



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



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## **Memorandum to the Lithuanian Government**

### **Assessment of the progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## INTRODUCTION

1. The first Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Lithuania on 23- 26 November 2003 on the invitation of the Lithuanian Government. In his report of the visit<sup>1</sup> the Commissioner identified a number of concerns regarding respect for Human Rights in the law and practice of Lithuania and made recommendations with a view to assisting the Lithuanian authorities in remedying the shortcomings. The issues addressed by the Commissioner pertained to the functioning of the judicial and prisons systems, the situation of refugees and asylum seekers, the situation of certain vulnerable groups, national minorities (with emphasis to the Roma minority) and the issue of the restitution of private property.
2. The Commissioner for Human Rights, (hereafter, “the Commissioner”) Mr. Thomas Hammarberg, decided to continue the practice of his predecessor of following up the extent to which the recommendations addressed to member-states were being implemented, as part of his continuous dialogue with national authorities. A follow-up visit to assess the progress made by Lithuania was carried out by members of the Commissioner’s Office<sup>2</sup> (hereafter, “the CommHR delegation”) on 31 May - 2 June 2006. The Commissioner would like to reiterate his sincere acknowledgements to the Government of Lithuania for the assistance provided to the delegation of his Office for the conduct of this visit.
3. During the follow-up visit, the CommHR delegation met with the Secretary of State of the Ministry of Foreign Affairs, the State Secretary and other high officials of the Ministry of Justice, the Deputy Director and other high officials of the National Courts Administration, judges and high officials of the Supreme Court, two Ombudsmen of the five Seimas (Parliament) Ombudsmen, the Director of the Department of National Minorities and Lithuanians Living Abroad and the Head of the national minorities division in the said department, the Director and other high officials of the State Data Protection Inspectorate, high officials of the Police Department of the Ministry of Interior, the Equal Opportunities Ombudsperson and members of her office, high officials of the Ministry of Social Security and Labour, high officials of the Ministry of Education and Science, the Controller for the Protection of the Rights of the Child, high officials of the Migration Department of the Ministry of Interior. The delegation visited the Foreigners Registration Centre in Pabradė, the Roma Community Centre and the settlement in Kirtimai, the police detention facility in Panevėžys, the Women’s Issues Information Centre and the Secondary School of Vilnia. A separate meeting between the delegation and representatives of non-governmental organisations working in the field of human rights took place in the premises of the Council of Europe Information Office in Vilnius. The members of the CommHR delegation would like to express their warm gratitude to the Lithuanian officials in Strasbourg and Vilnius for their excellent organisation of the visit<sup>3</sup> and to the different interlocutors met during the visit for their kind assistance and openness.
4. The purpose of this memorandum is to examine the manner in which the Lithuanian authorities have implemented the recommendations made by the first Commissioner in his 2004 report. As a matter of principle this memorandum does not seek to address any new issues beyond those examined in the first report. The memorandum is based on information gathered during the follow-up visit, reports by human rights experts, local and international non-governmental organizations and inter-governmental organizations and other public sources.

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<sup>1</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Lithuania, 23-26 November 2003, for the attention of the Committee of Ministers and the Parliamentary Assembly, CommDH (2004)6, 12 February 2004. The report can be found on the Commissioner’s website at <http://www.commissioner.coe.int>.

<sup>2</sup> Ms. Sirpa Rautio and Ms. Irene Kitsou-Milonas.

<sup>3</sup> Special thanks go in Strasbourg to Ambassador Neris Germanas, Permanent Representative of Lithuania to the Council of Europe, as well as Mr. Julius Rakitskis, Deputy to the Ambassador, and in Vilnius to Mrs. Jurga Kasputiene and Mr. Darius Staniulis from the Ministry of Foreign Affairs whose presence on the side of the members of the Commissioner’s Office throughout the visit proved to be an invaluable asset. The delegation also thanks Mrs. Marija Prokopcik, Director of the Council of Europe Information Office in Vilnius, and her collaborators for their assistance in organizing the meeting with the NGOs.

5. Before dealing with the recommendations of the first report, two issues seem worth referring to in this introductory part of the memorandum. Both were discussed in the course of the visit and are linked to the Commissioner's own reflections on current priorities with respect to human rights protection in Council of Europe member States.
6. The first such issue concerns the adoption of **human rights national action plans**. Here the Lithuanian experience deserves to be highlighted. Lithuania, like Moldova, Norway and Sweden, has developed, in 2002, a national action plan for the promotion and protection of human rights. The delegation was informed during the discussions in the Ministry of Justice of the implementation of the 2002 national action plan. The Commissioner has stressed the advantages of human rights national action plans as a means of implementing human rights standards at national level, during his exchange of views with the Steering Committee for Human Rights (CDDH) of the Council of Europe. The Commissioner is grateful to the Lithuanian experts for having actively contributed to this discussion within the CDDH<sup>4</sup>.
7. The second issue relates to whether or not there is a need to set up a **national human rights institution in Lithuania**. Indeed, according to Article 3 c of Resolution (99) 50 "[...] *the Commissioner shall, wherever possible, make use of and co-operate with human rights structures in the member States. Where such structures do not exist, the Commissioner will encourage their establishment* ». The Commissioner is aware of the fact that Lithuania has been encouraged<sup>5</sup> to consider the establishment of an independent national human rights institution, in accordance with the Paris Principles<sup>6</sup>. However, the Commissioner observes that the Lithuanian authorities - Secretary of State of Foreign Affairs and the Secretary of State for Justice, in particular – have carefully weighted the options available to them, concluding that the establishment of such an institution would not bring with it an added value. In their opinion it would be more useful to build upon the existing bodies (Ombudsmen of the Seimas, Equal Opportunities Ombudsperson) expanding their mandates and activities. The Commissioner is aware that in many countries ombudspersons and national human rights institutions co-exist quite effectively. However, he is of the opinion that no single model ought to be imposed and that the Lithuanian authorities should be left free to decide, within their own domestic institutional framework, how best to perform the functions, which are traditionally vested upon national human institutions. What matters is that an effective, independent monitoring is organised in the spirit of the Paris Principles.

## 1. THE JUDICIARY AND THE PRISONS SYSTEM

### Judiciary

8. In his 2004 report, the first Commissioner recommended to the Lithuanian authorities to pursue their efforts to achieve **greater judicial independence and efficiency** by tackling issues such as the **length of judicial proceedings** and establishing a **performance evaluation system and regular training for judges**.
9. In that report, the Commissioner had welcomed, *inter alia*, the entry into force, in May 2002, of the long-awaited Law on Courts. This law established the Council of Courts, a body competent to approve the budget for the judicial branch of Government, select candidates to posts in the judiciary, advise the President of the Republic on the appointment and transfer of judges and ensure that the courts enjoyed substantial and comprehensive institutional as well as administrative autonomy. Moreover, with a view to completing the modernization of Lithuania's judicial framework, the National Court Administration (hereafter, "the NCA") was created in March 2002 with the task of providing judicial institutions with the necessary assistance. In spite of these positive developments, the Lithuanian judiciary still lacked – noted the Commissioner's 2004 report - a system of supervisory evaluation. The development of a system of periodic assessment of judges' professional performance, was, therefore, recommended by the Commissioner. He also recommended organizing a stable and sustainable training system for judges. Finally, the Commissioner had recommended

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<sup>4</sup> 24 October 2006; Mrs. Elvyra Baltutyte, Agent of the Government of Lithuania to the European Court of Human Rights, Ministry of Justice took actively part in this discussion. A note prepared by the Lithuanian authorities was also circulated.

<sup>5</sup> United Nations Committee on the Elimination of Racial Discrimination (CERD), 2006 Concluding observations on Lithuania CERD/C/LTU/CO/3, 11 April 2006, para. 11.

<sup>6</sup> (General Assembly resolution 48/134) relating to the status of national institutions.

tackling the excessive length of judicial procedures, the lack of impartiality of certain judges, the low level of trust placed by Lithuanian society in its judiciary and the insufficient staffing level affecting the judicial system.

10. According to information gathered by the CommHR's delegation, an evaluation system was established shortly after the Commissioner's visit by the Council of Courts. Hence, a first evaluation of performance is now conducted two years after appointment as a judge, followed by a second one five years later and a third one after ten years. It is also possible to conduct an extraordinary performance evaluation of a judge. Moreover, in 2005 the Minister of Justice took the initiative of informing the public about the candidates to posts of judges.<sup>7</sup> The Government is considering additional measures to increase trust in the court system by increasing public participation in the selection procedure.
11. Regarding the length of proceedings, the CommHR delegation was told by the NCA that courts of justice are under the statutory obligation to send an explanation when a hearing is delayed for more than one year. All data are analyzed by the NCA and are sent twice a year to the Council of Courts for consideration. If the delays are not justified, appropriate instructions are sent to the courts. Indeed, the Council of Courts may instruct the NCA to forward information on unjustified delays to the respective Court. The Presidents of the Courts may take up disciplinary measures on the basis of the Rules of Court Administration. According to a survey requested by the Ministry of Justice on «*ways and possibilities for the acceleration and optimization of criminal proceedings*» (presented in May 2005), the recent amendments to the Code of Criminal Procedure would already allow for a more efficient conduct of pretrial investigations. However, heavy workload, lack of cooperation between different institutions and lack of management skills were delaying such a positive outcome.<sup>8</sup> Finally, members of the Supreme Court pointed out to the delegation that many training programmes for judges were now in place and that a new training center for judges was due to open. The new Judicial Training Center is functioning as of 1 January 2007.
12. The Commissioner is aware of a public debate which is currently taking place in Lithuania about the Constitutional Court's decision of 28 March 2006 declaring unconstitutional several provisions of the Law on Courts. Following that decision, new legislation is now under preparation, amending the respective competences of the NCA and the Council of Courts. The Commissioner does not wish to interfere in an issue which falls under the national margin of appreciation. He is confident that the new legislation will remain in line with the Council of Europe standards relating to the independence of the judicial system. The Commissioner welcomes the significant efforts that have already been made in order to address the concerns raised in the 2004 report.
13. In his 2004 report, the Commissioner had also recommended the Lithuanian authorities to provide judges and courts with human resources, which were required to carry out their work appropriately and to allocate the necessary funds for those recruiting a sufficient number of court assistants – in particular for district and county courts - and filling vacant posts in the judiciary. Recruitment for district courts seemed also problematic, due to certain rarities and lack of clarity in the new legislation.
14. The Commissioner now welcomes the efforts undertaken to deal with these shortcomings. According to information provided by the Ministry of Justice, 325 additional assistants have been recruited, bringing the ratio to one assistant per two judges. It is intended to bring gradually the ratio to one assistant per judge. Moreover, in June 2006, the number of unfilled vacancies has gone down to 18, as compared with 80 in 2003.

#### **Prison system and pre-trial detention**

15. In his 2004 report the first Commissioner had recommended that the Lithuanian authorities continue their efforts **to improve living conditions in prisons**. The **refurbishment of pre-trial detention facilities** was deemed most urgent.

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<sup>7</sup> Report on the situation of fundamental rights in Lithuania in 2005 submitted to the EU Network of Independent Experts on Fundamental Rights by Edita Ziobiene (Lithuania) on 15 December 2005, doc. CFR-CDF/LT/2005, p. 57-58.

<sup>8</sup> Ibid, p. 58.

16. It is true that in that 2004 report, the Commissioner had noted that the prison system had already undergone a transformation process, significantly reducing ill treatment, overcrowding and improving general living conditions for prisoners. The transfer of responsibility for the penitentiary system from the Ministry of the Interior to the Ministry of Justice had taken place already in September 2000. The Commissioner visited two prisons, Pravienskės Penitentiary No. 3 to the north west of Vilnius and Lukiskės Prison in the capital, in which he found the conditions to be correct in general, although he was concerned by the limited space in some detention cells and the bad conditions regarding isolation cells.
17. Notwithstanding the above, the Commissioner had expressed strong concern about the situation in some of the pre-trial detention facilities. The Vilnius Police Detention Centre was far from being adequate and was in need of urgent improvements. The Minister of Justice informed him about the programme for the renovation of pre-trial detention facilities for the period between 2003-2007 according to which 38 detention centers throughout the country would be refurbished with the aim of bringing them up to European and international standards.
18. The CommHR delegation did not visit prisons or pre-trial detention facilities other than the police detention facility in Panevėžys (see below). However, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT), had made public in early 2006 its report containing detailed findings on the situation of different detention centres in Lithuania together with the response submitted by the Lithuanian Government<sup>9</sup>. In addition, the CommHR delegation sought and received information from the Ministry of Justice on the 5-year renovation programme of prisons and the situation regarding overcrowding in prisons. From 2004 to 2006, ten prisons have been renovated, including the Lukiskės Remand Prison (where 46 cells have been renovated) as well as of the Šiauliai Remand Prison.<sup>10</sup> Since 2003, the number of prisoners in Lithuania has gone down from 11.000 to 8.000. The Seimas Ombudsmen informed the CommHR delegation that the overcrowding in prisons was no longer a subject of concern. The Commissioner notes with satisfaction that the Seimas Ombudsmen have the right to visit places of detention at any time of day or night, to meet with detainees without hindrance, to have access to all necessary documents and to interview officials. In his opinion this constitutes a very important guarantee for the rights of detainees; that's why the Commissioner would like to encourage the Seimas Ombudsmen to make full use of this power. More generally, the Commissioner welcomes the efforts undertaken by the authorities and hopes that the process of renovation of remaining prisons will be soon finalized, bearing in mind the findings of the CPT.
19. In addition, the CommHR delegation was informed by the Prisons Department of the Ministry of Interior that 28 million litas had been allocated in 2004 to the renovation of pre-trial detention facilities, within the framework of the above-mentioned 5-year programme. Thus, the detention centers of Panevėžys and Klapeida were now renovated. Additional funds - 629 000 litas were allocated for improving security and hygiene in 2005 under another programme: the State Investment programme. As mentioned above, the CommHR delegation visited the police detention facilities in Panevėžys and saw the renovated part which is indeed in conformity with human rights standards. The Prisons Department emphasized that improvements depended on the availability of funding, which was still clearly insufficient. Overcrowding is still an issue of major concern. Only 10 out of 46 pre-trial detention centers are in good condition. This figure was confirmed during the discussions with the Prison Department. The Seimas Ombudsmen equally underlined that the renovation programme was much too slow. According to the information gathered, the situation prevailing in the majority of the pre-trial detention facilities is still far from satisfactory. In this context, the Commissioner urges the authorities to undertake a more ambitious effort to guarantee adequate living conditions in all pre-trial detention facilities. Adequate funding for the renovation programme should be provided as a matter of priority by the Government.

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<sup>9</sup> CPT report to the Lithuanian Government on the visit to Lithuania carried out from 17 to 24 February 2004, doc. CPT/Inf (2006)9 of 23 February 2006 ; Response of the Lithuanian Government, doc. CPT/Inf (2006) 10.

<sup>10</sup> The poor conditions had been found to be in violation of Article 3 (prohibition of torture) to the European Convention on Human Rights according to the European Court of Human Rights in its judgment *Karalevičius v. Lithuania* of 7 April 2005.

20. The CommHR delegation's attention was further drawn by national NGOs to a problem related to the rights of prisoners: the censorship of their correspondence. The Commissioner notes that in its judgment *Karalevičius v. Lithuania*, the European Court of Human Rights ("the Court") found a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights ("the ECHR") precisely because of the practice of censorship of prisoner's correspondence. The Commissioner is aware that the Lithuanian legislation (Law on Pre-trial detention and Remand Prisons Internal Rules of 2001) does prohibit such censorship. However, he feels bound to recall that according to the Court's case-law, the ECHR seeks to protect fundamental rights and freedoms not only in theory but also in practice. Thus, the effective protection of the right to private life in Lithuania imposes on the authorities of this country the obligation to ensure in practice that its officials respect the prohibition of censorship in the daily life of Lithuanian prisons.

### **Life imprisonment and alternative measures**

21. In the 2004 report, the first Commissioner concluded that the existence of life time imprisonment remained one area where additional efforts should be made as there was no possibility of a review before a ten year period, except if the President granted a pardon or if the Parliament approved an amnesty, something which is extremely rare. He thus recommended that **life imprisonment sentences be periodically reviewed** and additional efforts be made to inform inmates of the possibilities of alternative measures.

22. During the follow-up visit, the Ministry of Justice informed the CommHR delegation that the situation remained unchanged; the courts are still under no obligation to review periodically life sentences. The Commissioner therefore reiterates that legislative measures in conformity with ECHR requirements should be adopted in this field.

23. The first Commissioner also recommended that the Lithuanian authorities **examine the possibility of imposing alternative measures to imprisonment**. During the follow-up visit the Ministry of Justice provided the CommHR delegation with detailed information on the scope and application of a broad spectrum of alternative measures available in the Criminal Code and Code of the Enforcement of Punishment. Existing alternative measures include postponing the serving of the sentence of deprivation of liberty. Public works and educational measures for minors can also be applied by the courts. It is widely recognized that the application of alternative measures has had a positive impact in reducing overcrowding in prisons. However, the authorities themselves recognize the need to go further and the creation of a probation system is one of the strategic goals envisaged to achieve the goal. The project has already resulted in the draft Government regulation « *On the conception of a probation system of Lithuania and on the planned measures implementing the concept* ». The Commissioner welcomes the introduction of alternative measures in the Lithuanian criminal system and encourages their increased use.

## **2. REFUGEES AND ASYLUM-SEEKERS**

24. The first Commissioner noted in his 2004 report that, since 2000, Lithuania had experienced a sharp increase in arrivals of asylum seekers, the majority coming from Chechnya and Afghanistan. The Commissioner, who visited the Refugee Reception Centre in Rukla, commended the considerable improvements made in securing decent standards in this reception center, where he found living conditions to be good. On the basis of the findings of the European Commission against Racism and Intolerance (ECRI), the Commissioner also highlighted improvements made in recent years in conditions of reception of asylum-seekers in the Foreigners Registration Centre in Pabradė, near the Belarusian border<sup>11</sup>. The reception facilities for asylum-seekers were separate from those persons held in connection with the commission of criminal acts.

25. In his report, the first Commissioner referred to the situation of undocumented persons, detained at the border, who, in most cases, were being expelled to their country of origin, except, as required by the principle of *non refoulement*, when the prevailing conditions in the said country of origin were those of war or extreme violence, as was the case, at the time, in

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<sup>11</sup> European Commission against Racism and Intolerance (ECRI), Second report on Lithuania, adopted on 28 June 2002, made public on 15 April 2003, CRI (2003)5, para. 48.

the Republic of Chechnya, in the Russian Federation. The Order on Determination of the Safe Country of Origin and the Safe Third Country and Return or Deportation of Foreigners approved in October 2000 by the Ministries of Interior and Foreign Affairs contained provisions regarding the procedure for deportation. According to this norm, the safe third country principle was not applicable if the foreigner's transit through the third country had lasted less than 48 hours or if he belonged to a group of particularly vulnerable persons, namely minors unaccompanied by their parents or their legal representatives, persons having suffered traumas and torture, persons with mental disorders, the elderly and persons in need of regular care due to poor health condition. The Commissioner recommended the Lithuanian authorities to adopt the measures necessary for avoiding exceptions being made to **the principle of non-refoulement**, which was generally complied with by Lithuania, and **to develop alternatives to the detention of asylum-seekers**.

26. In 2004, a new Law on the Legal Status of Aliens was adopted<sup>12</sup>. Among other changes, the law introduced a mandatory stay of asylum seekers in the Pabradė Centre for the whole duration of the procedure, except for unaccompanied minors asking for asylum. As the Aliens Law does not distinguish asylum seekers from other foreigners irregularly coming to Lithuania, all asylum seekers entering Lithuania in an irregular manner are thus detained. Only the courts, after an individual consideration of the merits of the case, might decide on alternative measures to detention. The court may take a decision not to detain the alien only if the foreigner's identity has been established, if he/she does not constitute a threat to public security and public order and if he/she co-operates with the court in determining the foreigner's legal status in the Republic of Lithuania. This has reportedly led to prolonged detention of asylum seekers in several cases<sup>13</sup>.
27. During the follow-up visit, the CommHR delegation visited the reception center (but not the detention centre situated nearby) and observed that it was surrounded by barbed wires on a compound guarded by uniformed border guards. However, the asylum seekers enjoy freedom of movement inside the center, unlike irregular migrants, who were restricted to the detention center nearby. There was a medical facility with two doctors and three nurses open seven days a week. Three hot meals per day were being served and bed linens were provided. Basic services, including social workers and psychological help were lacking, although the Lithuanian Red Cross is authorized, on the basis of an agreement with the Ministry of the Interior, to provide some social and legal assistance to asylum seekers residing at the Centre. However, according to NGOs, this could not be considered as sufficient. In the Commissioner's view such an environment can hardly be viewed as suitable for asylum seekers who often have to wait a long time for the decision on their applications or appeals. It is also not in the best interest of the child. Thus, the centre should, in principle, not be used as reception centre for families with children. The Commissioner further expresses concern about the reported lack of services in the center. He recommends the Lithuanian authorities to consider other solutions for the accommodation of asylum seekers and to provide adequate services for them in line with agreed standards.
28. As regards refugee status determination procedures, the Aliens Law provides for a single procedure, where all protection needs are assessed at the same time, something which the Commissioner views positively. Another positive aspect, in the Commissioner's opinion, is that according to the Aliens Law, the notions of "safe third country", "safe country of origin" and "manifestly unfounded application" may not be applied with regard to separated children seeking asylum. The Law describes a refugee as a person who meets the definition contained in Article 1 A (2) of the 1951 Convention. Moreover, the grounds for excluding a refugee status are contained in Article 88 of the Aliens Law, which reflects, in its wording, Articles 1 D, E and F of the 1951 Convention. However, the Aliens Law unnecessarily extends the scope of exclusion clauses to cover persons who would otherwise qualify for the subsidiary protection criteria. The cessation clauses included in the Aliens Law (Art 90) are also in line with the Article 1 C of the 1951 Convention but, again, the scope of cessation clauses is extended so as to cover persons entitled to subsidiary protection status.

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<sup>12</sup> Law of 29 April 2004, No. IX-2206.

<sup>13</sup> See in this respect, European Commission against Racism and Intolerance (ECRI), Third report on Lithuania, adopted on 24 June 2005, made public on 21 February 2006, CRI (2006)2, para. 104.



29. In line with Article 33 (1) of the 1951 Convention, the Aliens Law makes specific reference to the prohibition of chain deportations. In addition, the Aliens Law provides for prohibition of *refoulement*, whenever there are serious grounds to believe that the person concerned will be tortured, subjected to cruel, inhuman or degrading treatment or punishment (art. 130(2). The Law also incorporates Article 33 (2) of the 1951 Convention. However, the Law explicitly allows deportation or expulsion of those asylum seekers, who are considered to be a threat to the national security or public order, even before the final decision on an asylum claim has been made. Furthermore, the Aliens Law recognises the threat to national security or public order as grounds for refusing a residence permit in Lithuania. As the relevant provision is also applicable to asylum seekers, those among the latter who are considered to be a threat to national security or public order are automatically denied residence permits in the country and are subject to deportation procedures.
30. The Aliens Law shortened from 14 days to 7 days the deadline for filing an appeal against administrative decisions taken within asylum procedures. In contrast, the general period for appealing administrative decisions is 30 days.
31. The Commissioner regrets that the legal regime for the protection of asylum seekers has become more restrictive in Lithuania since the first Commissioner's visit. The Commissioner is of the opinion that there is a need for a comprehensive review and reform of the legislation applicable to refugees and asylum seekers in Lithuania. In the Commissioner's opinion the best way forward would be the enactment of a legal framework in Lithuania providing for effective safeguards for asylum seekers, in compliance both with the Geneva Convention and the ECHR requirements. The new legislation should make it clear that asylum seekers should be detained only as a measure of last resort and that conditions of reception should be made more humane, taking into account the needs of families and children.
32. The Commissioner has been made aware by the authorities that on 28 November 2006 many provisions of the Law on the Legal Status of Aliens have been amended<sup>14</sup>. It appears that asylum seekers are now exempt from detention when they enter or stay illegally. The Commissioner welcomes these developments. However, he believes that a thorough assessment of the Law as amended is required and reserves the right to come back to the authorities on this issue at a later stage.

### **3. EQUAL OPPORTUNITIES AND NON-DISCRIMINATION**

33. In his 2004 report, the first Commissioner noted that Lithuania already had in place a body of legislation, which promoted gender equality and prohibited discrimination on the basis of gender. The Law on Equal Treatment, planned to come into force on 1 January 2005, prohibited direct and indirect discrimination on the grounds of age, sexual orientation, disability, race or ethnic origin, religion and belief and extended the competence of the Office of the Equal Opportunities Ombudsperson (hereafter, "EOO") to investigate the cases of alleged discrimination on these grounds. According to the Commissioner, the establishment of the EOO represented a major step forward in fighting discrimination at all levels.
34. The National Programme on Equal Opportunities for Women and Men is being implemented since 2003. The new Law on Equal Treatment entered into force on 1 January 2005 and the EOO is now empowered to investigate complaints deriving from the two « Equality Laws » namely the Law on Equal Opportunities between Women and Men<sup>15</sup> and the Law on Equal Treatment<sup>16</sup>. Besides, the Law amending the Code of Administrative Offences<sup>17</sup> has enhanced the powers of the EOO, which is now empowered to impose fines on public

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<sup>14</sup> By Law No. X-924.

<sup>15</sup> Adopted on 1 December 1998, No. VIII-947, entered into force on 1 March 1999, amended several times between 2002 and 2005 in order to fully implement the European Council Directives.

<sup>16</sup> Adopted on 18 November 2003, No. IX-1826. A draft Law on Amendment of the Law on Equal Treatment is currently under preparation.

<sup>17</sup> Articles 187 (5) and 247 (6).

servants, employers and Government agents who refuse information, documents and material necessary to carry out its functions, or who obstruct the EOO in the exercise of its duties. Indeed, according to the said law, the EOO is empowered to impose sanctions when administrative offences have been committed.

35. However, the EOO's annual report<sup>18</sup> calls for further measures to be adopted in order to effectively combat discrimination. For instance, the Law on Equal Treatment, unlike the Law on Equal Opportunities between Women and Men, ignores the relevant EU directives<sup>19</sup> in that it does not provide that the burden of proof should lay on the defendant. Furthermore, the possibility for compensation of victims of discrimination should be provided for by the Equal Treatment Law, as it is the case under the Law on Equal Opportunities between Women and Men. The EOO informed the CommHR delegation that cases of discrimination are mainly originating in major Lithuanian cities and not in the regions. Therefore, awareness raising, dissemination of information and outreach activities continue to be a priority for EOO. Measures should be adopted to facilitate access to the EOO in order to complement the work through the media, which the EOO is using very effectively.
36. The EOO has also undertaken work aimed at promoting non-discriminatory practices, at raising awareness about discrimination and at developing innovative gender equality strategies. Current projects on the role of men in family life, discrimination in working life based on sexual orientation and protection of rights of persons with intellectual disabilities aim at highlighting issues, which are quite new to the Lithuanian society. The projects are often implemented in cooperation with civil society and academic institutions and stress the importance of respect for diversity and inclusion of all persons in society.
37. Furthermore, the national anti-discrimination programme for 2006-2008 was adopted on 19 September 2006 by Resolution No. 907. The programme is aimed at investigating manifestations of discrimination in all areas of public life, raising the public's tolerance, improving public awareness, providing more information about non-discrimination, equal treatment, equal rights and opportunities, and at improving legal protection against discrimination. Accordingly, the Government makes compulsory for ministries and state institutions to investigate complaints of discrimination (including racial discrimination) promptly and impartially. The programme also foresees training for employers, police officers, labour market institutions, trade unions and NGO representatives, pedagogues, judges and lawyers on the issues of discrimination, equal rights and their protection.
38. In the course of the follow-up visit, the CommHR delegation learnt that there were currently no plans to ratify Protocol No. 12 to the ECHR, at least in the foreseeable future. No information was made available to the delegation regarding the acceptance of the collective complaints procedure contained in the 1995 Additional Protocol to the European Social Charter. The Commissioner regrets the absence of political will on the side of the Lithuanian authorities to become a party to these important European legal instruments. In the Commissioner's view, there is a close link between accepting to be bound by these two treaties and ensuring to all persons under the jurisdiction of the State concerned an effective protection of human rights, both those of a civil and political nature and those of an economic and social one.
39. The Commissioner notes with satisfaction the significant enhancement of the legislative and institutional framework to fight against discrimination. Access by all persons, including those belonging to the most vulnerable groups in society, to their fundamental rights and freedoms has been enhanced by the new law. The extension of the mandate of the EOO has also contributed significantly to this goal, as illustrated by the increasing number of complaints received from Roma, persons with disabilities, those of different sexual orientation and the elderly. Prior to the new Law, these persons had no appropriate legal basis and mechanism to protect their rights and have access to justice. The Law on Equal Opportunities carries with it also a strong preventive effect, increasing the understanding of the Lithuanian society that discrimination is not only forbidden but wrong. The new anti-discrimination programme will certainly strengthen the protection in this field. The Commissioner recommends,

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<sup>18</sup> Annual report 2005, can be consulted at : <http://www.lygybe.lt>, see Conclusions and Proposals.

<sup>19</sup> Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

nevertheless, a strengthening of the Law on Equal Treatment in the light of the recommendations made by the EOO. The role of civil society in this regard should be recognized and their work strongly supported. Finally, the Commissioner recommends the signature and ratification of Protocol No. 12 to the ECHR and of the Additional Protocol to the European Social Charter providing for a system of collective complaints.

#### 4. THE SITUATION OF CERTAIN VULNERABLE GROUPS

##### Trafficking in human beings

40. In his 2004 report, the first Commissioner noted the many positive measures already taken by the Government to combat trafficking in human beings. The new Criminal Code provided for stricter sentences for perpetrators, although the number of cases leading to conviction remained low. The National Program for Control and Prevention of Trafficking in Human Beings and Prostitution 2002-2004, one of the firsts in the Baltic region, included a broad range of educational, socio-economic methods as well as legal initiatives. As regards the protection of victims, the main concerns expressed by the Commissioner were the lack of an overall rehabilitation programme for victims of trafficking, lack of possibility to be compensated and the lack of reflection period provided for in the law. He recommended **that firm measures be developed against trafficking in human beings** and that increased attention be given to prosecuting the criminal networks while protecting victims of trafficking
41. The Lithuanian authorities recognize that trafficking in human beings continues to be one of the most serious human rights problems facing Lithuania, which is at the same time a country of origin, transit and destination. Trafficking in human beings is mostly oriented towards sexual exploitation of women. According to data supplied by Europol, each year some 1000-1200 women from Lithuania fall victim of human traffickers.
42. In May 2005, the Lithuanian Government adopted its 2nd Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2008, which entered into force on 1 January 2006.<sup>20</sup> The Programme, which is coordinated by the Ministry of Interior and funded from the State and municipal budgets, takes a systematic approach and creates an integrated platform for action comprising public authorities, non-governmental organisations and international organisations. The Programme is based on the principle of enhancing the protection of the rights and freedoms of victims of trafficking in human beings. The Council of Europe Convention on Action against Trafficking in Human Beings<sup>21</sup> served as a basis for the drafting of the Programme.
43. The Programme seeks to determine the scope of trafficking in human beings by developing a national monitoring system for both trafficking in human beings and prostitution as well as a uniform system of data collection; to develop measures of early prevention and to implement measures aimed at reducing the demand for prostitution; to build a system of social assistance to victims, including protection and reintegration. Furthermore, it aims at strengthening specialized police units combating trafficking in human beings. The programme outlines the necessary implementation measures to be taken each year, clearly assigns institutional responsibilities for its implementation and sets aside the funds required.
44. By mid 2006, the new police structure was already in place with five staff working within the structure at central level. In addition, each county was to have a coordinator on trafficking in human beings by 2007. An amendment providing for a 30-day reflection period and a renewable residence permit for victims co-operating with the police was pending before the Parliament at the time of the visit. In addition, a project has been developed for victim assistance under which services are provided by a network of NGOs. They work in close cooperation with the police on protection measures. One NGO was working on a programme for children at risk. The Law on the Employment Support which came into force on 1 August 2006 ensures additional support for the reintegration of victims of trafficking into the labour market.

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<sup>20</sup> Government of the Republic of Lithuania, Resolution No 558 of 19 May 2005 on the approval of the Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2008.

<sup>21</sup> Opened for signature on 16 May 2005 in Warsaw. The Convention has not yet entered into force.

45. The Commissioner welcomes the new Action Plan against Trafficking in Human Beings and the measures taken to ensure better protection and assistance to the victims. The new legislation providing for a reflection period and a renewable residence permit for victims cooperating with the police are important elements of an effective protection scheme. The Commissioner invites the Lithuanian authorities to implement the new provisions with a generous spirit. The good cooperation established between various authorities and between the police and NGOs is particularly important. The efforts of the Lithuanian government to combat trafficking in human beings at the national, regional and the international level, through co-operation and assistance programmes, are to be commended and could serve as an example for others. The early ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ought not, therefore, be difficult and is strongly encouraged by the Commissioner.

### **Domestic violence**

46. In his 2004 report, the first Commissioner noted that the National Programme on Equal Opportunities for Women and Men 2003-2004 not only dealt with measures to achieve gender equality in the areas of employment, education, politics and decision making but covered also the issue of violence against women and trafficking in women. In spite of that the Commissioner recommended to draw up a national plan for combating domestic violence. He encouraged the authorities to better co-ordinate their efforts in this area and to provide training for judges and police as a priority. In this context, the Commissioner recommended the creation, as a matter of urgency and necessity, of special courts or specialized judges to deal with complex and difficult issues such as domestic violence. He also called for greater efforts to be made to establish a wider network of reception centres for victims of domestic violence.

47. Women's NGOs, met by the CommHR delegation during the follow-up visit, expressed concern, especially at the lack of use of restraining orders, which have been, in practice, very rarely applied, and the lack of suitable shelters for victims. There were only five municipal shelters in the whole of Lithuania. In addition, some crisis centres exist, but apparently can support the victim only for a few days. More financial support was required for the shelters and services for the victims.

48. In December 2006, the Government adopted a National Strategy on Reduction of Violence against Women and a Plan for its Implementation for the period 2007-2009. The goal of this strategy is to decrease domestic violence against women. It calls for the enactment of legal measures aimed at reducing violence against women, supporting the victims, contemplating effective sanctions for perpetrators and training of relevant officials. Several measures of the programme are aimed to expand network of women's shelters and support to NGO engaged in this field. The priorities and measures of the strategy are in line with the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence. All implementation measures are financed from the State budget. This year total amount for implementation of the strategy is 1 million 340 thousand litas.

49. The Ministry of Interior provided information about a training project for the police on domestic violence implemented in cooperation with the Austrian police. Since 2003, some 900 police officers have been trained to respond adequately to domestic violence. Training for judges is also taking place in a number of topics, including criminal law, family and children. Each court has a trained judge dealing with family and children issues<sup>22</sup>. It was the prevailing view that training in lower courts was sufficient and that it would be premature in Lithuania to discuss specialized courts, as previously recommended by the Commissioner.

50. The Commissioner welcomes the recent adoption of the national strategy on reduction of violence against women and its implementation plan for the period 2007-2009. The Commissioner expects that the strategy will be implemented effectively in order to strengthen the protection of women.

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<sup>22</sup> In the context of the National Strategy on Reduction of Violence against Women the preparation of legal acts providing for specialisation of family judges is envisaged.

## Persons with disabilities and the elderly people

51. In his 2004 report, the Commissioner encouraged further measures to be taken to improve the situation of persons with disabilities, while recognizing the significant efforts that had already been undertaken by the Ministry of Social Security and Labour. Progress was still required in improving access to public buildings and ensuring equal opportunities to employment and issues relating to pensions both for those with disabilities but also for those taking care of them. Regarding the elderly, the Commissioner noted the inadequacy of the level of pensions. Finally, the Commissioner called for measures to be taken to improve the care of the elderly and persons with intellectual disabilities, including the **development of appropriate care centres**.
52. During the follow up visit, the Ministry of Social Security and Labour provided detailed information on measures taken so far to improve the situation for persons with disabilities and the elderly. The amended Act on the Social Integration of the Disabled is based on a principle of equal treatment. The main focus is on employment and education. According to the Ministry, these measures have already proven successful. Funding has been provided, with the assistance of EU funds, to build the infrastructure for occupational training. Progress has also been made in providing for special assistance needs, of which some 80% are already met. Plans exist for 2007 for a major programme to improve access to public areas and for housing adaptation. Pensions for persons with disabilities have been raised by more than 30 %. Community based care has been increased both for persons with intellectual disabilities and elderly persons (the percentage of beneficiaries receiving adequate care has risen from 48 % to 80 %), although the authorities themselves admit that further progress is still necessary, especially with regard to the needs of elderly, which are not fully met yet.
53. In July 2006, the new law on Social Services entered into force. It provides for subsidies for persons in need of high level of support and the elderly (for example Alzheimer patients). The basic premise of this law is the adaptation of the environment for the needs of the patient and the provision of integrated services, such as social and health care.
54. According to a recent policy paper issued by leading NGOs in the area of mental health care, Lithuania is at the forefront of countries in the region due to its modern National Mental Health Strategy, which is based on new priorities and values putting mental health at the centre of general health care.<sup>23</sup> The main principles within the Strategy are human rights, modern services meeting users needs, promotion of autonomy and participation and treatment of minor mental health disorders in non-specialized health care services. The strategy foresees the reorganization of state care institutions for 2003-2008. It is necessitated by the fact that according to the data of the Ministry of Social Security and Labour, state care institutions house approximately 30 % of people who could live independently receiving social services in community. The majority of state care institutions are overcrowded, the largest having up to 550 residents. Upon implementation of the strategy, it is foreseen that every year the network of social services provided in the community will gradually expand, the number of places within institutions will decrease, the living conditions and quality of services provided will be improved.
55. The Commissioner welcomes the steps already taken by the authorities as well as those under way to address the needs of persons with disabilities and the elderly. The strategy to support community based care and de-institutionalization is in line with the modern and humane care regimes. The Commissioner encourages vigorous implementation of the strategy in cooperation with NGOs working on mental health issues. The establishment of an independent monitoring mechanism in closed institutions should be supported by the State.

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<sup>23</sup> *Human Rights in Mental Health Care in Baltic Countries*. A policy paper by Latvian Centre for Human Rights (LCHR), Global Initiative on Psychiatry, Mental Disability Advocacy Centre and Estonian Patient Advocacy Association, published on 22 June 2006 within the framework of the LCHR project "Monitoring Human Rights and Prevention of Torture in Closed Institutions: prisons, police cells and mental health institutions in Baltic Countries."

## 5. NATIONAL MINORITIES

56. In his 2004 report, the first Commissioner noted that on the whole, minorities were integrated quite well into the everyday life of Lithuania. However, he raised a particular problem which could be considered as basis for discrimination, namely the issue of **dual citizenship**. According to article 18.2.2 of the Law on Citizenship<sup>24</sup>, the rule that Lithuanian citizenship is lost where an individual acquires the citizenship of another state, does not apply to persons of Lithuanian origin. Although the primary intention behind this formula was to allow Lithuanians living abroad to return to the country without difficulty and without losing the nationality of their country of residence, it did not justify the distinction which, according to the criterion of ethnic origin, is drawn between Lithuanian citizens who, under article 29 of the Constitution, are equal before the law. The Commissioner further noted that in November 2003, a group of Parliamentarians had filed, before the Constitutional Court, a request to investigate whether Article 18 of the Law on Citizenship was in contradiction with the Constitution. It was expected that the provisions of the law would be reviewed in the light of the Court's decision. He recommended to the authorities to review the regulation on dual citizenship once a decision by the Constitutional Court has been adopted.
57. On 13 November 2006, the Constitutional Court decided that the aforementioned Article 18.2 and many other provisions of the Law on Citizenship were not in conformity with the Constitution of the Republic of Lithuania<sup>25</sup>. Consequently, on 20 December 2006, the Prime Minister formed a working group with a view to analyse the issues relating to the concept of Lithuanian citizenship. The Commissioner welcomes this development and recommends that legislation in compliance with the principle of equality before the law be enacted soon.
58. In his 2004 report, the first Commissioner referred to the 2002 regulations on minority **education** which allowed for the use of **minority languages** as the main language in compulsory education. Thus, a member belonging to a national minority is entitled to do his entire schooling in his own language, Lithuanian being taught as another regular course. The CommHR delegation was informed in detail of the various programmes with respect to minority languages benefiting members of the main minority languages, namely Polish and Russian. However, the officials of the said Ministry pointed out that additional financial support was needed in particular for translation of textbooks. The Commissioner welcomes the efforts undertaken by the authorities in pursuing the education of minority languages. He recommends that the required financial support be provided in order to meet the needs of a quality education in this respect and that teaching of Roma language be included in the programmes.

### The situation of the Roma minority

59. In his 2004 report, the Commissioner described the harsh living conditions of the Roma minority living in Kirtimai, the largest Roma settlement in Lithuania. The settlement, which is located near an industrial area at the outskirts of Vilnius, lacked basic infrastructure and facilities and most Roma living there were unemployed. There was, however, a well-equipped Roma Community Centre near the settlement providing basic services to the community, including social assistance, education and cultural activities. The Commissioner received complaints about discrimination of Roma in many areas of everyday life such as education, housing, health care, employment and access to citizenship. The Government's Programme for the Integration of Roma into society for 2000-2004 acknowledges also that Roma face specific problems in some areas. The Commissioner urged **measures to be taken to promote Roma integration**, while preserving their identity, not only in Kirtimai, but also in other parts in Lithuania, and **recommended the broadening of the existing integration programme for the Roma community with a view to improve the access to employment, housing, health and education**.
60. According to information from ECRI<sup>26</sup>, Roma faces discrimination in Lithuania in various fields. As regards education, ECRI recommended that the Lithuanian authorities continue their efforts to ensure that all Roma children integrate into mainstream schools and that

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<sup>24</sup> Adopted on 5 December 1991, entered into force on 11 December 1991.

<sup>25</sup> Ruling on the compliance of the provisions of legal acts regulating the citizenship relations with the Constitution of the Republic of Lithuania, case No. 45/03-36/04, can be consulted at: <http://www.lrkt.lt>

<sup>26</sup> ECRI, CRI (2006)2, op.cit. paras. 75-89.

ways are found to promote more regular school attendance and to pursue education further than is the case presently, particularly among girls. As regards housing in the Kirtimai settlement, ECRI recommended, as a short term measure, that Lithuanian authorities ensure that dwellings meet at least basic housing standards. In the longer term, the authorities should seek durable housing solutions in close consultation with the community concerned.

61. On 2-3 December 2004, the Vilnius municipality demolished six illegally constructed dwellings in the Kirtimai settlement, an action which drew the criticism of both the Seimas Ombudsmen and the Equal Opportunities Ombudsperson, who issued a warning to the mayor of Vilnius for the infringement of the law. The Seimas Ombudsmen recommended that Vilnius Municipality provide information to Roma on the possibilities for legalising illegal constructions and for obtaining social housing and that they negotiate on compensation for the demolition of property.
62. During the follow-up visit, the Department for National Minorities provided information on their efforts to integrate Roma in the new Programme, which was being developed for 2007-2010. The focus in the Programme is on Roma education, both for children and adults. While at the lower levels of education progress had been made, very few Roma are reaching higher education levels.
63. During the visit, a meeting was held with the Roma community at the Community Centre in Kirtimai, attended by the Deputy Mayor of Vilnius. He informed the delegation about recent developments at the settlement. Some works had been undertaken by the Municipality to improve roads, pavements and waste collection, but according to the Mayor the area was not meant for residential use, which set limits to how much could be done in terms of improving housing in the settlement. Since 2004, some Roma from Kirtimai have been accepted on the list for social housing, but at the time of the visit, it was not clear if anyone had actually yet received social housing. A survey had been conducted to find out if some families living in Kirtimai would be willing to move out if a plot of land was provided for them somewhere else. The Roma Community Centre in Kirtimai runs pre-schools trying to prepare Roma children for school. The teachers, who seemed well motivated and enthusiastic, confirmed that the main problem remains the lack of school attendance and linguistic skills of the children living in the settlement. A Roma assistant has been hired to help in the class room.
64. The Commissioner welcomes the measures taken by various authorities in trying to find solutions after the regrettable illegal demolitions of Roma housing in the Kirtimai settlement in December 2004. The interventions of both the Seimas Ombudsmen and the Equal Opportunities Ombudsperson were very important in this regard. However, the progress is still far too slow and more efforts are needed by local authorities in finding both short and long term solutions, also in line with ECRI recommendations.

## 6. THE RIGHT TO RESPECT FOR PRIVATE LIFE

65. In his 2004 report, the first Commissioner recommended to the Lithuanian authorities to take appropriate measures, in particular implementing existing legislation to ensure **the protection of personal and private data** as well as **regulating the use of information in the case of public persons**. He also stressed that it was of the utmost importance to **develop legal education** and explain to people the content of the right to privacy and ways of protecting it.
66. In the 2004 report, it was stated that although the Constitution and the new Criminal Code prohibited arbitrary interference with private life, the implementation of these provisions were not sufficient due to the fact that these legislative provisions were relatively new and poorly understood. Although, in theory at least, collection of information concerning the private life of an individual required a justified court order, there had been several cases where the right to private life had been violated. The most problematic spheres in Lithuania with respect to this issue concerned access to public information, which could be very easily accessed by public servants, the management of personal data and the activities of law enforcement institutions. The Law on Legal Protection of Personal Data, which prescribed a procedure for

collection, management and use of personal data, set forth only general standards and requirements for data protection and security. In view of these problems, the establishment of the State Data Protection Inspectorate responsible for the implementation of this law was considered a positive step by the Commissioner. Following a Constitutional Court Decision on 19 September 2002 on the right to privacy in telecommunications operations, a new version of the Law on Operational Activities<sup>27</sup> had been adopted and the Law on Communications had been amended.

67. The Law on Legal Protection of Personal Data was amended in April 2004<sup>28</sup>. The Commissioner welcomes this development but notes that the law remains vague. According to information received by the State Data Protection Inspectorate, the number of investigations and issuance of protocols based on complaints received has significantly increased between 2003 and 2005<sup>29</sup>. The number of inspections initiated ex officio has also increased. According to information received by the Ministry of the Interior, personal data protection is included in training for police forces. However, according to NGOs, there are still cases of unauthorized wiretapping by the security forces without adequate sanctions. Other complaints refer to the inadequate enforcement of the two aforementioned laws. While welcoming the measures taken so far, in particular the activities of the State Data Protection Inspectorate, the Commissioner encourages the adoption of additional means to guarantee the efficient implementation of the laws. This applies in particular regarding activities which fall outside the competence of the State Data Protection Inspectorate (i.e. processing of personal data by judicial bodies) or where its competences are not clear. The latter concerns the processing of personal data for the purposes of State security or defence where, according to the Law on Legal Protection of Personal Data, the monitoring function of the State Data Protection Inspectorate can be exercised as far as other laws do not provide otherwise.
68. In the 2004 report, the first Commissioner expressed concern about the increasing violation of privacy laws, *inter alia*, by the media, and recommended more rigorous protection of the use of information. According to the Civil Code, information on an individual's private life can be disseminated only when, taking into account the office of a person or his status in society, dissemination of such information is in conformity with the legitimate and reasonable interest of the society. The notion of "public person" is defined by court practice and in commentaries to the Civil Code. It applies to those, who because of their professional position, activities or social status are constantly in the centre of public attention and raise justified public interest (for example, politicians, high state and municipal officials, famous artists, actors and businessmen).
69. According to NGO reports, often the media did not respect the right to privacy not only with respect to public persons but to private individuals as well. Many allegations concerned disclosure of pretrial investigation materials or publication of false information against members of the judiciary. The Commissioner attaches high importance to the freedom of expression of the journalists and the right of the public to be duly informed. However, he believes that the right balance between these rights and the right to privacy and the protection of the independence of the judiciary should be stricken in light of the ECHR requirements. As the Court has stated, journalists must act in good faith and on an accurate factual basis, and must provide reliable and precise information, in accordance with the ethics of journalism.
70. The first Commissioner was concerned in his 2004 report because the right to private life was either not known or hardly identified by many Lithuanians who very rarely appealed to courts or other institutions such as the Ombudsman regarding the infringement of the right to privacy. The State Data Protection Inspectorate carried out important awareness raising activities in 2004 and 2005 in this respect, by means of press releases, leaflets, information to the media, participation on TV and radio programmes. In 2006, seminars were organized for the attention of the employees of school boards in different Lithuanian cities, for district registrars and for law enforcement agencies. The Ministry of Justice was also financing programmes on legal education. However, many national NGOs reported that the notion of

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<sup>27</sup> Amended on 20 May 2003, No. IX-1563.

<sup>28</sup> On 13 April 2004.

<sup>29</sup> According to the data provided by the State Data Protection Inspectorate to the CommHR delegation: (Protocols : 27 in 2004, 31 in 2005 against 10 in 2003 ; Complaints : 87 in 2004, 102 in 2005 against 55 in 2003).



private life is still not well understood by the society. The Commissioner believes that the important measures taken with a view to informing the public should be pursued and that adequate means should be allocated in this respect.

## 7. THE RESTITUTION OF PRIVATE PROPERTY

71. In his 2004 report, the first Commissioner recommended that the process of restitution of private property **to individuals** and **religious communities** be accelerated.
72. According to the 2004 report, a large number of complaints filed before the Seimas Ombudsmen were connected with this issue. This problem weighted heavily in the minds of many Lithuanians and exasperated them on account of the length of the proceedings and suspicions of corruption. The Government informed the Commissioner that it had undertaken efforts to solve this problem and that a project was underway to restore all seized land by 2005. However, there seemed to be some problems still with the Municipality of Vilnius. The restitution of buildings raised a different problem since there were two colliding rights, that of the owner and that of the present occupant. In this case, financial compensation to the proprietor seemed to be the most appropriate solution.
73. According to information provided by the Seimas Ombudsmen to the CommHR delegation, important progress has been made regarding the restoration of rural property. The same does, however, not apply to the urban property, both land and buildings. Many complaints are still lodged in this respect of which some 60% are well founded. As the Seimas Ombudsmen explained, unreasonably lengthy implementation of these projects and frequent legislative changes are at the origin of the problem<sup>30</sup>. However, 75-80% of the recommendations addressed by the Seimas Ombudsmen to the relevant governmental and municipal instances were followed. Furthermore, important financial support was given by the Government (e.g. 200 million litas were allocated as compensation for buildings which did not survive). The Commissioner welcomes the progress made regarding the restoration of rural property and hopes for a rapid finalization of this process. Regarding the restoration of urban property, the Government should work towards appropriate long term solutions, also in light of the Ombudsmen recommendations.
74. As noted in the 2004 report, the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property provided these communities with a possibility of recovering the enjoyment of their rights. All buildings belonging to the Orthodox Church have been returned, the Catholic Church has also recovered most of its properties. In the case of the Jewish Community, however, the problem has not yet been solved. The Ministry of Justice had presented amendments to the law, which has been modified several times already, to help solve this situation.
75. The CommHR delegation was informed by the Ministry of Justice that the process is at the final stages of negotiation. The Commissioner welcomes the progress made and recommends that the restoration of the real estate property to the Jewish community be finalized.

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<sup>30</sup> A detailed description can be found in the Annual report of 2005 of the Seimas Ombudsmen of the Republic of Lithuania; it can be consulted at : <http://www.lrski.lt>

## 8. SUMMARY OF RECOMMENDATIONS

In view of the aforesaid, the Commissioner recommends the Lithuanian authorities to:

- I. Secure that the amended version of the Law on Courts remains in line with the Council of Europe standards relating to the independence of justice.
- II. Finalise the process of renovation of the remaining prisons. Speed up the efforts to guarantee adequate living conditions in all pre-trial detention facilities and provide, as a matter of priority, adequate funding for the prison renovation programme.
- III. Ensure that all officials respect in practice the legal prohibition of censorship in the daily life of Lithuanian prisons.
- IV. Make sure that there is a system for periodically reviewing life imprisonment sentences.
- V. Secure that the legislation applicable to refugees and asylum seekers in Lithuania provides for effective safeguards for asylum seekers, in compliance both with the Geneva Convention and the ECHR requirements. Asylum seekers should be detained only as a measure of last resort and conditions of reception should be made more humane, taking into account the needs of families and children.
- VI. Strengthen the Law on Equal Treatment in the light of the recommendations made by the Equal Opportunities Ombudsperson and adopt measures to facilitate access to the EOO for those living in the regions. Sign and ratify Protocol No. 12 to the ECHR and the Additional Protocol to the European Social Charter providing for a system of collective complaints.
- VII. Ratify the Council of Europe Convention on Action against Trafficking in Human Beings without delay.
- VIII. Implement effectively the national strategy on reduction of violence against women.
- IX. Implement vigorously the National Mental Health Strategy in cooperation with NGOs working on mental health issues. Establish and support an independent monitoring mechanism for closed institutions.
- X. Proceed to the necessary amendments of the legislation on citizenship in line with the Constitutional Court's recent findings in order to ensure the full respect of the principle of equality before the law.
- XI. Provide financial support in order to meet the needs of a quality education with respect to minority languages and secure that teaching of Roma language is included in the programmes.
- XII. Speed up the efforts by local authorities in finding both short term and long term solutions to improve the situation in the Roma settlement in Kirtimai, in particular with regard to housing conditions.
- XIII. Adopt additional means to guarantee the efficient implementation of the Law on Operational Activities and the Law on Legal Protection of Personal data. Regulate the use of private information in line with ECHR requirements. Pursue the measures taken with a view to informing the public of the right to private life and allocate adequate means in this respect.
- XIV. Conclude as soon as possible the process of restoration of rural property. Work towards appropriate long term solutions to the restoration of urban property, also in the light of the Seimas Ombudsmen recommendations. Conclude the process of restoration of real estate property to the Jewish community without further delays.

# APPENDIX

## Comments of the Government of Lithuania

The Government of the Republic of Lithuania thanks the Commissioner for Human Rights of the Council of Europe Mr. Thomas Hammarberg for the Memorandum and recommendations assessing progress made by Lithuania in implementing the 2004 recommendations of the first Commissioner Mr. Alvaro Gil-Robles. Lithuania appreciates that Commissioner has noticed progress made by Lithuania in promoting and protecting human rights in many areas. It also welcomes the approach adopted by the Commissioner to draw upon different sources of information and reflect in the Memorandum developments that took place after the follow-up visit carried out by the representatives of the Commissioner's Office on 31 May - 2 June 2006.

Lithuania would like to clarify several issues relating to the Part 2 *Refugees and Asylum-Seekers* of the Memorandum. Firstly, in Lithuania's view the legal framework applicable to refugees and asylum seekers in Lithuania is in compliance with the existing international standards namely the 1951 Geneva Convention Relating to the Status of Refugees, European Convention for the Protection of Human Rights and Fundamental Freedoms, the case law of the ECHR as well as the relevant European Union Council Directives. Secondly, by recent amendments to the Law on Legal Status of Aliens two problems raised in the Memorandum were already resolved: asylum seekers were exempt from detention in cases when they enter Lithuania or stay there illegally; 14 days term for lodging appeal against administrative decisions concerning asylum procedure has been reestablished.

The comments in detail:

1. The Law on Amending Articles 2, 6, 7, 8, 11, 17, 18, 21, 25, 26, 28, 33, 34, 35, 40, 43, 46, 50, 51, 53, 54, 55, 56, 64, 79, 88, 90, 93, 97, 99, 100, 101, 102, 104, 106, 113, 115, 127, 130, 131, 132, 136, 138, 140 of the Law on the Legal Status of Aliens, Supplementing this Law by Articles 49(1), 101(1), 140(1), Repealing Articles 30, 105, Renaming Part X, and Amending and Supplementing Annex to this Law No X-924 was adopted on 28 November 2006, and entered into force on 16 December 2006.

2. Article 113 of the Law on Legal status of Aliens as amended by the law No X-924, sets forth grounds for detention of foreigners. Part 2 of this article stipulates that a foreigner can be detained if he or she illegally arrives to or stays in Lithuania except in cases that a person concerned has had filed application for the asylum. Thus asylum seekers are exempt from detention on these grounds (paragraph 26 and recommendation V of the Memorandum).

3. According Article 138 of the Law on the Legal Status of Aliens, as amended by the law No X-924, an alien can lodge an appeal against an administrative decision made according to this Law to the relevant District Administrative Court within 14 days from the date of delivery of said decision to a person concerned. This term is not any particular exception from general rule. Article 33 of the Law on Administrative Proceedings sets one month time limit for a complaint/petition to be filed with the administrative court only in case a special law does not establish otherwise (paragraph 30 of the Memorandum).

4. Concerning subsidiary protection (paragraph 28 of the Memorandum) it should be noted that criteria for providing subsidiary protection are established by the EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Article 88 of the Law on the Legal Status of Aliens stipulating grounds for refusing providing refugee status or special protection for asylum seeker is in line with Article 17 (Exclusion Clauses) of the Council Directive 2004/83/EC and is not in contradiction to the 1951 Geneva Convention or ECHR requirements.

Article 90 of the Law on the Legal Status of Aliens establishes different clauses for the revocation of the refugee status (part 1) and revocation of subsidiary protection status (part 2). Provisions related to the subsidiary protection status are fully in line with the Articles 16 (Cessation) and 19 (Revocation of, ending of or refusal to renew subsidiary protection status) of the Council Directive 2004/83/EC and is not in contradiction to the 1951 Geneva Convention Relating to the Status of Refugees or ECHR requirements.

5. Lithuania fully complies with the *non refoulement* principle (paragraph 28 of the Memorandum). According existing legislation the principle of *non refoulement* is observed also in cases when an alien constitutes a threat to the national security and public order or is convicted by court for grave or very grave crime and constitutes danger to the society. Thus the compliance with the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is guaranteed in full.

Vilnius, 2007-05-14