



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2015**

**Lithuania\***

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\* The present document is being issued without formal editing.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. Legal Provisions that Prohibit Enforced Disappearance under the Convention.....	3
III. Information on the Implementation of each Substantive Provision Contained in the Articles of the Convention .....	6

## I. Introduction

1. The Republic of Lithuania, following Article 29 of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter referred to as “Convention”), provides through the Secretary-General of the United Nations to the Committee on Enforced Disappearances, established under Article 26 of the Convention, a report on measures that are taken to give effect to its obligations under the Convention.
2. The Republic of Lithuania signed the Convention on 6 September 2007 in Paris, during the signature ceremony of the Convention. The Republic of Lithuania ratified the Convention on 23 April 2013 by Law No. XII-254. The Convention entered into force in respect of the Republic of Lithuania on 13 September 2013.
3. In accordance with Article 2 of the Law on the Ratification of the International Convention on the Protection of All Persons from Enforced Disappearance, the Republic of Lithuania, when depositing the instruments of ratification of the Convention, made these declarations under the Convention: following Article 31 of the Convention, the Republic of Lithuania declared that it recognizes the competency of the Committee on Enforced Disappearances to receive and consider reports, received from persons belonging to the jurisdiction of the Republic of Lithuania or in their name, in which they claim to be victims due to the fact that the Republic of Lithuania is violating the provisions of the Convention; following Article 32 of the Convention, the Republic of Lithuania declared that it recognizes the competency of the Committee on Enforced Disappearances to receive and consider reports, in which a state, which is Party to this Convention, claims that the Republic of Lithuania is not fulfilling its obligations under this Convention.
4. This report was prepared following the guidelines, adopted by the Committee on Enforced Disappearances, on the form and content of reports submitted by States Parties to the Convention under Article 29 of the Convention (CED/C/2).
5. This report was prepared by the Commission, approved by the Minister of Justice of the Republic of Lithuania in Order No. 1R-97 of 9 April 2015, the members of which are representatives of the Ministry of National Defence of the Republic of Lithuania, Ministry of Social Security and Labour of the Republic of Lithuania, Ministry of Health of the Republic of Lithuania, Ministry of Justice of the Republic of Lithuania, Ministry of Foreign Affairs of the Republic of Lithuania, Ministry of the Interior of the Republic of Lithuania and the Prison Department under the Ministry of Justice of the Republic of Lithuania. The commission was assisted by experts from other state institutions and bodies, for example, the Prosecutor General’s Office of the Republic of Lithuania, the Seimas Ombudsmen’s Office and Institution of the Ombudsman for Children Rights.
6. The draft report prepared by the Commission was harmonized with interested NGOs and state institutions, following the procedure established in legal acts, and considered in the sitting of the Government of the Republic of Lithuania.

## II. Legal Provisions that Prohibit Enforced Disappearance under the Convention

7. Article 18 of the Constitution of the Republic of Lithuania, adopted by a referendum on 25 October 1992, establishes the inalienable nature of human rights and freedoms. Article 20 of the Constitution of the Republic of Lithuania (hereinafter referred to as “Constitution”) establishes that the freedom of a human being shall be inviolable. No one may be arbitrarily detained or held arrested. No one may be deprived of his freedom

otherwise than on the grounds and according to the procedures which have been established by law. A person detained in flagrante delicto must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of the detainee, on the validity of the detention. If the court does not adopt a decision to arrest the person, the detainee shall be released immediately. Under Article 145 of the Constitution, after the imposition of martial law or the declaration of a state of emergency, human freedom cannot be temporarily limited as established in Article 20 of the Constitution.

8. The Republic of Lithuania, in order to give effect to its obligations under the Convention, envisaged criminal liability for the offense of enforced disappearance (Article 100<sup>1</sup> of the Criminal Code of the Republic of Lithuania). The following parts of the report include the description of the comprehensive national legal regulation system and other measures that ensure the proper fulfilment in the Republic of Lithuania of international obligations established by the Convention.

9. The Republic of Lithuania is a member of the United Nations, the Council of Europe and the European Union, as well as Party to numerous international treaties that contribute to the fight against crime involving enforced disappearances and their prevention. The Republic of Lithuania is Party to the following international treaties:

- International Covenant on Civil and Political Rights, signed on 16 December 1966
- Rome Statute of the International Criminal Court, concluded on 17 July 1998
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, and its Optional Protocol, adopted on 18 December 2002
- Geneva Conventions, adopted on 12 August 1949, intended for the protection of war victims, and its Additional Protocols, adopted on 8 June 1977
- European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “ECHR”), concluded on 4 November 1950
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, concluded on 26 November 1987

10. Paragraph 1 of Article 135 of the Constitution indicates that in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of the citizens and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice. Following paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania. The Constitutional Court of the Republic of Lithuania (hereinafter referred to as “Constitutional Court”) has repeatedly stressed in its jurisprudence that respect for the international law (i.e. compliance with the voluntarily assumed international obligations) and for the universally recognized principles of international law (including the principle *pacta sunt servanda*) is a constitutional principle and part of the legal tradition of the restored independent state of Lithuania (Constitutional Court Rulings of 14 March 2006 and 18 March 2014). The constitutional principle of respect for international law is an imperative for the Republic of Lithuania when meeting its obligations according to the international law, *inter alia*, international treaties, including the ones rising from the universally recognized norms of international law (general international law), as well as *jus cogens* norms, according to which international crimes are prohibited and which are consolidated in the international treaties ratified by the Seimas (Constitutional Court Ruling of 18 March 2014). Respect for the international law is an inseparable part of the constitutional principle (the essence of which is the rule of law) of a State under the rule of

law. The Constitutional Court has formulated the principle of international law as a minimum constitutional standard for the protection of human rights: as prescribed in paragraph 1 of Article 135 of the Constitution, to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law, the criminal laws of the Republic of Lithuania that are related to liability for international crimes, may not establish any such standards that would be lower than those established under the universally recognised norms of international law; disregard for the said requirement would be incompatible with the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution and expressed through the constitutional principle of a state under the rule of law. The Constitutional Court in its practice has also specified the methods for removing incompatibilities, stemming from the Constitution, between the Constitution and international treaties ratified by the Seimas. Paragraph 3 of Article 138 of the Constitution, under which international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania, should be construed in the light of the principle of the supremacy of the Constitution; the principle of respect for international law consolidated in the Constitution implies that in those cases where a national legal act (with the exception of the Constitution itself) establishes such legal regulation that competes with the one established in an international treaty, the international treaty must be applied; in those cases where the legal regulation consolidated in an international treaty that has been ratified by the Seimas and has entered into force competes with the legal regulation established in the Constitution, the provisions of such an international treaty have no priority in terms of application since a fact underlying the legal system of the Republic of Lithuania is that any law or other legal act as well as any international treaties may not be in conflict with the Constitution. In view of this fact, the Constitutional Court noted that, in the event of the incompatibility between an international treaty and the provisions of the Constitution, the duty arises, under paragraph 1 of Article 135 of the Constitution, for the Republic of Lithuania to remove the said incompatibility, either by renouncing appropriate international obligations established under the international treaty in the manner prescribed by norms of international law or by making appropriate amendments to the Constitution.

11. It should be noted that, as the Constitutional Court has repeatedly stressed in its jurisprudence, according to the Constitution, all Constitutional Court acts that interpret the Constitution and form the official Constitutional doctrine, bind with their content both the law-making and law-applying institutions (officials) (Constitutional Court Decision of 20 September 2005, Rulings of 28 March 2006 and 6 June 2006, Decision of 14 October 2008). All law-making and law-applying subjects, must follow the official constitutional doctrine when they apply the Constitution, they may not interpret the provisions of the Constitution differently from their construction in the acts of the Constitutional Court. Otherwise, the constitutional principle that only the Constitutional Court enjoys powers to construe the Constitution officially would be violated, the supremacy of the Constitution would be disregarded, and preconditions would be created for appearance of inconsistencies in the legal system. (Constitutional Court Decision of 20 September 2005, Rulings of 28 March 2006 and 22 December 2011).

12. During the period of preparation of this report, no pre-trial investigations were launched in the Republic of Lithuania under the Articles of the Criminal Code of the Republic of Lithuania that determine responsibility for acts of enforced disappearances as provided in the Convention.

### **III. Information on the Implementation of each Substantive Provision Contained in the Articles of the Convention**

#### **Articles 1 and 2**

13. The Law No. XII-776 of 13 March 2014, Amending Articles 7, 8, 27, 60, 95, 97, 151, 1511, 153, 162, 307, 308, 309 and the Supplement of the Criminal Code of the Republic of Lithuania, and Supplementing the Criminal Code of the Republic of Lithuania with Articles 1001, 1002, 1521, 2511, was adopted; it supplements the Criminal Code of the Republic of Lithuania (hereinafter referred to as “CC”) with offence of enforced disappearance, according to which a person, acting as a state agent or a person or a group of persons, who acting with authorization, support or acquiescence of the state, detained, abducted or otherwise deprived another person of his liberty, while refusing to acknowledge the detention, abduction or deprivation of liberty, or concealed the disappeared person’s fate or whereabouts, shall be punished with imprisonment of three to fifteen years.

14. No exceptional circumstances related to the state of war or threat of war, internal political instability or any state of emergency are envisaged in the composition of the criminal offence.

15. In the state of war the Law on the State of War of the Republic of Lithuania (hereinafter referred to as “Law on the State of War”) shall be applied, which inter alia embeds the provisions on detention of persons. The Law on the State of War determines the grounds for detention of citizens of the foreign country with which the Republic of Lithuania is at war. Paragraph 4 of Article 11 of the Law on the State of War establishes that the citizens of the foreign country with which the Republic of Lithuania is at war may be interned, as well as accommodated in a specific area, prohibiting to leave the area and the territory of the Republic of Lithuania. The decision that concerns the interning of persons from the foreign country with which the Republic of Lithuania is at war is made by the Government of the Republic of Lithuania. The procedure for releasing interned persons after the state of war is cancelled is determined by the Government of the Republic of Lithuania. Following paragraph 5 of Article 115 of the Law on the State of War, the Government determines the procedures for repatriation from the Republic of Lithuania of persons with the status of a prisoner of war and prisoners of war.

16. The issue of the Republic of Lithuania detention of persons may arise in cases when soldiers of or military units are sent to participate in international military operations, but it depends on the aim of the operation and the given mandate. For example, on 18 September 2007 the Memorandum of Understanding was signed between the Ministry of National Defence of the Republic of Lithuania and the Ministry of Defence of the Islamic Republic of Afghanistan on the transfer of persons detained by the armed forces of the Republic of Lithuania to the leadership of Afghanistan. The Memorandum of Understanding establishes bilateral obligation to follow existing norms of international law and international humanitarian law when transferring persons to the Afghan leadership and after the transfer, as well as the obligation not to violate the norms of international law, international humanitarian law and human rights demands with respect to the detained persons, and to keep record of the detained and transferred persons.

17. Article 100<sup>1</sup> of the CC provides that the responsibility for the enforced disappearance lies with the person, acting as a state agent, or a person or a group of persons who, acting with the authorization, support or acquiescence of the state, detained, abducted or otherwise deprived another person of his liberty while refusing to acknowledge the detention, abduction or deprivation of liberty, or concealed the disappeared person’s fate or

whereabouts. Even though the Article establishes only three constitutive elements of an offence, i.e. detention, abduction and other types of deprivation of another person's liberty, while four are established in the Convention (arrest is not directly indicated in the CC), still, the content and meaning of the concept of "otherwise depriving another person of his liberty" corresponds with the concept of "arrest"; therefore, no legal problems would arise when addressing the issue of prosecution for arrest. In addition, it should be noted that the criminal offence indicated in Article 100<sup>1</sup> of the CC does not require the consequences of criminal offence indicated in Article 2 of the Convention, "which place such a person outside the protection of the law". This allows to conclude that the definition of criminal offence provided in the Article of the CC is broader than the one in the Convention. Therefore, the concept of enforced disappearance, established in the CC, fundamentally corresponds with the one in the Convention and can even have a broader interpretation.

18. According to the data by the Information System of the Prosecution Service (hereinafter referred to as "ISPS"), since 13 September 2013, when the Convention entered into force with respect to the Republic of Lithuania, no pre-trial investigation has been started or completed under the above-mentioned CC Article.

### **Article 3**

19. As required by the provisions of Article 3 of the Convention, Articles 146 ("Unlawful Deprivation of Liberty"), 156 ("Abduction of a Child or Exchange of Children"), 252 ("Hostage Taking"), 228 ("Abuse of Office") and 294 ("Self-Willed Conduct") of the CC establish criminal liability of persons or groups of persons, acting without state's authorization, support or acquiescence, having committed enforced disappearance. Cases of complicity (forms and types of accomplices) are regulated by Articles 24 and 25 of the CC, and criminal association – by Article 249 of the CC.

20. Paragraph 1 of Article 1 of the CC establishes the rule that the Criminal Code of the Republic of Lithuania shall be a uniform criminal law having the purpose of defending human and citizen's rights and freedoms, public and the state's interests against criminal acts by criminal law means. This Code shall: 1) define which acts are crimes and misdemeanours and prohibit them; 2) establish penalties, penal and reformative sanctions for the acts provided for by this Code as well as compulsory medical treatment (paragraph 2 of Article 1 of CC). A person is held liable under this Code only when the act committed by him is forbidden by a criminal law in force at the time of commission of the criminal act (paragraph 1 of Article 2 of CC).

21. Following all the indicated CC Articles and rules provided in the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as "CCP"), a pre-trial investigation shall be started both when a complaint, challenge or report on criminal act is filed and when a prosecutor or a pre-trial investigation officer detects the elements of criminal act (PPC Article 166). In these cases the pre-trial investigation and proceedings are carried out according to the general procedure established in the CCP.

22. Paragraph 1 of Article 1 of the CCP establishes that the purpose of criminal proceedings is, by protecting human and civil rights and freedoms, public and the state's interests, to quickly discover criminal offenses and properly apply the law, so that the offender is justly punished and no one innocent is convicted. According to Article 2 of the CCP, in each case when elements of criminal act are detected the prosecutor and the pre-trial investigation bodies must take all legitimate measures within their competence to carry out the investigation and reveal the criminal act within the shortest period of time.

## Article 4

23. See information provided in paragraph 17.

## Article 5

24. The offence of enforced disappearance (CC Article 100<sup>1</sup>) is provided in the Special part of the CC, Chapter XV “Crimes against humanity and war crimes”.

## Article 6

25. Article 100<sup>1</sup> of the CC does not mention inducing, soliciting, attempting, knowing, ordering of criminal act involving enforced disappearance, but these acts in their meaning and content include the stages of criminal act established in the General Part of the CC (Preparation for Commission of a Crime and Attempt to Commit a Criminal Act – in Articles 24 and 25 of the CC respectively), as well as forms of complicity and types of accomplices (for example, giving an order is similar to the actions of an organizer; inducing and soliciting – of an abettor; knowledge – similar to assistance; Articles 24 and 25 of the CC).

26. Article 21 of the CC defines the stage of preparation for commission of a crime, while Article 22 of the CC defines the stage of attempting to commit a criminal act. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime. An attempt to commit a criminal act shall be an intentional act or omission which marks the direct commencement of a crime or misdemeanour where the act has not been completed by reason of the circumstances beyond the control of the offender. An attempt to commit a criminal act shall also occur when the offender is not aware that his act cannot be completed, because his attempt is directed at an inappropriate target or he is applying improper means.

27. Article 24 of the CC defines the institute of complicity and types of accomplices, while Article 25 of the CC defines the forms of complicity:

“Article 24. Complicity and Types of Accomplices

1. Complicity shall be the intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who have attained the age specified in Article 13 of this Code.

2. Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.

3. A perpetrator shall be a person who has committed a criminal act either by himself or by involving legally incapacitated person or the persons who have not yet attained the age specified in Article 13 of this Code or other persons who are not guilty of that act. If the criminal act has been committed by several persons acting together, each of them shall be considered a perpetrator/co-perpetrator.

4. An organiser shall be a person who has formed an organised group or a criminal association, has been in charge thereof or has co-ordinated the activities of its members or has prepared a criminal act or has been in charge of commission thereof.



5. An abettor shall be a person who has incited another person to commit a criminal act.

6. The accessory shall be a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of commission of the criminal act, the traces of the act or the items acquired by criminal means, also a person who has promised in advance to handle the items acquired or produced in the course of the criminal act.”

“Article 25. Forms of Complicity

1. Forms of complicity shall be a group of accomplices, an organised group or a criminal association.

2. A group of accomplices shall be one in which two or more persons agree, at any stage of the commission of a criminal act, on the commission, continuation or completion of the criminal act, where at least two of them are perpetrators.

3. An organised group shall be one in which two or more persons agree, at any stage of the commission of a criminal act, on the commission of several crimes or of one serious or grave crime, and in committing the crime each member of the group performs a certain task or is given a different role.

4. A criminal association shall be one in which three or more persons linked by permanent mutual relations and division of roles or tasks join together for the commission of a joint criminal act – one or several serious and grave crimes. An anti-state group or organisation and a terrorist group shall be considered equivalent to a criminal association.”

28. Execution of a lawful order, ordinance or instruction (paragraph 1 of Article 33 of the CC) is considered a circumstance that eliminates criminal liability, while the execution of a unlawful order, ordinance or instruction, which is known to be unlawful, cannot be considered a circumstance eliminating criminal liability (paragraph 2 of Article 33 of the CC). Even though there is no such practice in enforced disappearance cases, according to the provisions of Article 33 of the CC, the circumstance that a person executed a superior’s order, which is known to be unlawful, shall not be considered as grounds justifying the criminal act of that person or to absolve him from criminal liability (paragraph 2 of Article 33 of the CC).

29. Within the discussed period, the Supreme Court of Lithuania (hereinafter referred to as “SCL”) has examined only one case where the application of Article 33 of the CC was raised (2K-548/2013), but the case was not related to criminal offence of enforced disappearance. In addition, the SCL’s ruling did not raise any issues that could be relevant to the interpretation of Article 33 of the CC.

30. Article 27 of the Law on the Organisation of the National Defence System and Military Service of the Republic of Lithuania prohibits to issue an unlawful order or to force to perform an unlawful service. The aforesaid Article provides that nobody may issue to a serviceman or to a military element an order forcing the serviceman to break his oath, a clearly unlawful order (that bears criminal liability) or an order violating universally recognised principles and standards of international law. A commander (superior military officer) who issues such an order shall be held liable under a law. If a clearly unlawful order is issued, a serviceman may not execute it and must report it to a commander who is superior to the commander who has issued the unlawful order. No person serving in the Army may be forced to render servitude to another person or to a group of persons, with the exception of official duties. Article 15 of the Law on Military Police of the Republic of

Lithuania determines that a military policeman shall not carry out a manifestly unlawful order. He must inform the Military Police authorities of the receipt of such an order. The execution of a manifestly unlawful order does not release a military policeman from liability.

31. Points i-iii of subparagraph b of paragraph 1 of Article 6 of the Convention define the requirements for the effective responsibility of a superior, when features of an intentional form of guilt are identified in the actions of the suspect or the accused, which could be qualified respectively under paragraphs 4 and 6 of Article 24 and Article 100<sup>1</sup> of the CC (as organization of enforced disappearance or assistance). In addition, the responsibility of the commander is regulated by Article 113<sup>1</sup> of the CC. It should be noted that this Article encompasses the negligent execution of commander duties, i.e. the person who negligently executed the duties of a commander and thereupon persons legally or factually subordinate to him committed criminal activities defined in this chapter (Crimes Against Humanity and War Crimes) shall be punished with imprisonment from two to eight years. Article 317 of the CC establishes the responsibility for failure to execute an order, but paragraph 3 of Article 317 of the CC determines that a serviceman who fails to execute a clearly unlawful order of a commander shall not be held criminally liable. Following Article 321 of the CC, a serviceman who issues a clearly unlawful order or forces another serviceman to execute such an order, also a serviceman who executes a clearly unlawful order, where this causes serious consequences, shall be punished by imprisonment for a term of two up to eight years.

## **Article 7**

32. Article 100<sup>1</sup> of the CC stipulates that the offence of enforced disappearance shall be punishable by imprisonment for a term of three up to fifteen years.

33. Article 59 of the CC provides with the list of mitigating circumstances. The following shall be considered as mitigating circumstances: the offender has provided assistance to the victim or otherwise actively avoided or attempted to avoid more serious consequences, the offender has confessed to commission of an act provided for by a criminal law and sincerely regrets or has assisted in the detection of this act or identification of the persons who participated therein, etc. It should be noted that in line with paragraph 2 of Article 59 of the CC a court may also recognise as mitigating other circumstances which have not been indicated in paragraph 1 of this Article.

34. Article 60 of the CC provides with the exhaustive list of aggravating circumstances. The following shall be considered as aggravating circumstances: the act has been committed by torturing the victim or subjecting him to taunting, the act has been committed against a young child, the act has been committed against a person in a helpless state owing to an illness, disability, old age or for other reasons, in the absence of the person's request or the act has been committed against a minor by making use of his/her dependence or abusing confidence, standing or influence, the act has been committed against a woman known to be pregnant, the committed act has caused grave consequences or gave rise to real threat to the life of a victim, etc.

## **Article 8**

35. Paragraph 9 of Article 95 of the CC provides the list of criminal acts that have no statute of limitations due to the dangerousness of such criminal acts in relation to the society. Enforced disappearance is also included in the list. Persons who have committed

the abovementioned criminal act may be subject to a judgement of conviction despite the time that has passed from the commission of a criminal act.

## Article 9

36. Articles 4 and 5 comprising the General Part of the CC establish the competence of the State to exercise jurisdiction on the basis of the territory and nationality. The CC contains no direct provision stating that the State shall exercise jurisdiction in case the disappeared person has the nationality of the Republic of Lithuania, however, even in such a case the State could exercise jurisdiction on the basis of grounds stipulated in the CC and the CCP, because enforced disappearance (Article 100<sup>1</sup> of the CC) is attributed to crimes against humanity and war crimes. Article 7 of the CC stipulates that persons shall be liable for the crimes (including enforced disappearance), when such liability is grounded on international treaties, regardless of their citizenship and the place of residence, as well as of the place of commission of a crime (the principle of universal jurisdiction is established). Thus, in case there are reasons to suppose that a criminal act is committed against a national of the Republic of Lithuania, a pre-trial investigation comprised of the identification of the place of commission of a crime and of a person or persons liable for a crime may be started and executed on the grounds stipulated in Article 166 of the CCP and the question concerning the execution of jurisdiction shall be decided on the basis of Articles 4, 5, 6 or 7 of the CC. In this case attention should be paid to the fact that the principle of universal jurisdiction is applied to criminal acts, committed outside the territory of the State applying that principle, thus in case it emerges that a criminal act the victim of which is a national of the Republic of Lithuania was committed in Lithuania, the question concerning the liability of a person could be decided taking into account the territorial principle of jurisdiction (Article 4 of the CC), and in case it emerges that a criminal act was committed by a national of the Republic of Lithuania or a person permanently residing in Lithuania, jurisdiction based on the principle of nationality should be applied (Article 5 of the CC).

37. One of the preconditions for the application of the universal jurisdiction is that a person is punished in the State in which he or she in fact is present only in case he or she cannot be extradited or surrendered to the State that is the place of commission of a crime or to the international court. Article 7 of the CC does not stipulate such a precondition and priorities of jurisdiction. State in the territory of which a criminal act was committed or the State whose national committed a criminal act should be the first to use the right to punish the offender for international crime. Only in case the extradition or surrender of the offender from the place where he/she in fact is present is not possible, the execution of universal jurisdiction could be considered. It should be noted that according to the Statute of the International Criminal Court the jurisdiction of this court is only complementary. However the fact that the CC provides no priorities of jurisdictions shall not be considered as an obstacle for the application of the Convention in question. The principle *aut dedere aut iudicare* establishing the obligation of the State to extradite or judge is stipulated in the Convention, while the norm established in Article 7 of the CC gives rise to a precondition for proper application of universal jurisdiction. Article 7 of the CC clearly lists criminal acts subject to the principle of universal jurisdiction. Moreover, the abovementioned principle is discussed in international treaties that establish liability for acts indicated in paragraphs 1-13 of Article 7 of the CC, for example, the Convention, Council of Europe Convention on the Prevention of Terrorism, etc. In addition to the articles of the CC that stipulate the jurisdiction of the State, the European Convention on Extradition of 13 December of 1957 and Council Framework Decision of 19 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) (its provisions were incorporated into Article 9<sup>1</sup> of the CC in full) that establish jurisdiction based on the principles of nationality and territory should be mentioned. Moreover, bilateral

agreements with other states should also be mentioned (for example with the United States of America, etc.).

38. According to the data from the IPS system, as from 13 September of 2013, the day on which the Convention came into force in relation to the Republic of Lithuania, no criminal act of this kind was registered. According to the information available during the abovementioned period neither extradition was requested/executed nor requests for legal assistance were submitted in relation to the criminal act in question (the abovementioned data are not collected because the IPS legal assistance module does not classify data according to the article of the CC).

## **Article 10**

39. Aiming to ensure the presence of the suspect, the defendant or the convict in the proceedings, smooth pre-trial investigation, hearing of the case in the court and execution of a sentence as well as aiming to prevent the commitment of new criminal acts, precautionary measures may be applied according to Article 119 of the CCP. Article 120 of the CCP stipulates the following kinds of precautionary measures: arrest, intense supervision, home arrest, obligation to live separately from the victim, bail, confiscation of documents, obligation to regularly register at the police office, written undertaking not to leave the place of residence. Supervision of a military unit authority as a precautionary measure may be applied to a serviceman of that military unit while a minor may be surrendered to parents, custodians or other natural or legal persons that take care of the children. The general grounds for the application of precautionary measures are specified in Article 121 of the CCP; grounds and procedure for arrest are specified in Articles 122 and 123 of the CCP; grounds and procedure for temporary detention are specified in Article 140 of the CCP.

40. Paragraph 1 of Article 122 of the CCP establishes a reasoned supposition that the suspect will 1) run away and hide from a pre-trial investigation officer, prosecutor or court, 2) impede the proceedings, 3) commit new criminal acts indicated in paragraph 4 of the abovementioned article as a ground for detention. When there are reasons to suppose that the suspect will abscond and hide from a pre-trial investigation officer, prosecutor or court, detention may be applied taking into account the marital status, permanent place of residence, labour relations, state of health, previous conviction, links with foreign countries and other circumstances (paragraph 2 of Article 122 of the CCP).

41. When there are reasons to suppose that the suspect will impede the proceedings, detention may be applied in case there is evidence that the suspect himself or through other persons may try to influence victims, witnesses, experts, other suspects, the accused or the convicted, destroy, conceal or forge objects and documents that are important for the investigation of a criminal act and hearing in a court (paragraph 3 of Article 122 of the CCP).

42. In addition, a request to extradite a person to a foreign State or surrender to the International Criminal Court or surrender according to the European arrest warrant, a request of a foreign State to temporarily detain the wanted person waiting for a request on extradition or a European arrest warrant and a request of a foreign State to detain the convicted person pending a decision on recognition of court decision of a foreign State and execution of a sentence shall constitute grounds for detention. When imposing detention, grounds and reasons for detention must be indicated. Detention may be imposed only in cases when the achievement of objectives indicated in Article 119 of this Code is not possible by means of less severe precautionary measures. Detention may be imposed only when cases concerning criminal acts subject to a stricter sentence than one year imprisonment according to criminal legislation are investigated and heard.

43. Article 140 of the CCP specifies that a prosecutor, a pre-trial investigation officer or any person may detain a person caught in the place of a criminal act or soon after the commitment of such a criminal act. In case a person is detained by another person who is not a prosecutor or a pre-trial investigation officer, the fact of such detention must be immediately reported to the police. A prosecutor or a pre-trial investigation officer may decide to temporarily detain a person that was not caught in the place of a criminal act or soon after the commitment of such a criminal act only in exceptional cases when all the following circumstances are present:

- 1) It becomes clear that detention is possible on the grounds and circumstances indicated in Article 122 of the Code;
- 2) It is necessary to immediately restrict the liberty of a person for the sake of objectives specified in Article 119 of the Code;
- 3) There is no possibility to urgently turn to court for the imposition of detention in line with the procedure stipulated in paragraph 2 of Article 123 of the Code.

44. Temporary detention cannot be longer than it is necessary to identify a person and take mandatory steps of procedure. Maximum period of temporary detention is forty-eight hours. If a person detained in cases specified in paragraph 2 of the Article was interrogated as suspect in the proceedings, temporary detention may not exceed twenty four hours but a prosecutor may decide to extend this period up to the maximum period of temporary detention. If a person detained has to be arrested, such person must be brought before a judge no later than within forty-eight hours; the judge in line with the procedure stipulated in the Code shall decide the question of arrest. The period of temporary detention shall be calculated from the moment of factual detention of a person in the place of commitment of a criminal act or another place. A person temporarily detained and delivered to a pre-trial investigation institution or Prosecutor's Office must be interrogated as suspect not later than within twenty four hours following actions taken in line with Article 187 of the Code. A notification on detention is made in line with the procedure specified in paragraphs 1 and 2 of Article 128 of the Code. Paragraph 1 of Article 128 of the CCP specifies that prosecutor present at the moment a decision on imposition of arrest is taken must inform one of the family members or close relatives indicated by the person detained about the arrest of the suspect. In case the person detained does not indicate any such person, a prosecutor acting on his discretion must inform one of the family members or close relatives about the arrest if the identification of such a member or relative is possible. Prosecutor may decide not to pass any such information if the person detained provides reasonable explanations that such actions may pose risk to the security of his or her family members or close relatives. In addition, the person suspected must have a possibility to inform family members or close relatives about the arrest in person. Paragraph 2 of Article 128 of the Code of Criminal Procedure specifies that prosecutor shall send duplicates of ruling on imposition of arrest or on extension of detention period to the place of arrest. The person detained must be immediately released if:

- 1) A suspicion that he or she had committed a criminal act was not confirmed;
- 2) There are no grounds and circumstances for arrest specified in Article 122 of the Code or the arrest is not necessary;
- 3) The period for detention established in legislation has expired, 4) court has ruled not to impose arrest. Time of temporary detention is included into the period of arrest and sentence.

45. Article 139 of the CCP specifies that the imposed precautionary measure shall be cancelled when it becomes unnecessary or shall be replaced by a stronger or milder measure according to the circumstances of the case. If the pre-trial investigation reveals that

there are no grounds and circumstances to apply such precautionary measures as arrest, intense supervision, home arrest or obligation to live separately from the victim, a prosecutor must immediately make a ruling to release the suspect or cancel the application of a precautionary measure such as arrest, intense supervision, home arrest or obligation to live separately from the victim or mitigate the conditions for the application of the abovementioned precautionary measures. Duplicate of such ruling is delivered to a pre-trial investigation judge who imposed arrest, intense supervision, home arrest or obligation to live separately from the victim or extended the term for the application of the precautionary measures. Precautionary measures are no longer applied when the term for the application of a precautionary measure expires, exculpatory ruling comes into force or execution of a sentence starts.

46. Article 21 of the CCP establishes the following rights of a suspect: to be aware of an act he or she is suspected of, have a counsel from the moment of detention or first interrogation, receive translation and interpretation services, inform consular institutions and one person, receive urgent medical aid, be aware of the maximum term (in hours/days) of detention before the start of procedures in a judiciary institution, give evidence or keep silence, submit documents and objects that are important for the investigation, submit requests, make challenges, familiarize with pre-trial investigation information, appeal against the acts or decisions of a pre-trial investigation officer, prosecutor or pre-trial investigation judge.

47. Types of precautionary measures that are applied to persons subject to extradition from the Republic of Lithuania or surrender to the International Criminal Court or surrender according to the European arrest warrant and procedures of their application are specified in Article 72 of the CCP; procedure for the exchange of information that prevents from parallel criminal proceedings in European Union Member States is specified in Article 681 of the CCP the provisions of which oblige a prosecutor to contact on his or her own initiative the competent authority of another European Union Member State in cases when there are reasons to believe that the same person is subject to criminal proceedings concerning the same criminal act in another European Union Member State or in cases when the case has reached the court – by order of the court hearing the case – aiming to receive a confirmation on such a parallel set of proceedings.

48. If a person detained or arrested is a national of another State, his or her right to apply for consular assistance is guaranteed by the provisions of Article 31 of the Law on Detention of the Republic of Lithuania as well as relevant consular conventions of the Republic of Lithuania and another state (for example, Articles 38 and 39 of the Consular Convention between the Republic of Lithuania and Russian Federation). The Republic of Lithuania has no special legal provisions concerning guarantees to receive consular assistance for persons liable for enforced disappearance, however, according to the provisions of the Vienna Convention on Consular Relations, adopted on 24 April 1963, and paragraph 3 of Article 128 of the CCP in cases when a person having the nationality of another State is detained, a prosecutor is obliged to immediately inform about that the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detained person so requires, diplomatic mission or consular agency of his or her State.

49. In the state of emergency, the Lithuanian armed forces may be requested to render assistance to other state institutions. In such cases the Statute on the Use of Military Force approved by the Law on the Approval of the Statute on the Use of Military Force of the Republic of Lithuania is applied. The Statute on the Use of Military Force specifies that soldiers when rendering assistance to other governmental and municipal institutions in cases of emergency or for elimination of terrorist attack are empowered to persecute and detain persons that ignore mandatory directions of soldiers or are suspected of having committed or committing a criminal act or other act involving the breach of law. Persons

detained by soldiers shall be immediately and not later than within twenty four hours transferred to the competent authorities responsible for the investigation of lawfulness of activity of persons detained (paragraphs 2 and 3 of Article 13 of the Statute on the Use of Military Force).

## Article 11

50. Article 2 of the CCP establishes a general provision that each time when there is every indication of a criminal act a prosecutor and pre-trial investigation institutions must within the limits of their competence take all the measures stipulated in the legislation seeking for a speedy investigation and disclosure of a criminal act. This provision is applied in relation to all criminal acts (there are no special provisions related to an offence of a serious nature in this context).

51. The universal jurisdiction in Lithuania is established by Article 7 of the CC discussed in detail in the section concerning the implementation of Article 9 of the Convention. Prosecutor of the Prosecutor General's Office of the Republic of Lithuania shall take a decision on the extradition of a person from the Republic of Lithuania, surrender to the International Criminal Court (Article 71 of the CCP) or surrender according to the European arrest warrant (Article 71<sup>1</sup> of the CCP) for the purpose of prosecution and shall apply to the Vilnius County Court. The court having examined the application according to the procedure established in Article 73 of the CCP shall render a ruling. The abovementioned ruling may be challenged at the Court of Appeals of Lithuania.

52. Only Prosecutor General of the Republic of Lithuania or his/her deputy may request the extradition of nationals of the Republic of Lithuania or foreign states or issue the European arrest warrant concerning the surrender of a person to the Republic of Lithuania on the basis of grounds indicated in Articles 69 and 69<sup>1</sup> of the CCP (except nationals of the Republic of Lithuania or foreign states sentenced by a custodial sentence when the conviction came into effect in the Republic of Lithuania. A request to extradite such persons to the Republic of Lithuania shall be made by a court). Although Article 68 of the CCP specifies no procedure for how to deal with request on initiation or take-over of prosecution when prosecution according to the principle of universal jurisdiction is requested, however, paragraph 1 of this Article establishes a general provision that grounds, conditions and procedure for initiation and take-over of prosecution are laid down in the CCP and international treaties to which the Republic of Lithuania is a party. Thus upon a request to prosecute a person suspected of enforced disappearance that is based on the principle of universal jurisdiction, a pre-trial investigation shall be started in line with international treaties as well as procedure and grounds stipulated in Article 166 of the CCP.

53. Criminal act defined in Article 100<sup>1</sup> of the CC is attributed to the category of criminal acts of very serious nature. In line with Article 225 of the CCP cases related to criminal acts of very serious nature shall be heard by county courts. Rulings of the courts of first instance may be appealed to the courts of appeals and courts of cassation in line with the procedure stipulated in the CCP. The cases of such category when applying both the universal jurisdiction and jurisdictions based on the principles of territory or nationality shall be heard in the territory of the Republic of Lithuania according to the CCP, i.e. in line with the general procedure. In Lithuania there are no specialised courts.

54. General rules regulating the procedure of pre-trial investigation and judicial hearing in the courts of all instances specified in the CCP are applied to persons suspected or accused of the commitment of the criminal act in question. They are provided with guarantees concerning the protection of their rights specified in Article 44 to the CCP (right to independent and fair trial, right to make use of translation and interpretation services, right to have a counsel and the like) as well as guarantees that general principles of criminal

proceedings specified in paragraph 2 of Article 6 (principle of equality of rights) and Article 7 (principle of adversarial argument), etc. of the CCP will be applied. Paragraph 4 of Article 21 of the CCP establishes the following rights of suspects: to be aware of an act he or she is suspected of, have a counsel from the moment of detention or first interrogation, receive translation and interpretation services, inform consular agencies and one person, receive urgent medical aid, be aware of the maximum term (in hours/days) of detention before the start of procedures in a judiciary institution, give evidence or keep silence, submit documents and objects that are important for the investigation, submit requests, make challenges, familiarize with pre-trial investigation information, appeal against the acts or decisions of a pre-trial investigation officer, prosecutor or pre-trial investigation judge. Article 50 of the CCP establishes rules governing the procedure for invitation and appointment of a counsel, Article 51 indicates cases when a counsel must be present in the hearing, paragraph 8 of Article 44 opens up possibility to receive free legal aid in line with the law regulating the provision of a state guaranteed legal aid. According to subparagraph 7 of paragraph 1 of Article 51 of the CCP a counsel must be present when cases involving detention of the suspect or the accused are investigated and heard, i.e. if a counsel was not invited by the suspect, the accused or the convicted person or if a counsel was not invited by other persons on his or her request or consent, a pre-trial officer, a prosecutor or the court must explain to the suspect, the accused or the convicted person that the expenses of the state guaranteed legal aid concerning the obligatory participation of a counsel taking account of the financial status of the suspect, the accused or the convicted person, except cases stipulated in subparagraphs 1 and 2 of paragraphs 1 of Article 51 of the CCP, may be recovered to the State budget in line with the procedure specified in the CCP and inform the institution responsible for the provision of state guaranteed legal aid or a coordinator indicated by such an institution that the suspect, the accused or the convicted person needs a counsel and to appoint a counsel selected by the abovementioned institution. On holidays and when the institutions responsible for the provision of state guaranteed legal aid are out of office, a pre-trial officer, a prosecutor or the court shall appoint a counsel from the lists of advocates at call that provide state guaranteed legal aid in criminal matters compiled by the abovementioned institution. Moreover on the basis of procedure and grounds stipulated in the CCP the suspected persons and their counsel have a right to appeal against the actions and decisions of a pre-trial investigation officer, prosecutor or pre-trial investigation judge (Articles of 21, 62, 63, 64 and 65 of the CCP), familiarize with pre-trial investigation information (Articles 181 and 218 of the CCP), make challenges (Articles 48, 57-61 of the CCP) and the like. The rights to appeal, challenge, etc. are guaranteed in all other stages of the proceedings. The CCP in force does not establish any individual measures that would guarantee the equality of persons suspected of the commitment of enforced disappearance as well as other rights because, as it was already indicated, the general rules of criminal procedure apply.

55. Article 20 of the CCP defines information that is recognized as admissible evidence and specifies the procedure to determine the admissibility of evidence. This provision is applied when investigating and hearing cases involving all types and categories of criminal acts. Thus the provisions of Article 20 of the CCP are applied to cases involving enforced disappearance despite the principle of jurisdiction (territorial, nationality or universal) applied when hearing such a case.

56. At present six prosecutors are appointed by orders of chief prosecutors of prosecutor's offices of territorial regions as officers responsible for control and guidance of pre-trial investigations related to enforced disappearance; at the Prosecutor General's Office in line with Order No. PN-17 of the Chief Prosecutor of the Criminal Prosecution Division of 15 May 2014 three prosecutors of the Criminal Prosecution Division specialize in the field of crimes against humanity and war crimes, six prosecutors of the Criminal Prosecution Division specialize in the field of international intercommunication. On the



basis of Recommendations on the Distribution of Investigations of Criminal Acts among Pre-trial Investigation Institutions approved by Order No. I-47 of the Prosecutor General of the Republic of Lithuania of 11 April 2003 (new version by Order No. I-109 of the Prosecutor General of the Republic of Lithuania of 8 August 2008) (hereinafter referred to as “the Recommendations”) the Police is an all-purpose pre-trial investigation body and a prosecutor may entrust it with the pre-trial investigation of any kind of criminal act or with individual actions in such a pre-trial investigation. Other institutions listed in paragraph 1 of Article 165 of the CCP shall act as pre-trial investigation bodies when investigating criminal acts that they face when performing their direct functions specified in legislation regulating their activities. The list of abovementioned institutions includes State Border Guard Service, Special Investigation Service, Military Police, Financial Crime Investigation Service, Customs of the Republic of Lithuania, Fire and Rescue Department. Point 10.3 of the Recommendations stipulates that Military Police may be authorised to investigate criminal acts committed by soldiers of Lithuania or other NATO countries in a military territory or a military transport unit. Moreover a prosecutor may entrust a pre-trial investigation body to investigate other criminal acts defined by an official of that institution when performing his or her direct functions specified in legislation regulating the activities, though the investigation of such criminal acts is not included into the functions of such institutions. According to subparagraph 1 of paragraph 2 of Article 171 of the CCP prosecutors shall carry out by themselves the entire pre-trial investigation of criminal acts that are of high public importance as well as of criminal acts committed by pre-trial investigation officers in cases when such an investigation is not entrusted to a higher according to the subordination body or a central pre-trial investigation body or the Special Investigation Service.

57. Military Police performs the law enforcement function within the system of national defence of the Republic of Lithuania; its competence is defined in the Law on Military Police of the Republic of Lithuania. Inspectorate General for National Defence, Chief of Defence and Minister of National Defence within their competence control the activities of the Military Police. Military Police registers and checks statements and reports on alleged or actual criminal acts committed by soldiers on a military territory and in military transport units as well as other cases of the breach of law, conducts search of suspects, accused or missing soldiers in line with the procedure specified in legal acts, carries out pre-trial investigation in line with the procedure specified in legal acts, follows orders of a pre-trial investigation officer, prosecutor, judge and court in cases and in line with the procedure specified in legal acts, keeps a record of criminal acts and other cases involving the breach of law in the system of national defence, takes over from the Police soldiers it has detained and performs other functions specified in the Law on Military Police (Article 10 of the Law on Military Police). Subparagraph 3 of paragraph 1 of Article 13 of the Law on Military Police specifies the duty of a military policeman to detain persons suspected of commitment of a criminal act or the breach of law, subparagraph 2 of paragraph 1 of Article 14 establishes the right to detain persons suspected of commitment of a criminal act or the breach of law. It should be noted that subparagraph 4 of paragraph 1 of Article 13 of the Law on Military Police imposes a duty on a military policeman to protect the rights and legitimate interests of persons detained or given over to the Military Police, guarantee health protection, ensure urgent medical aid for the injured. In line with the procedure stipulated in legal acts the Prosecutor’s Office organizes and leads the pre-trial investigation conducted by the Military Police; Military Police is obliged to submit all the information to the Prosecutor’s Office that is necessary for the performance of the functions of the latter (Article 20 of the Law on Military Police).

58. As it was already stated the Prosecutor’s Office organizes and leads the pre-trial investigation conducted by the Military Police (paragraph 2 of Article 20 of the Law on Military Police of the Republic of Lithuania); in addition the Prosecutor’s Office

coordinates actions taken by the Military Police and pre-trial investigation bodies in the fight against crime. Paragraph 4 of Article 21 of the Law on Military Police states that police officers having detained a person in line with the procedure established by the law and having identified him as a soldier must immediately inform the Military Police about that. Upon the arrival of the military policemen, the Police must immediately hand over the soldier detained, documents as well as other objects he possesses. If the person detained is suspected of a criminal act or the breach of law the Police shall hand over to the Military Police all the available material that is necessary for the investigation of a criminal act or the breach of law. Military Police shall inform the Police about the investigation of such a criminal act or breach of law. Paragraph 5 of Article 21 of the Law on Military Police defines competence of the Military Police in relation to civilians. Military Police must immediately inform the Police about the detained civilians and hand over them to the Police officers in case the persons detained are suspected of a criminal act or breach of law. In addition, Military Police shall hand over to the Police all the material necessary for the investigation of a criminal act or breach of law. Military Police shall inform the Police about the investigation of such a criminal act or breach of law.

59. In the event of war, the pre-trial investigation shall be conducted in line with the procedure specified in the CCP except cases indicated in the Law on the State of War (paragraph 2 of Article 27 of the Law on the State of War). The Law on the State of War states that when pre-trial investigation bodies are unable to perform functions attributed to them by the CCP, such functions shall be performed by the Military Police; if the latter is unable to perform such functions, they are to be performed by persons appointed by a military commandant. In the territory, in which the Military Police and military commandant head-quarters are unable to perform their functions, a pre-trial investigation shall be performed by persons appointed by the chief of a military unit active or located in the territory in question or other military unit. If possible, persons having legal education must be appointed as pre-trial investigation officers (Article 26 of the Law on the State of War). When a pre-trial investigation is performed by persons appointed by the chief of a military unit or military commandant, deadlines specified in the CCP shall not apply (paragraph 2 of Article 27 of the Law on the State of War). A person suspected of a criminal act shall acquire the right to defence from the moment of detention or first interrogation; the right of defence for a defendant is guaranteed in other cases stipulated by the law. When it is not possible to ensure person's defence by an advocate or, in cases specified by the law, by an assistant of advocate, another person shall be appointed as a defence counsel. In such a case a person indifferent to the results of the suit and, if possible, having university education may act as a defence counsel (paragraph 3 of Article 27 of the Law on the State of War).

## **Article 12**

60. The CCP establishes the obligation of the Prosecutor's Office and pre-trial investigation bodies to register all reports about a criminal act and start a pre-trial investigation immediately. According to Articles 166-169 of the CCP each opening of a pre-trial investigation shall be registered according to the procedure established by the Prosecutor General of the Republic of Lithuania; a person who submitted a complaint, a statement or report shall be informed about the initiation of such a pre-trial investigation. Prosecutor or pre-trial investigation officer upon receipt of a complaint, a statement or report about a criminal act or having identified such a criminal act must initiate a pre-trial investigation immediately.

61. Prosecutor or pre-trial investigation officer upon receipt of a complaint, a statement or report and in certain cases upon a specification of such a complaint, a statement or report shall refuse to initiate a pre-trial investigation only in case the information about a criminal

act is obviously false or circumstances indicated in paragraph 1 of Article 3 of the CCP are present. For the purpose of specification of information contained in a complaint, a statement or report received the following actions not related to the procedural coercive measures may be taken: viewing of a scene of an act, examination of witnesses, requests to submit data or documents addressed to state or municipal enterprises, institutions, organizations, a claimant or person in the interests of which a complaint, a statement or a report is presented, examination of a claimant or person in the interests of which a complaint, a statement or a report is presented. Such procedural actions must be implemented as soon as possible, but not later than within ten days. If a prosecutor or a pre-trial officer refuses to start a pre-trial investigation, he or she shall prepare a reasoned decision. A pre-trial officer may refuse to start a pre-trial investigation only with the consent of the head of the pre-trial investigation body or person authorized by him or her. Duplicate of the abovementioned decision to refuse to start a pre-trial investigation shall be sent to a person who submitted a complaint, a statement or report. A pre-trial investigation officer must send a duplicate of the decision to the prosecutor not later than within 24 hours. Decision to refuse to start a pre-trial investigation by a pre-trial investigation officer may be appealed to a prosecutor, while the decision to refuse to start a pre-trial investigation by a prosecutor may be appealed to a pre-trial investigation judge. If the prosecutor does not revoke a decision to refuse to start a pre-trial investigation, his or her resolution may be appealed to a pre-trial investigation judge. The resolution of a pre-trial investigation judge shall be appealed in line with procedure specified in Part X of the CCP. Appeals may be submitted not later than within seven days from the day of receipt of a duplicate of a decision or ruling. Persons that have the right to submit an appeal but missed the appeal deadline because of important reasons reserve the right to ask a prosecutor or a pre-trial investigation judge authorised to investigate the appeal to extend the missed deadline. A request to extend the abovementioned deadline can no longer be submitted if more than six months have passed after the adoption of the decision that would be the subject of such an appeal. If a start of a pre-trial investigation is refused in cases specified in paragraph 1 of Article 168 of the CCP and when data on the breach of administrative law or misconduct specified in other legal acts is available, a prosecutor, pre-trial investigation officer by means of decision to refuse to start a pre-trial investigation shall refer that complaint, a statement or report and specification thereof for decision in line with the procedure specified in the Administrative Code or other legal acts. If a pre-trial investigation is initiated, it may be discontinued on the grounds specified in Articles 212, 213 and 215 of the CCP only by means of the ruling of a pre-trial investigation judge or decision of a pre-trial investigation judge that approves the decision of a prosecutor (Article 214 of the CCP). Decisions of a prosecutor and pre-trial investigation judge may be appealed in line with procedure and deadlines specified in the abovementioned article. When conducting a pre-trial investigation in relation to the criminal acts in question all the procedural actions specified in the CCP as well as procedural coercive measures may be applied.

62. Any person regardless his or her nationality, age, social standing or other criteria may refer himself to the Military Police if he or she has information or reasonable suspicions concerning the breach of law that were committed in the past, are in progress or are intended to be committed by soldiers and civil servants belonging to the system of national defence or persons in similar position. Persons may contact by phone, in writing, by e-mail or directly the officers of the Military Police in its head-quarters or territorial units. A pre-trial investigation shall be conducted in line with the procedure specified in the CCP. Article 14 of the Law on Military Police of the Republic of Lithuania establishes the rights of a military policeman including the right to enter all the premises in the military territory any time of day and the right to take procedural actions specified in legal acts when performing direct duties, in pursuit of persons suspected of a criminal act or criminals hiding from the law enforcement institutions or when preventing from criminal acts or

breaches of law. Article 12 of the Disciplinary Statute of Lithuanian Armed Forces specifies that every superior must ensure in person that soldiers subordinate to him must follow rules regulating soldier discipline and provisions of international humanitarian law. Superior having received information about the breach of rules regulating soldier discipline or provisions of international humanitarian law that was committed in the past or is still in progress must take actions specified in laws, other legal acts, military statutes and order of superiors seeking to identify the fact of the breach of discipline, identify person responsible for such a breach and prevent from damaging after-effects. If elements constituting a criminal act are identified during the investigation of such a breach of discipline or complaint, superior must immediately inform the Military Police about that and provide it with all the material necessary for a pre-trial investigation.

63. In line with the procedure specified in Articles 198 and 200 of the CCP and on the basis of grounds stipulated in Article 199 of the CCP anonymity may be granted to witnesses and victims. Moreover, in cases when grounds specified in Article 199 of Code of Criminal Procedure are identified as well as in other cases when there is evidence that disclosure of certain information about a witness or a victim may result in negative impact on the rights and legitimate interests of their family members or close relatives and partial secrecy of such information about a witness or a victim is sufficient to ensure the protection of such rights and interests, partial anonymity may be granted to witnesses and victims (Article 199<sup>1</sup> of the CCP).

64. In line with the procedure specified in the Law on the Protection of the Participants of Criminal Proceedings and Criminal Intelligence, Officers of Justice and Law Enforcement Institutions against Criminal Influence (hereinafter referred to as “the Law”) measures aimed at protecting against criminal influence may be applied to the following persons participating in criminal proceedings: witnesses, victims, experts, specialists and counsel (representatives), representatives according to the law, suspects, the accused, convicts, the acquitted, persons in relation to whom the case (pre-trial investigation) is discontinued, officers of justice and law enforcement institutions including judges, prosecutors, pre-trial officers, officers who organize and implement measures related to the protection against criminal influence, secret participants in criminal intelligence, parents (adoptive parents), children (adoptees), brothers, sisters, grand-parents, grand-children, spouses and partners of persons indicated in paragraphs 1-3 of the Article. Grounds for application, refusal to apply and discontinuation of measures related to the protection against criminal influence are specified in Articles 5 and 6 of the Law, types of such measures are specified in Article 7, procedure of application is specified in Articles 15-17. In line with Articles 183, 185, 186, 203, 279 and 282 of the Code of Criminal Procedure the interviews of witnesses subject to measures related to the protection against criminal influence in line with the procedure specified in legal acts may be audio and video recorded. Such interviews may be conducted by a pre-trial investigation judge guided by rules established in Articles 183 and 184 of the CCP including exemptions specified in Article 203 of the CCP. Other steps in investigation, i.e. identification and confrontation, are performed by preparing audio and visual obstructions that do not allow to identify a person participating in the identification or confrontation procedure (Article 204 of the CCP).

65. Specialised prosecutors received no special training on the peculiarities of investigation and its control in this kind of cases and there are no special funds allocated for the performance of such functions. The investigation of an enforced disappearance is to be carried out in line with an ordinary procedure specified in the law on criminal procedure. As it was already stated a pre-trial investigation of such criminal acts may be initiated ex officio, i.e. as soon as the elements of crime are identified by a prosecutor or a pre-trial investigation officer.

66. Article 145 of the CCP states that a search may be conducted aiming to find the wanted persons. A search shall be conducted on the basis of a reasoned resolution of a pre-trial investigation judge. According to Article 149 of the CCP when conducting a search or seizure the officers have the right to open the locked premises and repositories when faced by refusal to open them. Article 160<sup>l</sup> of the CCP specifies that in case of urgency a search may be conducted on the basis of order of a prosecutor or a pre-trial investigation officer, however the lawfulness of the procedural coercive measures applied must be confirmed by the decision of a pre-trial investigation judge not later than within three days from the issue of the abovementioned order. Such a decision of a pre-trial investigation judge shall be appealed in line with procedure specified in Part X of the CCP. The appeal lodged against the decision of a pre-trial investigation judge refusing to confirm the lawfulness of the procedural coercive measures applied suspends the execution of the decision. Article 150 of the CCP specifies exceptional conditions for a search to be conducted in the premises of diplomatic missions. Thus the CCP in force ensures the right of the officers to enter any premises in cases when a pre-trial investigation is carried out.

67. Article 155 of the CCP specifies the right of a prosecutor to access information. Having passed a decision and upon receipt of consent of a pre-trial investigation judge a prosecutor has a right to arrive at any state or municipal, public or private company, enterprise or organization and require to allow him the possibility to access the necessary documents or other information, make records or copy documents and information or receive the specified information in writing if it is necessary for the investigation of a criminal act. Persons refusing to submit the required information or documents to a prosecutor may be fined in accordance with Article 163 of the CCP.

68. In line with the procedure specified in Article 157 of the CCP, upon receipt of a request of a prosecutor, a pre-trial investigation judge during a pre-trial investigation may suspend from office the suspect or suspend his or her right to be involved in a certain activity if necessary for speedy and objective investigation of a criminal act or prevention from further criminal acts by the suspect. In addition Article 238 of the CC establishes criminal liability for failure to report a criminal act, i.e. a person who without any valid reason fails to report to a law enforcement institution or a court about a very serious offence known to him, either in progress or already committed, shall be punished by community service or by a fine or by arrest or by imprisonment for a term of up to one year (close relatives and family members of the perpetrator shall not be held liable for a failure to report a crime).

69. Article 231 of the CC establishes criminal liability for hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer or bailiff, i.e. a person who, in any manner, hinders a judge, prosecutor, pre-trial investigation officer, lawyer or an officer of the International Criminal Court or of another international judicial institution in performing the duties relating to investigation or hearing of a criminal, civil, administrative case or a case of the international judicial institution or hinders a bailiff in executing a court judgement shall be punished by community service or by a fine or by restriction of liberty or by imprisonment for a term of up to two years. A person who commits the act indicated in paragraph 1 of this Article by using violence or another coercion shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.

70. Article 233 of the CC establishes criminal liability for exerting influence on a witness, victim, expert, specialist or interpreter, and Article 234 establishes criminal liability for exerting influence on the victim to reconcile with the offender.

## Article 13

71. When solving the question on the extradition of a person or on surrender of a person according to the European arrest warrant it is necessary to determine if the act allegedly committed by a person constitutes a crime according to the laws of the Republic of Lithuania in force. As it was already indicated, Article 100<sup>l</sup> of the Criminal Code establishes criminal liability for persons that have committed the act of enforced disappearance. Such act constitutes a grave crime punishable by a custodial sentence of the maximum duration in excess of ten years (Article 11 of the CC). Persons liable for such criminal acts may be extradited or surrendered according to the European arrest warrant in cases and in line with procedure specified in the CC, CCP and international treaties. Grounds and circumstances for extradition and surrender of a person according to the European arrest warrant are specified in Articles 9 and 9<sup>l</sup> of the CC, procedure for such extradition and surrender are specified in Articles 72-77 of the CCP. Grounds for a request to extradite a person to a foreign country and issue of the European arrest warrant concerning the surrender of a person to the Republic of Lithuania as well as the procedure for submission of such a request are specified in Articles 69 and 69<sup>l</sup> CCP. The crime of enforced disappearance is not singled out in none of the articles indicated above, however, in line with law of the Republic of Lithuania in force extradition, surrender of a person according to the European arrest warrant, request to extradite a person to a foreign state and issue of the European arrest warrant concerning the surrender of a person to the Republic of Lithuania are executed in line with the general procedure stipulated in the Criminal Code and the Code of Criminal Procedure and taking account of international treaties the Republic of Lithuania is a party to. The Republic of Lithuania has no special extradition agreement containing special provisions for enforced disappearance (except for the Convention), however, as it was already stated, extradition or surrender according to the European arrest warrant is implemented in line with general procedure, and in case of discrepancy between national legislation and international treaty the norms of international treaty are applied (paragraph 3 of Article 4 of the CCP).

72. We are not in a position to provide an answer to the question concerning possible obstacles in applying the treaties indicated, because we had no such cases in practice. In addition we cannot indicate examples of law cases illustrating the application of the Convention when implementing extradition or surrender or when requesting for surrender according to the European arrest warrant, because we had no such cases during the indicated period.

73. According to the criminal legislation of the Republic of Lithuania the crime of enforced disappearance is not regarded as a political crime (related to a political crime or crime committed because of political reasons). Prosecutors and the courts decide whether an act is a political crime taking account of the norms of international treaties, their contents and meaning, international practice and circumstances of a particular case. In cases when it is proven that a person is being prosecuted for a crime of political nature, in line with subparagraph 3 of paragraph 3 of Article 9 of the CC and subparagraph 3 of paragraph 3 of Article 71 of the CCP, such person may not be extradited from the Republic of Lithuania or surrendered to the International Criminal Court. The same rule is applied in cases when the requested state has substantial grounds to believe that the request to extradite a person for committing a criminal act was submitted aiming to prosecute and punish that person because of his/her race, religion, nationality or political beliefs or that such grounds could have determined the situation of a person (paragraph 3 of Article 3 of the European Convention on Extradition of 13 December, 1957). In addition it should be noted that paragraph 4 of Article 3 of the European Convention on Extradition of 13 December, 1957 stipulates that this article shall not affect any obligations which the Contracting Parties have undertaken under any other international convention of a

multilateral character. Paragraph 1 of Article 13 of the Convention states that for the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives; accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

74. As regards procedural issues concerning the extradition and surrender of persons it should be stated that in line with the legislation in force decisions concerning a request of a foreign state to extradite a person or a request of the International Criminal Court to surrender a person for prosecution first of all are to be taken by a prosecutor of the Prosecutor General's Office of the Republic of Lithuania because according to Article 73 of the CCP he/she is granted the right to refer to the Vilnius County Court in case he/she believes that there are grounds for a request to extradite or surrender a person. However, in cases when a prosecutor is of the opinion that a request to extradite or surrender a person is inconsistent with the requirements of the CC and the CCP as well as international treaties (for example, in cases specified in subparagraph 3 of paragraph 3 of Article 9 of the CC, subparagraph 3 of paragraph 3 of Article 71 of the CCP), a prosecutor shall decide not to refer to the Vilnius County Court the question on extradition (surrender) of a person. In line with current practice the abovementioned decision of a prosecutor is checked by the Vilnius County Court that consequently confirms its lawfulness and validity by a resolution. In cases when a decision not to extradite or surrender a person according the prosecutor's statement is taken by the Vilnius County Court, a prosecutor may use his right stipulated in Article 74 of the CCP to appeal against such a court decision to the Court of Appeals of Lithuania. Decision of that court is final and conclusive.

75. As it was already indicated a prosecutor of the Prosecutor General's Office of the Republic of Lithuania shall submit his or her application on the extradition of a person from the Republic of Lithuania or on the surrender to the International Criminal Court or surrender according to the European arrest warrant to the Vilnius County Court. Judge of the Vilnius County Court shall not later than within seven days organize a sitting with the participation of the person to be extradited (surrendered), his or her defence counsel and prosecutor. The Vilnius County Court shall take a ruling on the application of a prosecutor in line with the procedure specified in Article 73 of the CCP. That ruling may be appealed to the Court of Appeals of Lithuania in line with procedure and on the grounds indicated in Article 74 of the CCP. The decision of the Court of Appeals of Lithuania shall be final and conclusive.

76. Only a Prosecutor General of the Republic of Lithuania or his/her deputy can request the extradition of nationals of the Republic of Lithuania or foreign states or issue the European arrest warrant concerning the surrender of a person to the Republic of Lithuania for the purpose of prosecution on the basis of grounds indicated in Articles 69 and 69<sup>1</sup> of the CCP. In line with the provisions of articles indicated of the CC and the CCP a prosecutor shall be guided by national legislation and international treaties. Thus, if when solving the question concerning the surrender of a person (extradition) to another state it becomes clear that that person may face a risk of enforced disappearance in a requesting state, that circumstance allows to assume that the extradition of a person to another state would violate the fundamental rights and (or) freedoms of the person, thus in line with the Constitution of the Republic of Lithuania, related international treaties of the Republic of Lithuania and subparagraph 8 of paragraph 3 of Article 9 of the CC that person should not be extradited.

#### “Article 9 of the CC. Extradition

1. A citizen of the Republic of Lithuania who has committed a criminal act in the Republic of Lithuania or in the territory of another state may be extradited to the foreign state or surrendered to the International Criminal Court solely in accordance

with an international treaty to which the Republic of Lithuania is party or a resolution of the United Nations Security Council.

2. An alien who has committed a criminal act in the Republic of Lithuania or in the territory of another state shall be extradited to the respective state or surrendered to the International Criminal Court solely in accordance with an international treaty to which the Republic of Lithuania is party or a resolution of the United Nations Security Council.

3. It shall be allowed not to extradite a citizen of the Republic of Lithuania or an alien where:

- 1) The committed act is not regarded as a crime or misdemeanour under this Code;
- 2) The criminal act has been committed in the territory of the State of Lithuania;
- 3) The person is being prosecuted for a crime of political nature;
- 4) The person has been convicted of the criminal act committed, acquitted or released from criminal liability or penalty;
- 5) The person may be subject to capital punishment for the committed crime in another state;
- 6) The statute of limitations for the passing or execution of a judgement of conviction has expired;
- 7) The person is released from penalty under an act of amnesty or by granting clemency;
- 8) There exist other grounds provided for by international treaties to which the Republic of Lithuania is party.

4. The persons who have been granted asylum or provisional protection in accordance with laws of the Republic of Lithuania shall not be punishable under a criminal law of the Republic of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign states, except in the cases provided for by Article 7 of this Code.”

## **Articles 14 and 15**

77. In line with paragraph 1 of Article 67 of the CCP in carrying out requests of foreign authorities and international organizations, the courts, the prosecution or pre-trial investigation bodies of the Republic of Lithuania shall take proceedings set out in this Code. When executing requests of foreign authorities and international organizations in cases provided by an international treaty to which the Republic of Lithuania is a party, proceedings which are not set out in this Code may also be taken, provided this does not contravene the Constitution and the laws of the Republic of Lithuania and is not against the fundamental principles of the criminal procedure of Lithuania. The Republic of Lithuania had signed bilateral agreements on mutual legal assistance with USA, Armenia, Azerbaijan, Uzbekistan, Kazakhstan, Ukraine, Moldova, Poland, Belarus, China, Russia, Turkey as well as a trilateral agreement with Latvia and Estonia. Lithuania is a participant to multilateral conventions that guarantee the possibility to submit various requests for legal assistance and execution of such requests, for example: European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and its additional protocols, European Convention on the Transfer of Proceedings in Criminal Matters of March 15, 1972. As a result of



Lithuania's accession to the European Union legislation of the European Union is applied aiming to facilitate the co-operation of the competent institutions of the European Union Member States and to ensure speedy and effective mutual assistance to the Member States, i.e. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000 approved by the Council in accordance with Article 34 of the Treaty on European Union and its additional protocol.

78. According to the data available Lithuania has neither co-operated with foreign states concerning cases of enforced disappearance nor provided legal assistance on the issues specified.

79. The Republic of Lithuania has signed no new agreements in line with Article 15 of the Convention.

## Article 16

80. Where it is determined that the person being extradited or surrendered will face real danger of enforced disappearance or some other real threat to life or health in the State requesting extradition, such a person will not be extradited (surrendered), pursuant to Articles 9 and 9<sup>l</sup> of the CC as well as on the grounds set out in international treaties. A state of war or the state of emergency may be declared in the Lithuanian territory in the cases and in accordance with the procedure provided in the Constitution of the Republic of Lithuania, the Law on the State of War and the Law on the State of Emergency, while an emergency situation may be declared in the cases specified in the Law on Civil Protection of the Republic of Lithuania. In those cases certain restrictions to human rights and freedoms may be applicable. However, none of the above laws refer to any peculiarities of legal cooperation with other countries as well as possible restrictions in criminal proceedings applicable at the time of the above situations. More details on the non-expulsion guarantees for aliens can be found under paragraphs 62 to 69 of the Periodic Report of the Republic of Lithuania under Article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/LTU/3).

81. It should be noted, moreover, that Article 75 of the CCP lays down a simplified procedure for the extradition/surrender of persons. It shall apply in the cases provided for in international treaties or under a European arrest warrant, but only with a written consent of the person to be extradited/surrendered and, in the case of extradition, with the consent of the Prosecutor General's Office of the Republic of Lithuania. A judge of the Vilnius County Court must hold a hearing within three days which must be attended by the person to be extradited/surrendered, his counsel and the prosecutor. During the hearing the judge verifies whether the person to be extradited/surrendered has voluntarily agreed to extradition/surrender by the Republic of Lithuania and is aware of the legal consequences of extradition/surrender and, in the case of extradition, whether the Prosecutor General's Office of the Republic of Lithuania has consented to the application of the simplified procedure for extradition by the Republic of Lithuania. Having found that the person to be extradited/surrendered has voluntarily agreed to extradition/surrender by the Republic of Lithuania and is aware of the legal consequences of extradition/surrender and, in the case of extradition, that the Prosecutor General's Office of the Republic of Lithuania has consented to the application of the simplified procedure for extradition by the Republic of Lithuania, the judge of the Vilnius County Court adopts a ruling to extradite/surrender the person in question. The ruling of the Vilnius County Court to extradite/surrender a person by simplified procedure is not subject to appeal. Should a person to be extradited/surrendered revoke his consent, the procedure for extradition/surrender of persons by the Republic of Lithuania, laid down in Article 73 of the Code, shall apply.

## Article 17

82. Article 20 of the Constitution declares freedom of a human being to be inviolable. No one may be arbitrarily detained or held arrested. No one may be deprived of his freedom otherwise than on the grounds and according to the procedures established by law. A person detained in flagrante delicto must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of the detainee, on the validity of the detention. If the court does not adopt a decision to arrest the person, the detainee shall be released immediately. Paragraph 1 of Article 44 of the CCP states that no one may be deprived of liberty other than in the cases and in accordance with the procedure prescribed by the Code. Article 146 of the CC prescribes criminal liability for unlawful deprivation of liberty: whoever unlawfully deprives a person of liberty, in the absence of characteristics of hostage taking, shall be punished by a fine or by arrest or by imprisonment for a term of up to three years. A person who commits such an act by using violence or posing a threat to the victim's life or health or by holding the victim in captivity for a period exceeding 48 hours shall be punished by arrest or by imprisonment for a term of up to four years (paragraph 2 of Article 146 of the CC). A person who unlawfully deprives a person of his liberty by committing him to a psychiatric hospital for reasons other than an illness shall be punished by arrest or by imprisonment for a term of up to five years (paragraph 3 of Article 146 of the CC).

### **Deprivation of liberty by court rulings or convictions, based on the provisions regulating the criminal procedure**

83. Persons deprived of liberty are housed only in officially recognised and well-kept detention facilities. Under Article 2 of the Law of the Republic of Lithuania on the Execution of Arrest (hereinafter referred to as "LEA"), arrest is implemented at remand prisons (pre-trial detention facilities). Remand prisons are established, reorganised, restructured and closed by the Government of the Republic of Lithuania at the proposal of the Ministry of Justice. Prior to being sent to a remand prison, persons under arrest may be kept at the detention facility of the local police institution, for a maximum period of fifteen days. By a decision of a pre-trial investigation officer or prosecutor or by a court ruling, arrestees may be moved from the remand prison to (placed in) the detention facility of the local police institution for pre-trial investigation actions or trial, for a maximum period of fifteen days. (As of 1 April 2016, the respective provision of Article 2 of the LEA is amended as follows: "[...] Prior to being sent to a remand prison, persons under arrest may be kept at a detention facility of the local police institution for a maximum period of fifteen days, until the completion of all procedural steps that cannot be carried out while these persons are at the remand prison. By a reasoned decision of the prosecutor during the pre-trial investigation or by a reasoned ruling of the judge or court during a trial, arrestees may be moved from the remand prison to (placed in) a detention facility of the local police institution, for a maximum period of five days, in order to carry out procedural steps the performance of which cannot be ensured while the arrestees are at the remand prison or attend a court trial [...]"). In accordance with Article 21 of the Code of Punishment Enforcement of the Republic of Lithuania (hereinafter referred to as "PC"), penalties involving fixed-term imprisonment and life imprisonment shall be implemented by correction facilities: correction centres, juvenile correction centres, prisons and open prisons. Convicts placed under arrest serve this sentence in detention facilities (Article 50 of the PC). Correction facilities are established, reorganised, restructured and closed by the Government of the Republic of Lithuania at the proposal of the Ministry of Justice (Article 21 of the PC).

84. The only basis for placing a person in a remand prison is a court ruling imposing arrest or extending the term of arrest (Article 8 of the LEA). The only basis for punishment

(placement in a correction facility) is a final conviction by a court of the Republic of Lithuania. In the cases provided for by the international treaty to which the Republic of Lithuania is a party and by the laws of the Republic of Lithuania, a basis for implementing a penalty may be a final conviction (judgement) of a foreign court or international judicial institution (Article 5 of the PC). Under Article 315 of the CCP, implementation of a conviction shall not begin if an appeal has been submitted. Implementation of a conviction may only begin where convicted person expresses in writing his wish to begin serving the sentence before the case is decided under the appellate procedure.

85. The administration of the remand prison shall notify a person's arrival to his spouse, co-habitant or close relatives no later than on the next day (Article 8 of the LEA). The administration of the correction facility shall notify the convict's arrival to the convicting court as well as to the convict's spouse, co-habitant or close relatives (Article 66 of the PC) within three working days.

86. The detainee's right to a counsel from the start of detention as well as the detainee's right to inform family members of the detention are governed by the CCP. Article 10 of the CCP provides suspected, accused and convicted persons with the right to defence. They are granted this right from the moment of detention or first interrogation. The court, prosecutor and pre-trial investigation officer must enable the suspected, accused or convicted person to defend against the suspicions and accusations within the means and ways established by law, and must take the requisite measures to secure the protection of their personal and economic rights. Article 14 of the LEA states clearly and unequivocally that an arrestee shall have the right to an appointment with his counsel. The number and duration of such appointments are unlimited. The procedure for arrestee appointments with a counsel is established by the Internal Rules of Procedure of Remand Prisons, approved by an order of the Minister of Justice. The above Rules specify the documents that must be presented by the counsel in order to be permitted to meet the arrestee and the procedure for bringing arrestees to the appointment with a counsel. They also stipulate that such an appointment shall be held in private. paragraph 4 of Article 21 of the CCP provides that a suspect shall have the right: to be aware of the act he or she is suspected; to have a counsel from the moment of detention or the first interrogation; to give testimony; to present real and documentary evidence of relevance to the investigation; to submit requests, to make challenges, to familiarize himself/herself with pre-trial investigation information, to appeal against the acts or decisions of a pre-trial investigation officer, prosecutor or pre-trial investigation judge. In implementing Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, Order No. I-288 of the Prosecutor General of the Republic of Lithuania of 29 December 2014 on the approval of the forms of the criminal procedure documents was adopted, also approving the Annex to the protocol on clarification of rights for the suspect (the annex sets out the content of all the rights under paragraph 4 of Article 21 of the CCP). In accordance with paragraph 8 of Article 44 of the CCP, every person suspected or accused of a criminal act may defend himself or be defended by a selected defence lawyer. If he is short of funds to pay for the services of a defence lawyer, he is entitled to receive free legal aid in accordance with the procedure prescribed by the law regulating the provision of a state-guaranteed legal aid.

87. The procedure for the admission of persons into a remand prison is regulated by the Internal Rules of Procedure of Remand Prisons. Paragraph 10 of the Rules stipulates that persons brought to a remand prison shall be admitted by the officer responsible for receiving arrestees/convicts, who shall complete the arrestee/convict search statement and other necessary documents. Arrestees and convicts newly arriving to a remand prison are registered in turn in the Daily Log, and registration continues until the end of the year. The number of the arrestee/convict in the daily log coincides with the file number of the new arrival in the remand prison. This number is entered in the Cell Card, in the list of Arrestees

and Convicts Subject to Solitary Confinement Requirements and in the Arrestee/Convict Personal Record File. When admitting an arrestee/convict without a temporary detention record, a record on arrestee/convict admission to the remand prison shall be completed and signed by the remand prison officer admitting the arrestee/convict and the convoy commander. Persons brought to police detention facilities are entered in the Register of Detained, Arrested and Convicted Persons and in the Register of Persons Kept in the Police Detention Facility. The said registers have been approved by the Order of the Commissioner General of the Police of 29 May 2007.

88. Article 45 of the LEA and Article 145 of the PC stipulate that persons housed at the institutions of confinement shall be ensured with personal health care services of the same quality and level as those available to persons enjoying liberty. Each institution of confinement has a health service that must ensure the provision of outpatient primary-level personal health care services around the clock. Secondary-level inpatient health care services are provided for arrestees and convicts by the Central Prison Hospital or by public personal health care institutions (where the Central Prison Hospital is unable or is not licensed to provide the required service), while ensuring that the arrestees and convicts are guarded. Arrestees and convicts are provided with tertiary-level personal health care services only by public institutions of personal health care, while ensuring that the arrestees and convicts are guarded. According to the data for 1 May 2015, institutions of confinement employed the total of 94 physicians and 144 nursing staff. Of them, 28 physicians and 50 nursing specialists worked at the Central Prison Hospital.

89. In accordance with the terms and procedure laid down in the LEA and the PC, the following rights are granted to arrestees and convicts: the right to correspondence (letters received and sent by arrestees and convicts may be inspected based on a ruling of the pre-trial investigation judge or the director of the correction establishment or by a court ruling in order to prevent criminal acts or other infringements of the law or to protect the rights and freedoms of other persons. The ruling of the pre-trial investigation judge, director of the correction establishment or court must indicate the grounds for and the duration and method of letter inspection, the persons whose letters (sent or received) will be inspected and other circumstances requiring that their letters should be inspected. The arrestees' and convicts' correspondence with the counsel is not subject to inspection); visiting rights (for arrestees, the number of visits by relatives and other persons is unlimited, yet the administration of the remand prison will authorise a visit only with a written consent of the prosecutor overseeing or carrying out the pre-trial investigation involving the arrestee requesting a visit or of the court hearing the case. (As of 1 April 2016, the provision concerning arrestees' visiting rights under Article 22 of the LEA is amended as follows: "The administration of the remand prison shall authorise a visit to an arrestee unless it has received a written instruction not to allow such a visit from the prosecutor overseeing or carrying out the pre-trial investigation involving the arrestee or from the court hearing the case. This instruction may be given only with the intention of preventing criminal acts or other infringements of the law or protecting the rights and freedoms of other persons, also in cases where visiting the arrestee might compromise a successful outcome of the pre-trial investigation. Where the prosecutor overseeing or carrying out the pre-trial investigation or the court hearing the case issues an instruction preventing an arrestee visit, the arrestee and the administration of the remand prison must be informed of the duration of the prohibition, the persons prevented from visiting, and other circumstances necessitating such a prohibition [...]"). Visits to arrestees may be short, i.e. up to four hours, or long, i.e. up to two days (amendment to the relevant PC and LEA provisions as of 1 April 2016: "[...] up to three hours, and long, i.e. up to one day [...]"). A specific number of visits under LEA depends on the type of the correctional facility where the convict is serving his sentence and on the group of convicts to which he has been allocated (considering his behaviour). An arrestee is entitled to an appointment with his counsel. The number and duration of such

appointments are unlimited. Visiting of convicts by lawyers is not limited. Appointments with a lawyer are not counted as visits. Each convict appointment with a lawyer shall take place at the time set by the administration of the correctional facility and may not last longer than eight hours (Article 102 of the PC); the right to telephone communication; foreigners arrestees and foreigners serving an imprisonment sentence have the right to keep contacts, via the Ministry of Foreign Affairs of the Republic of Lithuania, with the diplomatic missions and consular agencies of their home States as well as with international organisations (Article 109 of the PC).

90. The Internal Rules of Procedure of detention facilities, remand prisons and correctional facilities provide that the activities of correctional facilities and remand prisons as well as their officers may be inspected (checked) by the Minister of Justice, Vice Ministers of Justice, the Chancellor of the Ministry of Justice and, on their orders or in response to proposals, requests/applications and complaints, by the civil servants of the Ministry of Justice, as well as by the director and deputy directors of the Prison Department and, on their orders or in response to proposals, requests/applications and complaints, by the officers and other civil servants of the Prison Department. Paragraph 4 of Article 5 of the PC states that supervision of penal institutions, bodies and officers is the responsibility of courts of the Republic of Lithuania, prosecutors, Seimas-appointed ombudsmen, the Ministry of Justice and other public authorities in accordance with the laws of the Republic of Lithuania. Also see the information presented under paragraph 92 of the Report.

#### **Specific grounds for the detention of members of the military**

91. At the time of peace, the law enforcement body in the system of national defence is the Military Police, which follows the CCP and other laws and provisions regulating the implementation of pre-trial investigations. During the state of war, the provisions of the Law on the State of War of the Republic of Lithuania concerning arrest of persons as well as international humanitarian law are applicable. In the State of emergency, the powers of servicemen are laid down in the Statute for the Use of Military Force. Article 14 of the Disciplinary Statute of the Lithuanian Armed Forces sets out the grounds for the detention of members of the military, the existence of which allows detention of a member of the military. A detained serviceman is taken to his military unit. Where a member of the armed forces is detained outside the place of his deployment, he is handed over to the Military Police or taken to the nearest military unit. Once brought to the military unit, the serviceman is handed over to the unit's duty officer. The duty officer writes up a detention statement, informs the commander of the detained serviceman's military unit without delay, and takes any other urgent measures necessary to investigate the breach of discipline or to prevent the serviceman from causing harm to himself or others. The serviceman remains in detention until the grounds for detention cease to exist, but no longer than for 24 hours.

#### **Compulsory hospitalization of a person in a mental institution**

92. In accordance with e Article. 2.26 of the Civil Code (hereinafter referred to as "CVC") of the Republic of Lithuania, the freedom of a natural person shall be inviolable. A capable person may be placed under supervision or subjected to restrictions only with his consent as well as in other cases prescribed by law. Where a person's life is endangered or he has to be hospitalised to protect the public interests, the person's consent to medical care is not required. A person may be confined in a mental institution only with his consent and with a court authorisation. Where a person is seriously ill with a mental disease and where there is real danger that his actions may cause considerable damage to his or other people's health or life and property, the person may be hospitalised in a compulsory manner for a period not exceeding two days (as of 1 January 2016, the respective provision of Article 2.26 of the CVC is amended as follows: "[...] for a period not exceeding three working days"). Compulsory hospitalisation may be extended only with a court authorisation in

accordance with the procedure prescribed by law. In the case of incapable persons (as of 1 January 2016, the respective provision of Article 2.26 of the CVC is amended as follows: “If a person is incapable in the respective area [...]”), consent to his hospitalization for a maximum period of two days (as of 1 January 2016, the respective provision of Article 2.26 of the CVC is amended as follows: “[...] for a maximum period of three working days [...]”) may be given by the person’s guardian. In the case of incapable persons (as of 1 January 2016, the respective provision of Article 2.26 of the CVC is amended as follows: “In the case of a person incapable in the respective area [...]”), compulsory hospitalisation may be further extended only in accordance with the procedure prescribed by law and with a court authorisation.

93. The peculiarities of mental health care for mental patients who have committed acts dangerous to the public (criminal acts) are governed by Articles 36-38 of the Law on Mental Health Care of the Republic of Lithuania (hereinafter referred to as “LMHC”), which state that the decision on compulsory hospitalization of mental patients who have committed acts dangerous to the public and who have been declared to be without criminal capacity shall be adopted by a court, pursuant to Article 27 of the LMHC and the CC. At the proposal of the administration of a mental institution, the court, having decided, on the basis of the conclusion of the mental institution, that a person must be treated by compulsory hospitalization, has to specify the mental institution where the person must be hospitalized and set the duration of compulsory hospitalization as well as the conditions of health care. Six months later or, where necessary, at an earlier stage, the court, in accordance with the conclusion and proposal of the mental institution, must consider the issue of compulsory hospitalization and compulsory treatment and either extend the hospitalization and treatment, each time for a maximum period of six months, or terminate it. Persons who have committed acts dangerous to the public and have been hospitalized in a compulsory manner by a court order are subject to the requirements of this Law, except for the right to choose a mental institution and the conditions of health care. Article 98 of the CC clearly defines the imposition and application of compulsory medical measures. For persons with no or limited criminal capacity, as well as persons who have suffered a mental breakdown following the commission of a criminal act or imposition of a penalty and have consequently lost the ability to appreciate the essence of their actions or to control them, the court may impose the following compulsory medical measures: 1) outpatient observation under primary mental health care conditions; 2) inpatient observation under general observation conditions at specialised mental health care institutions; 3) inpatient observation under enhanced observation conditions at specialised mental health care institutions; 4) inpatient observation under strict observation conditions at specialised mental health care institutions. The court does not define any time limits for the application of compulsory medical measures. They are applied until the person gets well or his mental state improves and he is no longer dangerous. At least once every six months, the Court must, on the basis of the conclusion of the mental health care institution, decide on the extension, modification or termination of compulsory medical measures. Where compulsory medical measures are not necessary for a person, also where the court revokes the application of such measures, the person may be handed over by a court order to the guardianship or curatorship by relatives or other persons; additionally, he may be assigned medical observation. It is noteworthy that the Republic of Lithuania has one specialised mental health care institution, public institution Rokiškis Psychiatric Hospital, implementing the court-appointed compulsory measure of inpatient observation at a specialised mental health care institution.

#### **Restriction of the freedom of aliens**

94. In line with the provisions of Article 112 of the Law of the Republic of Lithuania on the Legal Status of Aliens (hereinafter referred to as “LLSA”), an alien’s freedom of

movement in the Republic of Lithuania may be restricted where it is necessary to ensure national security and public policy, to protect public health or morals, to prevent crime or to safeguard the rights and freedoms of other persons. An alien who is not a citizen of an EU Member State, his family member or another person who enjoys the right of free movement under legal acts of the European Union may be detained on the following grounds: 1) in order to prevent the alien from entering the Republic of Lithuania without a permit; 2) the alien has unlawfully entered the Republic of Lithuania or is illegally staying in it; 3) when it is attempted to return the alien who has been refused admission into the Republic of Lithuania to the country from which he arrived; 4) when the alien is suspected of using counterfeit documents; 5) when a decision is taken to expel the alien from the Republic of Lithuania or another state to which Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals is applicable; 6) in order to prevent the spread of dangerous or especially dangerous contagious diseases; 7) when the alien's stay in the Republic of Lithuania represents a threat to national security, public policy or public health. When deciding on the return of an alien to a foreign state, his expulsion from the Republic of Lithuania, the obligation of the alien to leave from the Republic of Lithuania or the transfer of an asylum applicant to another EU Member State responsible for examining an application for asylum, the alien may be detained only if the detention is necessary for the taking of and/or enforcement of the relevant decision (if the alien hampers the adoption and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer).

95. A citizen of an EU Member State and/or his family member or another person who enjoys the right of free movement under legal acts of the European Union may be detained only on the following grounds: 1) he is suffering from diseases with epidemic potential as defined by the regulations of the World Health Organisation or other contagious (infectious or parasitic) diseases which, according to laws of the Republic of Lithuania, are the subject of control provisions; 2) he is to be expelled from the Republic of Lithuania.

96. An asylum applicant may, on the grounds indicated in subparagraph 2 of paragraph 1 of this Article (illegal entry or stay in the Republic of Lithuania), be detained only in order to establish and/or verify his identity/citizenship and/or to identify the grounds underlying his application for asylum (the information on the grounds could not be obtained without detaining the asylum applicant), also when his application for asylum is based on grounds manifestly unrelated to the risk of persecution in the country of origin or based on fraud or where the asylum applicant has been refused temporary territorial asylum and there are grounds for believing that he may abscond to avoid return to a foreign state or expulsion from the Republic of Lithuania. When deciding on the risk of absconding, the following circumstances are taken into account: 1) an alien is not in possession of an identity document and fails to cooperate in establishing his identity and/or citizenship (refuses to provide his personal data, provides false information, etc.); 2) the person does not have a place of residence in the Republic of Lithuania or is absent from/does not reside at the indicated address of the place of residence; 3) the person does not have family relationship with persons residing in the Republic of Lithuania or social, economic or other ties with the Republic of Lithuania; 4) the person does not possess means of subsistence in the Republic of Lithuania; 5) the person failed to comply with the obligation to leave the Republic of Lithuania within the specified time limit and failed to voluntarily leave the Republic of Lithuania within the time limit specified in a decision to return him to a foreign state; 6) the person fails to comply with the alternative to detention imposed by the court; 7) an alien, accommodated at the Foreigners' Registration Centre without restricting his freedom of movement, has violated the procedure for temporary absence from the Foreigner' Registration Centre; 8) in order to escape criminal liability for illegal border crossing, the person has lodged an application for asylum pending pre-trial investigation against him;

9) the alien's stay in the Republic of Lithuania may represent a threat to public policy (Article 113 of the LLSA).

97. An alien may be detained by the police or any other law enforcement officer for a period not exceeding 48 hours. Detention of an alien at the Foreigner' Registration Centre for a period exceeding 48 hours requires a court decision. Vulnerable persons and families with vulnerable minor aliens may be detained only in exceptional cases having regard to the best interest of a child and vulnerable persons. An alien may not be detained for a period exceeding six months, with the exception of the cases when he does not cooperate in the process of his expulsion from the Republic of Lithuania (refuses to provide his personal data, provides false information, etc.) or when the documents required for the expulsion of such an alien from the State's territory are not received. In such cases, the period of detention may be extended for an additional period not exceeding 12 months. An alien's detention must be as short as possible, and in the cases referred to in paragraph 2 of Article 113 of this Law an alien may be detained for no longer than is necessary for the taking of a decision to return an alien to a foreign state, to expel him from the Republic of Lithuania, to impose an obligation to leave the Republic of Lithuania or to transfer an asylum applicant to another EU Member State responsible for examining the application for asylum, and/or for the expulsion from the Republic of Lithuania or the transfer of the asylum applicant to another EU Member State responsible for examining the application for asylum, and in the cases referred to in paragraph 4 of Article 113 of this Law – no longer than is necessary to establish and/or to verify the identity/citizenship of an asylum applicant and/or to identify the grounds underlying his application for asylum, or as long as there are grounds for believing that the asylum applicant may abscond when his application for asylum is based on the grounds manifestly unrelated to the risk of persecution in the country of origin or based on fraud or where the asylum applicant has been refused temporary territorial asylum (Article 114 of the LLSA). If there are grounds for detaining an alien established by this Law, an officer of the police or any other law enforcement institution shall apply to the district court of the location of the alien's stay in the territory of the Republic of Lithuania with a motion to detain the alien for a period exceeding 48 hours or to provide to the alien an alternative to detention within 48 hours from the moment of detention of the alien. The alien's presence at the court hearing is mandatory. During the court hearing of the motion to detain the alien or to provide to him an alternative to detention, the alien is entitled to state-guaranteed legal aid (Article 116 of the LLSA). The court's decision to detain an alien or to provide to him an alternative to detention must be forthwith announced to the alien in a language that he understands, indicating reasons for his detention or for providing the alternative to detention. The court's decision to detain the alien or to provide to him an alternative to detention shall become effective from the moment of its announcement. The court's decision to detain an alien must state grounds for detention, the period of detention with the exact calendar date indicated and the place of detention (Article 116 of the LLSA). An alien has the right to bring an appeal against a decision of a district court to detain him or to extend the detention period or to impose an alternative to detention before the Supreme Administrative Court of Lithuania according to the procedure established by the Law on Administrative Proceedings. The appeal may be filed through the Foreigner Registration Centre. The Foreigner Registration Centre forwards the alien's appeal to the Supreme Administrative Court of Lithuania. The Supreme Administrative Court of Lithuania examines an alien's appeal under the procedure established by the Law on Administrative Proceedings and passes a decision not later than within ten days from acceptance of the appeal (Article 117 of the LLSA). When grounds for an alien's detention no longer exist, the alien has the right, and the institution which initiated the alien's detention is obliged, without delay, to apply to the district court of the alien's place of stay with a request to review the decision to detain the alien. Upon receipt of a request to review a decision to detain an alien submitted by the alien or the institution which initiated the alien's detention, the court shall, not later than within ten days from acceptance of the



request, review the decision to detain the alien and shall pass one of the following decisions: 1) to uphold the decision to detain the alien; 2) to amend the decision to detain the alien; 3) to quash the decision to detain the alien (Article 118 of the LLSA).

**National preventive mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

98. On 3 December 2013 the Seimas of the Republic of Lithuania ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and adopted amendments to the Law of the Republic of Lithuania on the Seimas Ombudsmen, which entrusted the Ombudsmen of the Seimas of the Republic of Lithuania with the implementation of national torture prevention at places of confinement, thus making the Seimas Ombudsmen's Office the national prevention mechanism. The abovesaid legislation entered into force on 1 January 2014. In implementing national torture prevention, Seimas Ombudsmen (or, on their instructions, the staff of the Seimas Ombudsmen's Office) conduct regular monitoring of the human rights situation at places of confinement (detention facilities of police departments, institutions of imprisonment, social care, psychiatry, detention and accommodation of aliens, and other institutions) by paying frequent visits to them. In accordance with Article 191 of the Law of the Republic of Lithuania on the Seimas Ombudsmen, when carrying out national prevention of torture, the Seimas Ombudsmen shall have the right: to regularly inspect the treatment of persons deprived of liberty at places of detention; to obtain all information relating to the treatment of persons deprived of liberty, the living conditions and the number of such persons, and the number and locations of places of detention; to have access to all places of detention and all spaces within them, and to get acquainted with their facilities and infrastructure; to have private interviews with persons deprived of liberty as well as any other persons who could provide valuable information; to choose what places of confinement to visit and what persons to interview; to carry out inspections of places of confinement together with experts of their choice; to submit proposals/recommendations to the competent public authorities regarding the improvement of the treatment of persons deprived of liberty and their living conditions as well as prevention of torture and other cruel, inhuman or degrading treatment or punishment; to submit conclusions on the existing and draft legislation. No authority or official may order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Seimas Ombudsmen any information referring to the performance of the functions of the national preventive mechanism. The competent authorities must examine the proposals/recommendations of the Seimas Ombudsmen and enter into a dialogue with them on possible implementation measures of the proposals/recommendations as well as inform the Seimas Ombudsmen about the results of the implementation of their proposals/recommendations. The Seimas Ombudsmen maintain contacts with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations Committee against Torture as well as with the authorities of other States engaged in national prevention of torture. To assist the Seimas Ombudsmen in the implementation of national torture prevention, a separate structural division of the institution, the Human Rights Office, was established, and its staff, on the instruction of Seimas Ombudsmen, perform human rights monitoring at places of confinement by means of regular visits, drafting conclusions and recommendations, follow-up visits, observation of recommendation implementation and implementation of other tasks related to national torture prevention. Reports on the inspections of places of confinement carried out in implementing national torture prevention are published on the website of the Seimas Ombudsmen's Office. Presently, Seimas Ombudsmen have not detected any instances of detention of persons at places of confinement that would be unknown to the State and have not received any complaints regarding enforced disappearance of persons or detention thereof at unknown places.

**Registers of suspected, accused and convicted persons**

99. The Register of Suspected, Accused and Convicted Persons, kept by the Information Technology and Communications Department under the Ministry of the Interior, handles the following general data on natural persons declared to be suspects, when they are in hiding or their whereabouts are unknown, persons accused in private prosecution proceedings, persons who are subjects of procedural decisions in criminal proceedings adopted during the pre-trial investigation or trial, and persons against whom the procedural decisions adopted in criminal proceedings are implemented: the identification code, which is assigned in succession upon registration of a Register object with the Register Database and entry of relevant data, the personal number (to be entered if it has been assigned in accordance with the procedure prescribed by the legislation); the name(s) and surname(s), date of birth, sex, nationality(-ies), place of residence, alias (nickname), father's name and surname, mother's name and surname, the type and number of the personal identification document, and the person's search data: category of the wanted person (suspected, accused, convicted), search file number and commencement date, the name of the body conducting the search, and the date of expiration/annulment of conviction. The following classifiers are used to manage Register data: public authorities and bodies, types of courts, articles of the CC, types of penalties, types of disciplinary measures, types of penal measures, types of compulsory medical measures, types of preventive and interim procedural coercive measures, articles of the CCP relating to procedural decisions, articles of the PC related to the enforcement and implementation of imposed penalties, acts of amnesty, countries of the world, world currencies, central authorities of the Member States of the European Union, reasons for rejecting EU Member State communications, categories of EU criminal acts and sanctions, types of procedural documents submitted to the Register, and purposes of communications to EU Member States. Register data, Register information, and documents and/or document copies submitted to the Register are provided by the Information Technology and Communications Department in line with the Law of the Republic of Lithuania on the Management of State Information Resources and the Law of the Republic of Lithuania on Legal Protection of Personal Data. Data and information on a deceased person are supplied only for the purposes of rehabilitating that person or reinstatement of his former civil rights. Recipients must use the received Register data, Register information and documents and/or document copies submitted to the Register only for lawful and specific purposes indicated in the data provision agreement, application or inquiry, and must identify their source. In case the recipients of Register data use these data, Register information and documents and/or document copies submitted to the Register for purposes other than the lawful and specified purposes declared by them, they are held responsible in accordance with the procedure prescribed by the legislation of the Republic of Lithuania.

100. In the context of conformity with the provisions of paragraph 3 of Article 17 of the Convention, it should be added that the Prison Department under the Ministry of Justice of the Republic of Lithuania uses the information system of the Prison Department under the Ministry of Justice of the Republic of Lithuania (KADIS). Article 7 of the Statute of the Prison Department under the Ministry of Justice of the Republic of Lithuania served as a basis for the establishment of KADIS. This system enables electronic storage and management, at a single location, of data on arrestees and convicts in places of confinement as well as about convicts on probation. The following data on an arrestee/convict are managed in the KADIS database: a person's name(s) and surname(s); date of birth (year, month, day); personal number (where persons do not have personal codes under the legislation of a foreign State, only the date of birth (year, month, day) should be specified); sex; the person's place of residence; nationality; type of the personal identification document, its date of expiry, issuing authority and State; family status; education; workplace or educational institution; occupation; data on disability; dates of adoption and entry into force of judicial sentences and rulings, the courts issuing those decisions; the

imposed, changed, extended or terminated preventive measure of arrest; the imposed, changed or cancelled penalty; the names, surnames, dates of birth and personal numbers of the persons subject to isolation requirements; the term as well as the start and end dates of the preventive measure of arrest; names, surnames, dates of birth and contact data (address, e-mail, mobile phone number, place of residence) of close relatives; court rulings and sentence; convoy requests from pre-trial institutions and courts; criminal record; dactyloscopic data; the person's external appearance and any peculiar marks, with photographs thereof; sanctions and incentives applied; requests for pardon filed; civil actions and damage compensation; movement between institutions; movement within the institution; date of parole; information on the release from the place of confinement; date of death (year, month, day); service of documents received from the prosecution service, courts and other public authorities to arrestees/convicts or providing them with access to those documents; personal files of arrestees/convicts issued to the institution's staff; documents prepared by the administration of the place of confinement in accordance with the legislation regulating the preventive measure of arrest as well as penalties; documents received from natural and legal persons concerning the enforcement of the preventive measure of arrest or penalty imposed on the arrestee. Additionally, KADIS collects data on the number and composition of convicts and arrestees; data on the number of convicts and arrestees present in the place of confinement, unscheduled convoy or short trip; data on the observation of persons on probation and other persons; data on arrestee/convict health, namely medical checks, laboratory, clinical and instrumental examinations, established diagnoses, prescribed treatments, hospitalization, preventive tests (date (year, month, day) and results) for tuberculosis, HIV, viral hepatitis VHp B and VHp Ca and syphilis, and preventive vaccination (name and date (year, month, day) of the vaccine).

## **Article 18**

101. Institutions of the places of deprivation of liberty subordinate to the Prison Department provide information to the relatives of the persons under arrest or sentence, provided the persons under arrest or sentence indicate such relatives themselves. As specified in paragraph 14 of the Work instructions of registration services of the places of deprivation of liberty, approved by Order No. 57 of the Director of the Prison department under the Ministry of Justice of 6 May 2002, the registration service of the remand prison shall ensure the transmission of notification of the arrested or sentenced person's arrival at remand prison to the relatives of the arrested or sentenced person. If the relatives of the person under arrest or sentence who are willing to obtain information about the person's presence in the correctional institution appeal to the said institution, such information shall be provided to them upon consent given by the wanted person himself. As indicated in paragraph 333.2 of the Rules of Internal Procedure of the correctional institutions, upon the death of the sentenced person, the administration of the correctional institution must, without delay, by telephone or other appropriate means notify the spouse or partner or close relatives of the sentenced person and inform them in which civil status registration office the death certificate may be obtained. The remains of the sentenced person shall be buried in a cemetery or, upon a written request of the spouse, partner or close relatives of the sentenced person and on permission of the director of the correctional institution or an officer acting in his capacity, shall be given to the spouse, partner or close relatives of the deceased. If the person under arrest requests so, the administration of the remand prison, according to the prescribed procedure, must permit the arrested person to notify by telephone his/her spouse or close relatives of his/her release (Article 48 of the LEA). If a person serving a life imprisonment sentence becomes severely ill and the illness poses a threat to life, the administration of the prison or correction house must, without delay, notify the Director of the Prison Department or an official acting in his capacity and the

spouse, partner or close relatives of the sentenced person. The said persons, if they wish, shall be enabled to visit the sentenced person (Article 168 of the PC).

102. According to paragraph 8 of Article 2 of the Law on Legal Protection of Personal Data, the data concerning a person's conviction shall be attributed to special categories of personal data. Pursuant to Article 5 of the said Law, it shall be prohibited to process special categories of personal data, except in the cases when the data subject has given his consent, such processing is necessary for the purposes of employment or civil service while exercising rights and fulfilling obligations of the data controller in the field of labour law in the cases laid down in laws, it is necessary to protect vital interests of the data subject or of any other person, where the data subject is unable to give his consent due to a physical disability or legal incapacity, processing of personal data is carried out for political, philosophical, religious purposes or purposes concerning the trade-unions by a foundation, association or any other non-profit organisation, as part of its activities, on condition that the personal data processed concern solely the members of such organisation or other persons who regularly participate in such organisation in connection with its purposes. Such personal data may not be disclosed to a third party without the data subject's consent, except in the cases when the personal data have been made public by the data subject, the data are necessary, in the cases prescribed by laws, to prevent and investigate criminal or other illegal acts, the data are required for a court hearing, it is a legal obligation of the data controller under laws to process such data.

103. According to Article 25 of the Constitution, the human being must not be hindered from seeking and receiving information. Freedom to receive information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life and morals of a human being, or to defend the constitutional order. Article 30 of the Constitution and paragraph 1 of Article 5 of the Code of Civil Procedure of the Republic of Lithuania affirms the right of every person who deems that his right or interest protected by laws is violated to appeal to court. Pursuant to Article 11 of the Law on Provision of Information to the Public, every person shall have the right to appeal in court against the decisions and actions of state and municipal institutions, agencies and officials should they violate or illegally restrict a person's right to receive, collect or disseminate information. The Law on the Right to Obtain Information from State and Municipal Institutions and Agencies (hereinafter referred to as "the Law on the Right to Obtain Information") ensures the right of persons to obtain information from state and municipal institutions and agencies, specifies the procedure for implementation of such a right and regulates the actions of state and municipal institutions and agencies with regard to the provision of information to persons. Institutions must provide information to applicants. Provision of information may be refused in accordance with the procedure established in the Law on the Right to Obtain Information (Article 3 of the Law on the Right to Obtain Information). An applicant shall have the right to file an appeal against the actions of an institution following the procedure prescribed by laws (Article 19 of the Law on the Right to Obtain Information).

## **Articles 19 and 20**

104. The inviolability of a person's private life with regard to the processing of personal data is protected by the Law of the Republic of Lithuania on Legal Protection of Personal Data (hereinafter referred to as "the Law on Legal Protection of Personal Data"). The nature of the data concerning a person's conviction and the special aspects of their processing as provided for in the Law on Legal Protection of Personal Data have been considered in the previous parts of the Report.

105. Article 10 of the Law on Legal Protection of Personal Data stipulates that personal data on a person's health (its state, diagnosis, prognosis, treatment, etc.) may be processed by an authorised health care professional. A person's health shall be subject to professional secrecy under the CVC, laws regulating patients' rights and other legal acts. With regard to ensuring a patient's right to the inviolability of private life, account shall be taken of the principle that the patient's interests and wellbeing are more important than public interests. Application of this principle may be restricted in the cases established by laws when it is necessary for the protection of public security, crime prevention, protection of public health or safeguarding of other human rights and freedoms. The Law of the Republic of Lithuania on the Rights of Patients and Compensation for the Damage to their Health introduces a detailed regulation of the patient's right to get acquainted with his/her medical records, the conditions of accessibility of information to the patient's representatives, institutions and other persons. All information concerning the patient's stay in a health care institution, treatment, state of health, diagnosis, prognosis and treatment as well as all other information of personal nature about the patient shall be considered to be confidential. Confidential information may be provided to other persons only upon a written consent of the patient specifying the grounds for provision of such information and the purposes of its use, except in the cases when the patient has indicated, by signature, in medical documents as to which concrete person has the right to receive such information, and also, the scope and deadlines of provision of such information. In accordance with the laws and regulations of the Republic of Lithuania, a health care institution shall provide information about a patient on its own initiative and without the patient's consent in the following cases: 1) when it is required to report a crime; 2) to municipal child's rights protection units without delay upon necessity to defend the child's rights and interests, also, when there is a reasonable suspicion of violation of the child's rights; 3) in other cases, for example, to a court, prosecutor's office, pre-trial investigation institutions in the cases prescribed by legal acts.

106. For the purposes of searching of missing persons, competent institutions act pursuant to the Law on Legal Protection of Personal Data, Law of the Republic of Lithuania on Police Activities, Guidance for Searching of a Person (restricted use), DNA Data Register Regulations approved by Order No. 5-V-42 of the Lithuanian Police Commissioner General of 20 January 2011 "On Establishment of DNA Data Register and Approval of Regulations", and the Rules for Processing of the Data of DNA Data Register approved by Order No. 5-V-568 of the Lithuanian Police Commissioner General of 23 June 2011 "On Approval of the Rules for Processing of the Data of DNA Data Register". The purpose of the DNA Data Register is to register the objects of the Register, accumulate, process, systematize, store, use and provide the data of the Register to pre-trial investigation institutions, prosecutor's office, courts, other authorized state institutions, and, in accordance with the procedure laid down in the European Union legislation and international treaties to which the Republic of Lithuania is party, laws and other regulations of the Republic of Lithuania, to law enforcement institutions of foreign states and international law enforcement organizations for the purposes of disclosure, investigation and prevention of criminal acts, ensuring of public order and public security, and to perform other actions with regard to processing of the data of this Register. The objects of the Register include inter alia the DNA analytes of unidentified bodies, unknown helpless persons and persons whose parents or children are missing and who have voluntarily in writing agreed to provide their samples for a comparative DNA analysis. The lead institution in charge of the maintenance of the Register is the Police Department under the Ministry of the Interior of the Republic of Lithuania. The institution maintaining the Register is the Criminal Investigation Centre of the Lithuanian Police.

107. The data of the Register shall be provided according to the data recipient's request (in the case of a one-off provision of data), which shall indicate for which purpose the data

are to be used, the grounds for provision and reception of the data and the scope of the requested data, or under an agreement between the data recipient and the leading Register maintenance institution (in the case of multiple provision of data), which should indicate the purpose for which the data are to be used, conditions and procedure of data provision and the scope of the data to be supplied. The recipient of the Register data, receiving the data under the data provision agreement or a request, must not use these data in any other way than defined in the data provision agreement or the request and shall ensure protection measures provided in the agreement. Persons responsible for Register maintenance must sign a promise to keep the Register data secret for a period specified in laws and other regulations as well as not to violate the Law on Legal Protection of Personal Data. The said persons shall be liable in accordance with the procedure prescribed by laws for an unlawful disclosure, transmission, alteration or destruction of the Register data.

108. Measures for ensuring the right of access to information under Article 18 have been considered in the earlier parts of the Report.

## **Article 21**

109. Persons in respect of whom an arrest is imposed may not be kept in remand prisons for a longer period than that established in court rulings (Article 46 of the LEA). Sentence, ruling or resolution concerning the release of an arrested person shall be executed without delay as soon as they are received by the administration of the remand prison. Upon expiry of the term of arrest, the director of the remand prison or an official acting in his capacity must release the arrested person on their own decision and notify the official investigating that person's criminal offence or the prosecutor or court in charge of the case (Article 48 of the LEA). Having served their deprivation of liberty or arrest sentence, convicts shall be released in the first half of the last day of their punishment, and those released on other grounds – on the day the institution enforcing the punishment receives the requisite documents. If the documents are received no more than three hours before the end of the working day, the convict shall be released in the morning of the following day (Article 180 of the PC). If the person under arrest requests so, the administration of the remand prison, according to established procedure, must permit the arrested persons to notify by telephone their spouse or close relatives of their release. On the day of their release, the persons to be released are given back, on signature, their identity documents, personal items and money held in their personal account, also, the documents confirming the period of arrest served. The director of the remand prison or the person acting in his capacity must clarify to the person being released his rights and obligations. The minors to be released shall be sent to their parents or foster carers (guardians) or close relatives. The minors must be accompanied by members of the staff of the remand prison or parents or foster carers (guardians) or close relatives. In case the administration of the remand prison has received a statement about the victim's wish to be notified of the upcoming release of the arrested person, the director of the remand prison must inform the victim about the release. The victim shall be notified of the release of the arrested person no later than one day before the day of release of the arrested person. In the cases when the person under arrest must be released from the remand prison immediately after a sentence, ruling or resolution on the release of the arrested person has been received, the victim shall be informed immediately after the arrested person's release.

110. According to the data supplied by the Rokiškis Psychiatric Hospital, which, among other aims, is meant to provide personal health care services to patients placed under involuntary treatment who committed criminal acts and were recognized as unfit to plead as well as to ensure the protection of such persons, after treatment in said hospital the persons in respect of whom the court decides to substitute the application of coercive medical day care measures in hospital for the involuntary outpatient observation and treatment under

primary mental health care (the court orders involuntary outpatient observation according to the established place of the person's residence), are usually released home accompanied by their relatives. In the absence of relatives or loss of social relationship with them, such persons fill in an application to the municipality, where their reported place of residence is located or where they are included in the register of persons without place of residence, for reception of social services in a long-term social care institution (social care home). The municipality, on the basis of such application as well as documents supplied by the Public Institution Rokiškis Psychiatric Hospital, shall make a decision on the provision of services in a long-term social care institution.

111. Pursuant to an effective court decision to reverse the decision to detain an alien, the alien shall be immediately released from the place of detention. If the term of detention of an alien has expired, the alien shall be immediately released from the place of detention (Article 119 of the LLSA).

## **Article 22**

112. As has already been mentioned in the previous parts of the Report, the person whose constitutional rights or freedoms have been violated shall have the right to apply to court. Application to court for possibly unlawful deprivation of liberty or enforced disappearance or violated rights may be made by the individual himself or his legal representative or, also, the relatives of the individual.

113. The actions and decision of the heads of penal enforcement institutions and establishments may be appealed to the Director of the Prison Department. The actions and decision of the Director of the Prison Department may be appealed to a regional administrative court (Article 183 of the PC).

## **Article 23**

114. Information provided in the previous parts of the Report about the legal regulation in force in the Republic of Lithuania, ensuring proper enforcement in Lithuania of the international commitments established by the Convention, enables a conclusion to be drawn that the commitments set out in paragraph 2 of Article 23 and paragraph 3 of Article 23 of the Convention have been duly implemented. The CC provides for criminal liability for the criminal acts related to unlawful deprivation of liberty. Depending on individual circumstances, persons found guilty for unlawful deprivation of liberty may also be sentenced for the abuse of official position. The order of compensation for material and non-material damage resulting from the unlawful deprivation of liberty may be enforced in accordance with the procedure established in the Code of Civil Procedure. Official liability may be imposed on the civil servants found guilty for the unlawful deprivation of liberty. The Republic of Lithuania Law on Mental Health Care provides for liability for the violation of a person's hospitalisation requirements and those of the Law, i.e. pursuant to Article 31 of the Law, a person's hospitalisation in violation of the requirements of the Law shall be illegal. Persons found at fault for a person's illegal hospitalisation shall be held liable in accordance with the procedure established by the laws of the Republic of Lithuania.

115. Regarding compliance with the provisions of paragraph 3 of Article 23 of the Convention, it should be noted that police officers are provided with training on the protection of human rights, prevention, disclosure and investigation of criminal acts, working with information systems, organization and planning of pre-trial investigations, qualification of criminal acts, use of the collected data and making them official, work with

confidential information, application of procedural coercive measures, interview and search of persons, corruption prevention, inspection of aliens and legal status, etc. The introductory and professional training of officers of punishment enforcement always incorporates the area of human rights, including the international treaties for the protection of human rights, adopted by the United Nations, relating to the sphere of activities of the said officers. Also, prosecutors participate in different seminars, training events, conferences, open table discussions where attention is given, inter alia, to the protection of human rights as well as topical issues related to specific aspects of the prevention and investigation of crimes of corruption, human trafficking and other crimes.

## **Article 24**

116. Pursuant to Article 30 of the Constitution, a person shall have the right to compensation for material and moral damage in accordance with the procedure established by laws.

117. Article 28 of the CCP defines the term “victim” and specifies the rights of a victim. A subject who is recognized as a victim is a natural person who, as a result of a criminal act, suffered physical, material or moral damage. A person is recognized to be a victim by decision of a pre-trial investigation officer, a prosecutor or by the ruling of a court. The victim and his/her representative shall have the following rights: to supply evidence; submit applications; make challenges; have access to case information during pre-trial and trial proceedings; participate in court proceedings; appeal the actions of a pre-trial investigator, prosecutor, pre-trial judge and court, also, appeal the court’s judgement or ruling; to make a final speech. Pursuant to paragraph 10 of Article 44 of the CCP, every person who has been recognized as a victim shall have the right to request identification and just punishment for the person who has committed a criminal act, receive compensation for damage caused by a criminal act and in the cases established by laws – also, compensation from the Crime Victims’ Fund as well as receive state-guaranteed free legal aid in accordance with the procedure established by law.

118. According to Article 109 of the CCP, a person who suffered material or non-material damage as a result of a criminal act shall have the right, during criminal proceedings, to file a civil claim against the suspect or the accused or the persons bearing material responsibility for the acts of the suspect or the accused. The court shall hear such claim together with the criminal case. Where the civil claim has been filed during a pre-trial investigation, the data confirming the grounds and amount of the civil claim must be collected during this stage. Pursuant to Article 118 of the CCP, if the defendant or the person who bears material liability for the defendant’s actions do not have funds to compensate for the damage, the damage may be compensated from the funds allocated by the state for that purpose in the cases and in the manner established by law. The Law of the Republic of Lithuania on Compensation for Damage Caused by Violent Crime provides for the awarded compensation of material and/or non-material damage caused by violent crimes and the compensation in advance for material and/or non-material damage caused by violent crimes. This Law does not regulate the compensation of damage caused by violent crimes from the persons who committed a crime or the persons liable for their acts. Paragraphs 5 and 6 of Article 2 of the Law define the terms of compensation for damage caused by violent crimes and compensation in advance for damage caused by violent crimes. Compensation for damage caused by violent crimes shall mean the compensation for material and/or non-material damage caused by violent crimes from the special Crime Victims’ Fund programme where the person who committed a violent crime or the person liable for his/her acts does not compensate for the damage awarded by court judgement or the damage specified in a court-approved agreement on compensation or elimination of damage caused by violent crime. Advance compensation for damage caused by violent



crimes shall mean the compensation for material and/or non-material damage caused by violent crimes from the special Crime Victims' Fund programme where no court decision on the compensation for damage from the person who committed violent crime or the person liable for his/her acts has been made.

119. Article 6.283 of the CVC regulates the compensation for damage to a person's health. Where a natural person is a victim of mutilation or other impairment of health, the person liable for causing the damage must compensate to the victim for all the damages he suffered, including the non-material damage. Damages in cases referred to above shall be composed of the income the aggrieved person would have received had he not sustained the bodily harm, expenses related with the rehabilitation of health (medical treatment costs, expenses incurred for additional nourishment, medication, prosthetics, care of the injured person, acquisition of specialised transport means, retraining costs and other expenses necessary for the rehabilitation of health). If the health of the victim deteriorated after the judgement on the compensation for damage was passed, he shall have the right to file a claim for compensation of the additional expenses, except in the cases when the damage was compensated by a lump sum payment. This Article shall be applied only in cases where the victim has not made social insurance arrangements against occupational accidents according to the procedure established by laws.

120. Article 6.284 of the CVC regulates the liability for the damage caused by fatal injury. In the case of death of a natural person, the right to compensation for damage caused by his death shall be acquired by the persons who were under his support or at the time of his death were entitled to be supported by the deceased person (minor children, spouses, parents incapable for work, or other factual dependants incapable for work), also, the children of the deceased born after his death. These persons shall also have the right to compensation for non-material damage. Persons who have the right to compensation for damage caused by their breadwinner's death shall be reimbursed for that portion of the deceased person's income that they were receiving or were entitled to receive while the deceased person was alive. The amount of the damage to be reimbursed cannot be changed, except in cases when a child is born after the death of the breadwinner. This Article shall be applied only in cases where the victim has not made social insurance arrangements against occupational accidents according to the procedure established by laws.

121. Concerning implementation of the provisions of paragraph 6 of Article 24 of the Convention, it should be noted that the procedure for the recognition of a natural person to be a person whose whereabouts are not known or who is dead is regulated by the CVC and the Code of Civil Procedure. Pursuant to paragraph 1 of Article 2.28 of the CVC, where for the period of one year in a person's domicile there is no information about his whereabouts the court may recognise the person to be an absentee. In accordance with paragraph 1 of Article 2.31 of the CVC, in the event that no information on a person's whereabouts is obtained in his domicile for a period of three years and where he went missing under such circumstances, which posed a mortal threat or give the grounds to suspect that he was killed in an accident, and no information about the person has been obtained for a period of six months, a natural person may be declared dead according to an established court procedure. A soldier or other person who went missing as a result of military actions may in judicial proceedings be declared dead but not earlier than two years from the day of the end of military actions (paragraph 2 of Article 2.31 of the CVC). A declaratory judgement of death may be pronounced for a person irrespective of the fact whether he was or was not recognised an absentee. The date of death for a person for whom a declaratory judgement of death was pronounced shall be deemed the day on which the court judgement becomes effective. Where a declaratory judgement of death is pronounced for a person who went missing under such circumstances, which posed mortal threat or give grounds to suspect that he was killed in an accident the court may consider the alleged day of the accident to be the date of his death (paragraphs 3 and 4 of Article 2.31 of the CVC).

122. Application on the recognition of a person's absence complying with the requirements of the Code of Civil Procedure may be filed by any person or prosecutor concerned. Application on the recognition of a person's absence may be filed no earlier than 3 months before expiration of the term after which such a natural person may be recognized to be an absentee. Upon acceptance of the application, the court passes a ruling to make an announcement about the instigation of proceedings on a special website. The court may decide to make the public announcement about the institution of proceedings in any other way which it recognizes appropriate. Such announcements, apart from other requirements specified in the Code of Civil Procedure, should indicate a term during which the missing person is invited to step into presence, the court specifies the term to be no shorter than 3 months and no longer than 6 months (Article 451 of the Code of the Civil Procedure).

123. On application of the persons concerned or a public prosecutor, the court shall appoint a temporary administrator of the absentee's property until the court's judgement becomes effective. Absentee's spouse, close relatives or persons who are motivated to preserve his property may be appointed temporary administrators. The temporary administrator must take the inventory of the property and take measures to preserve it. The temporary administrator shall administer the property, maintain the persons whom the absentee is obliged to maintain and pay the absentee's debts. The temporary administrator shall have to obtain the authorisation of the court to dispose of the property, mortgage it or restrict the right to property in some other manner. Where the absentee's property is an enterprise the court shall appoint its administrator. The administrator shall act in his owner's name. Where the court gives a judgement that the person is recognised an absentee, a permanent administrator to his property shall be appointed by the court's judgement. A person may be appointed an administrator to the property only with his consent. In the event of an absentee's return or if his/her whereabouts become known, the court shall revoke its judgement to recognise the person an absentee and the administration to his property. Revenues received by the administrator from the property of the absentee shall be recovered by the owner of the property who has returned and who has to reimburse the property administrator for all expenses related to the administration thereof (Articles 2.29 and 2.30 of the Code of Civil Procedure).

124. In respect of a person's civil rights and obligations, legal pronouncement of his death shall equal the act of the person's death. If a person who was declared dead returns or his whereabouts become known, the court revokes its judgement to declare the person dead. The person who has returned shall not have the right to request the recovery of his property, which has been inherited after he was pronounced dead. However, in cases where a person was absent for serious reasons, he shall enjoy the right, regardless of the time of his return, to request the recovery of his property which is in possession of his heirs. A person who has returned shall also enjoy the right to request either the recovery of his property, which was gratuitously transferred to the third persons, or its value. He shall have, however, to compensate the person, who, in good faith, was in possession of his property, for all losses related to the recovery of the said property or its value (Article 2.32 of the CVC).

125. In the context of compliance with the provisions of paragraph 7 of Article 24 of the Convention it should be noted that Article 35 of the Constitution guarantees citizens the right to freely form societies, political parties and associations, provided that the aims and activities thereof are not contrary to the laws. Establishment and activities of public organizations is regulated by law. The right to form associations is further elaborated in the law of the Republic of Lithuania on Associations.

## Article 25

126. Article 100<sup>1</sup> (Enforced Disappearance) and Article 100<sup>2</sup> (Separation of Children) of the Criminal Code implement the provisions of subparagraph (a) of paragraph 1 of Article 25 of the Convention. According to Article 100<sup>2</sup> of the CC, unlawful separation of children knowing that such children, their parents or guardians were victims of the above-mentioned criminal acts, shall be punishable by deprivation of liberty for a term of up to 8 years.

127. The CC also criminalizes other crimes related to criminal acts defined in Article 25 of the Convention. Article 156 of the CC (Abduction of a Child or Exchange of Children) provides for punishment by arrest or by imprisonment for a term of up to eight years for abduction of another person's young child. Article 103 of the CC (Causing Bodily Harm to, Torture or Other Inhuman Treatment or Violation of the Protection of Property of Persons Protected under International Humanitarian Law) imposes liability for unlawful separation of children, unlawful restriction or deprivation of personal liberty in a time of war. Article 103 of the CC states as follows: "1. A person who, in time of war or during an armed conflict or under the conditions of aggression, occupation or annexation ordered, abetted or arranged inhumane treatment or treated inhumanely the persons protected under international humanitarian law: inflicts a serious bodily harm to or an illness on them or tortures them; conducts a biological or medical experiment with them; unlawfully takes their organ or tissue for transplanting purposes; unlawfully takes their blood or subjects them to other inhuman treatment; imposes upon them criminal penalties without a judgement of an independent and impartial court or without guarantees of defence in court; rapes or involves persons in sexual slavery or forces them to engage in prostitution; forcibly sterilises or inseminates them; utilises means of intimidation or terror; takes hostages; unlawfully restricts their liberty or deprives them thereof; separates children from parents or guardians; threatens death by starvation; unlawfully takes, confiscates the property of civilians or conducts mass expropriation thereof that is unjustifiable by military necessity; insults their dignity; forces them to change their religion; commits an outrage to the remains of the killed, shall be punished by imprisonment for a term of three up to twelve years". Article 300 (Forgery of a Document or Possession of a Forged Document) and Article 303 (Destruction or Concealment of a Seal, Stamp or Document) of the CC impose punishment for forgery, concealment or destruction of the identity documents of children specified in subparagraph (a) of paragraph 1 of the Article 25 of the Convention (subparagraph (b) of paragraph 1 of Article 25 of the Convention). Article 300 of the CC reads as follows: "1. A person who produces a false document, forges a genuine document or stores, transports, forwards, uses or handles a document known to be false or a genuine document known to be forged shall be punished by a fine or by arrest or by imprisonment for a term of up to three years. 2. A person who produces a false identity card, passport, driving licence or state social insurance certificate or forges a genuine identity card, passport, driving licence or state social insurance certificate or stores, transports, forwards, uses or handles an identity card, passport, driving licence or state social insurance certificate known to be false or a genuine identity card, passport, driving licence or state social insurance certificate known to be forged shall be punished by arrest or by imprisonment for a term of up to four years. 3. A person who commits the acts provided for in paragraph 1 or 2 of this Article, where this incurs major damage, or produces a large quantity of false identity cards, passports, driving licences or state social insurance certificates or forges a large quantity of genuine identity cards, passports, driving licences or state social insurance certificates or stores, transports, forwards, uses or handles a large quantity of identity cards, passports, driving licences or state social insurance certificates known to be false or genuine identity cards, passports, driving licences or state social insurance certificates known to be forged shall be punished by imprisonment for a term of up to six years. 4. A legal entity shall also be held liable for the acts provided for in this Article". Article 303 of the CC reads: "1. A person who destroys or conceals a seal, stamp,

document or a strict accounting form of a natural or legal person, where this incurs major damage, shall be punished by community service or by a fine or by arrest or by imprisonment for a term of up to two years. 2. A legal entity shall also be held liable for the acts provided for in this Article”. Compliance with paragraph 4 of Article 25 of the Convention is ensured by Article 157 of the CC which criminalizes the unlawful separation of a child by abducting or otherwise depriving the child’s liberty, including for the purpose of unlawful adoption. Article 157 of the CC states as follows: “1. A person who offers to purchase or otherwise acquires a child or sells, purchases or otherwise conveys or acquires a child, or recruits, transports or holds in captivity a child, while being aware or seeking, regardless of the child’s consent, his unlawful adoption, exploitation in slavery or in conditions similar to slavery, in prostitution, pornography or other forms of sexual exploitation, for forced labour or for services including begging, or involvement in criminals acts, shall be punished by imprisonment for a term of three up to twelve years. 2. A person who commits the acts provided for in paragraph 1 of this Article in respect of two or more children or young children or by posing a threat to a victim’s life or by participating in an organised group or being aware or seeking to acquire the victim’s organ, tissue or cells or being a civil servant or a public administration employee in the exercise of his powers shall be punished by imprisonment for a term of five up to fifteen years. 4. A legal entity shall also be held liable for the acts provided for in paragraphs 1 and 2 of this Article”.

128. Subparagraph 1 of paragraph 1 of Article 4 of the Law of the Republic of Lithuania on Fundamentals of Protection of the Rights of the Child provides for the requirement for all natural and legal persons to consider always and everywhere, first and foremost, the legitimate interests of the child. As required under the provisions of paragraph 5 of Article 25 of the Convention, Article 3.164 of the CVC guarantees the participation of a minor child in assuring his rights: “1. In considering any question related to a child, the child, if capable of formulating his or her views, must be heard directly or, where that is impossible, through a representative. Any decisions on such a question must be taken with regard to the child’s wishes unless they are contrary to the child’s interests. In making a decision on the appointment of a child’s guardian/curator or on a child’s adoption, the child’s wishes shall be given paramount consideration. 2. If a child considers that his or her parents abuse his or her rights, the child shall have a right to apply independently to a state institution for the protection of the child’s rights or, on attaining the age of 14, to bring the matter before the court”. Regarding the compliance with paragraph 5 of Article 25 of the Convention, it should be noted that adoption in the Republic of Lithuania should be possible exclusively for the best interests of the child (paragraph 1 of Article 3.209 of the CVC), depending on the child’s age, the child’s opinion should be heard by the court or it is decisive when passing a judgement on adoption (Article 3.215 of the CVC, Article 485 of the Code of Civil Procedure), the adoption procedure is regulated by legal acts (Part V of Book 3 of the CVC (Adoption)).

129. Article 3.215 of the CVC (The consent of the child to be adopted) reads as follows: “1. Where the child to be adopted has already reached the age of 10, the child’s written consent to the adoption shall be required. The child shall file his or her consent with the court; adoption without such consent shall not be permitted. 2. Where the child is under 10, he must be heard by the court if he or she is capable of expressing his or her views. In taking the decision, the court shall take account of the child’s wishes if those wishes are not contrary to the child’s interests”.

130. In accordance with the legislation of the Republic of Lithuania and the international agreements of the Republic of Lithuania, the State Child’s Rights Protection and Adoption Service under the Ministry of Social Security and Labour (hereinafter referred to as “the Service”) shall be responsible for the maintenance of records of children eligible for adoption and persons wishing to adopt a child as well as the organization of national and

international pre-trial adoption procedures. Only given the existence of the defined grounds for adoption which are also provided for in Articles 3.212 and 3.214 of the CVC, a legitimate and reasonable pre-trial adoption procedure should be initiated for the children who lost parental care in order to find prospective adopters for them. The Service, acting as an institution which has assumed the functions of a central authority as provided for in the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded in 1993, of the Hague Conference on Private International Law, ensures the implementation of the provisions of the said international treaty in Lithuania and organizes intercountry adoption in a foreign state in strict compliance with the requirements set out therein.

131. Since adoption creates a legal relationship between adopters and the adoptee which is identical to the legal relationship between natural parents and their children (paragraph 1 of Article 3.227 of the CVC), in order to protect the rights of the adopted child, the CVC does not specify any grounds for revocation of adoption. However, the adoptive parents are subject to legal liability as prescribed in laws for the failure to exercise parental authority. When parents neglect to perform their parental duty to bring up the child, abuse their child-rearing powers, treat children with cruelty, exert a harmful influence on children by their immoral behaviour or neglect their children, the court may adopt a judgement on a temporary or unlimited restriction of parental authority (Article 3.180 of the CVC) and place the child in care.

132. The legal procedure in place in Lithuania for reviewing the adoption or placement procedure, as prescribed by the provisions of paragraph 4 of Article 25 of the Convention, is the trial *de novo* conducted in order to ensure the lawfulness of a civil procedure. The grounds for instituting the proceedings *de novo* are defined in Article 366 of the Code of Civil Procedure. In case of commencement of a new trial, the presence or absence of circumstances specified by law, under which fresh proceedings must be instituted in respect of a case, should be established. Upon establishment of such circumstances, the court's judgement adopted on the case may be reversed as illegitimate and invalid (Article 371 of the Code of Civil Procedure). The Supreme Court of Lithuania, based on the practice of the European Court of Human Rights, adopted a stance that a deviation from the principle of legal certainty, i.e. starting new proceedings for review of effective court judgements is possible, if a necessity to rectify essential mistakes arises under urgent and convincing circumstances (Decision of the Supreme Court of Lithuania of 7 January 2008 on a civil case No. 3K-3-91/2008). The Law does not provide for limiting the possibility to start fresh proceedings in the case of adoption of a child, therefore, based on the presence of at least one of the grounds listed in Article 366 of the Code of Civil Procedure, individuals may apply to court for a new hearing. In accordance with the legal regulation, the conclusion to be drawn is that the new hearing of the adoption proceedings is possible, provided that, for example, the falsification of documents or the knowingly false opinion of an expert, due to which a wrongful or unfounded judgment was passed, are established by a *res judicata* court sentence (subparagraph 3 of paragraph 1 of Article 366 of the Code of Civil Procedure).

133. As can be seen from the commentary on Article 3.209 of the CVC (The Commentary on the Civil Code of the Republic of Lithuania, Book 3, "Family Law", Justitia, 2002, Vilnius, p. 396), when a child to be adopted lives in the adopter's family, it is necessary to determine how long and for what reasons he has been living there and whether the child went to live with that family in accordance with the procedure prescribed by law. The Decision of the Supreme Court of Lithuania of 7 January 2008 on a civil case No. 3K-3-169/2010 noted that the interpretation of paragraph 2 of Article 3.209 of the CVC as permitting adoption of a child, living in a family, regardless of the circumstances of his coming to live with the family, is invalid. The above Decision of the Supreme Court of Lithuania underlined that, in all cases in resolving the matter of adoption, the principle of

the priority of a child's interests should be respected and stated that a child may be adopted under extraordinary circumstances only when it is in the child's best interests. Adoption of a child living in the adopter's family in violation of the rules applied to choosing adoptive parents for the children included on the list (records) of children offered for adoption shall be possible only if prospective adopters act lawfully and bona fides. The Supreme Court of Lithuania concluded that the factual raising of a child in a family does not grant by itself the right to adopt the child under extraordinary circumstances, the child's placement with and stay in a prospective adopter's family must be in the child's best interests; the potential adopter must treat the child fairly during the whole period of the child's stay. The Supreme Court of Lithuania stated that in the case under consideration the child was taken in the prospective adopter's custody and kept all the time unlawfully, being subject to unfair treatment by the potential adopter, therefore, it should be considered an abuse of a right. Regarding the above case, the Supreme Court of Lithuania also noted that any attachment of a child to the prospective adopter was the consequence of the latter's unlawful and wilful keeping of a child, therefore, the right to submit this argument in court shall not be recognized (paragraph 3 of Article 1.137 of the CVC). The Supreme Court of Lithuania acknowledged that the courts of lower instance justly recognized all arguments concerning the child's attachment to the prospective adopter as abuse of a right and found on that basis that such behaviour does not correspond to the child's best interests.

134. Taking into consideration the national legal regulation and the practice of the Supreme Court of Lithuania, it should be concluded that the Republic of Lithuania should ensure the application and practical implementation of the legal procedures which would enable review of the adoption or placement procedure and terminate, where appropriate, any adoption or placement of children born in the circumstances of enforced disappearance as required by the provisions of paragraph 4 of Article 25 of the Convention.

135. The Law of the Republic of Lithuania on the Ombudsman for Children provides for the purpose of the activities of the Ombudsman for Children – to improve legal protection of children, to defend the rights and legitimate interests of children, to ensure implementation of the rights and legitimate interests of children provided for in international and national legal acts as well as to exercise supervision and control of the implementation and protection of the rights of children in Lithuania. The Ombudsman for Children investigates the submitted complaints concerning the acts or omissions of natural and legal persons as a result of which the rights or legitimate interests of children are violated (allegedly violated) or could be violated as well as the complaints concerning misuse of powers of officials or bureaucracy in the field of the protection of the rights of children. The Ombudsman for Children shall have the right, where he possesses information about violations not specified in complaints, to carry out an investigation on his own initiative or transfer the complaints to other competent state institutions.

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