sentence or to release the sentenced on probation (such persons could be released only following the procedure of amnesty or

![Diagram of Place of imprisonment and population of them in Lithuania, on 01-04-2005](image-url)
pardon\textsuperscript{57} that has never happened yet). No other state actually has such imprisonment till
the death of the imprisoned in the European Union. The term of imprisonment is provided
by the laws there (from 15 up to 30 years) after which the sentenced most often are
given freedom\textsuperscript{58}.

\textbf{Implementation of arrest and imprisonment sentence as well as the human rights.}
The concept of the correction\textsuperscript{59} of the culprit remained in the new Criminal Code of the
Republic of Lithuania the ideological grounds of which is negotiable as it on one hand is
partially related to the old system\textsuperscript{60}, on the other hand, criticized also from the international
point of view\textsuperscript{61}, as consideration of a person as a corrective object\textsuperscript{62} raises the problem of
neglect (observance) of human dignity. Such concept grades the status of a prisoner as an
independent person, following more the theories explaining the criminality oriented to-

\textsuperscript{57} President Decree provides that such persons could request the grace after 20 years of imprisonment. The Decree of
the President of the Republic of Lithuania on Formation of Grace Committee and its Regulations // V alstybës þínios

\textsuperscript{58} Current regulation of this punishment causes doubts regarding the constitutionality of it as such punishment actually
has very small difference from the capital punishment. Such case in 1977 was analyzed by the Constitutional Court
of Germany. It acknowledged that life sentence does not contradict the Constitution of Germany, however, referring
to the human dignity it is needed to provide regulatory possibility to be given freedom and the possibility of grace
is not enough (see BVerfGE 45, 187; also Zierlein K. G. Grundrechtsschutz im Strafrecht, Strafverfahrens- und Straf-
Only the Constitutional Court of the Republic of Lithuania could decide upon that in Lithuania. In any case the execution
of the imprisonment sentence until the death of the sentence excludes Lithuania from EU legal-cultural environment
(as previously capital punishment), it is inhumane and irrational.

\textsuperscript{59} In Lithuanian language the word “taisyti” (correct) is of a technical nature, not very much suitable in the context of a
person or social relations.

\textsuperscript{60} Criminality for the Soviet system was ideologically strange phenomenon. It used to state that in the socialist state
(finally after creation of communism) it should gradually disappear. Persons still violating the laws were considered
as individuals the personal traits of whom and attitudes are possible and need to be changed. The concept of correction
also appeared (in Russian – “исправить”) where a person was reduced to the ordinary object. The codes of this field
were called “The Codes of Corrective Labour” as the work was considered the most important penitentiary measure.
See Наташев, А. Е., Стручков, Н. А. Основы теории исправительно-трудового права. 1967, Москва, p. 69;
Стручков, Н. А. Советское исправительно-трудовое право. Москва, 1977, p. 159; Стручков Н. А., Ткачевский,
Ю. М. Советское исправительно-трудовое право. Москва, 1983, p. 23; Зубков, А. И. Уголовно-исполнительное
право России: теория, законодательство, международные стандарты, отечественная практика конца
XIX – начала XXI века. Москва, 2003, p. 505. “Correction” differed from “education” that was needed seeking to
change virtually the personality of a person and his consciousness. For more information see Schittenhelm U. Strafe
und Sanktionsystem im sowjetischen Recht. Grundlinien der Kriminalpolitik von den Anfängen bis zum Ende

\textsuperscript{61} The concept of “re-socialization” and “reintegration” is most often used here with all the ideological and practical
consequences coming out of them. Also see explanatory memorandum of European imprisonment rules “significant
change in the attitude towards the care of prisoners has taken place due to the change of regimes that sought to influence
the attitudes and behavior of prisoners and to change into the model supported by inducement of development of
the social abilities and personal possibilities that in the perspective could help them successfully return to the society.”

\textsuperscript{62} Such attitude programmed in this conception is soothe by the authors of the commentary of the Criminal Code of
the Republic of Lithuania by their statement that “…” the sentenced is not only the object of correction procedure but
also active member of it “…” Blaževićius J., Usik D., Švedas G. The commentary of the Criminal Code of the Republic
wards a person. The Criminal Code of the Republic of Lithuania consolidates the concept of correction where the imprisonment regime (the whole of terms and rules of behavior at the penitentiary institution; Article 112 of the Criminal Code of the Republic of Lithuania)\(^{63}\) is one of the correction measures (including also the possible usage of manacles, straitjackets, rubber sticks, war-dogs, water-pools and others), penalties and imposition of incentives are the measures of social rehabilitation, and the type of relations among the employees and the accused, almost one of the most important factors of successful re-socialization mentioned even 17 times in the not so long imprisonment rules of Europe, here is not mentioned at all\(^ {64}\). It seems that the main problem with this respect is not only the not underdiscussed (unpurified) concept of sought “effect” for prisoners (re-socialization), but also the non-separation of such sanctions as well as measures of safety ensurance (of public and (or) institution. In other words, the two main functions of the imprisonment system – re-socialization and security – are actually joined into one what from the theoretical and practical point of view when organizing the activities of this system cause inevitable problems (e.g. when imposing the penalties). Only the regulatory (theoretical) change of this concept in practice would not change anything at once. However, for the imprisonment system it is very important to have a clear, firm, logical conception (mission) based on the modern insights of social sciences.

The analysis of the statistics of imposition of punishments at the penitentiary institutions shows that during 1988–2003 averagely from 27% to 43% of the imprisoned were imposed with the punishments (out of them nearly one third was imposed with the strictest punishment – lockup at the isolation ward or a punishment room). The measures of encouragement have been imposed by a few times less. Such situation forms a precondition for choosing the strict formal measures for the settlement of conflicts, creating the tension at

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\(^{63}\) It should be noted that this term in the Soviet penal law also was very often used; in western tradition, especially in the social welfare countries, actually is not used any more or is being used very rarely.

\(^{64}\) The attention was also paid to this by the European Committee against Torture and any other Severe, Inhuman or Degrading Treatment or Punishment (see Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 23 February 2000, p. 31), also the Human Rights Monitoring Institute. See Implementation of Human Rights in Lithuania. Review of 2004. Vilnius, 2005, p. 33. It is interesting that Chapter VII of the Internal Rules of Imprisonment Institutions that consists of four paragraphs, called “Relations of the personnel of the imprisonment institutions and the sentenced” consolidate the obligation of personnel constantly explain the imprisoned their rights and obligations and prevent any illegal activities as well as also discusses the aspects of addressing the employee and the sentenced. In other words, not the (sought) relations are being discussed here between the employees and the sentenced but only a few formal rules of communication. See The Order of the Ministry of Justice of the Republic of Lithuania on the Approval of the Internal Rules of the Penitentiary Institutions // Valstybës þinios (Official Journal). – 2003, No. 76-3498; amendment of the rules see Valstybës þinios (Official Journal). – 2004, No. 98-3648. The concept of correction creates also more theoretical, organisation and practical problems (e.g. forms unclear functions of the whole personnel and the main tasks, distorts the aims of the imposition of the respective programmes, also penalties and incentives, fundamentals of distribution of the imprisoned, application of temporal departures and probational release, the policy of maintenance of the relations with the outside world, the criteria of assessment of efficiency of activities of the imprisonment system and others.
the institution and destroying the trust among the employees of the institution and the sentenced. Moreover, the process of formal punishment raises the problem of averment that inevitably entangles the participants into the relations of offence and defense leading towards other conflicts. The Criminal Code of the Republic of Lithuania actually does not provide any alternatives for the formal punishment process and in practice they are not applied.

The subculture of prisoners is another problem related also to the aforementioned aspects of the activities of imprisonment system. It is noted in any imprisonment system and during the Soviet regime it has especially spread. Scientific insights show that the more authority of the personnel is raised and the more life in the institution is based on formal and strict rules as well as the unconditional obedience, the bigger role is played by the internal intercommunication rules of the prisoners and the subculture develops. It is noticed in the report of the year 2003 of Elvyra Baltutytė of the Ombudsmen of the Seimas that “the castes of the sentenced have not been recognized by the administrations of Lithuanian penitentiary institutions for a long time and it is declared that the imprisonment sentence for the sentenced is implemented following the principle of equality in front of the law. However, during the research it has come up that the phenomenon of castes and subculture of the sentenced nowadays is a certain ideology of the sentenced that greatly influence their behavior and impede the implementation of the aims of the punishment of deprivation of freedom. It is stated that the phenomenon of division of the sentenced into

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65 Such situation is especially obvious in the circumstances of the case triered by the European Court of Human Rights Valašinas v. Lietuva 14-03-2000 (No. 44558/98) (to tell the truth related to the events 5–7 years old), also noticed in the appeals of prisoners analyzed by the Ombudsmen of the Seimas.

the castes is nearly the essential factor predetermining the spread of violence at the peniten-
tiary institutions and that is not only the problem of the sentenced but also of the peniten-
tiary institutions witnessing the deficiencies of the system of correctional institutions and
non-performance of the attributed functions\textsuperscript{67}.

One of the factors significantly influencing the subculture of prisoners and expanding
the space for human rights’ violations is that the majority of prisoners in Lithuania are
accommodated in huge rooms, in a few tens in one room. Such practice is criticized also
by European Committee for the Prevention of Torture and Inhuman or Degrading Treat-
ment or Punishment\textsuperscript{68}.

The supply of prisoners with the meaningful and well organized work is an important
factor of good atmosphere at the institution, inducing the integration after granting the
freedom. The part of working prisoners in Lithuania (see Picture 9) is one of the smallest
among the European Union countries\textsuperscript{69}.

It should also be noted that nearly 25% of the imprisoned learn and participate in other
programmes of occupation.

From the point of view of human rights and successful (re)socialization it could be
possible to distinguish other problematic aspects of implementation of imprisonment
sentence:

a) Legal acts do not provide the possibility for a person sentenced to the imprisonment
himself arrive for the execution of the sentence (the unarrested sentenced person is always
arrested when the convoy comes), also the term is not provided that could be imposed for
settlement of urgent matters before coming (taking a person) for the execution of the impri-
sonment sentence\textsuperscript{70};

b) The process of admission of an imprisoned person could be regulated in a more
precise way, the clear conception of work with the imprisoned from the very first day

\textsuperscript{67} Annual Report of Ombudsmen of the Seimas for the year 2003. The annual report of the Seimas Ombudsmen
Elvyra Baltutytë.

\textsuperscript{68} “There is an inevitable lack of privacy for the everyday life of prisoners kept in the huge wards. Moreover, there is a
great danger to experience threats and violence. The equipped rooms also induce the flourishment of the atmosphere
for the violations of the law and order, help to maintain strong internal relations of criminal organizations. Due to this,
personnel may face huge difficulties seeking to implement the needed control. Sometimes such control may become
completely impossible, e.g. in case of turmoil in the prison it would be difficult to escape the significant outside intervention.
Due to such premises it is nearly impossible to solve the issue how properly keep separately the prisoners in case they
might face danger. All these problems become clearer when the number of prisoners exceeds the limits. Moreover,
in such situation the prisoners are forced to queue at the washrooms and lavatories; and if we have in mind the problem
how difficult it is to properly ventilate the room where so many people are kept then the keeping conditions become

\textsuperscript{69} In 1997 in EU it balanced from 30% in Portugal up to 76% in Denmark. Hammerschick, W. Arbeit im Strafvollzug –
Rechtslage und Realität im europäischen Vergleich. In: Hammerschick, W. Pilgram A. (Hrsg.) Arbeitsmarkt, Strafvollzug

\textsuperscript{70} The Criminal Procedure Code of the Republic of Lithuania provides certain possibilities, e.g. under certain conditions
to postpone the implementation of sentence (Article 338), for the detained sentenced person to see his family members
or relatives (Article 341), the court is always obligated to take care of the children of the sentenced (Article 343) and his
property (Article 344), however, the virtual (possible) need of a person to take care of urgent matters before the
imprisonment is ignored.
should be consolidated\textsuperscript{71}; namely first days are very important for an imprisoned person, greatly from them depends an adaptation of a person at the penitentiary institution; although the post-regulatory acts provide the personal plan for the execution of the sentence until the very granting of freedom, however, actually the chosen concept of different adaptation, correction and granting of freedom programmes contradict that, they form seemingly different parts of the work with the imprisoned, but not the solid process;

c) Choosing of penitentiary institution is not related to the place of residence of the sentenced what for the part of the prisoners aggravate the possibility of maintaining the social relations; although the territory of Lithuania is small comparatively, however, the inconvenient infrastructure of public transport as well as the lack of finance may predetermine the fact that part of the families do not visit their relatives namely because the penitentiary institution is too far away (it is needed to carry a separate research seeking to verify the latter hypothesis only it is noted that e.g. in Denmark, which according to its territory is very similar to Lithuania, the place of residence of the prisoner is one of the main criteria upon choosing the place of imprisonment)\textsuperscript{72};

d) For the short-term trips home of the imprisoned (Article 104 of the Criminal Code of the Republic of Lithuania) the possibilities are very limited, actually they could be provided only for a very small part of prisoners and usualy in cases when the release on the probation could already be applied for them\textsuperscript{73}; the fact that such trip is forbidden for foreigners (Article 104, Paragraph 4 Part 3 Article 154 of the Criminal Code of the Republic of Lithuania) is incompatible with the equality principle as well as European imprisonment rules;

e) The Criminal Code of the Republic of Lithuania actually does not provide any peculiarities for the execution of imprisonment sentence by juveniles, no specific aims are provided, and the provision that a person having attained 18 could be left at the juvenile penitentiary institution (i.e. left only upon certain conditions, Article 81 of the Criminal Code of the Republic of Lithuania), contradicts the aim of successful (re)socialization;

f) There is no policy with the help of which it would be sought to inform the society about the activities of imprisonment system and positive changes, form an opinion based on tolerance and understanding about the penitentiary institutions and prisoners; it is strange that even among the press releases of the Prisons’ Department the absolute majority form those of negative type, related (exceptionally) with different violations of laws within the system of imprisonment\textsuperscript{74}.

\textsuperscript{71} Article 66 of the Criminal Code of the Republic of Lithuania provides that the admission procedure of the sentenced to the imprisonment is specified by the internal rules of the penitentiary institution and paragraph 64 of them provides such (quite abstract) rule: “The psychologist, commander, the officials of the internal investigations, care, personal health care, recording and other services carry the investigative, explanatory work with the arrived sentenced at the quarantine premises of the penitentiary institution and record the results in the book of the individual work with the sentenced”.

\textsuperscript{72} See Part 1 Article 23 of the Penal Code of Denmark.

\textsuperscript{73} In this case it should be noted that following the primary observations (press reviews) the opinion of the inhabitants of Lithuania (that should be more deeply analysed from the scientific point of view) is very contrary towards the prisoners, esacialy with respect to those who are granted the freedom beforehand. That predetermines partially understandable carefulnes of politicians and responsible institutions on this issue.

\textsuperscript{74} See press releases of the Prisons’ Department on the homepage under the heading “News” www.kalejimudepartamentas.lt.
The rights of the detained following the administrative procedure and the rights of the arrested

The biggest problem in this field is the condition of police wards that is clearly and directly described by the public police themselves. In the beginning of 2004 there were 46 territorial police arrest wards in Lithuania (1.058 places). The majority of them do not meet the international legal acts and recommendations. There are approximately 4 m² per person at the police arrest wards and in certain just 2 m² (the provided norm is 5 m²). The norm of the residential area per one person do not meet the requirements of hygienic norms at 23 (50%) arrest wards. 11 (26%) arrest wards do not have any beds, 3 (6.5%) arrest wards do not have showers, 22 (50%) arrest wards do not have medical stations, 30 (65%) arrest wards do not have the isolation rooms in case of communicative diseases, 14 (30%) of arrest wards do not have the appointment rooms installed, 35 (75%) arrest wards have artificial lighting that does not meet the hygienic requirements, 9 (20%) arrest wards have no natural lighting and the daylight does not pass, 13 (30%) of the arrest wards have ineffective mechanic ventilation, 7 (15%) arrest wards have no natural ventilation, 17 (37%) of the arrest wards do not have walking yards, 6 (13%) of the arrest wards do not have a room for warming of food and dish washing, 7(15%) of the arrest wards have no lavatories. The currently implemented programme for 2003–2007 of Renovation of Arrest Wards and Improvement of the Conditions, approved by the Government of the Republic of Lithuania on 29 January 2003 should change the situation.

It is also important to expand the infrastructure of alternatives for administrative arrest, especially public labour, i.e. to create more possibilities to perform such labour, provide the system of performance of such labour at the non-governmental organizations, to regulate on the regulatory level the main provisions (aims, type of labour, and organization of the work with the sentenced).

Constrained hospitalization and human rights

The huge reticence of the latter system from the scientific point of view, the absence of statistics, scientific articles are the most noticeable problems of this system that does not allow revealing and also envisaging the changeable issues. It should be noted that these problems cannot be “inflicted” only on the hospitalization system itself, the majority of them is related to

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75 See the review on the situation at the arrest wards provided by the public police: http://viesoji.policija.lt/index.php?page_id=22.
the strategy of the state policy in this field, its implementation, the lack of scientific methodology, finally, the experience of the old system for the change of which the time is simply needed.

It is obvious only that the outpatient treatment could become the new and most important alternative already provided by the Civil Code and Criminal Code of the Republic of Lithuania, however, currently is not applied in practice as there are no institutions and services that could ensure that 29.

**The measures applied for juvenile related to the deprivation of freedom and their rights**

There are still lots of problems of legal regulation and organizational type. Juvenile are placed at the special education and care homes following the (temporary from 1995(!)) decision of the Government upon the decision of the executive powers, and at the Juvenile Social Assistance and Prevention Center of Kaunas Chief Police Commissariat children could be left for the period of up to 30 days upon the decision of the police following the Order of Commissar General that is not published anywhere 80. Such procedure obviously contradicts Article 20 of the Constitution and Article 5 of the Convention of Human Rights and Fundamental Freedoms. The implementation of educative measures – placement at the special educational institution upon the court decision following Article 88 of the Criminal Code of the Republic of Lithuania – are not practically regulated.

On 9 May 2003 the Government approved by its decision the concept of the law of Juvenile minimal and moderate care. The regulatory base and institutional system created based on the latter law should solve the majority of problems, however, the real functioning of this system will start not soon (in May this year the draft law was submitted to the Government and due to the grounded criticism was returned for the improvement by the authors).

**Recommendations**

The analyzed problems in this chapter seeking to safeguard the rights of the persons with the deprived freedom are of a very different type and degree. It would be possible to formulate certain recommendations for the improvement of safeguarding of the rights of these persons.

It is important to solve the problem of overcrowding of inquiry wards. After entering into force of the new Criminal Code of the Republic of Lithuania the reduction of the number of imprisoned persons is noticed that formed a more favorable situation at

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29 Mental Health Services in the Community, p. 45.
80 The extracts of this order could be found on the homepage of Kaunas Chief Police Commissariat: http://kaunas.policija.lt/?psl=tur&sky=41. The information on the activities of the center see in the newsletter No 4 of the Prevention Service of the Public Police of the Police Department under the Ministry of Interior and Juvenile Prevention Center in Lithuania, No. 4, p. 31-32.
the penitentiary institutions with respect to their crowdedness. However, the problem of overcrowdedness of the inquiry wards remained also after opening the new Kaunas Inquiry Ward that is also already overcrowded.

The material situation of the biggest number of police wards violates the rights of people kept there and humiliates their dignity. The international experts have also paid attention to this situation not once as well as the Ombudsmen of the Seimas. The Programme of the Government adopted intended for the renovation of these wards, however, the improvement of the material situation of the police wards due to the insufficient funding remains only the far away perspective. The funding of renovation of the arrest wards should be one of the priorities of the Government.

Application of the life sentence, not providing the regulatory possibilities of absolution/mitigation of it, still excludes Lithuania from the tradition of criminal law dominating in Europe, misbecome with the international recommendations; raise the issue of constitutionality of such regulation. The initiative for the change of such legal regulation, inducement of public discussion is needed.

In a course of late years the system of the imprisonment of the sentenced has significantly changed in Lithuania but still has certain deficiencies and from the scientific point of view the negotiable provisions. The concept of correction of a person should be mentioned, also inconsistent regulation of the process of the re-socialization of a person at the penitentiary institutions, still clear predominance of the subculture, dominance of the culture of punishment but not the real solving of conflicts, placement of the huge number of prisoners in the big premises, small number of working prisoners – this is just a part of problems for solving of which different type and term activity strategies and measures are needed. Solving of the part of them is already programmed by the programmes adopted by the Government; however, it is important to ensure the proper funding of the implementation of them. For solving of other problems of theoretical and practical nature the comprehensive monitoring of functioning of the whole imprisonment system (regulatory acts, institutions and others) is needed. This would help to provide the respective further strategy of this system, plan and implement the local measures and those dedicated for the whole system (respective training of employees, improvement of their working conditions, organization of experimental projects, work and training and others).

Public information on the imprisonment system should also be mentioned as a separate problem. The negative attitude of the public to the sentenced is actually induced by the imprisonment system itself – the press releases contain the information on the crimes, other law violations and accidents at the penitentiary institutions and the positive information is very rare. It is important to create the system of public relations where without hiding the negative facts the positive aspects of penitentiary institutions, achievements, reforms, implemented programmes and others should also be provided and introduced.
Organization of juvenile imprisonment is one of the weakest aspects of the discussed topic. The Criminal Code of the Republic of Lithuania actually does not provide any implementation of imprisonment sentence over juvenile, the peculiarities of their resocialization process, does not raise any specific objectives. The procedure of placement of juveniles at the specialized education and care homes as well as at the Juvenile Social Assistance and Prevention Center contradicts the rights of the child consolidated on the international and national levels. The situation could be changed by the draft of the law amending and supplementing the Criminal Code of the Republic of Lithuania that would provide the peculiarities of execution of imprisonment sentence over the juvenile. It is also important to further intensively discuss and improve the draft law of Juvenile minimal and moderate care, to create the proper and efficient infrastructure of juvenile resocialisation at all levels of institutions.

In the field of constrained hospitalization the main problem is the lack of the information on the activities of this system, therefore it is important to encourage the research in this field and create the information system (collection of statistics).
THE RIGHTS OF NATIONAL MINORITIES

Introduction

According to the statistical data Lithuanians form 83% of all the citizens, whereas the Polish (6.7% of all the number of the citizens) and Russians (6.3% of all the citizens) are the largest national minorities in Lithuania. Other national minorities are much smaller (e.g. Byelorussians – 1.2%, Ukrainians – 0.7%, all other – not more than 0.1% of the entire citizens). Historically, national minorities are mostly concentrated in the Eastern Lithuania where Lithuanians often form the so called “minority within minority”, e.g. Šalčininkai, Vilnius region or Visaginas city. According to the population census the most varied city among the biggest ones by its national composition is Vilnius (Lithuanians – 57.8%, Polish – 18%, Russians – 14%, Byelorussians – 4%, Ukrainians – 1.3%, other nationalities – 1.4%) and Klaipėda (Lithuanians – 71.3%, Russians – 21.3%, Byelorussians – 1.9%, Ukrainians – 2.4%, other nationalities – 1.2%). It should be noted that mostly conditionally small (3000–4000 persons) communities of Jewry and Roma most often face the intolerance than biggest national and religious minorities in Lithuania. The attention also should be paid that the citizens of Lithuania evaluate the general situation of the rights of national minorities approvingly enough.

Legal basis of the protection of national minorities

Lithuania has accessed the United Nations International Covenant on Civil and Political Rights the separate articles of which (e.g. 26, 27) relate to the protection of national minorities. The following ratified United Nations Convention on Elimination of the All

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1 The data of population and home census taken in 2001.
2 Based on the results of opinion poll carried by UAB RAIT by the order of Ethnic Research Center of Social Research Institute 77% of the respondents would not like to live in neighborhood of Roma, 31% of Jewish; 68% of the respondents stated that in a course of 15 years their attitude towards Roma worsened. Based on the data of the representative opinion poll of the citizens carried by “Vilmorus” in 2003 20.4% of the respondents evaluate Jewish people negatively, 42.7% – Roma people, 8% – black people, 24.4% – Muslim people. The public opinion and market research center “Vilmorus”. Profiles of tolerance of Lithuania. The representative opinion poll (N=1044), 6–9 November 2003 [interactive], Vilnius, 2003 [referred to on 31 August 2005], p.5. Internet search: http://www3.lrs.lt/owa-bin/owarepl/inter/owa/ U0117830.doc.
3 E.g. based on the data of the sociologic research “Human rights in Lithuania in 2001–2004” even 41% of the respondents evaluate the rights of national minorities very well (only 4% evaluate them very badly). Though the evaluation got worse if compared to the year 2001 (then there were 55% of positive evaluations); in 2004 42% of Lithuanians and 36% of non Lithuanians evaluated these rights positively, whereas 3% of Lithuanians and 7% of non Lithuanians provided negative evaluations; 16% of the respondents mentioned that the protection of the rights of national minorities after Lithuania’s accession to the European Union improved (only 1% stated that the situation got worse); 40% of the respondents stated that a lot of attention is paid to the rights of national minorities (7% stated that there is little attention paid). See the chapter “Sociological aspects of human rights monitoring”.
Forms of Racial Discrimination\(^5\) (entered into force on 09-01-1999), Convention Relating to the Status of Stateless Persons\(^6\) (entered into force on 07-05-2000), the United Nations Convention on the Prevention and Punishment of the Crime of Genocide\(^7\) (entered into force on 01-05-1996) is also accessed. Among the international documents important for the national minorities is International Labor Organization Convention Concerning Discrimination in Respect of Employment and Occupation\(^8\) (entered into force on 26-09-1995) as well as 1960 UNESCO Convention against Discrimination in Education\(^9\) (the latter is neither ratified nor signed by Lithuania yet, though European Committee against Racism and Intolerance urged to do so in its report of 2002\(^10\)).

Talking about the protection on the regional level, the Council of Europe Framework Convention for the Protection of National Minorities\(^11\) that Lithuania has ratified on 17-02-2000 (entered into force from 01-07-2000). The European Charter for Regional or Minority Languages of Council of Europe as of 1992 has not been signed yet\(^12\). Although this charter is more for the protection of languages, the ratification of it would serve the national minorities, as the language is one of the most important elements of their distinction. The 12\(^{th}\) Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms\(^13\) should also be ratified in the near future prohibiting the discrimination by exercising any of the rights provided by the national laws. However, at present it is not even signed. Lithuania has also concluded the bilateral agreements that define certain aspects of the protection of national minorities (e.g. with Poland, Byelorussia, Ukraine, Hungary and other)\(^14\). The European Union legal acts are also important for the safeguar-

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The sufficient level of the protection, e.g. the Charter of the Fundamental Rights has the strong moral power\textsuperscript{15} Article 21 of which unambiguously provides the prohibition of discrimination. Article 13 of the European Community establishment Treaty providing the legal obligations\textsuperscript{16} binds the Council to take certain actions in combating the racial, ethnic, religious and other discrimination. Based on the aforementioned article the Programme of Anti-Discriminative Activities of 2001–2006 has been adopted\textsuperscript{17} also the directives on the racial equality\textsuperscript{18} and equal conditions applied upon the employment and at work\textsuperscript{19}.

Article 37 of the Constitution acknowledges the right of the citizens belonging to the national minorities to foster their language, culture and traditions. Article 45 provides that the national communities of the citizens independently take care of their ethnic culture, education, charity, mutual assistance and the state supports them. Thus, the cultural autonomy of national communities is consolidated. The wording of the mentioned provisions causes certain doubts as the mentioned rights should not be linked to the citizenship, should belong to all the persons. Article 29 consolidates the equality of all the persons against the law, court and other state institutions as well as officers, despite of their gender, race, nationality, language, origin, social situation, belief, convictions or opinions. Therefore, the principle of equal rights is consolidated by the mentioned article. Article 25 of the Constitution limits the freedom of speech by specifying it as the one incompatible with the national, racial, religious or social hatred, incitement of violence or discrimination, slander and disinformation.

The number of laws regulate the protection of national minorities, the most important of which are the Laws on National Minorities\textsuperscript{20}, Citizenship\textsuperscript{21}, Official Language\textsuperscript{22}, Political Parties\textsuperscript{23}, Public Information\textsuperscript{24}, Religious Communities and Association\textsuperscript{25}, Education\textsuperscript{26}, Associations\textsuperscript{27}, Equal Opportunities\textsuperscript{28}, as well as some other.

The laws of Lithuania do not provide the adequate definition of national minorities as there is no such definition in the Convention of the Fundamentals of the Protection of

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\item \textsuperscript{15} Charter of Fundamental Rights of the European Union // OJEC. – 2000, C 364.
\item \textsuperscript{16} Consolidated version of the Treaty establishing the European Community // OJEC. – 2002, C 325.
\end{itemize}
National Minorities. It is interesting to note that in the new Draft Law on the National Minorities such notion is introduced and set as: “national (ethnic) minority is a group of persons residing in the Republic of Lithuania as well as having chosen the belonging to other national (ethnic) group but not Lithuanian, by their free will”\(^{29}\). Such definition should not constrict at the moment possessed rights by the national minorities. Moreover, Article 4 of the project consolidates the person’s right to choose whether one should behave with him like with the person belonging for national minority or not, and that due to that he should not appear in an unfavorable situation. Talking about the provisions of the criminal law Articles 169 and 170 of the Criminal Code should be mentioned, the first of which prohibits the discrimination due to the nationality, race, gender, origin, religion or other dependence on some group. The second article prohibits the instigation against any national, racial, ethnic, religious or other group of people. Article 312 of the Criminal Code provides the liability for the profanation of the burial-place having the racial, national or religious motifs. The introduction of the aforementioned provisions into the Criminal Law of Lithuania is welcomed. However, as it has been noticed by the European Commission against the racism and intolerance the code has no provisions that clearly treat the racist motives of traditional crimes as the special aggravating circumstance\(^{30}\). In practice, the crimes having such motives most often are treated as the violations of public order. According to the data of the National Court Administration, during 2001–2003 Lithuanian courts have not received and examined any cases regarding the racism or propaganda of anti-Semitism, instigation of hatred. Following the data of the Prosecutor General’s Office in 2000–2003 there have been 2 investigations started due to the instigation against the national groups\(^{31}\). On the one hand such number should take delight. However, on the other hand that shows the passivity of the officials of the pretrial investigation institutions, having in mind the sellies of national hatred that caused wide ripples in the press, manifestations of anti-Semitism on the Internet and similar. Talking about the newest changes in the regulatory basis it should be mentioned that on 01-01-2005 the Law on Equal Opportunities has come into force. With the help of this law the competence of the Service of Equal Opportunities of Men and Women has been supplemented by the monitoring function of the prohibition to discriminate due to person’s age, gender, sexual orientation, disability, racial and ethnic dependence, religion or beliefs. The institution itself is called the Office of the Equal Opportunities Ombudsman.


The main fields of the protection of the rights of national minorities

**Education and science.** Education of national minorities in Lithuania is carried following the Law on Education 32, the provisions of education of national minorities 33 and other legal acts. There are non-Lithuanian state and private secondary education schools. Article 30 of the Law on Education regulates the right to study in the official or native language. It provides that the education process at the secondary schools or the informal education institutions may be carried in the language of national minority. However, the schools have to assure also the standard of knowledge of the official language. The education process at the state national minorities’ secondary education schools is carries in Byelorussian, Polish, Russian or through the coordination of different school languages; also the native language could be taught as a subject using the possibilities of out-of-school activities or at the institutions of Saturday/Sunday informal education 34. Thus, there are three languages of national minorities left in the state school systems. Whereas the languages of other national minorities will be taught as the subject at schools where the rest of the subjects are taught in Lithuanian. Referring to the fact that other national minorities are not large, such model of education in the languages of national minorities at the moment is the most optimal. Moreover, the national minorities have the right to establish the private schools where the subjects are taught in their language. It is also sought to create the system of the informal education for satisfying the needs of sparse or living incompact national minorities. It should be noted that during the school year 2004/2005 the number of secondary schools of national minorities reduced and the number of schoolchildren there if compared to the school year 2003/2004. On the other hand, the similar reduction tendency is noticed also with respect to Lithuanian schools and the number of schoolchildren there 35.

According to the carried analysis of all the textbooks and education aids carried in 2001 by the Public Enterprise Education Change Fund the lack of the more comprehensive cognitive material on national minorities is evident. Moreover, there is still prevailing the tendency of formation of ethnic identity corresponding the language taught, i.e. at schools where subjects are taught in Lithuanian, Lithuanians are educated, in Polish –

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34 Ibid.
35 E.g. the number of Polish schools reduced by 22.89% (from 83 to 64), respectively the number of schoolchildren reduced by 4.21% (from 13813 to 13231); the number of Russian schools reduced by 6.9% (from 58 to 54), accordingly the number of schoolchildren by 22.73% (26217 and 22880). For the comparison the number of Lithuanian schools reduced by 16.58% (from 1616 to 1348), the number of schoolchildren respectively by 2.89 % (from 495552 to 481210) [interactive; referred to on 1 August 2005]. Access via Internet: http://www.tmid.lt/index.php?page_id=22.
Polish and so on. That may stimulate the marginalization or more intensive cultural assimilation\textsuperscript{36} of persons belonging to national minorities (in solitary cases also Lithuanians as minorities) in cases when the schoolchild is attending the school where the language taught is other that the native one. In the future one should attempt to provide the knowledge in an objective way in the education process on the national minorities and form the multicultural cognition.

**Culture.** As it has been already mentioned, Article 45 of the Constitution safeguards the right for the national minorities to the cultural autonomy. There is National Community Home in Vilnius, in 2001 the Roma Center has been established, in 2004 the center of different national cultures in Kaunas. There are also cultural centers of national minorities in other cities, the means are allotted for the cultural projects of different organizations of national minorities. Up to 2004 the state supported the development of the culture of national minorities following the Programme of Promotion of Cultural Activities of National Minorities\textsuperscript{37}. Continuing this activity the state has come into the obligation in the new Programme of Integration of National Minorities into the Society of Lithuania in 2005–2010\textsuperscript{38} to support the nongovernmental organizations of national minorities, help the persons belonging to the national minorities, preserve the national identity, language, customs and traditions. The programme provides the support of the activities of cultural centers of national minorities, education and cultural activities of nongovernmental organizations of national minorities, different ways of support of the culture and cultural activities.

**The language.** According to Article 10 of the Framework Convention for the Protection of National Minorities the Parties underwent the obligations to acknowledge the right of each person belonging to national minority to freely and at ease, privately and publicly, orally and in a written form use the language of his national minority, also in areas where traditionally or abundantly live the persons belonging to national minorities, to provide the conditions for usage of the language of the national minority in communication with the institutions of administrative government in case of a real need.

Lithuanian language has the status of the official language in Lithuania. The laws do not regulate the unofficial language of communication, the right for the national minorities is safeguarded to foster their language\textsuperscript{39}. Following Article 4 of the Law on National Minori-

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ties the (local) language of the national minority apart from the official language is used at the local institutions and organizations at the administrative territorial units where any national minority is living in a compact way. However, it should be noticed that there are no criteria following which such regions are established. Thus this provision could be interpreted in a different way. Moreover, Article 7 of the Law on the Official Language provides that the Heads of the Administrative Institutions must assure the services in official language provided for the citizens. Thus, a certain legal obscurity appears – the provisions of which law should be applied. Though this problem most probably is more of a theoretical type, as practically in the regions the majority of the population of which form the national minorities, in relations with the government elected by people the language used is that of the national minority without any special difficulties (e.g. according to the data of the carried questionnaire interviews in 1997 “Eastern Lithuania and official language” only 5.6% of the respondents stated that they themselves faced immediately the problems due to the bad knowledge of Lithuanian language). Nonetheless for the assurance of legal clarity the aforementioned legal acts should be revised and amended, eliminating the inconsistencies. The state should also ensure that the obligatory knowledge of the official language would not overpass the limits of the public sector, i.e. the unofficial communication language should not be regulated in some way.

Until now it is disputable how the names and surnames of the persons belonging to the national minorities should be written in the passports. Mostly the representatives belonging to the polish national minority are unsatisfied about the presently existing procedure allowing the writing of the names and surnames of the non-Lithuanian persons in the passports using the Lithuanian characters according to the pronunciation and by adding or not adding the Lithuanian ending who wish that their names and surnames would be written in Polish characters in their passports. However, the Constitutional Court provided the explanation that the Ruling “On the writing of the Names and Surnames in the Passport of the citizen of the Republic of Lithuania” of the Supreme Council as of 31 January 1991 providing such procedure does not contradict the Constitution as the passports, being the official documents, fall under the scope of the public state life. The United Nations Human Rights Commission presently analyses the complaint of T. Klečkovskis, residing in Lithuania regarding the writing of his surname. It should be noted that European Court of Human Rights has also investigated the complaint of T. Klečkovskis regarding the writing of his surname and referring to its previous jurisprudence, refused to examine the case in general.

Article 11 of the Framework Convention for the Protection of National Minorities obligates the Parties to attempt to use also the language of minorities in places where traditionally or largely reside the national minorities when writing the public names of places, streets and making other topographic entries in case there is the need of such marking. Articles 4 and 5 of the Law on the National Minorities provide that in certain administrative territorial units where compactly live certain national minority, the informational inscriptions apart from those in Lithuanian may also be in the language of that national minority (local). In this case again the collision appears between the Law on the National Minorities and the Law on the Official Language as the latter provides that all public signs must be in the official language and the languages of national minorities are allowed only in the names and signs of the organizations representing the national minorities. There were already problems in practice due to the aforementioned inconsistency.

Religion. Article 43 of the Constitution provides that the state recognizes the traditional Lithuanian churches and religious organizations, whereas other churches and religious organizations in case they have the support in the public and their teaching as well as ceremonies do not contradict the law and honor. The state supports the traditional religious communities, they can give lectures at schools. Following Article 2 of the Law on National Minorities the right to profess any religion or not to profess, to stand the religious ceremony and national rituals in their native language is safeguarded. There is no state religion in Lithuania and there are 9 religious communities as well as associations recognized as traditional ones that are concretely named in the law. The question arises whether the division of the religious communities into the traditional and non-traditional does not infringe the equality principle. However, on the other hand, neither the new religious movements, nor the religious communities that have not been acknowledged by the state such as e.g. the Shia Muslims, are prevented from gaining of the status of religious commu-

45 E.g. Ėleslava Stupenko, the forewoman of Sudervė, Vilnius region, was punished by the administrative fine imposed for the usage of legally unmotivated names of the streets of Sudervė on the street plates: appellative words and place names were translated from Lithuanian into the Polish language (Kernavės str. – ul. Kiernowska, Saulės str. – ul. Słoneczna, Vilniaus str. – ul. Wilenska, Maišiagalos str. – ul. Mojszczolska and so on). The forewoman explained that she referred to the Framework Convention for the Protection of National Minorities and referred to the request of the residents to translate these names into the Polish language. This imposition of the fine by the Inspection was appealed by the forewoman to the Vilnius County Administrative Court. The Court acknowledged that the fine was imposed lawfully, however decided to change the fine into the warning. The forewoman appealed the latter judgment at the Supreme Administrative Court of Lithuania. The board of judges of that court examined the case and made a decision not to satisfy the appeal claim. The report of the activities of 2003 of the Official Language Inspection [interactive], p. 12 [referred to on 2 August 2005]. Access via Internet: http://vki.lrs.lt/doc/2003ataskaita.doc.
nity (25 years have to pass from the primary registration in Lithuania and they have to be supported by the public\(^{47}\)). It could be stated that the laws in Lithuania and the existing practice with respect to the belief corresponds the international standards of human rights.

**Political, economic and social fields.** The citizens of the Republic of Lithuania belonging to the national minorities have the same political rights as other Lithuanian citizens. The majority of the persons of the non-Lithuanian origin residing in Lithuania have the citizenship. Only part of Roma have no citizenship who due to the ignorance or other reasons have not managed to get the citizenship following the simplified order, following the former laws on the citizenship. The attention should be paid to the fact that Paragraph 2 Part 2 Article 18 of the Law on the Citizenship that entered into force on 01-01-2003 provides that one is deprived of the citizenship of Lithuania after gaining the citizenship of another state. However, this provision is not applied for the citizens of Lithuanian origin\(^{48}\). According to the opinion of the Advisory Committee of the Council of Europe the provisions of this law are discriminative and violate the right of the persons belonging to the national minorities to be equal in front of the law\(^{49}\). Upon the initiative of the group of the members of the Seimas presently explains away whether Article 18 of the Law on the Citizenship does not contradict the Constitution.

The citizens of Lithuania belonging to the national minorities have the active and passive suffrage, the right for equal conditions for joining the state service, take any position at the state government institutions, companies, enterprises and organizations. The same electoral threshold for the elections to the Seimas is applied for the parties of the national minorities as to all other parties – 5% (7% for the coalitions)\(^{50}\). Having in mind the general number of the citizens belonging to certain national minorities such provision of the law limits the possibilities of the ethnic minorities to get into Seimas. However, as the practice of the European Court of Human Rights showed the provision of the exceptions in the electoral laws for the parties of national minorities may induce the formation of such parties having the only aim – to avoid the electoral threshold\(^{51}\). Moreover, the parties formed on the national grounds by the foreign states may be used as the tool for the political pressure.

In the field of occupation the possibilities for the persons belonging to the national minorities to equally compete in the labor market are safeguarded by the laws. However, in practice part of the persons due to the insufficient knowledge of the official language, having the lower secondary education, those ready to compete in the labor market forms

\(^{47}\) Ibid, Article 6.


less than majority\textsuperscript{52}. According to the data of the Research on the Occupation of the Citizens, the unemployment in 2002 among the representatives of the national minorities is larger than the average one: the general unemployment – 13.8\%, Polish – 17.8\%, Russian – 20.3\%, persons of other nationalities – 17.4\%.\textsuperscript{53} First of all, for the improvement of the situation the care should be taken of the representatives of the most vulnerable social groups (e.g. elder persons) seeking to teach them the official language what would help them to equally compete in the labor market. Roma face the especially complicated situation in the field of occupation. They, apart the language barrier that is the essential obstacle for the members of other national minorities, also face the specific problems such as discrimination, social disjunction, very low educational level (it should be noted that the situation is impeded also by the very little motivation of Roma themselves to change the way of life).

Vulnerable groups

\textbf{Roma}. The situation of Roma among all the national minorities is most probably the worst. They face the intolerance, discrimination, various problems in the fields of occupation, accommodation, education, services, health care and other. Despite the implemented program approved by the Government on Roma integration to the public of Lithuania during 2000–2004\textsuperscript{54}, according to the data of the carried research\textsuperscript{55} by the Human Rights Monitoring Institute in the concrete the situation changed slightly. Integration attempts in different fields remained not interconnected and had no supplementing one another effect. The majority of the identified problems remained. On the other hand, all the measures provided by the programme have been implemented. Some of them have the long-term effect. Thus, at the moment it is difficult to specifically evaluate the progress made. The low level of education and motivation of Roma themselves that would be oriented to the problem solving also had influence on the implementation of the programme. Among the main achievements the establishment of the Roma public center could be mentioned and its educational activities. During the implementation of the programme most of the attempts were made towards the education of children and the language courses for the adults, the first textbook in Romani language was published. However, one failed to achieve the more significant improvement of the general situation of Roma. The programme itself was more oriented to the educational field but not social. According to the opinion of

\begin{footnotesize}
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\item Ibid., Paragraph 6.
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the European Commission against Racism and Intolerance the successful strategy for the improvement of the satiation of Roma community should at the same time include different fields, i.e. employment, health care and accommodation. As the faulty practice with respect to the human rights we could mention the decision of the Vilnius municipality carried in December 2004 to destroy 6 buildings illegally built in the settlement of Roma of Kirtimai, without having the court judgement for that. Such radical activities of the government institutions complicate the situation of Roma and deepen their isolation. The state strategies for including Roma into the educational system and labor market should be prepared for solving the complicated situation of Roma people, establish the priority fields of social assistance, prepare the objective projects oriented to the communities, funding scheme, form the block of social workers (mediators). Moreover, referring to the experience of Roma integration program of 2000–2004 the different integration fields should be linked so that they could be supplementing each other and in such a way more efficient ones.

Jewry. The Jewry is one of the oldest national and religious minorities in Lithuania. Though the main part of the public is not opposing the Jewry, still, as it has been already mentioned at the beginning, part of the society has the negative attitude towards the Jewry, the anti-Semitic statements occur as well as articles in the mass media, cases of cemetery or memorial graves profanation, public anti-Semitic incidents that, however, do not cause the more strict legal evaluation. For example, M. Murza, the Leader of Nationalists in Šiauliai, yet has been punished for the anti-Semitic statements just by imposing the administrative fine. Though the state politics publicly declare that such activities should be treated strictly. Presently, the relevant issue is the wish of the Litvacs (the Jewry deriving themselves from Lithuania) residing in Israel to retrieve their citizenship of Lithuania. The provision of the Law on the Citizenship introducing the ethnic criterion when establishing the right to the double citizenship is disputable. However, in case such right would be provided only for the Jewry among other persons of non-Lithuanian origin, then other national minorities would appear in an unequal situation.

58 Ibid., p. 29.
59 E.g. on 23 December 2003 when setting up the religious symbol of Jews in the center of Šiauliai – menorah, M. Murza, the nationalist of Šiauliai, disturbed with his folds, to set up the menorah, insulted and offended the Jews nation by shouting and carrying the banners. The folds of M. Murza will have to come before the court [interactive]. BNS, 12-03-2004 [referred to on 1 August 2005]. Access via Internet: http://www.delfi.lt/archive/article.php?id=3912457&categoryID=7&ndate=1079102091.
Mass Media

The majority of bigger national communities publish different publications in their native language, as well as other languages. Part of time of the national radio and TV is also devoted for the different national minorities. There is a lack of political and publicist broadcasts in the language of national minorities. Thus, the representatives of national minorities very often get to know about the political processes from the retransmitted neighboring TVs the information provided by which is not always objective enough. In the Mass Media the national minorities are usually evaluated in a neutral way. However, as it has been noted by the European Commission against Racism and Intolerance the national minorities in the mass media are usually assessed neutrally, Lithuanian mass media and especially the press in certain cases contributed to the formation of the negative image of the certain society groups, e.g. of Roma and refugees, especially Chechens as “the members of these groups are nearly exceptionally described in the articles describing the criminal situation, very often in a sensational manner”61. Moreover, one national daily published the series of anti-Semitic and humiliating the sexual minorities articles that according to the human rights experts have not been properly assessed from the legal point of view62. The representatives of the mentioned daily have been punished by the imposition of fines for the distribution of the printing propagating the national discord after the statement that the administrative violation has been made but not the crime committed63. The fine was also imposed on the publisher of the daily as 2nd District Court of Vilnius city assessed the series of articles as the purposeful publicity campaign instigating the hatred for Jews. Such assessment by the court was motivated by the fact that the articles published in a course of three weeks caste into the shade other relevant events at that time, among which was the start of the impeachment process of the then president Rolandas Paksas. The publisher appealed the latter court judgment for the Lithuanian Supreme Administrative Court64. The attention should be paid to the manifestation (in the form of commentaries to the articles) of the racist, anti-Semitic and xenophobic opinions instigating the national discord on the Internet news portals. Due to the anonymous type of Internet the persons for such acts are not arraigned though Article 20 of the Law on Provision of Information to the Public65 prohibits the publishing of information instigating the national, racial and

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62 Anti-Semitic articles and articles humiliating the sexual minorities in the daily “Respublika” were not properly assessed from the legal point of view [interactive]. Human Rights Monitoring Institute, 02.03.2005 [viewed on 1 August 2005]. Access via Internet: http://www.hrmi.lt/news.php?strid=1010&id=2322.
religious hatred. It should be noted that the Law on Provision of Information to the Public does not mention at all the electronic means of mass media that could publish such information. 3 institutions must ensure the following of the provided prohibitions in the mass media: the Commission on the Ethics of Journalists and Publishers, Inspector of the Ethics of Journalists as well as the Commission of Lithuanian Radio and Television.

**Institutional organization**

The issues of the protection of the national minorities are solved by the Human Rights Committee at the Seimas, also the Department of National Minorities and Lithuanians Living Abroad under the Government of the Republic of Lithuania. The Department of National Minorities and Lithuanians Living Abroad forms and implements the state politics of the harmony of national relations. The department supervises the state policy with respect to national minorities, implements the Integration Program of National Minorities into the Society of Lithuania during 2005–2010, allots the means for the support of the activities of organizations of the minorities, monitors the implementation of special programs, ensures the implementation of the state and international obligations with respect to the minorities, suggests and prepares different programmes. The Council of National Communities was established under the Department of National Minorities and Lithuanians Living Abroad consisting of the representatives of national minorities seeking to ensure the closer relations between the national minorities and state officials.

It should be noted that from 01-01-2005 the competence of the Ombudsman of the Equal Opportunities has been broadened and now the persons with the complaints regarding the discrimination, based on the ethnic and racial motives could address that institution. Until 01-01-2005 only the complaints based on the discrimination regarding gender could be addressed to the mentioned service. The number of the institutional protection subjects of the national minorities have been expanded by this amendment as until now the complaints regarding the national discrimination could have been submitted only to the Ombudsman of the Seimas and only regarding the misuse of office or bureaucracy of the state or municipal officials.

**Recommendations**

It has not been established that there are any essential inadequacy in the field of the protection of national minorities between the legal norms of Lithuanian laws and international laws. Although it is not possible to state that the rights of national minorities are fully ensured and implemented in practice. However, crude violations of human rights directed

against the national minorities happen quite rarely. They are not of the mass nature.

Lithuania has accessed the main international contracts regulating the protection of national minorities. Seeking to consolidate the protection level it is needed to ratify the Council of Europe Charter on the Regional or Minorities’ languages, 12 Additional Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms, UNESCO Convention “Against the Discrimination in the Education”.

The laws consolidate the prohibition of discrimination with respect to nationality, ethnics, race or religion. However, it happens that certain laws contain the provisions of discriminative nature, e.g. the Law on the Citizenship provides the ethnic type criteria with respect to the right to the double citizenship. This provision of the discriminative type should be changed. The laws on the National Minorities and Official language should also be coordinated. Their provisions regulating the usage of the languages of the national minorities and the official language in the administrative territorial units where compactly live some national minority, in the local institutions or the informational signs contradict one another.

The criminal liability is provided for the discrimination with respect to national minorities. However, the racist motives of traditional crimes are not considered as the special aggravating circumstances. In practice there are nearly no cases instituted for the racism or anti-Semitism propaganda, instigation of hatred. The attempts should be made to make the articles of the Criminal Code of the antidiscriminative nature not only the “paper” ones and the officials of the pretrial investigation would not avoid their application.

Despite of the integration programme the big number of Roma still face the hard living conditions, discrimination, low level of education and social disjuncture. For the solutions of Roma problems it is advisable to analyze the experience of the integration programme of 2000–2004, create the state strategies for the inclusion of Roma into the education process and labor market, establish the priority assistance fields, relate the separate fields of integration into the integral complex with the aim to supplement one another.

Sometimes it happens to hear the xenophobic and anti-Semitic outbursts in the mass media (especially in electronic one) directed against the certain national minorities. The biggest concern is caused by the fact that usually the executors of such activities remain unpunished in practice. It is important that the Law on the Provision of Information to the Public would regulate the electronic mass media as well.
THE RIGHTS OF THE SEXUAL MINORITIES

Introduction

The homophobia is the appearance of the intolerance manifesting in the fear of homosexual people and in the intolerance towards them. Sexual orientation is one of the main elements of person’s identity. Whereas discrimination based on the orientation could be understood as the rough interference into the private life of a person and violation of the principle of equal rights. Talking about the rights of sexual minorities it is important to note that these minorities do not attempt to gain some special rights or privileges. Simply through the fight against the discrimination of homosexual people it is sought to safeguard all the civil, political, social, economic and cultural rights for each person despite of his sexual orientation. The situation in Lithuania causes the concern as according to the data of the research carried by the Center of Gender Studies at Vilnius University the citizens of Lithuania are quite homophobic (in the scale justifying the homosexuality the Lithuanian respondents scored hardly 1.86 points out of the potential 10, whereas the most tolerant in Europe are the citizens of Holland – they scored 7.83 points). According to the data of the questionnaire interview carried in May 2005 61% of the respondents would not like to live in neighboring with the homosexual people. The attention should be paid to the fact that the data of the sociologic surveys depending on the chosen methodology may significantly differ, for example, according to the data of the representative survey of the residents, carried in 2003 by “Vilmorus” the level of intolerance in Lithuania is lower as 22.7% of the respondents would not like to have homosexual people as neighbors; 40.6% of the respondents thought that it is never possible to justify the discrimination of homosexual people during the employment process (32.7% of the respondents have been of the opinion that sometimes it is possible to justify this, whereas, 9.9% of the respondents thought that it is always possible to justify this). On the other hand, of late years the positive changes are also noticed, especially in the

3 Public Opinion Poll carried by UAB RAIT upon the order of Ethnic Investigations Center of the Institute on the Sociologic Research.
fields of law, e.g. the new anti-discriminative provisions in the punitive as well as labor laws, expanded functions of the Ombudsman of Equal Opportunities. The Lithuanian Government, together with EU in 2005 will provide the support of more than 1 million litas for the fight against the hatred towards the sexual minorities, following the programme of the fight against the discrimination EQUAL (it is the first time when the Government allots the financial support for the financing of the projects for the sexual minorities).

**International legal regulation in the field of the protection of the sexual minorities**

Equal rights of the sexual minorities or the principle of non-discrimination are directly or indirectly defined by different international documents. Article 26 of the International Covenant on Civil and Political Rights provides that all people are equal in front of the law and have the right to the same protection of the law without any discrimination and prohibits any type of the discrimination, including the discrimination for gender (the concept of “gender” of the Covenant includes also the sexual orientation).

The European Convention for the Protection of Human Rights and Fundamental Freedoms does not directly consolidate the prohibition to discriminate on the basis of the sexual orientation. However, the European Court of Human Rights already acknowledged in several cases that different types of discrimination based on the sexual orientation infringe the Constitution. The court has decided that the full prohibition of voluntary sexual relations between the two adult men in the private place contradicts Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that provides the right to the respect of the private life of each person. In 1997 the European Human Rights Committee established that the fact that the age of sexual maturity for the homosexual relations is higher than that for the heterosexual relations is already the discrimination violating the right to the private life, provided by Article 14 of the Convention. In the case Salgueiro da Silva Mauta against Portugal the court has established that the refusal to give the child for the care of the father motivating by the homosexuality of the father and his life with the other man violates the right of the father to the family life provided by Article 8 of the European Convention for the Protection of Human Rights and Fundamen-

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6 Internet search: http://www.equal.lt/index.php?article=13&langID=1[interactive; referred to on 1 August 2005].


tal Freedoms as well as violates the Article 14 with respect to sexual orientation (though the Article mentions only the prohibition of the discrimination regarding the gender of the person, the court confirmed that Article 14 regarding the non-discrimination must be interpreted as if it would indirectly mention also the sexual orientation)\(^{11}\). In the case B. against the France the European Court of Human Rights having evaluated the fact that the new sexual identity is not acknowledged for the transsexual woman who has undergone the operation (it has been refused to correct the birth certificate), made a conclusion that in such a way the private life of the claimant is not respected in such a way and has stated the violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms\(^{12}\). After the Protocol 12 of the Convention in force from 01-04-2005, that Lithuania has not signed yet, prohibits the discrimination not only of the rights provided by the Convention but also the established national legal norms and by that significantly expands the scope of the safeguarded protection from the discrimination by the Convention. The important fact is that on 15 January 1998 the European Council granted the consultancy status for the ILGA-Europe\(^{13}\).

Article 21 of the EU Charter of Fundamental Rights consolidates the prohibition of the discrimination on any basis including the discrimination for the sexual orientation. Such prohibition is also consolidated by the secondary legal acts of EU (e.g. directive establishing a general framework for equal treatment in employment and occupation 2000/78/EC\(^{14}\) that prohibit the discrimination based on the sexual orientation in all the labor relations). Thus, in the legal and political environment of Europe homophobia is not tolerated. It should be noted that Article 13 of the Treaty establishing the European Community\(^{15}\) states that “without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. The European Council also made the decision “establishing a Community action programme to combat discrimination (2001 to 2006)”\(^{16}\). Still the main legal document of the EU regulating the protection from the discrimination for sexual orientation is the aforementioned directive 2000/78/EC that provides the prohibition to discriminate for the sexual orientation in all fields related to the labor relations, the direct

\(^{15}\) Consolidated version of the Treaty establishing the European Community // OJEC. – 2002, C 325.
and indirect discrimination is also prohibited during the employment and at work, har-
assment, persecution of the person who submitted the complaint is prohibited and the
sanctions for any discriminative act should be “effective, proportionate and dissuasive”\(^\text{17}\).
The member states are encouraged to ensure the right of the concerned non-governmental
organizations on behalf of the aggrieved from discrimination or in support of him to
take part in the judicial and administrative procedures\(^\text{18}\). Following the analysis of the
documents of the Council of Europe and the European Union the statement could be
made that the abolishing of discrimination based on the sexual orientation becomes the
obligatory norm in Europe\(^\text{19}\). EU member states should consolidate the respect for the
rights of lesbians, gays and bisexual people as well as provide the respective protection
for the sexual minorities from discrimination.

**The situation of sexual minorities in Lithuania**

The Constitution does not provide directly the prohibition of the discrimination
based on the sexual orientation. However, Article 22 provides the immunity of the private
life into the scope of which falls also the sexual orientation of a person. Article 169 of the
Criminal Code provides the prohibition to discriminate a person or a group of persons
on different grounds, including the sexual orientation. Such crime shall be punished by
imposition of a public works or a fine, or confinement, arrest or deprivation of freedom of
up to three years. Article 170 of the Criminal Code prohibits the instigation against diffe-
rent groups of people or persons belonging to them. The obligation to consolidate the
equal opportunities is also provided by the Labor Code Article 2 of which provides the
principles of legal regulation of labor relations one of which is the equality of legal
subjects irrespective of their gender, sexual orientation, race, nationality and other grounds.
Article 129 of the Labor Code provides that the gender, sexual orientation, race, nationa-
ly and so on cannot be the lawful reason for the discontinuation of labor relations when
there is no fault of an employee. Following Article 3 of the Law on the Safety and Health
at Work each employee is guaranteed of the safe and healthy working conditions irres-
pective of the citizenship of an employee, race, nationality, gender, sexual orientation,
age, social origin, political or religious beliefs. Starting from 01-01-2005 the mandate of the
Ombudsman of Equal Opportunities has been expanded and now the competence of the
ombudsman also includes the examination of the complaints regarding the discrimina-
tion based on the sexual orientation. That is a complimentary change as earlier people of
untraditional orientation in case of their discrimination could only directly address the


\(^{18}\) Ibid., Article 9.

\(^{19}\) The Report on the Situation of Human Rights in Lithuania. The Project of Human Rights Activity Plan of the Seimas
court. The positive changes of the Lithuanian legal environment regulating the rights of sexual minorities have been predetermined by the established standards in this field of the European Union that member states have to implement as well as by the activities of Lithuanian Gay League in proposing the amendments to the laws. This non-governmental organization joins the homosexual and bisexual citizens from the age of 18 and is the member of International Lesbian and Gay Association from 1994. For quite a long time this main organization representing the Lithuanian sexual minorities has not received any state support. Another, not so active and known organization, representing the sexual minorities is Lithuanian Lesbian League “Sapfo”.

Both the criminal laws as well as the laws regulating the labor relations provide a clear and unambiguous prohibition of discrimination based on sexual orientation. Whereas the laws regulating the family relations are not so favorable towards the persons of untraditional orientation. Article 3.12 of the Civil Code prohibits the marriage between the persons of the same sexual orientation. Cohabitants also are deemed to be the persons of different gender. It is thought that Lithuanian society is not ready to accept the unisexual marriages and in the near future it is not planned to legalize them. Thus, people of untraditional orientation find themselves under the unequal conditions if compared to the heterosexual couples in the following fields: inheritance (in case of death of a person having left the will, his/her spouse will inherit his property in any case. However, the partner of a lesbian or gay under the similar circumstances will not be able to do the same); adoption (according to the Civil Code the unmarried persons cannot adopt the same child. Thus, living together the couples of lesbians and gays have no right for adoption. On the other hand, it is doubtful whether the interests of the children would not be violated in case in the nearest future the couples of sexual minorities will be allowed to adopt the children as referring to the current attitude of the society such child would experience a huge pressure and the number of cases of taunts at school would increase as well as the risk of social isolation with respect to him); social insurance (e.g. they have no right to get the widowhood pension) as well as other fields related to the rights to gaining of the status of a spouse or cohabitants). The transsexuals also appear in the discriminative situation with respect to marriage and gaining of the rights based on it as the question arises regarding the acknowledgement of their new sexual identity. Nevertheless, Lithuanian sexual minorities decided first of all to attempt to change the opinion of the society about the marriages of gays and lesbians and only then take concrete steps. In their opinion, Lithuanian society will be ready to legitimize the partnership of the persons of the same gender approximately in five years. It should be noted that by resolution “On Respect for Human Rights in the European Union” as of 16 March 2000 the European Parliament addressed the member states by encouraging them to

21 Internet search: http://www.gay.lt/article.asp?ID=407 [interactive; referred to on 1 August 2005].
adopt the laws acknowledging the registered partnerships of persons of the same gender and providing the same rights and obligations for them that are acknowledged with respect to the registered partnership of a male and female.

Regardless of some progress within the legislation, in practice gays, lesbians and bisexuals experience the continuous social separation regarding the discrimination based on their sexual orientation. Following the data of the survey carried by the Lithuanian Gay League the majority of the respondents (representing the sexual minorities) are afraid of the worse behavior of the surrounding people than with others due to their sexual orientation. Based on the results of the survey 67% of the entire respondents hide their sexual orientation from their parents, 64% from their brothers and sisters, 85% from their relatives. Thus, the homosexuals being afraid of the hatred and denunciation are not open even with their closest people. The fact that this fear is not groundless shows the results of another survey, following which 47% of the respondents have stated that having learned about the homosexuality of a daughter or son would try to change him/her and only 28% would accept him/her as he/she is. The sexual orientation is even less seen in the public life of lesbians, gays and bisexuals (89% of them are hiding it) and in working places (88% of the respondents are hiding their sexual orientation in all the workplaces where they worked or in some of them). Such data allow the presumption that homosexuals often face the discrimination in the public services sector as well as at work, nevertheless that the sexual orientation does not have any influence for the abilities of a person to perform one or another work. Apart from the sexual orientation the physical disability or the color of a skin is always evident. Thus the discrimination of the disabled and immigrants may be more widely spread than that of the sexual minorities. However, e.g. transsexuals who are easy to distinguish in case they change gender in a chirurgical way, especially suffer from discrimination. It is thought that in case the employers find out about the divergence from the expected heterosexual femininity or heterosexual masculinity of those looking for work, the discrimination during the employment process based on the sexual orientation would spread more widely.

The hiding of the way of life could have negative psychological effects, cause stress and depression. Most probably it is possible to state that the decision of the polititian to reveal his untraditional orientation would mean the political death (according to the data of the survey, 44% of the residents of Lithuania state that would not change their opinion about the publicly known person if they know about his/her homosexuality, and 38% of the members of the Lithuanian society think that this information would negatively effect their opinion about the concrete person). Homosexuals quite often experience such emotional

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and physical violence, however, they avoid informing about such sallies, being afraid to reveal their orientation. Such fear is quite substantial as following the data of the aforementioned survey one third of the aggrieved has informed the police, however, in 15% of cases the police reacted neutrally or supportively and 39% think that the reaction of the police was hostile and humiliating. The victims of the violence motivated by hatred, irrespective of their nationality, race, gender or sexual orientation, experience much deeper trauma than the victims of incidental crimes as such violence is a personal one and directed against the identity and dignity of a concrete person\(^\text{27}\). About 6% of the respondents stated that they have been dismissed or made to leave the working place due to their sexual orientation. That is quite a big percentage, having in mind that only 15% of the respondents have been open at work. Cases of homophobia happen also at the health care institutions. Even 63% of the participants of the survey have been made to think about the emigration as the main possibility to avoid the problem due to the discriminative behavior at work, in the service sector, at the religious institutions and in the family\(^\text{28}\). A bit better situation is among the academic youth that based on the data of the carried survey could be described as moderately homophobic (50.94% of the students scored 2 and less points of homophobia out of 9). However, even 89.32% of the students are more or less homophobic\(^\text{29}\).

The attention should be paid to the fact that Lithuanian society evaluates the situation of sexual minorities quite positively. According to the data of the sociologic research “Human Rights in Lithuania in 2001–2004” 19% of the respondents (in 2001 – 26%) evaluate the protection of the rights of the sexual minorities very well; 8% (9% in 2001) evaluate as very bad. 22% of the respondents stated that more attention is paid to the rights of sexual minorities (10% thought that there is little attention paid). Referring to a quite critical attitude of Lithuanian society towards the sexual minorities the supposition could be made that too big attention is paid to the mentioned rights and constructed based on the logics that “it is good as it is for them, so what else do they want”\(^\text{30}\).

The mass media also from time to time contain the articles humiliating the sexual minorities and supporting the negative stereotypes that are not properly assessed from the legal point of view. In one case the prosecutor discontinued the pretrial investigation due to the articles that according to the evaluation of the majority of experts instigate the national and racial disagreement as well as that mock the sexual minorities as well as Jews. Still, referring to the huge pressure of the organizations taking care of the protection of human rights as well as public debates, the pretrial investigation has been again renewed and the representatives of the daily were punished by the imposition of the fines.

\(^{27}\) Ibid., p. 5.

\(^{28}\) Ibid., p. 8.


\(^{30}\) See the chapter of this book „Sociological Aspects of Human Rights Monitoring“.
Recommendations

It is possible to state that the sexual minorities in Lithuania experience the constant social isolation due to the discrimination based on the sexual orientation. The attempts of the society itself as well as the attention of the government institutions are needed in the fight against hatred. As positive change we could mention the fact that the Government of Lithuania in cooperation with the EU programme EQUAL will allot significant financial support in 2005 for the fight against the hatred with respect to the sexual minorities.

The changes of law of late years have been favourable for the sexual minorities. Lithuanian criminal law provide the liability for the discrimination based on the sexual orientation. The Labor Law acknowledge the equality of the labor subjects. The Service of the Ombudsman of Equal Opportunities is authorized to examine the complaints regarding the discrimination based on the sexual orientation. For the strengthening of the protection on the international level the Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms should be ratified consolidating the general principle of prohibition of discrimination by exercising any right provided by the internal law of the state. Irrespective of the theoretically consolidated protection, following the data of the survey carried by the Lithuanian Gay League, many homosexuals face the discrimination, taunting, physical and psychic violence as well as intolerance in the family and the public.

In the field of family law the couples of sexual minorities appear in an unequal situation if compared to the heterosexual couples. Implementing the common principle of equality the rights and obligations of the unisexual couples should be gradually equalized to the rights and obligations of the couples of different gender. Moreover, the laws should prohibit the discrimination also in the fields of social protection, social insurance and health care.

Sallies at sexual minorities happen in the mass media. However, they do not always receive the proper legal response. Manifestation of homophobia in the mass media should be punished following the law.

The state institutions should maintain the close relations with the non-governmental organizations in strengthening the fight against the discrimination when implementing the principle of equal opportunities. The laws should provide the right for the non-governmental organizations to lawfully represent the victim of discrimination or support him/her during the trial or administrative procedures.
Arūnas Želvys

THE RIGHTS OF REFUGEES

Introduction

During 2004 the Migration Department under the Ministry of the Interior received 458 applications of aliens to provide the asylum in the Republic of Lithuania (including children). Compared to 2003 the number of applications reduced by 186 or by 28.8% (546 applications during 2002). The majority of applications was submitted by the citizens of Russian Federation (358 applications that formed 78.2% of all the applications; compared to 2003, reduced by 25.6%). The status of the refugee has been granted for 12 aliens (all of them the citizens of Russian Federation) ¹. The status of refugee during January–July 2005 was granted for 3 persons (the citizens of Russian Federation) ².

Quite many changes in the field of the safeguard of the rights of the refugees took place when Lithuania became the member of the European Union. The intercept of the European Union acquis in the field of the refuge is related to the membership: implementation of EU directives; direct application of EU regulations related to the implementation of the refuge procedures on the territory of Lithuania; effect of the new wording of the Law on the Legal Status of Aliens ³ (hereinafter referred to as the Law on the Legal Status of Aliens) as well as other legal acts.

After the Lithuania’s accession to the European Union the Eurodac system, the database of the fingerprints of the asylum applicants, started functioning for the identification of the asylum applicants and help to establish the state responsible for the analysis of the asylum applications. The social integration of refugees is being implemented, for example, the social integration tutors employed by the Red Cross help the refugees to find the work, start the social relations and so on ⁴. Following the agreement between the Ministry of the Interior and the Lithuanian Red Cross, the asylum applicants receive the free of charge translation services, free of charge legal assistance (the legal assistance is provided on all the Lithuanian territory, Refugees Reception Center, Refugees Registration Center, at the Lithuanian Red Cross secretariat in Vilnius), the free of charge legal assistance is also provided at the Vilnius University Law Clinics.

The project of the frontier monitoring is being implemented with the help of which the lawyers of the Red Cross provide the information on the asylum procedure for the

¹ The newest information on the issues of citizenship, visas, migration and asylum in the Republic of Lithuania in 2004 [interactive]; [referred to on 21 March 2005]. Internet search: www.migracija.lt.
aliens near the border. After the establishment of European Refugee Fund\(^5\), following the funding of the mentioned fund and the partial funding by the Ministry of the Interior, the Day Center of the Asylum Seekers has been established in Kaunas, the representative office of International Migrations Organization in Lithuania according to the funding of the mentioned fund is implementing the project on the assistance to voluntary return and reintegrate for persons who have been refused from the asylum (other projects are being implemented as well related to the safeguarding of the rights of the asylum seekers and aliens). On 28 April 2005 the Law on Health System\(^6\) has been amended providing that the free of charge health care includes also the health care of the asylum applicants or aliens that have been granted the temporary or subsidiary protection. The new Law on the Status of Aliens compared to the previous regulation consolidated quite many positive novelties in the field of detention of asylum seekers (the detained persons are provided with the free of charge legal assistance, the repeated examination of the necessity of detention is provided, the alternative detention measures have been provided and so on\(^7\)).

The negative attitude of the society and mass media to the asylum seekers and refugees still remains as a problem. Such attitude has been expressed in the Report as of 2002 of the European Committee for the Fight against the Racism and Intolerance\(^8\). On 6–9 November 2003 the sociologic research was carried „The Profiles of Tolerance in Lithuania“. Following the conclusions of the research among the groups of persons towards which the residents are least tolerant there are also the group of refugees (38.3% of the respondents have the negative attitude towards the refugees)\(^9\). According to the opinion of the experts, the consultations have been carried with whom during the research, the negative image of the asylum seekers is formed due to the negative facts provided by the mass media, the lack of positive information at the mass media, the lack of the public information on the activities of the state institutions in the field of safeguarding of the rights of refugees. On the other hand, the report “Human Rights in Lithuania in 2001–2004”\(^10\) specifies that the attention towards the rights of migrants and refugees is sufficient – 32% (insufficient – 11%). The evaluations slightly improved if compared to the year 2002. Moreover, 19% of the interviewed have mentioned that the protection of these rights improved and only 1% mentioned that they got worse.

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\(^5\) Established by the decision of the Council 2000/596/EB on 28 September 2000.
\(^8\) The second and the third periodical report following the International Convention on the Abolition of All Forms of Racial Discrimination. The News. 2004, No. 76-2628.
\(^9\) Ibid.
\(^10\) See the chapter of this book “Sociological Aspects of Human Rights Monitoring”. 
Detention of the asylum seekers\(^{11}\) and the minimum standards for the acceptance of the asylum seekers

The maximum term of the detention of the asylum seeker non-provided by the Law on the Status of Aliens causes worries. Foreign experts\(^{12}\) also paid attention to the mentioned fact during the preparation of the draft law. Following Paragraph 2 Part 1 of Article 113 of the Law “an alien may be detained if the alien has illegally entered into or stays in the Republic of Lithuania”. Following Article 115 in view of the fact that the alien’s identity has been established, the court may take a decision not to detain the alien and to grant him a measure alternative to detention. The majority of the asylum seekers are forced to leave their country without the person’s identity documents and cannot get them later. In such cases the alternative detention measures are not imposed and the detention may be applied for the undefined period of time as the law does not provide the maximum terms exceeding 48 hours (Article 12(5) of the previously valid law on the Status of Refugee\(^{13}\) provided the maximum term of detention of 12 months). In case it is impossible to establish the identity of aliens they, after a certain established period of time, should be released from the detention institution\(^{14}\). It is not clear why the maximum detention period is not provided by the law, as the Paragraph 58 of the Conclusion on the Draft Law on the Legal Status of Aliens\(^{15}\) specifies the opinion of the Human Rights Committee of the Seimas that “such conduct could provide the applicants with the grounds to contest at the European Court of Human Rights the fact that the measure has not been provided by the law, i.e. Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms may be infringed”. Following the conclusions of the employees of Aliens’ Registration Center the term of the detention usually does not exceed the period of time during which the asylum application has to be examined. However, this does not mean that the detention in all cases will be strictly terminal. Based on the conclusions of the representatives of Red Cross after the rejection of asylum application and after the detention of asylum seeker due to the decision to deport him from Lithuania (Paragraph 5 Article 113), the term of the detention of the asylum seeker due to the incapacity of the state to deport him from the country or due to some other reasons independent from him may become unfoundedly long. The absence of the maximum term of detention is partially compensated by the provision of the Law on the Status of Aliens following which the alien who cannot be deported from the Republic of Lithuania due to the objective reasons in a course of one year from the

\(^{11}\) We are grateful for the representative of Lithuanian Red Cross the Attorney at Law Laurynas Biekša for the help when preparing this chapter and for the provided overview of the main problems in this field.


day of the decision on the deportation is provided with the issued temporary residence permit in the Republic of Lithuania (Article 132). In such a way the alien may be detained for the period of up to 12 months and later on, after the issue of the residence permit in the Republic of Lithuania, he should be released from the place of the detention.

The Coordinator of the Representative Office in Lithuania of the United Nations Chief Commissar of Refugees expressed the opinion that in practice there are cases when the possibility is not provided for the asylum seeker who is being detained due to the danger for the state safety (Article 113) and his representatives to get acknowledged with the detention motifs (when the issue regarding detention, exceeding 48 hours, of the asylum seeker is examined at the court). Such information is also not provided for the state institutions examining the applications for the asylum. As to contest such detention becomes especially difficult, that may also be the basis for the application of the detention of the unlimited term of the asylum seekers. Moreover, such situation is not compatible to Part 4 Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms providing the right for the detained person to appeal the lawfulness of the detention.

The conditions at the Aliens’ Registration Center do not correspond to the requirements of the Directive 2003/9/EC on the minimum standards for the reception of asylum seekers\(^\text{16}\). The Aliens’ Registration Center in Pabradė (Švenčionys region, approximately 40 km from Vilnius) is the only detention center in Lithuania (established in 1997) of aliens (including also the asylum seekers the detention period of which exceeds 48 hours). The asylum seekers who have not been detained are also accommodated in the center or whom the alternative detention measures have been applied. There are 89 employees at the center. It could accommodate 300 persons at a time, and in extreme cases there could stay up to 300 detained persons and 200 asylum seekers\(^\text{17}\).

Since 1 January 1997 till 1 January 2002 there were 3585 aliens temporarily accommodated in the Center. The maximum number of accommodated aliens in the Center was on 19-21 August 1997 – 962\(^\text{18}\). At the moment there are approximately 100 aliens living there. The Aliens Registration Center is not the social institution and not fully corresponds the standards of safeguarding the social rights of the asylum seekers. Following Part 1 Article 17 of the Directive the special material and health care conditions must be provided for the groups with the specific needs. Article 18 of the Directive provides the protection of children’s rights. However, neither the law nor other legal acts provide how the rights of the groups of persons with the special needs are safeguarded. Moreover, there are no social workers (the social workers employed by the Lithuanian Red Cross are working there being half staff employees), psychologists, no rehabilitation services are being provided, only the necessary health aid is provided that does not ensure the essential health


\(^{18}\) The information of the Aliens’ Registration Center on the Internet: http://www.pasienis.lt/units/urc.htm [interactive]; [refer to on 14 April 2005].
care needs at the Aliens’ Registration Center. The special concern is caused by the accommodation of the children-asylum seekers and insufficient safeguarding of their special needs (for example, there is no employee working with the children). The conclusion could be drawn that there are two ways for solving such situation: to limit the term of accommodation of the asylum seekers at the center or to change the nature of activities of the center and ensure the provision of social services.

Family reunification

According to Article 30 of the Law on the Status of Aliens, the person having the status of the refugee shall have the right to the family reunification. Certain norms of the family reunification are still not harmonized with the Directive 2003/86/EC due to the right to the family reunification. Firstly, according to Part 4 Article 5 of the Directive the competent institutions of the member states shall provide the written notice about the decision made to the person who has submitted the application for the family reunification soonest possible and not later than during 9 months. The Law provides that the conditions for the submission of the aliens’ applications for family reunification and the procedure for the examination thereof shall be established by the Minster of the Interior (Part 6 Article 30). However, these conditions and procedure have not been established until now. Secondly, Part 1 Article 30 provides the condition for the family reunification – the lawful life in the Republic of Lithuania for a continuous period of at least 2 years, i.e. the law provides the minimal term of 2 years for living on the Lithuanian territory. Whereas, Article 8 of the Directive requires that the lawful life period in the state is not longer than 2 years, i.e. the term of 2 years is the maximum one. In this case Lithuania, while implementing the Directive, could have established the period not exceeding 2 years or could have established no period of time. Thirdly, the Law does not provide the simplified procedure for the reunification of the unaccompanied juvenile refugee with his family members (Part 3 Article 10). The issue of the reunification of the asylum seekers (also of the unaccompanied juvenile) with the family following the common procedure at the Law on the Status of Aliens is solved especially vaguely (Article 30 and Article 43). The ambiguity appears when the parents residing outside Lithuania of the alien living in Lithuania are seeking for the reunification of the family. In one case parents living abroad may seek for the reunification of the family and receive the temporary residence permit in Lithuania. However, another article already does not provide that parents may seek for the reunification of the family. Such situation formally limits the possibility of family reunification. That is also acknowledged by the specialists of the Migration Department: usually in such case more favorable provisions towards the asylum seeker are followed. Moreover, the law contains the obvious inconsistencies of legal norms in relation to the persons’ right to the reunification of the family.

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who have been granted the temporary protection (Part 2 Article 30 and Part 4 Article 94). In one case the alien who has been granted the temporary protection has no right to the family reunification. However, in other case they say that the family members of such persons have the right to the temporary protection in Lithuania. The dubious situation is created by such regulation that allows the interpretations when the alien who has been granted the temporary protection has the right to the family reunification. It is thought that such situation needs to be solved following the principle of family solidarity and the law clearly provides that the family members of the person who has been granted the temporary protection have the right to the family reunification.

**Return to one's own state and appeal of the decisions**

The experts of the Representative Office of the International Migration Organization in Lithuania expressed a concern that those asylum seekers and refugees who wish to return to their state meet the obstacles when they do not receive the needed travel documents from some embassies of the foreign countries. Such situation is considered as faulty and contradictory following the provisions of International Covenant on Civil and Political Rights of 1996 (Article 12) that prohibit the limitation of a person’s right to leave any country, unless such leave is restricted by the law (if that is necessary for the safety of the state, public order, for the protection of the health or moral of the citizens or the rights and freedoms of other persons and that is compatible with other rights acknowledged by the Covenant).

The Law on the Status of Aliens provides the term of 7 days (Article 138) during which the decisions for the denial to enter the territory of the state or refusal to provide the asylum may be appealed. Whereas, the Administrative Proceeding Law (Article 33) provides the overall term of appeal of 30 days. It is not clear following what criteria the Law on the Status of Aliens provide the significantly shorter term of appeal. Though the employees of Aliens’ Registration Center state that usually 7 days is enough for the appeal, however, it is impossible to agree that the possibility to appeal the decisions during 7 days does not limit the rights of the asylum seekers: it is hard to appeal the decisions due to the ineptitude of the language, psychological traumas and so on. Partially it is attempted to solve the problem while implementing the Agreement between the Ministry of the Interior and Lithuanian Red Cross related to the free of charge legal assistance for the asylum seekers. Following such agreement the Migration Department provides all the decisions made with respect to the asylum seekers for the Lithuanian Red Cross, the lawyers of which represent interests of the asylum seekers at the courts.

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**Recommendations**

Referring to the requirements of Directive 2003/9/EC it is important to ensure the rights of the groups of persons with special needs staying at the Aliens’ Registration Center. That could be done by limiting the term of the accommodation of the asylum seekers at the Aliens’ Registration Center or by ensuring the social services provided at the center. Referring to the requirements of the Directive 2003/86/EC it is necessary to harmonize the norms of the Law on the Status of Aliens related to the family reunification and eliminate the dubious provisions regulating the family reunification that provide the possibility to limit the rights of asylum seeker (it is important to adopt the terms and procedure for the submission of the applications for the family reunification; the norms providing the terms for the family reunification should be improved; it is important to adjust the common norms regulating the family reunification (especially talking about the juvenile refugees seeking to reunify the family). The efficient guarantees for the asylum seekers should also be provided from the unfoundedly long detention terms or incapacity to get acknowledged with the detention motifs when the court examines the issue of detention related to the danger for the state safety and exceeding 48 hours. It is recommended to prolong the term for the submission of the appeals by the asylum seekers, for example, for the denial to enter the territory of the state or refusal to grant the asylum.

It is recommended to improve not only the legal regulation but also implement the purposeful public education on the issues of refugees.
II. SOCIOLOGICAL ASPECTS
OF HUMAN RIGHTS MONITORING
Introduction

Human Rights is a complex and manifold concept. Contrary to the existing opinion, it is related not only to the legal discourse. Historically the issue of human rights is the disputable object during the philosophical, political science and sociological discussions as well as disputes. The contemporary connotation of the human rights is mostly associated with the United Nations Human Rights Declaration, adopted in 1948, where there are two fundamental fields of human rights defined: civil-political and socio-economic. From that time, the discourse of human rights was enlarged by a number of new headings, aspects, preferences and the content of interpretations changed. That is natural phenomenon, reflecting not only the dynamics of the legal science analyzing the human rights but at the same time specifying the political, social, economic and cultural circumstances of life. The experts may disagree and dispute the rightness of the standard of the mentioned circumstances as well as criteria or the activities ensuring such rightness. The only and acceptable version to all is hardly possible. Human rights are not the unchangeable entity but probably a social construct accumulating inside the public justice experience and projection. Referring to the human rights from the sociological point of view, the natural need appears for the analysis of the change of this experience, the opinion about the human rights not only from the law experts but also the main subjects of the mentioned rights – people themselves.

The sociologic researches on human rights, and first of all the quantitative researches, are neither new nor unique on the worldwide nor Lithuanian scale\(^1\). The main problem while carrying the human rights sociologic researches is the establishment not only of the common attitude of residents to human rights but at the same time clarification of the areas of human rights that are most vulnerable according to the evaluation of people themselves. For the human rights expert such tasks may seem superficial and the possible answers too uninformative. The field of human rights is first of all the field of law or normative field that presupposes the special legal knowledge on the problems of human rights as well as on the special procedures for the establishment of violations of human rights. It is natural that the majority of residents is not the experts of human rights and could have very vague understanding of objective and procedural aspects of human rights. Therefore, the question may arise: can people who have no special training, i.e. randomly selected respondents, evaluate the situation of human rights in Lithuania? There are grounds to believe that they are able to evaluate. This may be stated based on the results of a study carried out in November 2001\(^2\). First of all the attention should be paid to the fact that only 6% of the respondents of the survey were not able to answer the question “Are human rights being violated in Lithuania?” In the majority of other researches, the answer “difficult to say” is significantly more frequent. That means that the question about the human rights seems quite clear for the

\(^2\) Ibid., p. 64–66.
respondents. We could even say that this question is even relevant. Secondly, the respondents quite adequately understand the content of the human rights. This statement is possible after the analysis of data of the research carried in November 2001 – the responses to the open question “What fields of human rights in Lithuania are most sore and require the special public attention?” The list of human rights named spontaneously largely coincided with the list presented by the expert lawyers of the questionnaire for the closed question where the respondents were requested to evaluate the situation of different human rights in Lithuania (however, there were exceptions as well: for example, the experts did not specify the position “the right to the free of charge studying” that was mentioned even by 25% of the respondents). It should also be mentioned that during the evaluation of the human rights in Lithuania, the residents first of all had in mind the social rights (the rights to work and choose employment, the rights to the adequate standard of living and etc.).

The sociological research “Human Rights in Lithuania: 2001–2002”, carried by the Public Opinion Research Centre “Vilmorus” in the framework of the United Nations Development Program project “Human Rights Action Plan” was the first complex sociological research that sought to analyze not only the opinion of Lithuanian residents towards the situation of human rights as well as the efficiency of the protection of human rights in the country, but also to analyze their experience when facing the violations of the human rights in different fields of life. The two national representative surveys were carried during the research that allowed the correction of the planned structure of the Report on the Situation of Human Rights in Lithuania. The carried survey determined that the “human rights” for the residents is not an abstract legal category but quite sensitive and very well understood object. People were critical enough with respect to the situation of human rights as well as the institutions, protecting the human rights. It was also noted that the experience of people facing the violations of their rights is not as dramatic as the general evaluation of the situation. However, just a small number of people the rights of whom were violated addressed the competent authorities for the restoration of the violated justice. The main reason of such inactivity is the disappointment with the authorities protecting the human rights. It was also noted during the research that most often the residents of Lithuania concentrated over the socio-economic problems of human rights thinking that the situation there is much worse than in the civil-political field.

The results of the research were presented not only in Lithuania but also abroad and caused quite a big interest by the human rights experts as well as common residents. The positive experience of these researches encouraged the inclusion of sociologic researches in the field of human rights into the National Action Plan for the Promotion and Protection of Human Rights (hereinafter Human Rights Action Plan)3. After the approval of the mentioned Plan at the end of the year 2002 the sociologic researches were carried in the fields of the disabled, the rights of the victims of crimes, racism and xenophobia4. The

3 Approved by resolution No IX-1185 of the Seimas of the Republic of Lithuania of 7 November 2002.
4 Approved by resolution No IX-1185 of the Seimas of the Republic of Lithuania of 7 November 2002.
Human Rights Action Plan in the framework of human rights monitoring also provided the repeated general sociologic analysis of the situation of human rights in Lithuania seeking to clear out the change of the opinion of the residents towards the human rights situation from the time when the aforementioned Plan was approved.

The latter objective of the Plan was implemented in November 2004 when the Public Opinion Research Centre “Vilmorus” carried a new representative survey of the residents of Lithuania about the situation of human rights and their protection upon the commission of Implementation Committee of the National Human Rights Action Plan in the Republic of Lithuania under the Human Rights Committee of the Seimas of the Republic of Lithuania. The aim of this survey as well as of the aforementioned surveys carried in 2001–2002 was first of all to analyze the evaluation of the situation of human rights by the residents of Lithuania as well as the efficiency of the protection of human rights in the country. However, at the same time it was sought to compare the results of 2004 and 2001–2002 as well as to establish the positive and negative tendencies in the evaluation of the situation of human rights.

The latter two aims also defined the structure and content of the questionnaire of the sociologic research of 2004. On the one hand, seeking to ensure the possibility of the comparative analysis, the questions from the surveys of 2001–2002 should have also appeared in the questionnaire of 2004. On the other hand, when forming the questionnaire the reference was made (though marginally) to the fundamental socio-political changes related to the accession of Lithuania into the European Union on 1 May 2004. The new questionnaire consists of nine notional units:

1. Assessment of the situation of human rights in Lithuania;
2. Assessment of the policy of human rights in Lithuania;
3. Assessment of the situation of human rights in Lithuania after the accession to the European Union;
4. Assessment of the system of the protection of human rights;
5. Assessment of the work of authorities in the protection of human rights in Lithuania;
6. Assessment of the attention towards the human rights in Lithuania;
7. Experience of the residents when facing the violations of the human rights;
8. Experience of the residents in restoration of the violated rights;
9. Assessment of the informational supply of the residents about the human rights.

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5 The number of the respondents in the survey of 2001 was 1010, in the survey of 2002 – 1044.
Like in 2001, in 2004 the respondents were requested to assess the range of violations of human rights in Lithuania. The comparison of the results is presented in Picture 1.

It should be noted that the structure of the answers nearly did not change: in 2004, like in 2001, the majority of the respondents had chosen the answer “sometimes violated”, then – “systematically violated” and “do not know/ hard to tell”.

However, when assessing just the answers the attention should be paid to the fact that in a course of three years the number of the respondents who noted that the human rights are systematically violated significantly reduced (from 39% to 27%). We are of the opinion that this positive dynamics reflects the objective social and economic improvements in Lithuania.

On the other hand, big number of those stating that human rights are being systematically violated and nearly two thirds stating that the rights are being violated from time to time might cause anxiety. The mentioned rates evidence the tension within the public (as you will see later on – first of all this concerns the socio-economic field).

Schoolchildren and students talk about the systematic violations of the human rights most often – 40%. As the result of other researches show, students more sensitively react to the injustice, discrimination. That may be not only the natural outcome of the youth socialization testifying the lack of “flexibility” of youth and idealistic attitude towards the injustice, but also the result of civil education that spread at schools of late years. This assumption is partly supported by the fact that people having no secondary education talk least of all about the systematic violations – 20%, the rural inhabitants – 20%. The biggest number in the mentioned groups formed those who had not answered the question. Most probably, the question about the human rights for part of them is too abstract.
Further on, we will analyze the assessment of the protection of concrete human rights in Lithuania. Picture 2 lists the rights presented for the survey starting from the most vulnerable and ending with the least vulnerable ones.

**Picture 2. How do you assess the protection of the human rights in Lithuania presented bellow (%)?**

<table>
<thead>
<tr>
<th>Human Right</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to fair pay for work</td>
<td>61(77)</td>
</tr>
<tr>
<td>The right to work and choice of employment</td>
<td>59(85)</td>
</tr>
<tr>
<td>The right to the adequate standard of living</td>
<td>52(79)</td>
</tr>
<tr>
<td>The rights of crime victims</td>
<td>47(54)</td>
</tr>
<tr>
<td>Women protection from violence in the family</td>
<td>46(54)</td>
</tr>
<tr>
<td>The right of the child to state support guaranteeing the right to study</td>
<td>45(72)</td>
</tr>
<tr>
<td>The right to the fair hearing at the court</td>
<td>40(51)</td>
</tr>
<tr>
<td>The right of the elderly to the social protection</td>
<td>40(52)</td>
</tr>
<tr>
<td>The right of the child to avoid violence and constraint</td>
<td>40(53)</td>
</tr>
<tr>
<td>The right to timely and qualitative medical aid</td>
<td>37(42)</td>
</tr>
<tr>
<td>The right to social security</td>
<td>33(57)</td>
</tr>
<tr>
<td>The right to the immunity of the ownership</td>
<td>32(39)</td>
</tr>
<tr>
<td>The right to the information from the state/municipal authorities</td>
<td>30(35)</td>
</tr>
<tr>
<td>The rights of pregnant/raising the preteen children women</td>
<td>28(42)</td>
</tr>
</tbody>
</table>
The results of the survey conducted in November 2001 are in brackets.

Talking about the content of the assessment it should be noted that out of 23 fields of human rights the assessment by the residents improved in 18 fields. That is really a significant positive change, being in perfect correlation with the improvement of the generalized assessment of the situation of human rights. We also note that the protection of socio-economic rights is assessed worse of all: the right to the fair payment, the right to have and choose employment, the right to adequate standard of living. On the other hand, the biggest positive changes took place namely in these fields.

Comparing the results of the surveys carried in 2001 and 2004 it could be noted that the structure of the answers slightly changed. Table 1 displays the change of the first five human rights assessed worst of all (the difference between the answers “very good/good” and “very bad/bad”). The place among the rest negatively assessed rights is marked in the brackets.
Table 1. Protection of human rights assessed negatively in the surveys in 2001 and 2004 (the difference of positive and negative answers, %)

<table>
<thead>
<tr>
<th>Protection of Human Rights</th>
<th>2001</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to work and choice of employment</td>
<td>-81 (1)</td>
<td>-48 (2)</td>
</tr>
<tr>
<td>The right to the adequate standards of living</td>
<td>-77 (2)</td>
<td>-41 (3–4)</td>
</tr>
<tr>
<td>The right to the fair payment for work</td>
<td>-74 (3)</td>
<td>-54 (1)</td>
</tr>
<tr>
<td>The right of the child to adequate support from the state</td>
<td>-68 (4)</td>
<td>-32 (6)</td>
</tr>
<tr>
<td>The rights of crime victims</td>
<td>-51 (5)</td>
<td>-41 (3–4)</td>
</tr>
<tr>
<td>Protection of women from violence in the family</td>
<td>-48 (7)</td>
<td>-36 (5)</td>
</tr>
</tbody>
</table>

As it is seen from the table above, the right of the child to the adequate support from the state to guarantee the right to education and the right to social security was eliminated from the top five of the worst assessed rights in 2004: from the fourth place in 2001 it lifted to sixth place in 2004. It should be noted that the negative assessment of this right decreased twice. However, in 2004 the protection of women from violence in the family appeared among the top five. Despite of the fact that the negative assessment of this right decreased in 2004 it lifted from seventh place to fifth. The remaining three rights assessed worst of all – the right to fair pay for work; the right to work and choice of employment and the right to adequate standards of living – changed their places: the first right lifted from the third place in 2001 to the first in 2004; the second – dropped down from the first place to the second and the third right – from the second place dropped down to the third-fourth.

The assessment of the right of crime victims compared to other specified rights changed least of all, however, its place in the first top five of the negatively assessed human rights changed quite significantly: from the fifth place in 2001 lifted to the third-fourth. It should be noted that in 2004 the first top five negatively assessed human rights consisted of three rights assigned to the unit of socio-economic rights and two more rights having close relation to the criminal justice. Such display of the rights shows the areas of most concern of the residents of Lithuania nowadays.

Not all the human rights were assessed negatively during the surveys. Table 2 provides the top five of the best assessed (the difference between the answers “very good/good” and “very bad/bad”) human rights. The place among the rest positively assessed rights is marked in the brackets.
Table 2. Protection of human rights assessed positively in the surveys in 2001 and 2004 (the difference of positive and negative answers, %)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of belief and religion</td>
<td>87 (1)</td>
<td>80 (1)</td>
</tr>
<tr>
<td>The right to freedom of expression</td>
<td>56 (2)</td>
<td>57 (2)</td>
</tr>
<tr>
<td>The rights of national minorities</td>
<td>51 (3)</td>
<td>37 (3)</td>
</tr>
<tr>
<td>The rights of sexual minorities</td>
<td>17 (4)</td>
<td>11 (5)</td>
</tr>
<tr>
<td>The rights of persons in confinement</td>
<td>15 (5)</td>
<td>21 (4)</td>
</tr>
</tbody>
</table>

The first top five of the best-assessed human rights did not change: in 2004 like in 2001 the best assessment received the freedom of belief and religion, the right to freedom of expression, the rights of ethnic minorities, the rights of persons in confinement and the rights of sexual minorities. The change took place only between the two last rights: the rights of sexual minorities from the fourth place in 2001 dropped down to the fifth place in 2004, and the rights of persons in confinement lifted from the fifth place to fourth. It should be noted that having compared the results of 2001, in 2004 the positive assessment of the freedom of belief and religion, the rights of ethnic minorities and the rights of sexual minorities slightly decreased. However, the positive assessment of the right to freedom of expression increased insignificantly and notably increased the positive assessment of the rights of persons in confinement.

The more detailed analysis of the assessment of different human rights is presented below.

**The right to fair pay for work.** Even 61% of the respondents assessed the protection of this right as a bad one. However, three years ago the number of them was even bigger – 77%, i.e. the situation changed to the better. That corresponds to the statistical data provided by the Statistics Department on the change of the average net monthly salary: LTL 699.4 in 2001, LTL 728.4 in 2002, LTL 786.4 in 20036.

As in 2001, a decidedly negative evaluation is registered in all the socio-demographic groups in 2004 as well. The situation is assessed equally by the workers and the specialists having the university education, the groups with the lowest income (up to LTL 200) and highest income (over LTL 500 per member of the family), the residents of Vilnius city and rural inhabitants. People at the pre-retirement age are distinguished by negative assessment – 70% assessed the situation negatively. It could be presumed that the amount of pay for work is especially relevant for them as this determines the amount of pension benefit. The better assessment of the situation is noted among the students at vocational schools or universities – 17%. It is evident that they expect the fair earnings when they will start working. In reality, young and qualified people have good perspectives in the labour market.

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The right to work and choice of employment. That is also a very sensitive topic for the residents of Lithuania. Unemployment was for a long time the main problem in Lithuania. Even 59% of the respondents specified this right as poorly protected. However, three years ago the overall majority was of such opinion – even 85%, i.e. significant, positive changes took place there. According to the data of the Statistics Department, the total number of the unemployed from 2001 until 2003 decreased by 28%7.

It is natural that the greater number of those negatively evaluating the protection of this right is among the unemployed – 67%. That raises more concern among the persons of the pre-retirement age – 68%. It is especially critical to lose the work for people of this category as to find another work at such age is extremely difficult. However, in 2001 such assessment among the unemployed amounted to 91% and among the people at the pre-retirement age – 94%. The problem of unemployment causes less concern for youth – 48% assess the situation as bad, the specialists having the university education – 44%. The mentioned categories of residents can easier find or change the work. The mentioned rates also improved if compared to the ones in 2001.

The right to adequate standards of living. Although the big number of residents – 52% – indicates that the right to the adequate standard of living is not assured, still in a course of the latter three years major changes took place in the assessment – in 2001 the negative assessments formed 79%. As in 2001, in 2004 people at the pre-retirement age and unemployed people assess the situation in this field of human rights worse. On the other hand, yet just 11% of residents positively assess the protection of human rights in this field (three years ago there were just 3%)8.

The rights of crime victims. 47% of the respondents evaluated negatively the protection of the rights of crime victims. That again is less than three years ago (54%). Those with positive evaluation of the protection of human rights in this field form very small group – just 6% (were 4%). In 2001 the differences in social and demographic groups were not significant. In 2004 the worst assessment was given by the specialists having the university education – 58% as well as the residents of the biggest cities (except Vilnius) – 61%9.

Protection of women from violence in the family. The assessment of this field in a course of three years also improved; nevertheless, it remains still low – negative evaluation by 46% (was 54%). The significant differences between the answers of men and women were established. 54% of women respondents and 35% of men state that women rights are not protected. It should be noted that in 2001 59% of women and 48% of men specified this problem. It is more likely that the reduction of negative assessment of this problem in 2004 happened first of all due to the changed assessment by men. To what extent the assessment of women rights by men could be objective and impartial is the topic for a separate discussion, however, if to

8 According to the data of the Statistics Department, average monthly income per member of a household in 2003 amounted to LTL 457.6 (Ibid., www.std.lt/web/main.php?parent=900).
deduct the assessments of men from the general assessment number, it should be acknowledged that in the eyes of women the situation of the protection of women from violence in the family in 2004 has not changed so significantly. To mention other socio-demographic groups it should be noted that the specified problem of the protection of women from violence in the family is more often noticed by studying youth – 60%, those having the university education – 51%. In the survey of 2001 such differences have not been noticed.

The right of the child to adequate support from the state to guarantee the right to education. In November 2001 the protection of these rights was negatively evaluated by 72% of the respondents. After the three years such evaluation decreased to 45%. The number of the positive evaluations increased from 5% in the previous year up to 13%. Women assess the situation worse – 50% (men – 40%), the group with low income (up to LTL 200 per member of the family), unemployed. In the survey carried in 2001 this problem was mentioned more often by the unemployed – 81%, people at the age of 40–49 – 80%.

The right to the fair hearing at the court. The improvement is noticed also in this field of the protection of human rights. If three years ago the negative evaluations formed 51% of the respondents, so in 2004 the number of such evaluation was less and formed 40%. Unlike the results of 2001 when men more often raised this problem than women, the responses to this question of the survey in 2004 were quite the same in all the social-demographic groups. Moreover, during this period of time the confidence in courts as an institution increased. In November 2001 those who trusted in courts formed 17% of the respondents and after three years – 23% (the number of those mistrusting decreased from 41% to 34%)10.

The right of the elderly people to the social security. The elderly people in the post-Soviet countries have many problems: the amount of pension benefits, medical services, ability to adjust to the fast growing information society. 40% of the respondents specified that the rights of those people to the social security were not protected (22% expressed the positive evaluation). However, in 2001 the number of such opinion was bigger – 52%. The evaluation of the situation of social security of elderly people depends on the education – the evaluation of those having the university education is more critical: 55% evaluated the situation as bad. This criticism significantly correlates with the place of residence: 58% of the residents of Vilnius evaluated the situation as bad, 48% of the residents of other big cities, 37% of the residents of regional centres and only 29% of the rural inhabitants. Accordingly, the results of the survey of 2001 were as follows: in Vilnius – 68%, 57% in other big cities, 48% – in smaller cities and 43% – in rural areas. The results show that mostly such opinion changed among the rural inhabitants, in other places, the reduction was more or less similar (approximately 10%).

The right of the child not to experience violence and coercion. The protection of such right was evaluated negatively by 40%, and positively by 17% of the respondents. In a course of three years, the evaluations improved (accordingly, the numbers in 2001 were: 53% and 7%). Women, youth having the university education, the residents of Vilnius see

more problems in this field. The results of the survey of 2001 did not show significant changes among different socio-demographic groups.

**The right to timely and professional medical care.** The bigger number forms those who evaluate the protection of this right negatively (37%); positive evaluations were given by 25% of the respondents. In a course of three years the evaluations improved (accordingly the numbers were 42% and 25%). More noticeable differences among the socio-demographic groups were not recorded. According to the results of the survey of 2001 the situation in this field was better evaluated by the retired people (27% of the satisfied) as well as those having no secondary education (27% of the satisfied). It should be noted that the confidence in health service as an institution in Lithuania is quite high. In November 2004 the number of those who relied on health service formed 48%; those who did not rely formed 26% of the interviewed\(^\text{11}\). Thus, the health care system is trusted, however, at the same time it is specified that the right to timely and professional medical care is not assured. This contradiction can be explained: the residents realize that the material base of the health care system is weak; however, the confidence in doctors themselves exists (that is one of the most respected professions in Lithuania).

**The right to the social security.** The evaluation of the social security significantly improved in a course of three years. If in 2001 the number of negative assessments formed 57%, so in 2004 the number of them significantly reduced to 33%. The number of positive evaluations improved accordingly: from 7% up to 19%. In 2001 this problem was more often pointed by the unemployed (65%) as well as the group of the respondents at the age of 40–49 – 64%. In 2004 the negative evaluations were expressed also by the unemployed; however the number of them decreased to 49%. More critical with respect to the social security are the residents of Vilnius – 43% of negative evaluations, the residents of other big cities – 36%. Such persons at the regional centres are less – 33%, and in the rural areas – 28%.

**The rights to the inviolability of property.** The evaluation of the right to the inviolability of property also improved (despite of bigger number of negative evaluations than positive) – in 2001 the protection of these rights was negatively evaluated by 39% of the respondents and in 2004 – 32%. There are groups of residents where the number of positive evaluations of the protection of this right is bigger than negative ones.

**The right to access information from the state/municipal institutions.** Slight positive changes took place in this field of human rights in a course of a few years – the number with negative evaluations formed 35% and in 2004 – 30%. Positive evaluations were less – 18% (used to be 16%). The survey of 2001 has not established any significant differences in socio-demographic groups. The most critical about the right to access information from the state/municipal institutions in 2004 were the residents of Vilnius – 40% of them supplied the negative evaluations, the specialists having the university education – 36%, and also the unemployed – 37%. It could be thought that the mentioned categories of the residents more often addressed the following authorities for the needed information.

\(^\text{11}\) Ibid., p. 60.
The rights of pregnant/raising preteen children women. The evaluations significantly improved: if in 2001 the number of negative evaluations formed 42%, so in 2004 the number of them formed just 28%. The survey of 2001 also has not established the significant differences in socio-demographic groups. The results of the survey in 2004 allowed noticing the increase of positive evaluations from 13% up to 21%. Women at the age 18–39 evaluate the protection of the mentioned rights a bit worse, i.e. those who can evaluate the situation based on their own experience.

The state protection of children who do not receive family support. The evaluation of this right significantly improved – if in 2001 the negative evaluations formed 43%, so in 2004 the number of them just formed 28%. The number of positive evaluations accordingly increased – from 17% up to 23%. The differences in answers among socio-demographic groups were neither strong in 2001 nor in 2004. In 2004 elderly people, having lower education were more distinguished, quite a big number of whom could not answer the question.

The right of the child to be protected from economic exploitation. Positive changes were also noticed there: the negative evaluations decreased from 35% to 25% and the number of positive evaluations increased from 13% up to 20%. The survey of 2001 as well as of 2004 has not established the significant differences in socio-demographic groups. In the survey of 2004 there were more elderly people, having lower education who could not answer the question.

The right to the immunity of the private life. That is the first of the analyzed rights where positive answers were a bit more frequent (23%) than negative ones (22%). The evaluations nearly did not change in a course of three years. That is quite an interesting phenomenon, having in mind the late political scandals and frequent facts that caused the suspicion (due to the publicity of the telephone conversations, names of the patients, client addresses and similar things) about the respect of the constitutional right in Lithuania. As the results of the survey of 2001 also show, this right is not fully understood in all layers of the society of Lithuania: elderly people, less educated, rural inhabitants could not answer this question.

Similar tendencies were also noticed in the survey of 2004: specialists, having the university education evaluated the situation worse (34% of the negative evaluations).

Assurance of equal opportunities for men and women. There were more positive evaluations (24%) than negative ones (21%). If compared to 2001, the evaluations in 2004 were a bit better (accordingly the numbers were 20% and 28%). When evaluating this aspect of human rights, the answers of men and women diverged. Among the evaluations by men there are more positive answers (28%) than negative ones (14%). Whereas among the evaluations by women it is on the contrary – more negative answers (26%) than positive ones (22%). The similar tendency was also in 2001: 21% of men specified that equal opportunities were not assured, 27% of men stated that the rights were assured; accordingly the evaluations by women were as follows: 34% and 15%. The results showed that in a course of 3 years the number of men stating that this right was not assured reduced as well as the number of women stating that such rights were assured also reduced.
The rights of persons in confinement. There are significantly more positive answers in the evaluations (30%) than negative ones (9%). From 2001 the results slightly improved. This phenomenon also looks strange having in mind the constant criticism of different international organizations addressed to Lithuania due to the bad conditions at the places of confinement. One of the possible explanations is the public opinion that persons having committed the crimes live in the places of confinement “too well”. Therefore, such positive evaluations could be interpreted as the wish of people to punish more strictly the persons having committed the crimes. More significant differences in the answers among the different social-demographic groups were not noticed neither in the survey of 2001 nor of 2004.

The rights of sexual minorities. Here again the bigger number is of those stating that such rights are protected well enough – 19% than those negatively evaluating the protection of the rights of sexual minorities – 8%. Being aware of a quite critical attitude of Lithuanian society towards the sexual minorities the precondition could be made that the positive attitude towards the protection of the rights of sexual minorities is stated based on the same logics as that to the protection of the rights of persons in confinement. It is just thought that “it is quite good for them, what more do they want”. To tell the truth the number of positive evaluations decreased in a course of three years (from 26% to 19%). That could have been influenced by more active position of the defenders of sexual minorities in Lithuania as well as outside it, also by onetime actions such as, for example, the discussion raised in autumn 2004 in the media about the publicity of the information on sexual orientation of persons holding high posts. The students most often evaluate the situation of the sexual minorities negatively: in 2001 – 23% (positively – 19%); in 2004 – 27% (positively – 21%). We would interpret this as the bigger tolerance of the students towards these minorities.

The right to freedom of expression. The majority evaluates positively the protection of this fundamental right – 65%, the minority (8%) – negatively. The evaluations from 2001 have not changed. A bit less positive evaluations are among the answers of rural inhabitants, persons having lower education, having low income.

The rights of ethnic minorities. The positive answers dominate (41%). There is a very small number of negative answers (4%). The evaluation of ethnic minorities from 2001 worsened (there were 55% of positive evaluations at that time). It seemed that there were no striking events during 2001–2004 that could be interpreted as the violation of the rights of ethnic minorities. To tell the truth, the opinion of the ethnic minorities to the protection of their rights was always slightly more critical than that of Lithuanians. For example, in 2004 there were 42% of Lithuanians who positively evaluated these rights and 36% of non-Lithuanian nationality, whereas negatively evaluated 3% of Lithuanians and 7% of non-Lithuanians. However, the difference is not such that would point the ethnic dissonance in the evaluation of the protection of the rights of ethnic minorities. Therefore, trying to explain the worsened evaluation of the protection of the rights of ethnic minorities it is only possible

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to suppose that with the improvement of the situation in the socio-economic field that is the most relevant for the residents at the moment, the criticism towards other aspects of human rights is increasing. The students see more problems in the protection of the rights of ethnic minorities – 13% of the respondents evaluate this field of human rights negatively.

The freedom of belief and religion. The majority (82%) of the respondents positively evaluated the protection of this fundamental human right in Lithuania. There is a small number of those thinking contrary (just 2%). In a course of three years, the positive evaluations decreased (used to be 89%). However, the number of negative evaluations did not increase. Different socio-demographic groups in 2001 and in 2004 were unanimous in their answers.

Out of 23 topics of human rights presented for the evaluation in 2001 only 6 received positive evaluation, whereas in 2004 – 7. Therefore, the protection of socio-economic rights and of the majority of other rights is still evaluated as negative. The fact that two rights directly related to the field of criminal justice got into the top five of the worst evaluated rights in 2004 causes worry. However, it is important that significant, positive changes have taken place in the evaluations of the majority of rights. Especially that relates to the right to the adequate standard of living, the right to the social security as well as the right of the child to the adequate state support towards ensuring the right to education.

The situation assessment also improved in other fields: the right to the fair pay for work, the right to work and choice of employment, the right to the fair hearing of the case, the right of the elderly to the social security, the right of the child not to experience violence and coercion, the rights of the pregnant/raising preteen children women, the state protection of the child without family support, the right of the child to be protected from economic exploitation.

The number of positive evaluations slightly decreased in the following: the freedom of belief and religion, the rights of ethnic minorities, the rights of sexual minorities. The supposition could be made that after the improved situation in the fields that are currently most relevant to the residents – i.e. the socio-economic rights – the criticism towards other rights has increased that are not so strongly related to the problems of everyday life. On the other hand, the more critical attitude towards the civil rights may witness not about the worsened situation so much in this field, but about the growing civil consciousness in the public.
THE ASSESSMENT OF THE HUMAN RIGHTS POLICY IN LITHUANIA: A COMPARATIVE ASPECT

The respondents were requested in the questionnaire to compare the current human rights policy in Lithuania with the one that existed during the Soviet times, to compare the situation in Lithuania with the situation in other Baltic countries, assess whether the current human rights policy meets the requirements of the European Union, assess the state human rights policy in general. The same questions were provided in November 2001. The results of the survey showed the significant positive changes in a course of three years.

![Diagram showing the assessment of human rights policy in Lithuania.](image-url)

The results of the survey carried in November 2001 are in the brackets.
As earlier, the provided results of the surveys of 2001 and of 2004 can be divided into two groups: the group of positive answers (more agree than disagree) and the group of negative answers (more disagree than agree). Table 3 shows the changes in the assessment of human rights policy that could be attributed to the group of “positive” or “negative” answers (the proportion of “agree” and “disagree” is calculated).

Table 3. Acceptance of the current human rights policy in 2001 and 2004 (the difference between the answers “agree” and “disagree”, %)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>The current human rights policy is better than during the Soviet times</td>
<td>-19</td>
<td>7</td>
</tr>
<tr>
<td>The current human rights policy meets the requirements of the European Union</td>
<td>-36</td>
<td>-23</td>
</tr>
<tr>
<td>You are satisfied with the current Lithuania’s human rights policy</td>
<td>-46</td>
<td>-29</td>
</tr>
<tr>
<td>The current human rights policy is better compared to the other Baltic states (Latvia and Estonia)</td>
<td>-15</td>
<td>-7</td>
</tr>
</tbody>
</table>

The provided results showed that if compared to 2001 the number of negative evaluations of the human rights policy reduced in 2004. Especially interesting and significant are the changes in the assessment of the Soviet times. Differently from 2001, in 2004 the interviewed were more inclined to agree with the statement that the current human rights policy was better compared to the Soviet times. In a course of three years, the difference between those agreeing and disagreeing to that statement changed by 26%. If in 2001 this period was assessed significantly better than the current one (45% positive and 26% negative assessments), in 2004 the situation was already contrary (37% of the respondents evaluated the Soviet times negatively and 30% of the respondents positively). We are of the opinion that this is the consequence of the objective positive improvements in social-economic field.

In 2001 mostly pre-retirement age people (55%), lower educated (51%), rural inhabitants (51%), living in district centres (51%), workers (52%), unemployed (59%) disagreed with that statement. More agreement with this statement expressed the youth (36%), having university education (39%), wealthier (38%), and Vilnius inhabitants (39%). In 2004 very strong dependences from some social demographic parameters were recorded. First of all the education: 53% of those having the university education better assessed the current situation than that in the Soviet times, contrary assessments formed 24%. People having no secondary education expressed more sympathy with the past (33%) than nowadays (28%).
Strong correlation was noticed with the age: the students evaluated the current situation very positively – 61%, the past was valued only by 12%. Among the people at the pre-retirement age the situation was contrary – 42% evaluated the past better than the current situation – 36%. The current situation was significantly assessed better also by the wealthy people, the inhabitants of the capital city, whereas low-income inhabitants as well as rural inhabitants better assessed the past. That means that young, qualified, having more income inhabitants of the city were more satisfied with the current human rights policy than those who were not so successful in adjusting themselves to the carried reforms, elderly people, less educated people, rural inhabitants.

The number of people who better evaluated Lithuania’s human rights policy in the context of the requirements of the European Union also increased. In 2001 the number of people stating that this policy did not meet the requirements formed 43% and after three years – 37%. Accordingly, the number of positive evaluations also increased (the human rights policy met the requirements) – used to be 7% and in 2004 there were already 14% of such answers. In a course of three years the difference between those agreeing and those disagreeing with the statement “The current human rights policy meets the requirements of the European Union” increased by 13%. In 2001, the number of people of the opinion that the current human rights policy did not meet the requirements of the European Union was significantly larger in all the social demographic groups. In 2004, most often the optimistic answers were provided by the students – 38%, having the university education – 20%, higher income groups (500 and more litas per month per family member) – 20%.

Unfortunately, the human rights policy in Lithuania was evaluated worse than in Latvia or in Estonia. 12% of the respondents evaluated Lithuania’s human rights policy better and 19% – of other Baltic countries. However, here as well certain positive changes took place in a course of three years: the difference between the agreeing and disagreeing with the statement “The current human rights policy is better compared to the other Baltic states” increased by 8%. In 2001, only Russian people stated that human rights policy in Lithuania was better than in Latvia or Estonia. In 2004 more often the favourable evaluations for Lithuania were provided by inhabitants of Vilnius, more educated people. Moreover, 50% of the respondents were not able to answer the question.

In general, only 14% of the respondents are satisfied with the current human rights policy (in 2001 the number of them was less – 9%), dissatisfied formed 43% (in 2001 the number of them was bigger – 55%). In the course of three years the evaluations improved by 17 percentage points. Differently from the results of the researches in 2001, in 2004 the bigger number of those satisfied with the human rights policy is among the youth, those having the university education, inhabitants of Vilnius city.
THE SITUATION OF HUMAN RIGHTS AFTER LITHUANIA’S ACCESSION TO THE EUROPEAN UNION

In May 2003 91% of those who voted at the Euro-referendum supported the membership of Lithuania in the European Union. Such high support remained later on as well: 84% of the respondents having the opinion supported the membership in November 2004, 16% were against\textsuperscript{13}. According to the data of the Euro-barometer researches Lithuania is one of the countries that supports Eurointegration most actively. The main motifs of the integration to the European Union are economic and social – it is expected that in the future, despite of the fact that not at once, the situation will improve in many economic and social fields.

The questionnaire contained the unit of questions on the issues whether after the accession to the European Union the protection of different human rights improved in Lithuania.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
& Improved & Worsened & Did not change & Hard to tell \\
\hline
1. The right to access the information & 23 & 3 & 59 & 15 \\
2. The rights of the children & 20 & 3 & 59 & 18 \\
3. The right to work & 20 & 13 & 59 & 8 \\
4. The rights of the migrants, refugees & 19 & 1 & 39 & 41 \\
5. Consumer rights & 19 & 4 & 62 & 15 \\
6. The rights of the ethnic minorities & 16 & 1 & 45 & 38 \\
7. The rights of the disabled & 15 & 6 & 58 & 21 \\
8. The rights of the suspected, accused and the imprisoned & 14 & 1 & 48 & 37 \\
9. Women rights & 14 & 3 & 61 & 22 \\
10. The rights of the elderly & 13 & 8 & 65 & 14 \\
11. Prevention of trafficking in human beings & 12 & 8 & 42 & 38 \\
12. The right to the health protection & 12 & 13 & 66 & 9 \\
13. The rights of the sexual minorities & 11 & - & 38 & 51 \\
14. The right to the protection of private life & 9 & 5 & 69 & 17 \\
15. The right to participate in the state governance & 8 & 5 & 63 & 24 \\
16. The rights of the crime victims & 7 & 5 & 56 & 32 \\
\hline
\end{tabular}
\caption{Has the protection of human rights improved in these fields after Lithuania’s accession to the European Union (\%)}
\end{table}

\footnote{The data of the Public Opinion Research Centre “Vilmorus”.}
As it is seen from the table above, the answers “the situation has not changed” and “hard to tell” dominate. Most probably that in a course of half of a year from Lithuania’s accession to the European Union the significant changes in the field of the protection of human rights could not have taken place so quickly. On the other hand, the respondents specified that certain positive changes took place nearly in all the fields.

We will group the specified human rights in the questionnaire for the assessment of the respondents according to the positive and negative evaluations: the first group will consist of the rights with the best assessment of the changes – the difference is between 10% and 20%. The second group will consist of changes with the good assessment: the difference of positive and negative assessment is up to 10%. The third group – the difference is negative, i.e. the majority chose the answer “worsened”.

<table>
<thead>
<tr>
<th>The right to access the information</th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>The rights of migrants, refugees</td>
<td>18</td>
</tr>
<tr>
<td>Children rights</td>
<td>17</td>
</tr>
<tr>
<td>The rights of the ethnic minorities</td>
<td>15</td>
</tr>
<tr>
<td>The consumer rights</td>
<td>15</td>
</tr>
<tr>
<td>The rights of the suspected, accused and imprisoned</td>
<td>13</td>
</tr>
<tr>
<td>The rights of the sexual minorities</td>
<td>11</td>
</tr>
<tr>
<td>The rights of women</td>
<td>11</td>
</tr>
</tbody>
</table>

The right to access information. The majority of the respondents (23%) noted the positive changes in the right to access the information (negative changes were mentioned by 3%). The biggest number was among the students, specialists having the university education.

The rights of migrants and refugees. 19% of the interviewed mentioned that the protection of these rights improved and only 1% that it worsened. The respondents hardly had in mind any concrete information about migrants and refugees – there were not so many of them in Lithuania, though there were quite many of critical publications in the media about their living in Lithuania. It is possible to suppose that the image of the European Union causes associations for many with respect and help for the migrants and refugees. Especially big number of the respondents who mentioned the improvement in this field (31%) was among students.

The rights of the child. 20% mentioned the positive improvements in the field of the protection of the rights of the child (only 3% stated that the situation got worse). Again, the biggest number of those who mentioned positive changes was among the students – 31%.
The rights of the ethnic minorities. 16% mentioned the positive changes and only 1% – negative ones. The protection of the rights of the ethnic minorities is associated for majority with the principal provisions of the European Union. The assessments of the protection of this right are quite similar in all the social-demographic groups.

Consumer rights. 19% mentioned the positive and 4% negative changes. More often the negative changes were mentioned in rural areas, among the groups of people with lowest income, by the unemployed. It could be thought that there people had in mind the growth in prices for certain goods. Positive changes were most often seen by the youth – 35%.

The rights of the suspected, accused and imprisoned. 14% mentioned the positive changes and only 1% – the negative ones. That could be associated with the active position of European Union institutions related to the reform and improvement of the penitentiary system in the new member states, including Lithuania. The answers were similar in all social demographic groups.

The rights of sexual minorities. 11% of the respondents specified the improved situation and practically there were no answers about the contrary (just 4 answers out of 1000). The students most often specified the improvement of these rights.

Women rights. 14% of the respondents specified that the situation of the protection of the rights of women improved and 3% – that it got worse. The opinions of men and women do not differ with regard to this issue.

<table>
<thead>
<tr>
<th>The rights of the disabled</th>
<th>The difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to work</td>
<td>7</td>
</tr>
<tr>
<td>The rights of the elderly people</td>
<td>5</td>
</tr>
<tr>
<td>Prevention of trafficking in human beings</td>
<td>4</td>
</tr>
<tr>
<td>The right to the protection of private life</td>
<td>4</td>
</tr>
<tr>
<td>The right to participate in the state governance</td>
<td>3</td>
</tr>
<tr>
<td>The rights of the crime victims</td>
<td>2</td>
</tr>
</tbody>
</table>

The rights of the disabled. 15% of the respondents provided the positive and 6% negative evaluations. Negative opinion was more often expressed by people having no secondary education, people with low income, unemployed.

The right to work. During the evaluation of this right there was the smallest number of people having no opinion on this issue and the responses were quite polarized: 20% evaluated the changes positively and 13% – negatively. Most often the students provided positive evaluations – 42% and negative evaluations were provided by the unemployed – 25%.
The rights of the elderly people. The evaluations were contradictory – 13% noticed positive changes and 8% – negative ones. More evaluations that are negative were received from the elderly people, having no secondary education.

Prevention of trafficking in human beings. 12% positively evaluated the changes in the field of the protection of human rights and 8% – negatively. That is one of the most critically assessed fields. The supposition could be made that the inhabitants relate the opening of borders with wider possibilities to engage in criminal activity as well as new preventive techniques and technical assistance from western countries.

The right to the protection of private life. 9% of the respondents evaluated the changes favourably and 5% – unfavourably. The students provided best evaluations. The unemployed and low-income group presented the worst evaluations.

The right to participate in the state governance. 8% of the inhabitants provided the positive evaluations and 5% – negative ones. Here again the students provided the best evaluations and the unemployed provided the worst evaluations.

The rights of the crime victims. Only a very small number of the inhabitants could assess the changes: 7% of positive answers and 5% of the negative ones. The unemployed and people with low income expressed the worse evaluations, whereas the students provided the best evaluations.

<table>
<thead>
<tr>
<th>The right to the health security</th>
<th>The difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-1</td>
</tr>
</tbody>
</table>

Only one field of human rights contains more negative evaluations (13%) than positive ones (12%) – that is the right to the health security. The unemployed evaluated the changes especially bad (24% of the negative evaluations), the inhabitants of Vilnius city (20%). The supposition could be made that here the criticism for the field of health security is related to the prices of medicine as well as difficulties to purchase the traditional medicine from the formerly Soviet areas.

Thus, in the majority of the fields of human rights, after Lithuania’s accession to the European Union, the inhabitants noted the positive changes. The students provide especially good evaluations. The unemployed, the respondents with lower income group are more sceptical from that point of view.
THE ASSESSMENT OF THE HUMAN RIGHTS PROTECTION SYSTEM

The previous chapters discussed the evaluations of the protection of different fields of human rights. Now we will touch another aspect – how the human rights protection system itself is evaluated in Lithuania.

As we can see there are not many of the positive evaluations (not more than 10%), negative evaluations dominate. However, it is not possible to disregard the decrease of the negative evaluations since May 2002.

Table 8 displays the change of the differences of the responses “agree” and “disagree”.

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>2002</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effectively protects the human rights</td>
<td>-56</td>
<td>-33</td>
</tr>
<tr>
<td>The work activities are transparent and clear</td>
<td>-62</td>
<td>-40</td>
</tr>
<tr>
<td>Open and accountable to society</td>
<td>-61</td>
<td>-40</td>
</tr>
<tr>
<td>Is constantly improving its work</td>
<td>-49</td>
<td>-22</td>
</tr>
</tbody>
</table>
59% evaluated the efficiency of the human rights protection system negatively in 2002 and in 2004 such answers formed only 40%, i.e. significantly less. If compared to 2002, the difference in 2004 between those who agree and those who disagree with the statement about the system of the efficient protection of human rights improved by 23 percentage points. The analysis of the data of 2002 showed that the differences of this as well as other answers within the social demographic groups were not significant (in the majority of cases it did not go beyond the limits of the statistical bias). In 2004, the worst evaluations were expressed by the unemployed, workers and those having the low income. The slightly better evaluations were presented by the students and the inhabitants of Vilnius city.

Just a small number mentioned that the work of the human rights protection system was transparent and clear (7%), nearly half – 47% – negatively evaluated this aspect. However, in 2002 such evaluations formed even 65%, i.e. the situation changed to the better also here. In a course of two years the difference between those who agree and those who disagree with the statement about the transparency and clearance of the work activities of the system of the protection of the rights improved by 22 percentage points. In 2004, again the worst evaluations were provided by the unemployed and people with low income.

"The system is open and accountable to society" – 6% of the respondents agreed with this statement and 46% disagreed. However, a noticeable improvement of the situation is seen also here – in 2002 64% of the respondents assessed the situation badly and the difference between those agreeing and disagreeing improved by 21 percentage point.

The following aspect of the work of human rights protection system was evaluated relatively better – "The system continuously improves its work". 10% of the respondents agreed with this statement and 32% disagreed. Like regarding the aforementioned aspects the significant changes were recorded – in 2002 the number of negative evaluations formed even 54% and negative evaluations formed 5%. The difference between those who agree and disagree with the statement "continuously improved its work" improved by 27 percentage points.

Thus, despite of the fact that the assessment of the human rights protection system remains low, still the assessment of the situation has significantly improved since 2002. More socially vulnerable groups of inhabitants, especially the unemployed, assess the situation worse.
How do the different Lithuanian authorities ensure the human rights in Lithuania? This question was presented for the respondents in May 2002 and November 2004. They were requested to evaluate the work of the following institutions: the President Office, the Seimas, the Government, the courts, the media, non-governmental organizations, and municipalities. The respondents’ knowledgeability should not be overestimated when evaluating the work of the institutions. However, that is the public opinion that should be known and considered.

There were three institutions that received more positive evaluations than negative ones (the media, the NGOs and the President Office) as well as three that received more negative evaluations (the courts, the Government, the Seimas). In the majority of cases the evaluations improved from 2002 that correlated with the positive changes of the assessment of the situation of human rights.

Table 9 contains the differences of evaluations “good” and “bad”.
As it is seen from the above table, the situation among the positively evaluated institutions in a course of two years has noticeably improved with respect to non-governmental organizations and the President Office (the difference of the evaluations improved by 14 and 12 percentage points). With respect to the media, it remained nearly unchanged. More significantly the situation improved with respect to the negatively evaluated institutions: the differences of the evaluations improved with respect to the courts by 25 points, to the Government – by 22 points and to the Seimas – by 21 point.

The more detailed analysis of the evaluation of the mentioned institutions is as follows:

**The media.** The work of this institution was evaluated best of all – 57% of positive evaluations and only 10% of negative ones. The evaluations from the year 2002 have not changed. Moreover, trust in the media as an institution decreased by 12% during the mentioned period of time\(^\text{14}\). However, that did not have any influence over the assessment of the work of the media in the protection of human rights. In 2002, the work of the media was equally well assessed by all social demographic groups. In 2004 the work of the media was better evaluated by the lower income people, the unemployed, the workers, the inhabitants of rural areas and regional centres. They still retain the image of the media as the defender of the common people.

**Non-governmental organizations.** More than a half of the respondents could not evaluate this institution or provided neutral answers. The answers of the rest of the respondents were spread to advantage of the non-governmental organizations – 34% of the positive evaluations and 10% of the negative answers. From 2002, the evaluations improved – then it was only 24% of the positive evaluations (14% of the negative ones). In 2002 the work of NGOs was best evaluated by the young people (31%), better educated (34%), and wealthier (34%) inhabitants. Similar situation was also in 2004: the work of NGOs was best evaluated by the students (52% evaluated positively), the specialists having the university education, i.e. better educated and active people. Less educated people more often had no opinion on that issue neither in 2002 nor in 2004.

\(^{14}\) Lithuania Before Entering the European Union, p. 62.
The President Office. This institution received a bit more positive evaluations (27%) than the negative ones (25%). The evaluations in 2002 were worse (accordingly the numbers were 21% and 31%). In both cases Mr Valdas Adamkus, one of the most popular politics, was holding the post. Therefore, why in one case the work of the President Office in protecting the human rights was evaluated negatively and in another case – positively? The supposition could be made that the respondents differentiate the activities of the President and the President Office (namely the activities of the counsellors) and in 2002 the activity of the environment of the President was not popular. The promises to take more care of the ordinary people given by Valdas Adamkus after the presidential elections in 2004 might have had influence over the positive evaluations in 2004. The activities of the President Office were better evaluated in 2002 and 2004 by the educated, younger, wealthier inhabitants of the cities. The negative evaluations were expressed by elder people, having no secondary education, lower income, and rural inhabitants. Such situation was also in 2002. However, the mentioned groups evaluated the work of the President Office much negatively.

The courts. The work of this institution in assurance of human rights in Lithuania is assessed quite negatively: 19% of positive and 36% of negative answers. However, it is also important that since 2002 the evaluations significantly improved (accordingly the numbers were 10% and 52%). The confidence in courts also increased during that period of time. In 2002, all social-demographic groups negatively evaluated the work of the courts. However, in 2004 the evaluations pointedly differed in the different age groups: if the students in general positively evaluated the work of the courts (38% of positive and 29% of negative answers), so those at the age of sixty and elder people on the contrary, gave negative evaluations (12% of positive and 43% of negative answers). The supposition could be made that the type of evaluations depended also on the life experience – there is a bigger chance to face negative experience when growing older that will remain in the memory for long.

The Government. There are more negative evaluations (37%) than positive ones (17%). However, the work of the Government in 2004 was assessed noticeably better than in 2002 when accordingly the numbers were 50% and 8%. All the social-demographic groups evaluated the work of the government in the field of the protection of human rights negatively in 2002. In 2004 the work of the Government was evaluated worse by the unemployed, workers, and inhabitants with lower income.

The Seimas. Traditionally, the work of this institution is assessed negatively and the confidence in it is especially low. Accordingly, poor evaluations were given for the work of the Seimas in the protection of human rights in Lithuania: 43% of the respondents assessed this work negatively and only 12% gave positive evaluations. However, in 2002 such evaluations were even worse: 57% of negative and 5% of positive answers. The supposition could be made that the evaluations in November 2004 were better as the Seimas was newly elected and part of the inhabitants expected better results than earlier. Like in the year 2002, the assessment of the work of the Seimas in 2004 was low in all the social-demographic groups. The students and the inhabitants of Vilnius city expressed slightly better evaluations in 2004.
ATTENTION TO HUMAN RIGHTS IN LITHUANIA

The different aspects of the assessment of the situation of human rights have been analyzed. To make the picture even clearer we will present the results (Picture 6) that were received after the summing up of the answers to the question on how much attention is given for the different human rights in Lithuania.

Picture 6. In your opinion, how much attention is given to below-mentioned issues of human rights in Lithuania? Evaluate on a 5-point scale, where 1 – “very little attention is given” and 5 – “very much attention is given”; in the diagram answers “much” (4+5) and “little” (1+2) are shown ranked by difference of positive and negative answers (%)

- **The rights of ethnic minorities**: 40(47)
- **The rights of migrants, refugees**: 32(29)
- **The rights of the child**: 33(25)
- **The rights of the suspected, accused and imprisoned persons**: 27(27)
- **The rights of the sexual minorities**: 22(19)
- **Consumer rights**: 27(18)
- **The right to access information**: 26(29)
- **The rights of women**: 24(25)
- **The rights of the disabled**: 31(44)
- **The right to the health protection**: 34(44)
- **The rights of the elderly people**: 34(51)
- **The right to participate in the state governance**: 34(50)
We shall group the mentioned rights according to the difference of negative and positive answers. The first group will consist of the rights where the difference is positive. The second group will consist of the rights where this difference is negative, however, does not exceed 15%. We will name this group as the group of the rights of insufficient attention. In case the difference between the positive and negative evaluations is even bigger, we will name this problematic group of rights as the groups of the least attention.

It should be noted this group contained nearly all the rights (except the right to access information and the rights of women) that were best evaluated according to the question “Has the protection of human rights improved in these fields after Lithuania’s accession to the European Union?” (see Table 4). In a course of 2 years the difference of positive and negative answers got a bit worse (by 4 percentage points) with respect to the ethnic minorities. However, the negative attitude changed towards the positive one with respect to the rights of the child and consumer rights. There the differences in evaluations improved accordingly by 21 and 19 percentage points.
The rights of ethnic minorities. As in 2002, in 2004 the respondents specified that the biggest attention is given to the rights of ethnic minorities – 40% of positive evaluations. By the way, this rating decreased in a course of the mentioned period of time (used to be 47%). However, the number of negative evaluations also slightly decreased. In 2002 people having university education and wealthier ones evaluated the situation as noticeably positive one. In 2004, the best evaluations were given by people having the university education. The negative evaluations, the number of which is small, quite equally divide in all the socio-demographic groups. It should be noted that the evaluation of the protection of this right was also positive that allowed the supposition that such evaluation was greatly influenced also by the positive opinion about the large attention paid to the mentioned rights. According to the data of the survey of 2004, 64% of people stating that especially much or much attention was paid to these rights evaluated the protection of ethnic rights in Lithuania as very good or good.

The rights of migrants, refugees. Here also the majority of the respondents specified that the attention paid to these rights was sufficient – 32% (insufficient – 11%). Since 2002, the assessment slightly improved. The difference in the socio-demographic groups consisted not of the type of the assessments but of the part of the respondents having no opinion: 53% of the respondents having no secondary education had no opinion on this issue and 27% of the respondents having no opinion on the issue had the university education.

The rights of the child. If in 2002 the bigger amount was of those who stated that the attention paid to the rights of the child was insufficient, so in 2004 the situation changed: 33% of the respondents specify the sufficient attention and 17% state that the attention was still insufficient. It is important to note that better evaluations have been given by the groups of the inhabitants who in most cases have children: inhabitants at the age of 30–39, housewives (even 51% of them specified that there is enough attention paid to the rights of the child).

The rights of the suspected, accused and imprisoned. The number of positive evaluations did not change since 2002 (27%). However, the number of the negative evaluations due to the lack of attention to such rights decreased nearly twice. There is only one group of inhabitants according to which the attention paid to the rights of the imprisoned is insufficient – the youth. As in case of the ethnic minorities, the supposition could be made that the positive evaluation of the protection of the rights of the imprisoned recorded earlier greatly depend on the positive evaluation of the attention paid to this issue. According to the data of 2004, 54% of those stating that there is very much attention paid to the rights of the suspected, accused and imprisoned evaluated the situation of the protection of the rights of the imprisoned in Lithuania as very good or good.

The rights of the sexual minorities. More than a half (51%) of the respondents had no opinion on this issue. Among those who expressed their opinion, the bigger number formed those who positively evaluated the attention paid to the rights of sexual minorities (22%). Since 2002, the number of negative evaluations decreased twice. Only the students expressed critical opinion to this issue – there were more negative evaluations than positive ones. The data of the carried surveys again allow verifying the hypothesis whether the
positive evaluation of the protection of the rights of the sexual minorities is not influen-
ced by the opinion that too much attention is paid to these rights. According to the
results of the surveys carried in 2004, 61% of those stating that very much or much atten-
tion was paid to the rights of sexual minorities, evaluated the protection of these rights in
Lithuania as very good or good.

The consumer rights. If in 2002 the attention to the consumer rights was evaluated as
insufficient, so in 2004 significant changes were recorded. 27% evaluated the attention to
these rights positively and 19% – negatively. In 2002, the situation was more favourably
evaluated by the respondents at the age 30–39 – 29%, wealthier ones – 26%. The situation
was evaluated more negatively by the respondents of the pre-retirement age – 39%. In 2004,
the answers in different social groups were quite similar.

| Table 11. The group of the rights of insufficient attention (the negative
difference of positive and negative answers is less than 15%) |
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to access information</td>
</tr>
<tr>
<td>The rights of women</td>
</tr>
<tr>
<td>The rights of the disabled</td>
</tr>
<tr>
<td>The rights of elderly people</td>
</tr>
<tr>
<td>The right to the health protection</td>
</tr>
</tbody>
</table>

The right to access information. Here the difference of positive (24%) and negative (26%)
evaluations is already negative. Since 2002, the evaluations changed slightly. As in 2002, in
2004 the youth complained least of all regarding the right to access information. People at the
pre-retirement age complained most of all in 2002 and in 2004 – the unemployed.

The rights of women. The evaluation of the attention paid to the rights of women
changed very slightly: 21% evaluate the attention paid to these rights positively and 24% –
negatively. Like in 2002, in 2004 the answers of men and women differ. The majority of men
state that there is enough attention paid (in 2002 – 29%, in 2004 – 24%) than not enough (ac-
cordingly – 22% and 17%). Whereas women on the contrary state – the bigger number of them
state that the attention paid is insufficient (in 2002 – 35%, in 2004 – 30%). The positive
evaluation was expressed accordingly by 16% and 18% of women. It should be noted that
similar tendency was recorded when analyzing the opinion of the inhabitants towards
the assurance of equal opportunities of men and women. The supposition could be made
that the inhabitants tend to attribute the assurance of the equal opportunities for men and
women to the issue of the protection of the rights of women.

The rights of the disabled. The attention towards the rights of the disabled was evalua-
ted quite sceptically: 22% of positive evaluations and 31% of the negative ones. However, it is
important that the evaluations of 2002 significantly improved (then the number of negative
evaluations formed even 44% and positive – just 13%). In 2002, there were no clear differences recorded in socio-demographic groups and in 2004 the worst evaluations were expressed by the residents of the biggest cities, having the university education, wealthier respondents.

The right to the health protection. Despite of the negative balance of evaluations (23% of positive ones and 34% of the negative ones), the situation since 2002 significantly improved (at that time the attention towards the rights to the health protection was positively evaluated only by 14% and negatively even by 44% of the respondents). In 2002 people at the pre-retirement age evaluated the situation worse (55%) and in 2004 most of the negative evaluations was expressed by the residents of Vilnius city (41%).

The rights of the elderly people. In 2002, more than a half of the respondents (51%) evaluated the attention towards the rights of this group of people as insufficient (only 12% specified the sufficient attention). There were significantly less (34%) of the negative evaluations in the repeated survey in 2004 and there were significantly more of positive evaluations (22%). Although the situation in this field is not good, it is changing to the better. Like in 2002, in 2004 elderly people (accordingly 60% and 38%), those having university education, the residents of the biggest cities were more critical towards this field.

Table 12. The group of the rights with the least attention (the negative difference between the positive and negative answers is more than 15%)

<table>
<thead>
<tr>
<th>Right</th>
<th>2002</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to participate at the state governance</td>
<td>-39</td>
<td>-17</td>
</tr>
<tr>
<td>The right to the protection of private life</td>
<td>-46</td>
<td>-23</td>
</tr>
<tr>
<td>Prevention of trafficking in human beings</td>
<td>-47</td>
<td>-27</td>
</tr>
<tr>
<td>The rights of the victims of crimes</td>
<td>-52</td>
<td>-29</td>
</tr>
<tr>
<td>The right to work</td>
<td>-59</td>
<td>-33</td>
</tr>
</tbody>
</table>

The right to the state governance. During the evaluation of the attention paid towards this right twice more of the respondents expressed negative evaluations (34%) than positive ones (17%). On the other hand, these evaluations from 2002 significantly improved (the numbers accordingly were 50% and 11%). In 2002, the situation was evaluated worst by the people at the pre-retirement age and the workers; in 2004 the most critical in this respect were also the workers and the unemployed, those with low income, people of secondary education.

The right to the protection of the private life. The attention towards this right was evaluated as insufficient – 36% of negative evaluations and just 13% of positive ones. Since 2002 the evaluations significantly improved (accordingly the numbers were 53% and 7%). In 2002 and in 2004 the negative evaluations were given by all socio-demographic groups.
Prevention of trafficking in human beings. 37% of the respondents specified the lack of the attention towards this problem (in 2002 the number of such answers was even bigger – even 53%). Only a small number (10%) do not see any problems in this field. In 2004, like in 2002 the results of the survey showed the concern in this problem in all the socio-demographic groups.

The rights of the crime victims. There are significantly more (37%) of the respondents who state that the attention paid to the protection of these rights is insufficient than those contrary thinking (8%). Like in the majority of other fields, the assessment of the situation here also improved (in 2002 the numbers accordingly were 57% and 5%). The socio-demographic profile of the most critical ones towards this aspect in the surveys of 2002 and 2004 was similar: these were more educated and wealthier people. Similarly to the group of the rights with the sufficient attention, the supposition could be made that the negative assessment of the protection of the rights of the crime victims recorded earlier greatly depend on the negative assessment of the attention paid to the protection of these rights. According to the data of 2004, 54% of those stating that there was very little or little attention paid to the rights of the crime victims also evaluated the protection of the rights of the crime victims in Lithuania as very bad or bad.

The right to work. That is the right where according to the respondents least attention is paid. Even 47% of the respondents specified that the attention is insufficient and there are just 14% of those who think on the contrary. But namely in this field the biggest positive changes were recorded as well – since 2002 the number of negative evaluations reduced to 21%. In 2002, the situation was evaluated worst by people at the pre-retirement age (78%), the group of people at the age of 40-49 (76%), the unemployed (78%), the workers (74%), the residents of regional centres. In 2004, the unemployed (68%) and the respondents of low income (59%) mostly complained regarding the lack of the attention paid towards the right to work. Like in case of the rights of the crime victims, the correlation among the attention to the protection of the right to work and the evaluations of the right to work and the right to choose the employment could be also noticed. According to the data of 2004, 63% of those stating that there was very little or little attention paid to the right to work also evaluated the protection of the right to work and choose the employment as very bad and bad.

Thus out of sixteen fields of human rights ten were evaluated as the fields with insufficient attention paid (especially that concerns the right to work and the rights of the crime victims). On the other hand, the results in majority of fields improved. The respondents gave best evaluations for the rights of the ethnic minorities as well as the rights of migrants and refugees. The positive correlation established among the assessments of attention and situation of the certain rights allowed the opinion that the residents tend to relate the poor protection of human rights in Lithuania with the insufficient attention towards these rights.
VIOLATIONS OF HUMAN RIGHTS:
EXPERIENCE OF RESPONDENTS

The first chapter analyzed the assessment of the respondents of the protection of different human rights in Lithuania. Now we will discuss another, more fact-based aspect – what number of the respondents experienced the violations of human rights in a course of late years (Picture 7).

First of all the attention should be paid to the fact that in a course of three years the number of those whose rights have not been violated formed 48% in 2001 and 61% in 2004. It should be also noted that in 2001 as in 2004 the first top three of the most vulnerable and worst assessed rights (Picture 2) corresponded. That is the right to fair pay for work, the right to adequate standard of living, the right to work and choose employment. It is important that the situation mostly improved in the fields where most of the complaints were registered. Changes in other fields were not big; however, the level of the declared violations of human rights was not high – in nine fields out of twenty-three not more than 1% of the respondents mentioned the violations of the rights.

Thus, there were 52% of the respondents in 2001 and 39% of the respondents in 2004 who mentioned the violations of their rights. Who were they? In 2001, they were people having the university education (56%), people at the age of 40–50 (64%), the unemployed (70%), the residents of Vilnius (62%), the residents of other big cities (61%). The situation in 2004 slightly changed: the violations were most often specified by the youth (54%), the specialists having the university education (54%), the residents of Vilnius (51%). We think that the living conditions of these groups of residents are even better compared to the rest of residents of Lithuania. However, they have much higher needs and requirements, the civil sensitivity.

We shall analyze in a more detailed way the separate fields of human rights.

The right to the fair pay for work. That is most often mentioned problem. It was specified by 18% of the respondents. The improvement was noticed in this field since 2001 – the number of people who mentioned this violation decreased by five percent. But these figures describe people in general, including also the unemployed. There are much more complaints regarding the unfair pay for work among the employed – even 30%. Even more often this problem is specified by the workers – 36% (35% in 2001).

The right to an adequate standard of living. 11% of the respondents expressed complaint regarding the adequate standard of living. Since 2001 this rate fell down nearly twice (was 21%). The attention should be paid that this rate is especially subjective. The “adequate” level depends on the needs, on the imagined standards of good life. Most probably due to this fact this problem in 2001 and 2004 was more often specified by the specialists having the university education, and less often mentioned by rural inhabitants, retired people.
Picture 7. Please indicate which human rights, in your opinion, have been violated with respect to you in the recent years (%)

The results of the survey of November 2001 are in the brackets

- The right to the fair pay for work (18(23))
- The right to an adequate standard of living (11(21))
- The right to work and choice of employment (10(20))
- The right to timely and professional medical care (9(11))
- The right to social protection (7(9))
- The right to access information from government and municipal institutions (6(7))
- The right to the immunity of ownership (6(7))
- The right to fair hearing of cases (4(7))
- The right of elderly people to social security (4(6))
- The right of the child to adequate support of the state towards ensuring the right to education (4(5))
- The right of the immunity of the private life (3(3))
- The right of the pregnant women and those raising preteens (2(2))
- The right to freedom of expression (2(1))
- The rights of the crime victims (2(2))
- Assurance of the equal opportunities of men and women (1(2))
- The right of a child not to experience violence and coercion (1(1))
- Protection of women from violence in the family (1(1))
- State protection of a child who does not receive family support (1(1))
- The rights of the ethnic minorities (0,5(0,3))
- The right of belief and religion (0,4(0,8))
- The right of a child to be protected from economic exploitation (0,1(0,6))
- The rights of the imprisoned (0(0,3))
- The rights of sexual minorities (0(0))
- No violations of the rights (61(48))

The results of the survey of November 2001 are in the brackets.
The right to work and choice of employment. Every tenth respondent specified the violation of his/her right to work (27% including also the close social environment). These answers among the people at the employable age are even more often – 15%. It is evident that most often the unemployed specify the violation of this right – 27%. In 2001, this problem was specified twice as more – it was specified by every fifth respondent. This issue was especially relevant for the unemployed (54%) and the respondents belonging to the group with lowest income (33%).

The right to timely and professional medical care. 9% of the respondents indicated that this right was violated (20% also including the close social environment). People having the university education express “criticism” towards the system of health protection much more often – 19% as well as the residents of Vilnius – 23%. People having no secondary education who mentioned this form just 2%, the rural inhabitants – 3%. It can be assumed that people having the university education and the residents of Vilnius have much more demands. In 2001, there were 11% of those who complained about the medical care, i.e. there were no changes in a course of three years (the existing difference does not exceed the statistical bias). The residents of the cities (15%) expressed more complaints during the mentioned year than rural inhabitants (5%).

The right to social security. 7% of the respondents stated the violations of their rights (there were 9% of them in 2001). If to include the closest social environment of the respondents then this rate would amount up to 12% and again most often the residents of Vilnius city expressed more complaints due to the problems of social security (17% in 2001 and 15% in 2004).

The right to access information from the government and municipal institutions. Since 2001 part of the respondents who mentioned the violations of the rights in this field nearly did not change – 6% (were 7%). More often this was specified by the specialists having the university education (11% in 2001 and 13% in 2004), the residents of Vilnius (10% in 2001 and 11% in 2004).

The analysis of the violations of other rights, at least in socio-demographic terms, would be meaningless due to the small number of the respondents who specified them. It should only be noted here that none of the respondents mentioned the violation of the rights of him/her as the representative of sexual minorities (such openness is hardly possible in our cultural environment). On the other hand, in 2004 nine respondents (0.9%) specified that this occurred for their relatives or acquaintances and that is already the sign that the problem obviously exists.

None of the respondents specified the violations of his/her rights as the imprisoned person. However, 2.1% of the respondents specified that this occurred for their relatives or acquaintances and this again demonstrates that such a problem exists.

Only a few respondents state that their rights to freedom of belief and religion as well as the rights of ethnic minorities were violated. A bit more (1.7%) specified the violation of
the right to freedom of expression (including the close social environment – 2.6%). The students specified this violation more often (4.2%).

Very few women respondents (1.2%) mentioned violence against them in the family. However, when talking about such existing problem in the families of the acquaintances quite a big number is specified – 7%.

Thus, if compared to 2001 the succession of the declared violations of the rights in a course of three years nearly did not change. The most often specified violation is that of the right to the fair pay for work, the right to the adequate standard of living, the right to work and choose employment, the right to timely and professional medical care. In the majority of cases young, educated people and residents of the cities complain about the violations of their rights. Most probably their needs and demands are much higher that those of the less qualified, elder people. The frequency of mentioning of the violations of the majority of the human rights was very low, however, after including the close social environment of the respondent this rate as a rule significantly increases and that makes the existing problem even more relevant.

The most important according to our view is the fact that in a course of three years the number of the respondents stating the violations of their rights in a course of late years significantly decreased.
RESTORATION OF VIOLATED RIGHTS

In 2002 the respondents were requested to specify the human rights that were violated in a course of late 12 months. During that year only four answers were statistically relevant: 6% of the respondents stated that they experienced the violations of their rights to work; 3% of the respondents mentioned the violation of their right to the protection of the private life, the right to the health care and consumer rights. In 2004, the mentioned list was enlarged by one more right: receive information. Picture 8 provides the results of the answers concerning the five rights that were violated in a course of late 12 months; it also provides the answers to the questions whether the respondent applied the respective authorities and what was the reaction of these institutions.

![Graph of Violated rights, Applied, Investigated, Restored for The right to work and The right to the health]
### The right to access information

- **Violated rights**: 4.2
- **Applied**: 1.5
- **Investigated**: 0.7
- **Restored**: 0.5

### The right to the protection of private life

- **Violated rights**: 4
- **Applied**: 2.1
- **Investigated**: 1.7
- **Restored**: 0.4

### Consumer rights

- **Violated rights**: 2.8
- **Applied**: 0.9
- **Investigated**: 0.7
- **Restored**: 0.5
In 2004, the rights of the majority of the respondents (76%) were not violated in a course of 12 months. However, in 2002, such respondents formed 85% and the worsened situation by 9% causes concern. This concern was also increased by the fact that if compared to 2002, the situation in 2004 did not change only in the field of the consumer rights. The situation in other fields of human rights got worse: in the field of the right to work and the right to health protection – by 3%; the right to access information – by 2%, and the right to the protection of private life – by 1%.

On the other hand, the worsening of the situation can be related not only to the increased cases of violations of human rights but also to the increased civil sensitivity: people are more aware of their rights and more often react to the illegal activities through the prism of the human rights. Does such increased civil sensitivity presuppose the civil activities, the wish not only to record but also protect their rights? What was the behaviour of those whose rights, as they have stated, were violated? As it is seen from Picture 8, their behaviour was quite passive one. Due to the violated rights to work in 2004 just 20% of the respondents supplied their applications, whereas in 2002 this percentage was twice as big – 48%. In 2004 only every second respondent filed an application because of violation of the right to the private life and in 2002 there were two thirds of them. The improvement of the situation is noticed only in the field of the protection of the right to the health care: there were 17% of those who filed complaints in 2004 and 14% in 2002. The results show that the civil demand of people is not only low but also is not distinguished by any special increase.

Why people do not apply due to the violations of their rights?

<table>
<thead>
<tr>
<th>Reason</th>
<th>2004</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>It’s hopeless to apply, nobody is going to help</td>
<td>71(64)</td>
<td></td>
</tr>
<tr>
<td>Was afraid to lose the job</td>
<td>16(6)</td>
<td></td>
</tr>
<tr>
<td>That was insignificant violation of human rights</td>
<td>11(6)</td>
<td></td>
</tr>
<tr>
<td>Do not know where to apply</td>
<td>8(10)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>4(7)</td>
<td></td>
</tr>
</tbody>
</table>

The results of the survey carried in November 2001 are in the brackets.
The alternatives of this question were constructed based on the answers to analogous open question (without any alternatives provided) of the survey conducted in November 2001. In 2001 as well as in 2004 the answer “it’s hopeless, nobody will help” took the first place – that revealed the disappointment of people in the state institutions, helplessness and the worst thing is that such disappointment was growing: in 2001 there were 64% of such people and in 2004 – 71% (the increase by 7%). Nevertheless, here again one should keep in mind that such problems as poverty and unemployment cannot be solved by simply addressing the institution.

The concern is also caused by quite a big number of the responses “afraid to lose the job” (16%) what suggests that the relations between the employers and employees are not improving. The number of such responses increased by 10% compared to 2001.

The answers “do not know where to apply” are also important. The number of such responses forms 8% (in 2001 – 10%) of the respondents. That reveals the problem of the information supply for the residents. This problem will be analyzed in the next chapter in a more detailed way.

Still part of people applied to different institutions, e.g. 1.6% of the respondents applied regarding the right to work in 2004, for 1.1% this issue was investigated and for 0.5% the rights were restored. Better results are concerning the applications due to health protection – 1% applied, for 0.9% the problem was investigated and for 0.8% the rights were restored.

Due to the very small number of the statistical data one should not absolute the received results. However, it is still possible to state that for a quite large number of people who are active and who fight for their rights succeed in restoration of the justice. The passivity of the residents used to be and still remains a serious problem in Lithuania.
SUPPLY OF INFORMATION ABOUT HUMAN RIGHTS TO THE RESIDENTS

The previous chapter already showed that information supply was one of the problems of the protection of human rights. Now we will analyze how people assess the information spread in Lithuania about the human rights and the possibilities to protect them.

Picture 10. Do you think that the information on human rights and the possibilities to defend one’s rights is sufficient in Lithuania (%)?

<table>
<thead>
<tr>
<th>Yes</th>
<th>19(22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>58(62)</td>
</tr>
<tr>
<td>Difficult to tell</td>
<td>23(16)</td>
</tr>
</tbody>
</table>

The result of November 2001 is in the brackets.

Since 2001 the situation in the field of information has not changed a lot, the reduction was noticed in the number of the positive as well as negative evaluations. The number of negative evaluations is thrice more than positive ones. That shows that a lot still can be done in this field as the need for the information on the human rights is very huge.

The specialists having the university education (71%) were in most need of this information in 2001, also people at the age of 30-50 (70%), the group of people with higher income (74%). In 2004, the following socio-demographic groups felt the lack of the information on human rights: the youth (70%) and the workers (66%). The answers to the question whether people know whom to address concerning the violated rights will help to clear out what type of information is needed (Picture 11).

As we could see there are only four fields of human rights out of sixteen where there are more positive answers than negative ones. These are more known, more “popular” fields: the rights to the health protection, the rights of the child, the right to work, consumer rights.

The lack of information is especially felt in the field of the rights of sexual minorities – only 7% of the respondents stated that they know where to address. Those knowing where to address in relation to the right to take part in the state governance, the rights of the ethnic minorities, the rights of migrants and refugees, trafficking in human beings, the rights of the suspected, accused and imprisoned do not form one fourth. Such answers could have been foreseen, having in mind that all the aforementioned rights are related to the so-called rights of social minorities, i.e. that the majority of the respondents simply do not belong to
such groups and therefore do not feel the need to have more information on the protection of such rights. However, it is not possible to say that people have enough information where to address in case of violations of other rights (except the aforementioned four where there are more positive answers than negative ones).

**Picture 11. Do you know where to apply for the violated human rights in the following fields (%)? (the ranking is made referring to the number of negative answers)**

<table>
<thead>
<tr>
<th>Human Rights Area</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>The rights of sexual minorities</td>
<td>7</td>
<td>64</td>
</tr>
<tr>
<td>The right to participate at the state governance</td>
<td>19</td>
<td>59</td>
</tr>
<tr>
<td>The rights of ethnic minorities</td>
<td>17</td>
<td>58</td>
</tr>
<tr>
<td>The rights of migrants, refugees</td>
<td>19</td>
<td>55</td>
</tr>
<tr>
<td>Prevention of trafficking in human beings</td>
<td>24</td>
<td>55</td>
</tr>
<tr>
<td>The rights of the suspected, accused and imprisoned</td>
<td>23</td>
<td>53</td>
</tr>
<tr>
<td>The right to the protection of private life</td>
<td>35</td>
<td>53</td>
</tr>
<tr>
<td>The right to access information</td>
<td>36</td>
<td>50</td>
</tr>
<tr>
<td>The rights of the crime victims</td>
<td>36</td>
<td>45</td>
</tr>
<tr>
<td>The rights of women</td>
<td>36</td>
<td>45</td>
</tr>
<tr>
<td>The rights of the disabled</td>
<td>40</td>
<td>44</td>
</tr>
<tr>
<td>The rights of elderly people</td>
<td>44</td>
<td>43</td>
</tr>
<tr>
<td>Consumer rights</td>
<td>40</td>
<td>48</td>
</tr>
<tr>
<td>The right to work</td>
<td>31</td>
<td>58</td>
</tr>
<tr>
<td>The rights of a child</td>
<td>27</td>
<td>62</td>
</tr>
<tr>
<td>The right to the health protection</td>
<td>26</td>
<td>67</td>
</tr>
</tbody>
</table>
Who is best informed about the possibilities to protect the human rights? Practically in all the positions the same consistency recurs: most often they are men, at the age of 30–60, people having the life experience and still active, well educated and well qualified, having higher income, the residents of the cities. And on the contrary, the answers “do not know whom to address” or “difficult to say” are more often provided by the retired people or the youth, also by less educated people, having lower income, rural inhabitants. Women know less about the possibilities to protect human rights, however, there are also exceptions – they are better aware of the possibilities to protect the rights of women and children.

It is important to establish from what sources people learn about the situation in the field of human rights in Lithuania – it could help in planning of the information flow in these fields (Picture 12).

There is no doubt that television used to be and remained the most important source of information on the human rights. This is especially evident when only one answer had to be chosen – public and commercial televisions together form 53%. Other sources, such as press and radio, fall behind several times. It should be noted that in 2001 people answering the open question “From what sources do you receive information on the human rights and possibilities to protect them?” included the press (75%), TV (67%) and radio (34%) into the top three information sources. In 2004, like in 2002 the respondents specified the same three most important information sources for them – commercial TV, public TV and national press took the first three positions. However, positions 4 and 5 differed: in 2002 these were the public radio and personal experience and in 2004 – information from the acquaintances and friends and public radio.

In 2004, like in 2002 public television was especially important for elderly people and commercial television on the contrary – for younger ones.

During the period of surveys the national press was more important also for the better educated, working specialists, the group of people with higher income. It could be thought that the price of the national press still remains too big for part of the residents. The importance of the regional press, evidently, is bigger in the rural areas.

The socio-demographic profile did not change for those mentioning also the public radio: this source was more important for the retired people, less educated ones. The information received from the acquaintances and friends was relatively more important for the mentioned groups of people as well.

As in many other surveys, especially strong correlation of the usage of Internet with the age was established in this survey as well: in 2004 Internet was specified as the most important source of information by 7% of the youth and only 0.3% of the retired people. Internet as one of the three most important information sources was mentioned by 28.2% of the youth and just 1.6% of the retired respondents.
Picture 12. Please specify the sources of information from which you get to know most about the situation of human rights in Lithuania (%)

### The main source of information

<table>
<thead>
<tr>
<th>Source</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public TV</td>
<td>27</td>
</tr>
<tr>
<td>Commercial TV</td>
<td>26</td>
</tr>
<tr>
<td>Personal experience</td>
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<td>National press</td>
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<tr>
<td>Information from acquaintances and friends</td>
<td>9</td>
</tr>
<tr>
<td>Public radio</td>
<td>8</td>
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<tr>
<td>Internet</td>
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<tr>
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<td>Commercial radio</td>
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<tr>
<td>Special literature</td>
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<tr>
<td>Conferences/seminars / trainings</td>
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### Three main sources of information

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SUMMARY

The sociologic survey carried in November 2004 continues the tradition of the human rights surveys that was started in 2001–2002 when drafting the Human Rights Action Plan supported by the United Nations. The underlying idea of these surveys was to create the database based on the selected indicators by the human rights experts where the evaluations of the surveys regularly carried in different aspects of human rights in Lithuania would be stored. The comparisons of such evaluations could outline the dynamics of the situation of human rights and show the change of the opinion of people in a course of time with respect to the human rights policy in Lithuania and their experience in protecting and implementing their rights.

The carried survey revealed that in a course of recent years the evaluation of the situation of human rights in Lithuania changed to the better: the number of those stating that human rights are being systematically violated reduced, improved the attitude to the field of human rights that was traditionally evaluated negatively – socio-economic rights. Such improvement of the evaluations can be conditioned by the general improvement of the socio-economic field of Lithuania. These fields remain the sorest areas in Lithuanian democratic state. That could be conditioned by the lately increased civil sensitivity; on the other hand, such sensitivity is not absolute. That is testified by a quite significant improvement of the assessment of the rights of the imprisoned during the existence of the quite strict criticism of Lithuania’s penitentiary system that is constantly expressed by important international organizations and experts.

There are positive changes also with respect to the Lithuania’s human rights policy. In 2004, the residents of Lithuania finally acknowledged that the current human rights policy is better than that of the Soviet times. In a course of late years the number of people thinking that the current policy meets the requirements of the European Union increased. However, despite of the positive tendencies, the overall evaluation of policy remains pessimistic.

The residents of Lithuania carefully relate the improvement of the protection of human rights with the accession to the European Union. That is especially observed in the field of the rights of the social minorities, i.e. such fields of human rights as the rights of migrants, refugees, the rights of ethnic minorities, the rights of the suspected, accused and imprisoned, prevention of trafficking in human beings, the rights of sexual minorities.

The residents of Lithuania tend to be critical not only to the situation of human rights but also to the system of the protection of human rights. The majority of people were sceptical about the efficiency of the protection system of human rights, the transparency and clearance of its activities, openness and accountability for the public. They also have doubts that this system is able to continuously improve its work. Despite of the fact that during late years the mentioned evaluations became not so radical this still does not change the essence of the problem: the residents of Lithuania still have no confidence in the system protecting the human rights.
Despite of the absolutely negative evaluations of the protection system of human rights, the evaluation of the institutions engaged in the activities of this system is not so implicitly negative. The criticism was expressed towards the Seimas, the Government and the Courts. The evaluation of the President Office improved and became positive. The mass media and non-governmental organizations were also evaluated positively. That is quite evident phenomenon, having in mind the strengthened role of the non-governmental organizations in protecting and assuring the human rights in Lithuania.

The results of the carried surveys allow the presumption about the positive correlation between the opinion of the residents about the attention paid to the human rights and situation assessment of the mentioned rights. Although like in the case of the assessment of the human rights situation, the opinion of the residents towards the sufficient attention to the human rights was mostly critical (ten fields of human rights out of sixteen were named as the fields with the sufficient attention paid) still the assessments in the majority of fields of human rights noticeably improved.

The evaluations of the human rights are frequently subjective and are based on the ungrounded information. As an example we could mention the situation about the rights of the imprisoned that are based on the opinion of the common people that they are too good for the persons who committed the crimes against other persons but which on the other hand may be very critically assessed by the international experts. The carried surveys revealed no big contradictions between the assessment of the situation of human rights and experience of people: for example, the top three of the most vulnerable and worst assessed human rights practically coincide. On the other hand, the analysis of the answers of the residents about the experienced violations of the rights in a course of late years showed favourable trends.

However, this cannot be made absolute: the analysis of the answers of the residents about the experienced violations of the rights in a course of late 12 months revealed a slightly different picture: the number of those stating that they did not experience any violations of their rights in a course of late years reduced. The situation became worse in the field of the right to work, the right to the health protection, the right to access information and the right to the protection of private life.

The circumstance that the worsened experience of the human rights violations may be also preconditioned by the increase of the civil sensitivity cannot be omitted. The passivity of residents remains a very serious problem in developing the civil society in Lithuania.

Lithuanian mass media may perform an important role in the field of human rights when raising civil sensitivity and strictness. The surveys showed that, on the one hand, the residents of Lithuania still lack the information on human rights, but, on the other hand, this information is more often obtained from electronic mass media – television and radio as well as the press. The role of public television may be especially important.

The carried surveys revealed a lot of problematic points in the field of the human rights. However, they also showed that the attitude of people towards the human rights and their implementation in Lithuania undergo positive changes. That allows seeing the perspectives of the human rights policy in Lithuania with optimism.
Publication “Human Rights in Lithuania” gives a complete picture of the human rights protection system in Lithuania based on the summary of the relevant issues concerning Lithuania as well as the principles of the national legal system. The publication is dealing with those issues the analysis of which outlines the human rights system and which by their relevance highlights the most important strengths and weaknesses of the system.

The present study consists of two structural parts – legal and sociological analysis of separate human rights protection areas.

ISBN 9955-9821-3-6

This publication is issued under the UNDP programme
Support to the Implementation of the National Human Rights Action Plan (LIT/02/005)

Išleido UAB „Naujos sistemos”,
Vytenio g. 50/803, LT-03229 Vilnius
Spausdino Standartų spausduvė,
Dariaus ir Gireno g. 39, LT-02189 Vilnius