

IHF FOCUS: elections and political rights; freedom of the media and access to information; independence of the judiciary and the rights to a fair trial; conditions in prisons and detention facilities; respect of privacy; trafficking in human beings; labor and trade union rights.

The Lithuanian legal system continued to undergo reforms with the aim of harmonizing it with European standards and international human rights conventions. Questions continued to be raised, however, e.g. about the availability of professional and efficient legal advice to indigent people.

While freedom of expression was generally respected, journalists frequently faced obstacles in access to information especially at the local level, which hampered reporting on issues of public interest. In addition, many journalists feared reprisals when covering sensitive issues such as corruption cases.

Political rights were limited by the fact that only members of political parties were allowed to stand for elections, a practice that impeded effective participation of all citizens in the conduct of public affairs.

In a positive development, overcrowding in prisons decreased as a result of the implementation of the new criminal, criminal procedure and criminal executive codes, in force since May 2003. Alternative sentences became more frequent and the length of prison sentences was reduced. Nevertheless, several problems remained in the prison system, including keeping inmates in group cells instead of single cells, widespread inter-prisoner violence and the non-execution of short-term leaves and conjugal meetings for prisoners.

Article 177 of the criminal procedure code regulates wiretapping by the security forces but its wording is ambiguous and thus paves the way for a wide range of interpretations. Increasing concern was raised about the operational activities of the security services and their compatibility with international standards on the right to privacy.

With regard to trafficking in human beings, Lithuania was a country of origin, transit and destination, and the problem of human trafficking has been growing in the country since its accession to the EU. Women victims of trafficking were forced to work in the sex trade in Lithuania, while Lithuanians, including children, were trafficked to Western Europe, mostly for the purpose of exploitation in the same trade.

Lithuania remained one of the countries with most complaints submitted to the European Court of Human Rights (ECtHR). In 2005, the court ruled against Lithuania in 14 cases.

Elections and Political Rights

According to Lithuanian election law, only political parties have the right to nominate candidates for elections of local councils and parliament (*Seimas*). As a result, individuals who are not members of political parties nor wish to become such are excluded from standing for elections. In a similar vein, only members of political parties can be appointed as members of election commissions - with the exception of one civil society organization, the Association of Lawyers, whose members can take part in the work of election commissions. Moreover, by law, lawyers have a privileged access to election commission chairmanship: persons with other qualification are not eligible for that position. In addition, article 12 of the election code prescribes that 50% of all Central Election Committee Members must be lawyers, which undermines participation by other professional groups.

Election legislation in place therefore impeded effective participation of all citizens in the government of their country and the conduct of public affairs.

* This chapter is based on the *Annual Report 2005 of the Lithuanian Human Rights Association* (IHF member) and information from the Human Rights Defence Fund (Vlnius) to the IHF.

In addition, as many as 300,000 (or 11% of the total population) signatures were necessary for the organization of a referendum. Of several attempts to hold a referendum only one has so far succeeded. On 20 October, *Seimas* rejected an initiative to reduce the number of the necessary signatures to 100,000.

Freedom of the Media and Access to Information

The right to access information of public importance or interest was not always respected by local authorities. Clear legal provisions were not in place to regulate this right, as a result of which especially journalists faced problems when trying to report on important issues.

In addition, defamation provisions could be invoked in order to put obstacles in the way of investigative journalism and legitimate criticism. Lithuanian law made the dissemination of information that was untrue and damaging to an individual's honor and dignity punishable by a fine or imprisonment of up to one year. Dissemination of libelous material through mass media could be punished by up to two years imprisonment.¹

◆ On 31 January, Aurimas Drizius, the editor of the *Laisvas Laikraštis* was found guilty by the Mazeikiai District Court for the disclosure of pre-trial investigation materials without the prosecutor's permission (article 247 of the criminal code). He was ordered to pay a fine of LTS 1,200 (approximately EUR 347). Drizius had published in 2003 a certificate issued by the Mazeikiai district prosecutor's office containing information on suspected money laundering worth about LTS 3.8 million (EUR 1.1 million) by the company Mazeikiu Nafta (Mazeikiai Oil Refinery), then owned by the US capital company Williams. The Supreme Court, however, acquitted Drizius in the fall of 2005. Another corporation, Ex-Commissioners' Bureau, founded by Alvydas Sadeckas

who later became the chairman of the parliamentary National Security and Defense Committee, was also allegedly involved in the criminal activities. Criminal proceedings for money laundering against Mazeikiu Nafta were initiated in 2001 but the case was still pending as of the end of 2005.²

◆ The libel case initiated by the prosecutor general's office against journalist Ruta Grinevičiute in September 2004 was still pending at the end of 2005. Grinevičiute was accused of having spread false information about Stanislovas Stulpinas, the chief prosecutor in Klaipėda, in her articles published in August through December 2003 in *Klaipėdos Laikraštis* and in TV programs, allegedly belittling him and shattering his credibility. In addition, by accusing him of having committed a felony, Grinevičiute had allegedly libeled him. According to Grinevičiute, Stulpinas had taken a bribe, was professionally incompetent and had transgressed his professional ethics. Among other things, she called into question the extremely low price Stulpinas' wife had paid for a plot of land she had purchased and suggested that this was possible only in exchange of Stulpinas having dropped charges against a relative of the previous owner of the land. Grinevičiute claimed she had received the corruption-related information from the Special Investigation Service, however, only the journalist was charged.

On the other hand, media outlets violated their professional code of ethics by intruding in the private life of individuals, oftentimes also publishing false information. This was especially unfortunate in cases where journalists failed to take into consideration the precarious situation of victims of crime and their relatives.

Independence of the Judiciary and the Right to a Fair Trial

The independence and impartiality of the judiciary was affected by the depend-

ence of courts on executive authorities and also by an incorrect perception of many judges of their own role. Many judges still regarded as their primary role the protection of the interests of the state - an attitude that characterized the former Soviet legal system - rather than acting as independent protectors of individuals' rights.

The independence of Lithuanian courts was also compromised by the fact that the executive branch was involved in preparing court budgets and controlling them, thereby being in a position of putting pressure on judges and the operation of courts. In addition, the process of preparing court budgets was not transparent. Generally, courts were underfunded, with budget cuts continuing despite the fact that the number of judges and their caseload increased. The physical working conditions of courts were often poor, which also had an impact on the judiciary and other judicial staff not only by obstructing their daily work but also by increasing vulnerability to pressure from the executive, in the hope of receiving urgently needed additional funding.

In some cases suspicion was raised about the possibility that court documents had been forged after court cases were closed. The fact that access to closed court files was routinely barred nourished such suspicions and contributed to distrust and lack of confidence in the judicial system.

An *ex-officio* legal service system was in operation but it was unable to provide for adequate legal counsel for indigent people. The Law on Advocacy prescribed a relatively fixed honorarium for *ex-officio* appointed attorneys, regardless of the outcome of the case. The payment was insufficient and was not always paid promptly, all facts that did not encourage *ex-officio* attorneys to the best possible performance to represent their clients. As a result, in general, their clients only received modest and cursory legal assistance. Moreover,

free legal assistance was not always available to all indigent persons.

The Lustration Commission

The Lustration Commission, established in 1999 was composed of members some of whom had a questionable history as alleged collaborators of the former USSR Secret Service (KGB), putting into question the commission's operation.

Moreover, the work of the commission was not transparent and it did not grant the suspected persons access to the material on their cases that was available to the commission, thereby depriving them of the right to defend themselves. However, after passing a decision, the Lustration Commission made all the case information available to the media. Persons who did not agree with the decisions of the commission could file a complaint with a court but, by that date, not only was their reputation affected, but they also were obliged to prove their innocence. Even in the case of a favorable court decision, the persons were unable to recover their lost honor and dignity. These problems occurred *inter alia* in the cases of V. Girdzijauskas, V. Kavaliauskas, and A. Matulionis.

The regulations and practices by which the Lustration Commission operated therefore violated the right to a fair trial and, in particular, the right to be presumed innocent before proven guilty.

Conditions in Prisons and Detention Facilities³

Following the entry into force of the new criminal, criminal procedure and criminal executive codes in May 2003, the application of alternative sentences became more frequent and the length of prison sentences reduced. Among the important new provisions was article 157 of the criminal executive code, which provided for the mitigation of a sentence on grounds of good conduct by a prisoner, among other rea-

sons. The new sentencing policy has considerably decreased the number and the length of prison sentences, which, in turn, has decreased overcrowding in Lithuanian prisons. While still a few years ago almost all Lithuanian penitentiaries and detention facilities were overcrowded, in 2005 only the Lukiskes pre-trial facility and the prison hospital continued to run in serious overcapacity (1,212 inmates in Lukiskes, although its official capacity was 864). In a similar vein, the Siauliai pre-trial facility was designed for 425 inmates but held 642.⁴

As of January 2005, 8,125 inmates were held in detention facilities under the jurisdiction of the Prison Department, of which 6,218 were convicted persons serving a prison term. Over 32% of the inmates were employed or participated in educational or other activities: 13% attended secondary school classes, 13.5% classes of vocational education, five inmates studied at a higher level of education, and many others were engaged in individual occupational, creative or other types of activities.

The problems that were still to be solved included the large number of inmates per cell, widespread inter-prisoner violence (e.g. psychological and physical pressure, sexual exploitation, and lack of short-term leaves and conjugal meetings).

◆ Aidas Širka (27), Richardas Jankovskis (21), and Žilvinas Navickas (29), who belonged to the “caste” of the downtrodden among the prisoners, intentionally violated prison rules so as to be moved to another cell with other inmates. They were, however, put into a punishment cell in which already three other inmates were being held who belonged to another “caste.” After three days, one inmate was found killed - Kęstutis Girčys.

Prisoners were not granted home leave - although this is provided for by article 104 of the criminal execution code - and were not allowed to have conjugal meetings.

◆ During 2004-2005, none of the inmates in the Pravieniškės correctional facility no. 2 or the Alytus correctional facility was granted home leave. The respective prison administrations stated that they were reluctant to allow home leave because they feared that the inmates would commit crimes.

The Lithuanian criminal procedure code did not provide for specific treatment of juvenile delinquents. As a result, the conditions of detention and imprisonment of young offenders in 2005 did not take into consideration their specific needs in order to ensure the best possible prerequisites for their rehabilitation and re-socialization. Corrections officers working with young offenders did not have specialized pedagogic and other training for the purposes of dealing with juveniles.⁵

Police Facilities

Lithuania had 46 police stations, of which only ten were in satisfactory condition. In others, the sanitary conditions of the cells were poor, the requirement of five square meters per inmate was not complied with, and the segregation on the basis of the nature of crimes the inmates had committed was not respected. In addition, the inmates’ right to outdoor exercise was not implemented, access to showers was restricted, and health care was not sufficiently ensured. According to the Human Rights Defence Fund, in some police stations (especially in Ukmergė and Anykščiai) the conditions were so poor that they amounted to inhuman and degrading treatment.

The conditions of work for police officers were also very poor and failed to meet the established standards.

Respect of Privacy

Article 177 of criminal procedure code regulates wiretapping by the security forces but its wording is ambiguous and

thus paves the way for a wide range of interpretations.

In practice it appeared that especially the wiretapping of mobile phones was increasingly used by the State Security Department without adequate control by the office of the prosecutor general, which is in charge of supervising such activities. Judges and prosecutors seemed to sanction applications for such operational activities without thorough consideration: it was difficult to establish on what grounds many wiretapping activities were approved as indispensable for investigation.

The lack of adequate supervision of wiretapping became all the more worrisome in light of the fact that information collected by security agents was frequently leaked to the media. What is more, such leaks were increasingly tolerated, without the responsible authorities taking efficient measures against the persons who divulged such confidential information and sanctioning them.

Trafficking in Human Beings

Lithuania was both the country of origin, transit and destination for trafficking in human beings.

According to the International Organization for Migration (IOM), the number of people being trafficked from Lithuania to work in the sex trade has increased since the country joined the EU. An IOM survey revealed that Britain had become the number one destination country for trafficked Lithuanians. IOM also reported that most victims were from poor and broken families, largely dependent on social assistance. More than half of them had not completed secondary education, many were unemployed, and while 72% of the women were single, more than half of them had children.⁶

According to Europol, every year approximately 1,200 Lithuanian women fell victim to trafficking or left the country

against their will.⁷ According to IOM, trafficking of minors also rose since 2004.⁸

The Lithuanian Human Rights Association reported that many Lithuanians went missing and remained unaccounted for, and it was feared that many of them ended up in other countries and were forced to prostitution or other sex services.

Trafficking in human beings from Lithuania was facilitated by the fact that there was no computerized system to record information on people reported missing. The lack of systematic processing of information hampered law enforcement agencies in their efforts to establish effective operative searching. In addition, the fact that only very few traffickers were brought to justice further facilitated trafficking by creating a climate of impunity: both the law enforcement and judicial institutions appeared to avoid taking rigorous measures to stop trafficking because they were proven hard to deal with.

In Vilnius, the capital, alone there were at least 15-20 illegal companies involved in prostitution, with an estimated turnover of no less than LTS 20 million (approximately EUR 5,8 million). The Vilnius AIDS center estimated that 1,000-3,000 women worked as prostitutes in Vilnius. The punishment for illegal prostitution was between LTS 500 and 1,000 or arrest up to 30 days. Pandering was punished with up to five years imprisonment or a monetary penalty. Pressuring a juvenile or a dependent person into prostitution was regarded as an aggravating circumstance and carried a prison sentence of up to seven years.

Labor and Trade Union Rights⁹

Article 3 of the ILO Convention on Freedom of Association and Protection of the Right to Organise, No. 87, states: "workers' and employers' organizations shall have the right to draw up their constitutions and rules [...] The public authorities shall refrain from any interference which

would restrict this right or impede the lawful exercise thereof." The convention was ratified by Lithuania in June 1995. In addition, article 11 of the European Convention on Human Rights, article 5 of the European Social Charter (Revised), and article 50 of the Lithuanian constitution provide for the right to free association and non-interference by public authorities in the freedom of trade unions.

A new procedure of registering legal entities enacted in 2004 showed its impact in 2005. It significantly reduced the establishment of new trade unions and representation of workers in enterprises. In order to register, dozens of documents were asked to be filled in or submitted, and the employer's consent was required to register a trade union at the employer's address - otherwise the legal address of a trade union could only be its leader's home address.

Many employers tried to hinder their employees from associating in trade unions and hampered trade union activities, for example, by threatening to fire them or actually doing so. Some such cases were taken to court in the course of 2005.

The Lithuanian government continued to ignore the Constitutional Court judgment of December 2004 concerning the remuneration of civil servants. The judgment was handed down in relation to governmental decree of 20 May 2002 providing that in the event a governmental or municipal institution lacks funding for paying remuneration to civil servants, their wages can be cut without reducing their work load. Subsequently, civil servants' wages were not indexed and they were not paid for overtime, and work during weekends and official holidays in 2002-2004.

Trade unions representing civil servants took the case to the Supreme Administrative Court, which in December 2004 found in favor of the civil servants. The authorities, however, failed to rectify the de-

creed but instead stated that if civil servants wanted to challenge the pay-cuts, each individual was obliged to take his or her case to a court of law.

In December 2004, the Constitutional Court ruled the governmental decree to be in violation of the constitution, which stipulates in article 48 that it is inadmissible that a civil servant is not paid for the job commissioned to be done, or is paid belatedly or less than he or she is due pursuant to laws and bylaws. The court noted that the legislature had failed to ensure the necessary budget lines for this purpose when adopting the Civil Servant Act of 23 April 2002. The court ruled that the governmental decree violated the ownership right and the principle of equality among persons.

Further, the Constitutional Court looked into the legal provisions that prohibited civil servants from taking an additional job to ensure an additional salary; the court found this provision to be incompatible with the constitution because it posed unacceptable restrictions to the human rights of civil servants, thereby prescribing the restrictions disproportionate to the aim pursued. Civil servants in Lithuania enjoyed as employees a more protected status than others. When introducing the 2002 decree, the government cited the necessity to prevent possible conflicts of state and private interests.

According to the Lithuanian Human Rights Association, the labor market has changed radically in Lithuania since it became EU member. Officially, the unemployment rate dropped dramatically from 16% to 6%, however, according to local monitors, this improvement in the statistics could largely be attributed to the migration of a high number of Lithuanians to Western Europe in search of work and better perspectives for the future. This has, in turn, resulted in a shortage of labor force in some sectors of labor market, for exam-

ple in construction. A flow of cheaper work force from non-EU countries in that sector has led to illegal or unacceptable practices such as employment without written contracts, failure to register the workers with authorities, and, consequently the failure to pay obligatory payments for social security and taxes.

Endnotes

- ¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *2005 Country Reports on Human Rights Practices*, March 2005.
- ² Human Rights Defence Fund, *Human Rights Report on Lithuania for 2005*.
- ³ Based on the Human Rights Defence Fund, *Report on Human Rights in Lithuania in 2005*.
- ⁴ The statistics were provided by the Lithuanian Human Rights Association.
- ⁵ *Annual Report 2005 of the Lithuanian Human Rights Association*.
- ⁶ International Organization for Migration, "Lithuania – Human Trafficking Increases since EU Accession, 28 October 2005, at www.iom.int/en/backup%5Fnews/pbn281005.shtml.
- ⁷ Cited in US Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2004*, 28 February 2005, at www.state.gov/g/drl/rls/hrrpt/2004/41693.htm.
- ⁸ International Organization for Migration, "Lithuania – Human Trafficking Increases since EU Accession," 28 October 2005, at www.iom.int/en/backup%5Fnews/pbn281005.shtml.
- ⁹ Based in information from the Human Rights Defence Fund, *Human Rights Report on Lithuania for 2005*.