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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

**COMMENTS BY THE GOVERNMENT OF LITHUANIA
TO THE CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE**

[23 March 2005]

The Government of the Republic of Lithuania has the honour to submit to the United Nations Human Rights Committee the information on the implementation of recommendations contained in paragraphs 7, 9 and 13 of the *Concluding Observations of the United Nations Human Rights Committee on the Second Periodic Report of Lithuania (CCPR/CO/80/LTU)*. The Committee considered the Second Periodic Report of Lithuania (CCPR/C/LTU/2003/2) at its 2181st and 2182nd meetings, held on 24 and 25 March 2004.

Recommendation 7

The new Law on the Legal Status of Aliens of the Republic of Lithuania came into effect on 30 April 2004. Paragraph 2 of Article 130 of the Law stipulates that “an alien shall not be expelled from the Republic of Lithuania or returned to a country where there are serious grounds to believe that in the country the alien will be tortured or subjected to cruel, inhuman or degrading treatment or punishment”. This provision of the Law is also applied to foreigners who constitute a threat to the public security or to the public order of the Republic of Lithuania. In the cases when the circumstances specified in paragraph 2 of Article 130 of the Law on the Legal Status of Aliens of the Republic of Lithuania exist, no decision regarding the expulsion of a foreigner from the Republic of Lithuania or his repatriation is made even if the foreigner’s stay in the Republic of Lithuania threatens public security or public order.

It is also noteworthy that according to paragraph 4 of Article 127 of the Law on the Legal Status of Aliens of the Republic of Lithuania, decisions on the expulsion of aliens when their stay in the Republic of Lithuania poses a threat to public security or public order shall be taken only by the Vilnius County Administrative Court. In 2004, the Vilnius County Administrative Court passed such a decision only in one instance. However, later the enforcement of the decision was suspended on the grounds that the alien had not exhausted all the remedies available to defend his rights. Vilnius County Administrative Court decided to wait until the decision of the European Court of Human Rights on the admissibility of the communication submitted by this person is taken.

Recommendation 9

Legislative initiatives

With the purpose of providing for a new remand measure in the Code of Criminal Procedure, *i.e.* an injunction for the suspect to live separately from the victim, the Law Amending Articles 120, 121 and 126 of the Code of Criminal Procedure of the Republic of Lithuania and Supplementing the Code by Article 132-2 was passed and came into force on 26 November 2004. Said amendments were drafted with a view to implement measure 51.2 (“To create legal possibilities to restrain violent family members from the aggrieved family”) provided for in the National Equal Opportunities Programme of 2003-2004 approved by the Resolution of the Government of the Republic of Lithuania (3 June 2003, No.712).

It is to be noted that the provisions of such character are laid down in the instruments of the United Nations and of the Council of Europe; corresponding legal provisions have been put into practice in many member states of the European Union. Injunction for the suspect to live separately from the victim imposed by an order of the pre-trial judge or court would prohibit the suspect from living in the place of residence of the victim during the criminal proceedings thereby protecting the victim from a likely unlawful impact, ensuring an unhindered investigation of the case and with a view to preventing new criminal acts (e.g., terrorising a person, offences affecting health etc.). This measure should be particularly effective in such cases when the victim is dependant on the suspect due to personal, social or any other reasons and has to live with him and the suspect takes advantage of this situation by using violence against and otherwise terrorising the victim and when, however, there are no grounds to impose the remand measure of detention upon the suspect. It is believed that it is more important to secure the victim’s interests in such a case, therefore, the suspect rather than the victim should leave the dwelling during the criminal proceedings. As children frequently are also victims under such circumstances or they live together with the victim, the principle of legal interests of the child must also be given priority consideration (paragraph 1 of Article 4 of the Law on Fundamentals of Protection of the Rights of the Child of the Republic of Lithuania).

The pre-trial judge or the court, by ordering an injunction on the suspect to live separately from the victim, could also restrict the suspect from visiting certain places (e.g., the work or dwelling place of the victim), from communicating or making contact with the victim and other persons specified in the ruling (e.g., relatives of the victim). When ordering this remand measure, the suspect would be warned that another remand measure (detention, home arrest, taking of

documents etc.) might be ordered for his failure to comply with such injunctions. The injunction to live separately from the victim would be revoked either when it is no longer necessary or when substituted by a more severe or more lenient remand measure. The remand measure would be revoked or varied by the prosecutor's decision or the court's ruling.

It should be stressed that the above-indicated restrictions can be ordered only by the judge or the court and only when there are reasonable grounds to believe that the person, living together with the victim and making use of the property, may violate the rights of the persons who live together with him: exert unlawful influence on the victim, commit new criminal acts directed against the victim or persons living together, hinder the commenced criminal proceedings etc. It should be noted that this restriction is not contrary to the core of ownership rights; the remand measure is temporary, applied only during the course of criminal proceedings to the extent it is necessary for an unhindered investigation of the case and the protection of interests of the victim and the family. Such restrictions of constitutional rights are in compliance with the principles of necessity and proportionality, since the given remand measure is based on the available factual data on the suspect's abuse of his rights to property or free abode, with a view to protect the life, health, freedom and dignity of the individual, as well as the interests of under-age children.

Government initiatives in the fight against domestic violence

Specific measures for tackling the problem of domestic violence are provided in the National Equal Opportunities Programme for 2003-2004 and in the National Programme against the Commercial Sexual Exploitation and Sexual Abuse of Children.

While implementing the measures of the National Equal Opportunities Programme for 2003-2004, ten projects of social assistance for victims of domestic violence against women were supported by the Ministry of Social Security and Labour. The projects aimed at providing women who have suffered from domestic violence with a set of social services: granting temporary shelter, food, legal and psychological advice, assistance in obtaining and filing required documents.

A publication "Legal and Practical Advice for Female Victims of Violence" was issued in 2004. It was distributed to all municipalities, subdistrict offices, women's crisis centres, police offices and teaching institutions.

Seminars are organised for police officers where they are trained to deal with situations of domestic violence, by using the most appropriate measures of influence to assist families, which suffer from domestic violence, provide prompt assistance for the victims of violence and render advice to the people on these issues. Such seminars are held by the Training Centre of the Lithuanian Police, the Ministry of Social Security and Labour, public agency National University Hospital Child Development Centre, non-governmental organisations and foreign experts. The Faculty of Police of Mykolas Riomeris University has included lectures on violence against women and children into their curriculum.

Lithuania continues to develop the system of fight against domestic violence against women. In 2004, a scientific study relating to the actions for suppressing violence against women was carried out. The study included analysis of existing legislation and experience of foreign countries, recommended actions to combat violence against women and a model of integrated support. Bearing in mind the topicality of this problem, the draft National Strategy for Curtailment of Domestic Violence against Women and the Plan of Implementation Measures of the Strategy for 2006-2009 are being elaborated in order to develop the system for suppressing domestic violence against women and to ensure timely and accessible legal, social and psychological assistance to the victims of domestic violence, protect them from social isolation, organise the rehabilitation of victims, ensure the effective application of not only penal sanctions, but also of measures of alternative influence on the violator and build public intolerance towards domestic violence.

With a view to implementing the National Programme against the Commercial Sexual Exploitation and Sexual Abuse of Children, a competition of projects of short-term and long-term support for children who have suffered from sexual abuse or commercial sexual exploitation was organised in 2004. Partial financing of 168,000 thousand litas (approximately 48,650 euros) for eight projects was granted by the Ministry of Social Security and Labour. The projects were implemented in June-December 2004 and included integrated support for children through psychological, social, legal, temporary accommodation and food supply services.

A two-stage training on the issues of sexual abuse and commercial exploitation of children for specialists working in the field of protection of the rights of children continued for the whole year 2004 in 10 Lithuanian counties. More than 300 specialists upgraded their qualifications during this training.

The concept of providing services for children who have suffered violence was drafted in 2004. The draft contains a review of the violence against children and its trends, provides for specific recommendations regarding the services of short-term and long-term rehabilitation for children victims of violence and their families, as well as for under-age offenders, forecasts the volume and types of the services that would be necessary for short-term or long-term rehabilitation.

In 2004, the following publications were also prepared: "Rehabilitation and Reintegration of Children who have Suffered Sexual Violence and their Relatives: Methodological Guidelines for Social Workers and Social Educators", "Rehabilitation and Reintegration of Children who have Suffered Sexual Violence and their Relatives: Methodological Guidelines for Psychologists". The publications are designed for social workers, social educators and psychologists working with children who have suffered violence and their families. The Methodological Guidelines extensively describe the stages of the work of social workers, social educators and psychologists, include case studies and discuss the extent of competence and responsibility of these specialists. The Guidelines should help the specialists to recognise a child who has suffered from violence, evaluate damage and render support to the child and his family. The publications have been widely circulated.

The National Programme of Prevention of Violence against Children and of Support for Children for 2005-2007 has been developed. The Programme sets forth the following underlying objectives: reducing violence against children by building a negative stance of every individual on violence against children as a phenomenon and enhancing the abilities of children to protect themselves from violence; eradicating the causes and factors of violence against children in a multifaceted manner; creating a system of preventive measures to curb violence against children; developing an effective system of support for children who have suffered from violence, their families, and violent under-age offenders; and developing international co-operation in this field. By way of the implementation of this Programme, the support necessary due to the damage suffered by the child and his family as well as the services acceptable to the child would be provided, the risk of far-reaching negative consequences would be reduced and potential violent offences should be prevented in the future. Aftercare services for persons who have committed sexual offences will be organised to help such people to learn how to suppress their sexual desire for children, thereby reducing repeated sexual offences against children.

Recommendation 13

Administrative arrest

The Code of Administrative Offences of the Republic of Lithuania (hereinafter – the CAO) provides for “administrative arrest” as a type of the penalty (Art. 21 of the CAO) (in the *Concluding Observations* it is referred to as “detention as administrative punishment”), however, the CAO does not stipulate such forms of administrative detention as involuntary psychiatric care and immigration detention.

In accordance with the CAO, administrative arrest is imposed for up to 30 days only in exceptional cases for certain violations of administrative law. Administrative arrest is sanctioned by the court. Administrative arrest may not be ordered for pregnant women, women who have children under 12, persons under eighteen years of age and disabled persons of Group 1 and Group 2. Pursuant to the CAO, administrative arrest may be imposed for the following violations of administrative law:

- illegal acquisition or possession of narcotic or psychotropic substances without intent to sell or distribute them in any other manner;
- minor hooliganism, that is offensive language or indecent gestures in public places, offensive harassment and other similar acts which disturb public peace or order;
- knowingly false calling of fire protection, police, medical first aid and other emergency services;
- defamation of a bailiff;
- resistance to a police officer or police supporter who is discharging his duties of protecting public order;
- refusal to adhere to the lawful instructions or demands of an officer of the police or the Special Investigation Service, the State Border Guard Service, the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania and the National Security Department, as well as defamation of an officer, expressed either in word or bodily gestures, offensive behaviour, harassment or other acts;
- failure to comply with the lawful instructions or demands of authorised police officials by the person included on the police operative-prevention register under the procedure prescribed by the Law on Organised Crime Prevention;

- violations of the Law on Assemblies of the Republic of Lithuania;
- holding an unlawful meeting, demonstration, protest and other acts in the sanitary protection zone of a nuclear facility;
- drinking alcoholic beverages in public places, except public places where sale of such beverages is allowed for consumption in these places, or showing up in public places while intoxicated with alcohol thereby contravening human dignity and public morals. Administrative arrest may be only imposed if an offender was previously punished for the same violations two times during one year;
- running dens for gambling, debauchery or consumption of alcoholic drinks. Administrative arrest may be only imposed if an offender was previously punished for the same violation;
- prostitution trade. Administrative arrest may be only imposed if an offender was previously punished for the same violation.

We believe that, considering the grounds for imposing administrative arrest, conditions and application procedure thereof, this sanction for violations of administrative law is in compliance with the principles of necessity and proportionality.

In addition it should be noted that the CAO requires that nature of violation, personality of offender, mitigating and aggravating circumstances indicated in the CAO must be evaluated when imposing punishment.

Administrative apprehension

The CAO stipulates that the application of administrative apprehension of a person, as a measure for ensuring proceedings of administrative law violations, is allowed only in the cases explicitly laid down in the laws of the Republic of Lithuania in order to prevent violations of administrative law, draw up law infringement records, ensure timely and fair hearing and the enforcement of orders in administrative proceedings. A person may be apprehended only by the bodies or officers authorised for this purpose and only for specific violations listed in Article 266 of the CAO:

- 1) by the police – for violations of administrative law when the CAO allows administrative arrest for such violations; for violations of the regulations of transactions in foreign currency; for drinking alcohol in public places or showing up in public places while intoxicated with alcohol and thereby contravening human dignity and public morals; in cases when there are

grounds to believe that people are involved in prostitution; for infringement of traffic regulations, hunting, fishing or fish stock protection regulations and other infringements of the legislation on the protection and use of animal life; as well as in other cases explicitly provided for by the laws of the Republic of Lithuania;

2) by the officers of the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania – for violations of the regulations of transactions in foreign currency;

3) by the officers of the State Border Guard Service and of the Customs Office – for violations of the regulations of the frontier, rules of border crossing point operations or customs duty regulations;

4) by the senior security officer at the site of the protected object – for violations of law relating to attempts to invade protected objects and other State-owned or public property;

5) by the officers of imprisonment and pre-trial detention establishments, social and psychological rehabilitation institutions – for delivery or attempts to deliver prohibited substances, articles and objects.

Article 267 of the CAO establishes that administrative apprehension may last not longer than five hours, save in the instances when different time limits of administrative apprehension are applied under exclusive necessity.

The CAO specifies that persons being subject to administrative liability for violations of the regulations of the frontier or the rules of border crossing point operations may be apprehended for up to three hours for the purposes of drawing up an infringement record; for up to 48 hours, when it is necessary to establish the person's identity and to ascertain the circumstances of the violation; and persons subjected to administrative liability for petty hooliganism or infringements of the rules of assemblies and other mass gatherings may be apprehended until the district court judge or the police commissioner considers the case within the prescribed time limits, but not longer than for 48 hours.

The Law on the State of Emergency of the Republic of Lithuania stipulates that, during a state of emergency, people shall always carry documents proving their identity, otherwise they may be kept in detention until their identity is established; the detention period not exceeding 24 hours.

The Law on the Legal Status of Aliens of the Republic of Lithuania sets forth that the police or any other law enforcement institution officer may detain (apprehend) an alien for a period

not exceeding 48 hours. The Law on the Legal Status of Aliens of the Republic of Lithuania sets forth the following grounds for detaining aliens:

- 1) in order to prevent the alien from entering into the Republic of Lithuania without a permit;
- 2) if the alien has illegally entered into or stays in the Republic of Lithuania;
- 3) when it is attempted to return the alien to the country from whence he has come if the alien has been refused entry into the Republic of Lithuania;
- 4) when the alien is suspected of using forged documents;
- 5) if a decision on the expulsion of the alien from the Republic of Lithuania has been taken;
- 6) in order to stop the spread of dangerous and especially dangerous communicable diseases;
- 7) when the alien's stay in the Republic of Lithuania constitutes a threat to public security, public order or public health.

An alien may be detained for a period of over 48 hours at the Foreigners' Registration Centre on court order. An alien under the age of 18 may be detained only in an extreme case when the alien's best interests are the main consideration. In view of the fact that the alien's identity has been established, he constitutes no threat to public security and public order, provides assistance to the court in determining the alien's legal status in the Republic of Lithuania as well as other circumstances, the court may take a decision not to detain the alien.

Psychiatric care

It should be noted that the CAO does not provide for such a form of detention for administrative law violations as involuntary psychiatric care. Article 271(1) of the CAO only stipulates that in cases when there are valid grounds to believe that the persons apprehended for violations of administrative law are intoxicated with alcohol, narcotic or psychotropic substances, a test shall be performed in accordance with the prescribed procedure to determine whether they are intoxicated with alcohol, narcotic or psychotropic substances. Such persons are referred for tests for insobriety or intoxication with narcotic or psychotropic substances administered under the procedure defined by the Government of the Republic of Lithuania; however, such testing cannot be considered as psychiatric care of the person.

The Code of Criminal Procedure of the Republic of Lithuania provides for placement in health care institutions as one of the coercive procedural measures. In cases when it is necessary to

conduct the suspect's forensic medical or psychiatric examination, the suspect may be referred, based on the order of the pre-trial judge or the court, to the examination institution and held there until the examination statement is submitted to the prosecutor or court (the time spent at the examination institution is included into the time of detention). In the event it is found by the forensic psychiatry examination that the suspect is dangerous to the public due to his mental disease, his time at the examination institution may be prolonged by the order of the judge or he may be referred to another special institution until the court decides the issue of coercive medical measures. If the suspect is referred to the examination institution the time periods for holding him therein are determined or extended in accordance with the same procedure as the procedure applied for ordering, extending or appealing against the detention.

Detention in police custody

The Code of Criminal Procedure stipulates that the pre-trial judge or the prosecutor may detain the person caught during the commission of a crime or shortly after the commission of a crime when there are grounds to believe that such a person may escape or, at the given moment, it is not possible to ascertain his identity, as well as when legal prerequisites for pre-trial detention exist. Such temporary apprehension cannot exceed 48 hours.

The Law on Pre-Trial Detention of the Republic of Lithuania sets forth that persons for whom detention is chosen as a remand measure shall be kept in pre-trial detention establishments, founded and liquidated by the Government of the Republic of Lithuania upon recommendation of the Ministry of Justice, or be detained in police custody for no longer than 15 days. The latter provision is pragmatically determined by the fact that there are just four pre-trial detention facilities in Lithuania: Lukiškes Remand Prison in Vilnius, Remand Prison in Kaunas, Remand Prison in Šiauliai and Kaunas Juvenile Remand Prison and Correctional Home.

Vilnius, 18-03-2005