

## Lithuania<sup>1</sup>

### **IHF FOCUS: prisons and detention facilities; national end ethnic minorities; trafficking in human beings; asylum seekers and immigrants; labor rights.**

In 2003, Lithuania continued to develop its protection of human rights both by extending and upgrading its domestic legislation and by ratifying international treaties. In recent years, Lithuania also amended a number of its laws to comply with relevant EU legislation as well as the UN Convention on Elimination of All Forms of Racial Discrimination.

The new Penal Code, the Code of Criminal Procedure and the Code of Execution of Punishments, which entered into force in 2003, represented a fundamental step forward in aligning legislation with European and international standards. The new legislation should shorten the time required for criminal investigations, so that fewer persons will be detained for extended periods of time. Prison sentences were reduced and alternative mechanisms of punishment developed. Finally, in March and April 2003 respectively, the *Seimas* (parliament) amended the Constitution and the Law on Public Prosecution to strengthen the independence of public prosecutors and to clarify their status and powers as heads of pre-trial investigations.

The Civil Code, Penal Code, Labor Code, and Law on Education were amended to outlaw discrimination on ethnic or racial grounds. In 2003, as part of the National Action Plan for the Protection and Promotion of Human Rights, the Parliamentary Commission for Human Rights prepared a Program to Combat Intolerance, Racism, Xenophobia, and Homophobia.

There is a large Roma minority in the country, which continue to live in poor conditions. Education of Roma was made a priority within the Program for the Integration of Roma into Lithuanian Society.

Trafficking in human beings continued to be an issue of concern, with Lithuania being a country of origin, transit and destination. Issues such as assistance to female victims were not addressed within the Penal Code. There were also problems surrounding the application of asylum legislation and a restrictive interpretation of the definition of a refugee.

On a positive note, a new Labor Code entered into force on 1 January 2003, regulating for the first time relations between employers and employees in accordance with the International Labour Organization (ILO) norms.

The Lithuanian government adopted a Law on Equal Opportunities in November 2003. However, there were indications that the law may not meet all of the conditions set down in article 13 of the EU Equal Treatment Directive. The new law forbids direct or indirect discrimination on the grounds of age, sexual orientation, disability, race, religion or belief in the workplace, in education, and in the provision of goods and services, including housing. However, social security, social protection, healthcare, immigration and asylum are not covered by the law despite the fact that proposals covering these areas were submitted to the lawmakers by the Lithuanian Gay League. In addition, in cases under dispute, the burden of proof rests with the victim.<sup>2</sup>

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<sup>1</sup> Based on a report by the Lithuanian Human Rights Association (LHRA). For the preparation of this report the LHRA has used statistics of the Lithuanian Ministry of Foreign Affairs, Ministry of Education, Statistics Department and the Department of National Minorities and Lithuanians Living Abroad.

<sup>2</sup> Lithuanian Gay League, at [http://www.gay.lt/article\\_en.asp?ID=17](http://www.gay.lt/article_en.asp?ID=17).

## **Prisons and Detention Facilities**

The final stage of the reform of the legal system, the enforcement of new penal laws, was completed on 1 May 2003. The new Penal Code and the Code of Execution of Punishments were prepared in accordance with the principles laid out in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Prison Rules, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987.<sup>3</sup>

Lithuania has had long-term difficulties in solving the problem of overcrowding in places of imprisonment. This can be attributed partly to the high level of criminality and particularly to a stringent penal policy—in 2002, 43.6% of all persons convicted of criminal crimes were given unsuspended prison sentences, the average term imposed by the courts amounting to four years and four months. Since then, alternative punishments that correspond more precisely to the type of crime committed have been enforced. In 2003, pre-trial institutions for adults and hospitals within detention centers continued to face the problem of overcrowding, whereas other places of imprisonment were not full. This was particularly manifest in female and juvenile imprisonment institutions, which were most affected by the changes.

The new penal laws also guaranteed more humane conditions for those imprisoned. The system of classification of convicts was altered to ensure that convicts were placed in safer conditions. Some were granted the right to go home once every three months for three days, and the right to a 14-day leave during the year. All those detained were guaranteed the unrestricted right to send to officials and employees of the state and municipal institutions, public organizations and international institutions applications, requests or complaints. It was forbidden to censor such correspondence. The new laws also provided for the prosecution of perpetrators in cases of violence among imprisoned persons and in cases of misconduct of prison officials.

Facilities for the performance of religious rites were provided for in all places of imprisonment, and convicts were given the right to marry under civil law. In addition, visits by lawyers were not restricted.

From 1 January 2003, new norms governing nutrition for convicts were applied in prisons. According to these norms, different daily food rations were determined for those working and not working, for males and females, minors and adults, and those being treated in medical institutions.

On 22 September, the process of demilitarization of the system of imprisonment was completed. Until then the security of prisons had been overseen by conscripts of the military service within the internal service units of the Ministry of Interior.

During the past decade, drug distribution in prisons became an increasing problem. According to unofficial data, some officers working in prisons were involved in the process of drug transfer to convicts. Within the past year and a half, two places of imprisonment (the Alytus Correction Institution and the Lukiskes pre-trial facility) were supplied with modern devices for detection and identification of drug substances.

Whilst the enforcement of the new penal laws resulted in improvements in the detention conditions and prisons, there was a need for projects aimed at altering the approach of the public and officials towards those detained or imprisoned. Most frequently, convicts were punished

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<sup>3</sup> Recommendation No. R (87) 3.

twice—by the court and by humiliating behavior on the part of officials, but also to some extent after their release through lack of support, for example, in searching for employment.

### **National and Ethnic Minorities**

According to the 2001 population census, there were 115 nationalities living in the country. Those ethnic groups with the largest numbers were: Poles (6.7%), Russians (6.3%), Belarusians (1.2%), Ukrainians (0.7%), Jews, Germans, Tartars, Latvians, and Roma (0.1%).

#### *Education*

In January 2002, the Ministry of Education approved new regulations for minority education, allowing for the use of minority languages as the primary language of instruction in compulsory education. National minorities could complete all schooling in their own language, with Lithuanian being taught as an additional course.

As of the end of 2003, there was an expansive network of schools functioning for the largest national minorities (Polish and Russian). In addition, there was one Belarusian-language school, one German, and one Jewish school, all funded by municipalities. According to official data from the 2002/2003 academic year, out of a total of 2,058 general education schools (with 567,453 pupils), 56 schools offered Russian as the language of instruction, and an additional 49 mixed schools had Russian classes. These schools had 33,698 pupils, accounting for 5.9 % of the total number of pupils in Lithuania. Eighty-one schools had Polish as their language of instruction and 43 mixed schools offered Polish classes, the number of pupils in them totalling 21,314. Pupils in Polish schools accounted for 3.7% of the total number of school children in Lithuania.

As of the end of 2003, there were 37 weekend schools for Armenian, Belarusian, Estonian, Russian, Romanian and other national minorities. These offered the possibility of studying their language, native history, culture, literature, and music.

#### *The Roma Minority*

The majority of Roma in Lithuania continued to live in very poor conditions, with no permanent place of residence. Whilst education was compulsory for persons under the age of 16, most Roma children either started school at a later stage or did not attend at all and there was a high dropout rate.

This was due to a number of reasons, including language problems (most Roma speak only Russian) and the inability of parents to supply their children with the necessary books etc. The majority of 40-50-year-old Roma have only been through elementary education in Russian and consequently have difficulties understanding information provided in Lithuanian. This was compounded by the fact that many could not read and thus faced serious problems when dealing with official administrative procedures.

A Roma ABC book was prepared and published within the governmental Program for Integration of Roma into Lithuanian Society. It was prepared in close cooperation with the Education Exchange Fund, one of the most active non-governmental institutions assisting in the field of multicultural and civic education, education on the holocaust, and integration of national minorities, which also organized a number of seminars for teachers working with Roma children, and summer recreation camps for Roma children.

The government stated that it had made Roma education problems a priority within the Program for the Integration of Roma into Lithuanian Society. This program was based on the Council of Europe Recommendation No. 1203 “On the Roma in Europe,” approved by the Parliamentary Assembly in 1993, which encouraged member states to take measures to tackle issues relevant to Roma education and culture, guarantee equal rights in various fields of life, and maintain contacts with the European Community and international Roma organizations.

In 2001 the Roma Public Center was built on the largest territory inhabited by Roma in Vilnius and provided various educational and cultural activities. In 2002/2003, two preschool teaching groups were offered by the center and were attended by 24 Roma children. The center also organized Roma language courses, cultural programs, summer camps, and other courses. From September 2002 the Roma Public Center has also functioned as a day center and provided adult education.

The European Roma Rights Center (ERRC) voiced its concern that the Program for the Integration of Roma in Lithuanian Society for 2000-2004 only appeared to address the situation of Roma in the “Kirtimai” tabor, a Roma settlement in Vilnius.<sup>4</sup>

The ERRC also criticized the fact that the government paid insufficient attention to the situation of Roma in Lithuania’s Joint Inclusion Memorandum of December 2003 on issues related to social inclusion, which was required by the EU from all accession countries.<sup>5</sup> The ERRC noted that the government had failed to include disaggregated data on Roma on which to base efficient policy measures. Moreover, the government failed generally to state what measures it planned to take in order to improve the situation of Roma.

According to the ERRC, the memorandum downplayed anti-Romani sentiment in Lithuanian society and omitted any mention of racial discrimination as a factor in the social situation of Roma (who were termed by the memorandum as “Gypsies”)—a factor that the Council of Europe’s European Commission against Racism and Intolerance (ECRI)<sup>6</sup> and the UN Committee on the Elimination of Racial Discrimination have taken up as a serious problem<sup>7</sup>.

The memorandum also failed to adequately deal with the question of how to solve, *inter alia*, the poor health care situation of Roma. This could be attributed to the fact that many Roma do not have state-provided medical insurance because unemployed Roma are not registered at state unemployment offices. Also, the memorandum linked the high unemployment rate of Roma mainly with the low level of education, but failed to pay attention to the fact that this was largely

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<sup>4</sup> ERRC concerns are mentioned in the letter from the ERRC to Anna Diamantopoulou, Commissioner for Employment and Social Affairs, and Vilija Blinkeviciute, Lithuanian Minister of Social Security and Labor, 17 February 2004, at [http://www.erc.org/publications/legal/JIM-Lithuania\\_2004.doc](http://www.erc.org/publications/legal/JIM-Lithuania_2004.doc).

<sup>5</sup> Prior to accession, all countries are expected to prepare, with the European Commission, a Joint Inclusion Memorandum (JIM), with the purpose of preparing the country for full participation in the open method of coordination on social inclusion upon accession. The JIM outlines the principal challenges in relation to tackling poverty and social exclusion, presents the major policy measures taken in the light of the agreement to start translating the EU’s common objectives into national policies and identifies the key policy issues for monitoring and review. The Lithuanian report is posted at [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/lt\\_jim\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/lt_jim_en.pdf).

<sup>6</sup> ECRI Second Report on Lithuania, adopted on 28 June 2002 and made public on 15 April 2003, at [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Lithuania/Lithuania\\_CBC\\_2en.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Lithuania/Lithuania_CBC_2en.asp#TopOfPage).

<sup>7</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Lithuania. 21/03/2002, CERD/C/60/CO/8.

a result of discrimination against them in the labor market. There was also insufficient attention paid to the fact that problems with education are closely linked to discrimination and hostility against Roma children on the part of non-Romani parents, school officials and/or other children. Both ERRC and ECRI urged the Lithuanian authorities to vigorously combat all forms of school segregation, which was of serious concern for Roma.

The ERRC also highlighted the poor housing situation of Roma, with settlements lacking basic facilities (waste removal, running water, clean drinking water, etc). There was no information provided by the government as regards measures planned to overcome these problems.

### **Trafficking in Human Beings**

According to Europol, there are more than 120,000 victims of human trafficking every year in Europe. More than 3,000 of these come from the Baltic States with the largest group (about 1,200 persons) from Lithuania. Due to its geographical location, in 2003, Lithuania remained a country of origin, transit (in particular, between Eastern and Central European countries) and destination for the trafficking in human beings. According to information from the Ministry of Interior, the biggest flow was from Lithuania to Germany, Spain, Denmark, Norway, Holland, England, France, and Poland.

In 2002, 119 victims of human trafficking from Lithuania were recorded in Germany (comprising 14.7 % of all victims), 50% of whom entered the country legally. In addition, 67 Lithuanian citizens were identified as being involved in trafficking into Germany in 2002.

Whilst Lithuania ratified the United Nations Convention Against International Organized Crime in April 2002, in practice the country's high level of employment was at the root of the continuation of human trafficking. The majority of victims were young women who were taken to other countries to work as prostitutes. According to the International Organization for Migration (IOM) in Bonn, a large majority of women who received assistance to return to their countries came from Lithuania.

The new Penal Code provides for strict sentences (up to eight years imprisonment) for trafficking in human beings and foresees criminal liability for the trafficking of children, which carries a sentence of between two and ten years. According to figures supplied by the Ministry of Interior, eight people were sentenced in 2002 and 12 in 2003 for trafficking in human beings. However, issues such as the activities of criminal networks and assistance to female victims were not adequately addressed by law. In addition, Lithuanian legislation did not identify precise methods for compensating the damage caused to victims of trafficking and did not provide for any possibility to exempt them from legal responsibility for acts such as illegal immigration. There was also no option given to foreign victims to remain in Lithuania for a certain period during which they could decide whether to file a criminal case and give evidence.

In 2002 the government approved the 2002-2004 Program for Control and Prevention of Trafficking of Human Beings and Prostitution, which aims at providing a system for the control and prevention of trafficking. This includes a broad range of preventive measures—educational, socio-economic and medical, as well as legal initiatives. However, in 2003, there was no overall rehabilitation program for victims of human trafficking and forced prostitution nor a general institutional framework, which could provide comprehensive legal, medical and social assistance to victims.

On a regional level, the Baltic Assembly approved on 29 November 2003 a resolution, which called on the parliaments and governments of the Baltic States to harmonize their legislation in this area and to improve the work of law enforcement bodies. IOM also assisted with the training of police officers and social workers to deal with this problem.

In 2002, IOM also carried out a campaign in Lithuania against trafficking in women. An additional campaign against trafficking in human beings was organized on a regional level by the Nordic countries. During 2002-2003, Lithuanian NGOs implemented several other projects aimed at providing social aid and facilitating the reintegration of victims (e.g. "International Initiatives for Young Women," a combined venture of the Charity and Support Foundation of Lithuania and a US initiative, intended to promote alternative forms of employment).

### **Asylum Seekers and Immigrants**

On the eve of becoming an EU member state, Lithuania continued to be concerned with the need to balance internal security, tightening territorial borders and fighting illegal immigration, and on the other hand guaranteeing freedom of movement and refugee protection. This was further complicated by the fact that Lithuania would become the external border of the European Union in 2004 and was already viewed as an attractive country for illegal immigrants and asylum seekers.

Between 2000 and the end of 2003 there was a sharp increase in asylum seekers. The majority came from Chechnya and Afghanistan and a smaller number from India and Sri Lanka. It is expected that these numbers will increase once Lithuania joins the European Union in May 2004. Most of these persons arrived in Lithuania from across the Belarusian border.

According to statistics provided by the Lithuanian authorities, 581 illegal immigrants were detained in 2003. Out of those illegal immigrants detained at the border, 111 came from Russia, 92 from Belarus, 73 from Latvia, 5 from Poland, 5 from Ukraine, 48 from Turkey, 14 from China, 27 from India and 27 from Pakistan.

As a future member of the EU, Lithuania was obliged to align its national legislation with the *acquis communautaire*, including those provisions relating to asylum and immigration. The right to asylum was regulated by the 1995 Law on Refugee Status, which was amended in the 1990s to comply with the Rome Statute of the International Criminal Court (ratified by Lithuania in 2003) and the UN Geneva Convention of 28 July 1951. However, during the year a draft law on the legal status of foreigners was prepared and submitted to parliament for adoption. This should replace the Law on Foreigners Status and the Law on Refugee Status. It seeks to fully align national legislation with EU requirements.

Regarding the procedure for obtaining refugee status, the Lithuanian system was consistent with the Dublin Convention on Asylum and the Schengen *acquis*. The whole procedure lasts a total of six months which can be extended for a similar period. Efforts have been undertaken to shorten the procedure to three months. Once refugee status is granted, the applicant is then transferred to a specific municipality which will take care of the asylum seeker. The total number of refugees was estimated at between 2,000 and 3,000.

A person who was denied refugee status by the Migration Department of the Ministry of Interior and was thus subject to deportation, had 14 days to appeal before the Vilnius District Administrative Court. Once an appeal was filed, the deportation procedure was automatically

stopped. On 10 April 2003 the Lithuanian Supreme Administrative Court passed a decision<sup>8</sup> declaring the right to be free from detention, even if no residence permit is granted, if deportation is suspended by the Migration Department at the Ministry of Interior.

In practice, however there were major problems relating to asylum applications, in particular when asylum applications were filed at border check points. Both the UNHCR and NGOs received complaints from asylum seekers claiming that border guards often ignored their asylum applications. Moreover, according to the Law on Refugee Status, appeals submitted against negative decisions on admissibility did not have a suspended effect on deportation.

In addition, the restrictive interpretation of the definition of a refugee limited the possibility of granting refugee status to asylum seekers. Since the introduction of the possibility of granting temporary residence permits on humanitarian grounds to persons who did not meet the criteria laid down in the refugee definition, there have been very few cases where refugee status has been recognized. Moreover, according to the case law, it is not possible to appeal against decisions to examine applications through the accelerated procedure.

On 21 February 2003 the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its opinion on Lithuania's initial report. The committee expressed its concern about discriminatory treatment and negative, hostile attitudes towards asylum seekers and refugees among the public, certain politicians and in the media.

The integration of asylum seekers and immigrants was complicated by the negative attitudes expressed by the media as well as public institutions over asylum seekers and illegal immigrants, primarily of Chechens and immigrants from Russia, living in the Rukla Refugee Registration Centre.

In general, considerable improvements have been made regarding the conditions in refugee centers: living conditions were relatively good (including temporary accommodation) and there were social intergration programs—Lithuanian language courses, assistance in finding employment, an allowance for daily expenses as well as allocations for health care. The Lithuanian Human Rights Association (LHRA) felt, however, that in addition to legal measures and the organising of professional training for public officials working on state borders, it is necessary to involve society and cultivate a culture of acceptance of asylum seekers.

## **Labor Rights**

On 1 January 2003, a new Labor Code entered into force, regulating labor relations in the country. For the first time in the history of Lithuania, a balance between the interests of employees and employers was provided for in the code, which was adopted following negotiations between government officials and national organizations of employees and employers. The norms of the new Labor Code were in the main drafted in accordance ILO conventions and EU labor law.

In 2003, the Law on the Guarantee Fund came into force, according to which employees of bankrupt and insolvent enterprises who did not receive wages, which were due, would be paid from the said fund the amount of three monthly average wages.

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<sup>8</sup> Case No. A<sup>6</sup>-258- 03.

In addition, the Law on Social Insurance of Occupational Accidents and Occupational Diseases was supplemented, under which all disabled workers shall be paid damage compensation from the Social Insurance Fund. From 1 September, the minimum wage was increased from 430 to 450 Litas (€124 to 130).

Unemployment levels decreased from 12 to 9.8%. Employees who had lost their jobs and had two years left before retirement were given the right to receive unemployment benefit.

However, there were a number of violations of European labor law: for example, social dialogue at the level of enterprises was not improved and collective agreements were not concluded in most enterprises. Trade union membership decreased, covering less than 10% of all employees. The adoption of the Law on Labor Councils Representing Employees, though foreseen in a new Labor Code, was dragged out throughout 2003, thus leaving more than 90% of employees without representation.

There were still no provisions to cover stress at work, depression, anxiety, and harassment as occupational trauma. This was due to the fact that discussions between employers and representatives of employees on the adoption of certain covenants and joint decisions, referred to in article 47(3) of the Labor Code, failed to take place.

Shadow economy and illegal work accounted for between 20 to 30% of all economy. Small companies in the light industry and food industry continued to hire illegal employees, who were not assured social guarantees. In addition, many legal employees, who were paid a minimum wage, were given additional untaxed payment.

Whilst a supplementary pension insurance scheme was introduced and cumulative pension funds with tax privileges were established in 2003, this did not benefit those on low-incomes. In addition the system of pay for overtime and the regulation of working hours were frequently violated. According to the Labor Code, working time must not exceed 40 hours per week. In reality, however, employees often worked as many as 43 hours per week, with no overtime payment, and on the work time sheet it was entered that the employee worked part time.

In 2003, a new procedure for the resolution of labor disputes came into force. However, in most enterprises labor dispute commissions were not formed. In labor disputes before the courts, statements given by employees and their organizations were rarely taken into account. In addition, the Supreme Court did not permit employees to be represented by trade union lawyers who did not have advocate status, despite the fact that article 50 of the Constitution guaranteed trade unions the right to represent and defend the interests of employees.

Employment of the disabled and their social integration worsened throughout the year. According to a survey carried out by the LHRA, out of 7,000 visually impaired disabled people, 2,000 would like to work but could not get jobs. A Law on Social Employment Enterprises has been under preparation for a long period of time, and should provide for the establishment of so-called social employment enterprises that offer jobs to disabled, persons discharged from imprisonment, and long-term unemployed persons. Over the last decade, there have been five such enterprises with workplaces, specially equipped for the blind and visually impaired people. However, government policy in the field of customs and taxes has forced most into bankruptcy and as a result hundreds of visually impaired disabled people working in these enterprises were dismissed.



- Jurgita Gritenaite, a disabled person with visual impairment, worked from 1998-2003 in UAB "Regovitus," which has special workplaces equipped for the blind. Due to threatening bankruptcy, the company had to reduce the number of workplaces for the disabled and to admit other employees who were more cost efficient. Following her dismissal, lawyers of the Trade Union "Solidarumas" filed a claim with the Panevezys Court, which recognized her dismissal as unlawful. She was, however, not given back her job due to the poor financial status of the enterprise. On 8 December 2003, the Supreme Court of Lithuania upheld the decision of the Panevezys Court.