

Translation from the Lithuanian language

HUMAN RIGHTS MONITORING INSTITUTE

**IMPLEMENTATION OF HUMAN RIGHTS IN LITHUANIA
2005**

OVERVIEW

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ABOUT US

The **Human Rights Monitoring Institute** is an independent organization that represents the civic society. It has been established in 2003, in order to encourage the development of an open and democratic society in Lithuania through the consolidation of legal principles of human rights. Strategic objectives of the Institute are as follows:

- to develop an independent mechanism of civil monitoring over a national policy, law making and law enforcement in the sphere of human rights;
- to make the cases of violation of human rights, their reasons and results public;
- to strive for a constant attention of the national authorities to the problems of human rights, as well as improvement of laws, programs and services ensuring human rights;
- to encourage the national authorities to report to the public on policy and practice related to human rights.

The HMRI performs a daily monitoring of national authorities and publicly reacts to the already committed and potential violations of human rights. In order to enjoy the influence in amending legal acts, programs and services the Institute performs a systemic research, drafts conclusions and recommendations, as well as presents them to the public. Moreover, the Institute initiates strategic cases at courts or provides legal assistance in the course of their investigation, and drafts alternative reports to the international human rights authorities.

INTRODUCTION

Before Lithuania became a member of the European Union (EU), people widely believed that the integration into this union will solve majority of problems, which are common to transitional economies, including the guarantee of human rights. Unfortunately the Lithuanian membership in the EU failed to guarantee an adequate protection of human rights and freedoms. Legal and institutional reforms that were necessary for the candidacy to the EU are stuck at present.

In 2006, nothing is left but to state that since May 2004, when Lithuania became the member of the EU, the situation in human rights is degrading. The Human Rights Monitoring Institute (HRMI) has registered gross violations of international standard on human rights, especially in the areas of respect to the right to private life, the right to take part in political life, and the right to a fair trial. Moreover, the number of discrimination cases, especially of the Roma people, is not decreasing.

In Lithuania we lack an efficient human rights policy, which would provide for effective means guaranteeing the observance of the international standards of human rights. Politicians, public servants, law enforcement officers and the society has a limited understanding of the human rights, an education related to human rights is not fully incorporated into school and university curricula. In Lithuania we have no mechanisms of implementation of rulings of the European Court of Human Rights and the recommendations of committees established on the basis of international human rights treaties.

Since this year Lithuania has no national plan on human rights. The first National Action Plan on Support and Protection of Human Rights was adopted in Lithuania in 2002 on the basis of the Vienna Declaration and the Action Plan. When the period of implementation of the above mentioned action plan expired in 2005, it has not been extended.

In Lithuania we don't have an authority for monitoring the efforts of the national authorities and non-governmental organizations in ensuring human rights, developing a dialogue between various authorities and the society, as well as formulating proposals to the national bodies. The absence of the policy on human rights means also that an efficient system, within the framework of which one could monitor the violations of human rights, does not exist in Lithuania. The state must accept more liability for ensuring the adequate protection of rights and freedoms of Lithuanian citizens.

While striving to fill in this gap the HRMI develops several trends of activity: it performs a role of an observer of the situation related to the human rights and an expert that initiates discussions and acts as an intermediary when solving human rights problems. The HRMI drafts annual human rights overviews, thematic reports and analyses, public statements, as well as other texts. The HRMI cooperates with organizations and activists of civil society and human rights, and acts as an active intermediary between various sectors and groups and as a coordinator of their activity.

By now the HRMI is the sole organization in Lithuania that provides annual overviews on the human rights situation. This – third – overview was drafted on the basis of documents of national authorities related to human rights, non-governmental as well as international human rights organizations, researches made by the HRMI and data of monitoring performed by mass media, as well as consultancy with specialists and experts. The publication has been compiled by a work group, comprising the employees and experts of the Institute: Margarita Jankauskaitė, Margiris Karvelis, Agnė Kurutytė, Henrikas Mickevičius, Asta Radvilaitė, Dovilė Šakalienė, Rokas Uscila. We hope that this overview will be beneficial as a source of information about the human rights situation in Lithuania and a starting point for the future research, discussions and training.

We are grateful to the Open Society Institute and the Open Society Fund-Lithuania that provided support to the preparation of this overview.

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SUMMARY

This overview describes the situation related to the fundamental political and civil rights and freedoms in Lithuania in 2005. It examines the right to the respect of private life, the right to a fair trial, civil rights, discrimination, racism and other forms of intolerance, as well as human rights in the police activity. A separate analysis is made also of situation of vulnerable groups – women, children, victims of crime, convicted and mentally ill persons – in the context of the human rights.

In 2005, protection of personal data related to the control by operational services, disclosure of the private information, unreasonably frequent use of a personal identity code, and insufficient protection of personal data compiled in the information systems or databases, remained the basic problems related to the right to inviolability of private life. The use of video surveillance systems became more frequent, although no sufficient legal regulation existed.

In 2005, understanding of the society, politicians, officials and representatives of mass media about the content of the right to private life remained poor. Lack of objective information and discussions prevented development of an efficient public monitoring of various state initiatives that restricted the right to privacy. The fact that no independent authority of protection of private life exists in Lithuania constituted another reason for the failure to effectively ensure the right to private life.

The tendency of political interference in the work of law enforcement authorities and courts persisted in 2005 as well, and dependency of a pre-trial investigation and prosecution authorities and lack of their professionalism showed up. Faulty legal regulation of bailiffs' activity and their abuse of power were also revealed. Adequacy of measures taken in order to solve problems of implementation of the right to a fair trial is disputable, too.

The right to freedom of expression was not sufficiently ensured in 2005 either – attempts by politicians to suppress the criticism of their political opponents by applying to courts upon a criminal procedure have been registered. The fact that representatives of the supreme power assessed the public criticism as an anti-national act and applied to the special services in order to protect themselves from it constitutes a matter of special concern.

The year 2005 in Lithuania saw a significant progress in improving the legal basis of fight against discrimination and intolerance, which was especially strengthened by the coming into effect of the *Law on Equal Opportunities*. Still, Lithuania continued as one of the most intolerant countries in Europe, and intolerance against the representatives of certain ethnic and religious groups, as well as persons holding other views increased.

In 2005 children and women remained the most vulnerable social groups. A matter of special concern is the scale of violence against the said groups and the fact that in the sphere of trafficking in people – most often women and girls – Lithuania continued as a country of import and export, as well as a point for sexual tourism.

A number of inhuman and cruel behavior cases by police officers did not diminish in Lithuania in 2005. The due conditions of residence of the convicted persons, their right to health care and social integration after the release were not guaranteed. A failure to ensure the rights of

convicted persons in 2005 was prevented by the fact that no independent authority, able to visit regularly the detention authorities without a prior notice, existed.

Similar to the year 2004, one of the major problems in 2005 in the sphere of the rights of victims of crime was a declarative nature of assistance and support; especially in the state's ensured legal assistance and damage recovery in crimes of violence. The right of victims of crime to know about the release of a suspect or convicted person from a detention authority has not been implemented either.

In 2005, gross violations of rights at the mental health authority were registered, as well. In Lithuania the system of mental healthcare in 2005 continued to be based on the system of huge closed mental healthcare authorities, which is in conflict with modern healthcare and social policy, based the principle of autonomy of an individual, granting of powers and the right to living in the least restricting environment. Due to a faulty legal regulation the protection of incapable persons still is an especially problematic area.

RIGHT TO AN INVIOABILITY OF THE PRIVATE LIFE

In 2005, protection of personal data related to the control by operational services, disclosure of the private information, unreasonably frequent use of a personal identity code, illegal processing of other personal data and insufficient protection of personal data compiled in the information systems or databases, remained the basic problems related to the right to inviolability of private life (hereinafter referred to as the right to private life). The use of video surveillance systems became more frequent, although no sufficient legal regulation existed.

Possibilities to protect the right to private life are aggravated by poor understanding of the society, politicians, officials and representatives of mass media about the content and importance of this right. The lack of objective information and discussions prevents from development of an efficient public monitoring of various state initiatives that restrict the right to privacy. The fact that no independent authority of protection of private life exists in Lithuania constitutes another reason for the failure to effectively ensure the right to private life.

Control over an Operational Activity

It has already been stressed that the insufficient monitoring of legitimacy of the operational activity poses a threat to the right to private life. The fact that the monitoring of legitimacy performed by the Prosecutor General's Office is ineffective has been recognized by the representatives of this authority as well¹. The Parliamentary Committee on Control over Operational Activity was established in March 2005, however, it may investigate only the most gross violations. In the course of drafting this report, i.e. in March 2006, a report on its activity has not been submitted, therefore it is difficult to decide on its efficiency.

Efficient control over the operational activity would be ensured in the best way by a special, independent from the political power authority. An opportunity to establish such a special authority was provided for in the draft of the new wording of the Law on Operational Activity, which was submitted to the Seimas back in 2004. Unfortunately this draft has not been approved yet, and its fate is still unclear.

Disclosure of a Pre-trial Investigation Material

Similar to the year 2004, the disclosure of private phone conversations and other pre-trial investigation material, which became a popular practice, continued as one of the most gross violations of the right to private life. TV and other mass media continued to present extracts of conversations of politicians and businessmen without being punished².

According to the standards set by the European Court of Human Rights the disclosure of secretly collected information to the society or third persons constitutes a serious restriction of privacy of a person. Such information may be disclosed only in cases provided for by laws in order to achieve a legal objective(s) and the disclosure must be proportionate thereto. It remains unclear, what legal objectives were sought when disclosing private personal conversations that are the material of a pre-trial investigation in the mass media. Conditions for spreading this practice are created also by the fact that such violations are not revealed, and actions of the prosecution authorities taken in order to find out, who uncovered the operational or pre-trial investigation material, are not determined enough.

Similar to the previous years, attempts were made to disclose private personal conversations, constituting a part of a pre-trial investigation material, at the Seimas. In late 2005, the temporary committee of the Seimas, which investigated corruption at the Municipality of Vilnius City, intended to hear the conversations of Artūras Zuokas and the businessmen, at the sitting hall, although this data are the evidence in a non-heard criminal case. After the consultancy with experts of law it was not permitted to hear these conversations at the Seimas, however such attempts prove that members of the Seimas do not understand the functions and powers of the Seimas, i.e. that the competence of the Parliament does not comprise a defining of a guilt of the suspects³.

Protection of Personal Data Collected in the Information Systems and Databases

In 2005, lots of problem occurred due to illicit data management and use in various information systems or databases. In 2005, in Vilnius some persons were detained as they sold a copy of the central database of clients of the State Social Insurance Fund, which comprised data about 1.5 million employed residents of Lithuania and 100 000 companies of the country. According to the police, these persons used to sell illegally received data of “Sodra” for several years already. Confidential information was used by some companies engaged in debt recovery and private persons⁴. This proves that measures of protection installed in the state information systems are not sufficient⁵.

Threat to the data protection increases because in Lithuania we have strongly centralized database system, protected data is quite available to the third persons, and people are not that well educated and conscious in the sphere of data collection, storage and use. For example, in the biggest personal database in Lithuania – the Register of Residents – data is collected about all residents of the country, i.e. their names, surnames, addresses, place and date of birth, civil status, nationality, personal identity code, information about parents, spouses, and children. Its objective is to store data about residents, submit it to the authorities of state power of the Republic of Lithuania and management authorities, local self-government authorities, national registries, and other legal as well as private persons⁶. As mentioned by the experts of PHARE project, the purpose of the Population Register is not totally clear – it is based only on the need of third parties to get such data. In other words the Population Register has to meet various objectives of administration, including the private sector⁷. The Law on the Population Register does not provide for any potential recipients of the information. This may violate the principle of proportionality of data management and the human right to inviolability of private life, as various entities may receive information about every citizen without a legal basis for such actions. For this reason one must immediately exactly define the purpose of the Population Register.

Use of a Personal Identity Code

Similar to the year 2004, improper legal regulation of the use of a personal identity code and unreasonably frequent use thereof continued as one of the problems⁸. For example, personal code used to be illegally registered at shops, when a person wanted to return items of poor quality or when providing other services⁹. Cases of illicit disclosure of the personal identity code have been registered as well. For example, surname of a person and the personal identity code used to be presented in the internet, when bailiffs placed announcements about the ongoing auctions. Deficiency of legal regulation that fails to sufficiently restrict the management of the personal

identity code, as well as lack of information about the standards of data protection was proven also by the fact that persons, who have disclosed the personal identity codes, were sure that they act as required by law¹⁰. In fact, more than 500 legal acts that define the use of the personal identity codes, which often is unreasoned, are effective in Lithuania.

We hope that in future a number of cases of unreasoned use of the personal identity codes will decrease, as in the second half of the year 2005 a *Draft Law on Amending and Supplementing the Law on Legal Protection of Personal Data* (hereinafter referred to as the draft law) was prepared and, upon the consent of the Government, submitted for discussion to the Seimas. The draft law clearly defines the notions of “management” of the code and provides restrictions of getting information about the personal code, its use, providing information about the personal code, as well as data processing related thereto. The law, which is effective at present, limits only the use of the personal identity code, thus leaving the possibility to collect information about the personal identity codes and perform other actions. The draft law proposes to grant permission to collect and to submit information about the personal identity codes, and to use them, only to the state information systems, while in the currently effective law such a right is granted to all legitimate information systems.

It is prohibited in the draft to publicly disclose the personal identity code and to administer the personal code for the direct marketing purposes. No such prohibition exists in the currently effective law. Having assessed the fact that amendments to this law not only clearly formulate the standards of administration of the personal code, but restrict possibilities of managing the personal code and entities entitled thereto, this draft law should be passed as soon as possible.

Protection of a Personal Data Related to Bills and Debts

Sending bills to people in open letters, as made by various companies and enterprises, remained a tolerated practice in 2005, especially for the utilities companies when providing bills and informing about debts.

According to the data of the State Data Protection Inspectorate (SDPI), bills often were simply put into mail boxes of people, and this constitutes a possibility to violate the right to privacy of the recipient of the service. The data presented in the bills – place of residence of the person, payable or due charges, number of the payment book, or even indicated name, surname and personal identity code – are subject to the *Law on Legal Protection of Personal Data*. Therefore the data manager and manager must protect personal data from accidental and illicit destruction, amending, disclosure, as well as any other illegal processing. However, data managers, in this case the utilities companies, failed to follow the requirements of the laws and did not consider the recommendation announced by the SDPI to the companies to submit bills for the provided services to the residents by non-open means¹¹.

In 2005, problems also occurred due to improper processing of data about the persons indebted for utilities services. In order to recover debts of people, utilities companies submit data about the indebted persons to the companies of debt recovery. According to the *Law on Legal Protection of Personal Data* the data manager, who receives data about a person not from the subject of the data, must inform the data subject before starting to administer the data of the person¹². Utilities companies have the right to submit personal data to the companies of debt recovery only when they inform the indebted person about his debt in writing and the latter fails to respond to the invitation within 18 days. Still, some cases were registered where debt recovery

companies did not inform people that they collect information about them, and what information and for what purpose they collect. Moreover, there were cases when invitations to pay debts were sent to people in open letters, and more personal data than permitted by law was presented therein¹³.

In December 2005, the draft on amending the Law on Legal Protection of Personal Data, which obligated to submit to people bills for the provided services in a non-open way, was registered at the Seimas. For this reason the draft must be adopted urgently.

Use of Video Surveillance Systems

In 2005, the use of video surveillance systems became more frequent in Lithuania, although no sufficient legal regulation existed. Due to the lack of legal regulation lots of violations of the right to private life were registered in 2005.

In September 2005, upon the initiative of the Municipality of Vilnius City a camera for monitoring the traffic and shooting the offenders was installed and used at one of crossroads in Vilnius, although its use was not registered. Ignorance of the principles of private life and lack of legal regulation was illustrated by the fact that, upon being asked about the legality of use of such a camera, a representative of the Municipality of Vilnius City admitted that this camera is not “fully legalized”. According to the current order in Lithuania personal data managers must register themselves at the State Data Protection Inspectorate. However, this has not been done. By willful use of this camera and collection of information shot with it one violated the Law on Legal Protection of Personal Data and the principles of the right to private life.

Violations occurred also due to the fact that the lack of legal regulation makes it unclear, what measures must be taken by data managers to avoid the directing of camera to space and persons, the surveillance of which is not intended, and shooting them. There were cases, when not only a license plate of the vehicle, but its interior and faces of passengers, who would not be willing to be identified, were recorded in photographs made by the speed control systems, installed by police.

The cases were registered, when operators of video surveillance cameras abused the technical possibilities, directed cameras and maximized the view so that they could easily identify numbers dialed by a mobile phone of a person. Moreover, major supermarkets used to install surveillance cameras of 360 degrees coverage above changing boxes.

The grossest violations of the right to private life while using video surveillance systems were related to the storage and use of the recorded films. Legal acts do not provide rules of using and storing information about a person, which was obtained by means of video surveillance systems, therefore there were plenty of such violations. For example, persons shot even by the cameras were showed on TV more than once¹⁴.

The lack of legal regulation results also in the fact that people in Lithuania are still not informed or informed in a non-sufficient manner about the conducted video surveillance. For example, the internal rules of “SPA Vilnius” in Druskininkai read that video surveillance cameras are installed therein, but they do not indicate the number of cameras and place of their

installation. No reaction is noticed to the necessity to provide due information about the use of video cameras. It was back in 2003, when the State Data Protection Inspectorate has instructed the Chief Police Commissariat (CPC) of Vilnius City to inform persons about the video surveillance by placing information plates in the surveillance areas, but the CPC continued to ignore this compulsory instruction by the State Data Protection Inspectorate in 2005, too.

In 2005, an active campaign of public relations was carried out in mass media that was aimed at forming a positive public attitude towards video surveillance cameras as an effective mean of security. The SDPI has noticed articles, prepared by private companies of public relations, in which representatives of the companies engaged in trade in these technologies indicated their positive influence upon reduction of criminality, although no independent and thorough analysis has been performed in Lithuania of the efficiency of these technologies, as well as costs and benefit of their use, and researches made in other countries revealed that a role of video surveillance system in reducing the criminality is usually insignificant, and a threat to privacy – huge¹⁵.

The submitted to the Seimas *Draft Law on Amending and Supplementing the Law on Legal Protection of Personal Data* is supplemented with an article that sets forth the fundamental principles of use of video surveillance cameras.

Control over an Information Transmitted Through an Electronic Media

The fact that only two euro-parliamentarians from Lithuania spoke on this issue in Lithuania, when the *Directive on Data Storage* was being discussed at the Parliament of the European Union obviously illustrates the statement that poor understanding about the content and importance of this right poses a threat to the right to private life. Some more well known persons and experts of political science expressed their opinion upon adoption of the directive, but no discussion arouse.

The Research on Control over Information Transmitted through Electronic Media and Respect to the Right to Private Life, which was made in 2005, revealed that an issue of protection of data stream and content is especially relevant, because lots of gaps in legal regulation and examples of inappropriate practice showed up¹⁶. Therefore it disturbs to know that Lithuanian politicians, experts, academic society and NGO showed no interest in the Directive, which obligates companies dealing with electronic communications to store the stream of data of all citizens of the European Union, who use electronic communication technologies, for the period of up to two years¹⁷.

Use of Biometrics

Speaking about the introduction of passports with biometrics, the situation is similar. The *European Council Regulation (EC) No. 2252/2004 on standards for security features and*

biometrics in passports and travel documents issued by Member States, which provided for the introduction of biometric passports, sets forth the intention to use the biometrics of a face and finger prints in passports. The first biometrics – data of the face – were intended to be integrated in passports already in the second half of the year 2006, Lithuanian society in 2005 had not been dully informed about a reliability, efficiency and, the most important, about their impact upon the right of a person to private life, of biometric passports yet.

With no doubt the introduction of biometric passports will pose a big threat to the right to privacy – especially due to the specifics and means of storage of biometrics, as well as their reliability. Therefore the EU Task Force on Data Protection¹⁸ declared in late 2005 that prior to the introduction of passports with biometrics one must hold a detailed public discussion related to legal, ethical and technical aspects of these documents. Such discussion takes place in majority of European countries and state authorities, non-governmental organizations and experts of authorities established in order to analyze the consequences of use of biometrics take an active part therein.

In Lithuania no discussion originated, and the process of informing the society resembled a public relations or advertising campaign, in which the introduction of biometric passports was presented as an attractive technological innovation that increases security of people¹⁹. Experiments, which were conducted in majority of the countries, showed that the results are contrary²⁰. Such single-sided and non-critical information may be explained by the fact that in Lithuania it is usually presented by an involved companies²¹. Detailed discussion did not take place in the Seimas. When presenting the amendments to laws that permit the use and collection of biometrics, members of the Seimas were only interested in financial implications of introduction of this innovation.

Necessity to Establish an Independent Authority of Data Protection

Efficient data protection is only possible when an independent authority of data protection becomes established. We don't have such an authority in Lithuania. The State Data Protection Inspectorate in Lithuania is a part of executive power. And it is the executive power, which initiates and implements the majority of initiatives restricting private life. Importance of the independent authority of data protection is stressed in the Charter of Fundamental Rights of the European Union, which was ratified by Lithuania, being the first country in Europe to do so, together with the Treaty on European Union, as well. Article 8 of the Charter reads that compliance with these rules shall be subject to control by an independent authority. The proposal by the State Data Protection Inspectorate to change the status of this inspectorate and to establish an institution of Private Life Protection Ombudsman, which would be accountable to the Seimas, instead of the latter authority was removed from the *Draft Law on Amending and Supplementing the Law on Legal Protection of Personal Data* that was presented in 2005 as the Government did not consent to it. Without an independent authority protection of private life may not be efficiently ensured, therefore such an authority must be established.

Right to Choose a Name

The right to choose a name and surname, including the spelling, is considered to be one of the spheres of the right to private life. In 1999, the Constitutional Court has ruled that a name and surname of the person must be indicated in the passport of the citizen in the national language.

However, this rigid provision is not based on sufficient arguments and causes uncertainty and inconvenience.

The issue of spelling of names and surnames is brought by persons of ethnic minorities. There are no clear legal arguments for non-permitting the representatives of minorities that use Latin letters to spell the name and surname in their native language. It stays unclear how should the names and surnames of foreigners, who come to live in Lithuania, be spelled. In such cases the above mentioned provision of the Constitutional Court is not implemented – names and surnames are indicated either in the original language, or the spelling of name and surname is distorted while trying to combine the original and Lithuanian languages. Similar problem is faced by citizens of Lithuania, who marry foreign citizens, and their children. It is expected to solve this perennial problem by the *Draft Law on Spelling Names and Surnames on Documents*, which, upon the Government approval, was submitted to the Seimas in September 2005. This draft law provides that representatives of ethnic minorities will be permitted to spell their names and surnames in their native language in a non-Lithuanian, but Latin-based letters, i.e. it will be permitted to use letters *q*, *x* and *w* in spelling names and surnames. Such order will apply to the citizens of Lithuania, who are married to foreigners, and their children²².

One should positively assess the fact that in September 2005 the Seimas consented to the *Draft of Amendments to the Civil Code*, which permits the persons, due to the fault of which the marriage has been terminated, to keep the surname of his husband or wife. The current *Civil Code* provides that in case the marriage was terminated due to the fault of any of spouses, upon the request of the other spouse the court may prohibit the spouse, which is guilty for the termination of marriage, to keep the marital surname, except the cases, where the spouses have common children.

According to the international principles of the right to private life a person may choose a surname both during the marriage and after its termination. According to old traditions in Lithuania women, who enter the marriage, purportedly most often take the surname of the husband, so the effective provision of the Civil Code in fact was applied to women only and this caused their indirect discrimination²³.

Right to the Integrity of the Person

In 2005, in Lithuania the Program on Prenatal Genetic Research of the Ministry of Healthcare, which provided for the general examination of pregnant women, was presented²⁴. Upon a negative public reaction this project was withdrawn and returned for correction, still the fact that a project, which provided for a compulsory examination of all pregnant women was proposed and presented, raises serious doubts, how do the employees of the healthcare sector understand the right to private life that protects decision of a person on any intervention in his body. Forced examination of pregnant women would grossly violate their right to inviolability of private life, therefore prenatal research must be only of advisory nature.

In 2005, a group of members of the Seimas tried to present for discussion a draft of the *Law on Life in Prenatal Phase*. In this law, except three cases, one tried to prohibit the termination of prenatal life at any stage of its development, i.e. from the moment of fertilization.

It was back in 1997, when the European Commission on Human Rights held that absolute prohibition of abortions is not in line with the right to privacy²⁵. The European Court of Human

Rights has stated that the European Convention on Human Rights does not guarantee the right of an unborn child to life, as the Convention protects the rights of persons, and the foetus becomes a person only after the birth. Thus, in regard to human rights, the right of decision of a woman prevails.

The Assembly of Elders of the Seimas excluded the draft law from the agenda of the Seimas and it was not discussed, but the initiative itself illustrates the fact that not all parliamentarians understand the content of the right of decision and tend to follow the international obligations of the State of Lithuania.

¹ Implementation of the Human Rights in Lithuania: Review, HRMI, 2004, page 16.

² For example, see TV3 channel: J.Olekas ay be related to “Rubicon”, TV3, 5 December 2005.

³ For more information see the chapter Right to a Fair Trial.

⁴ Former KGB Officer Used to Sell Confidential Data of “Sodra”, ELTA, 29 April 2005.

⁵ A. Sadeckas: Personal Data is not Sufficiently Protected in Lithuania, ELTA, 12 May 2005.

⁶ The Law on the Population Register, Article 3.2.

⁷ Phare Twinning Project “Strengthening Administrative and Technical Capacity of Personal Data Protection”. Study of legal aspects of registries of the Republic of Lithuania, especially the Population Register and the Register of Real Estate, when ensuring data protection, page 12.

⁸ The Right to Inviolability of Private Life: Use of Personal Identity Code in Lithuania, HRMI, 2004.

⁹ Invitations to Pay Debts Include More Information about the Indebted Persons than Allowed by Law, Lina Navickaitė, “Kauna diena”, 3 October 2005.

¹⁰ Personal Identity Codes are Made Public in the Internet, Laura Gelaitė, “Ekstra žinios”, 9 September 2005.

¹¹ The Data Protection Inspectorate Recommends not to Issue Open Bills, ELTA, 8 August 2005.

¹² The Head of “Gelvoros saugos konsultacijos” is warned about violations of the Law on Personal Data, ELTA, 12 May 2005.

¹³ Invitations to Pay Debts Include More Information About the Indebted Persons than Allowed by Law, Lina Navickaitė, “Kauna diena”, 3 October 2005.

¹⁴ “Keliai. Mašinos. Žmonės”, LTV channel, 25 September 2005.

¹⁵ The Impact of CCTV: Fourteen Case Studies, Home Office online report, 2005.

¹⁶ Restriction of Private Life in the Sphere of Electronic Communication, Aimed at Investigation and Prevention of Crimes: Problems and Possible Solutions, HRMI, 2005.

¹⁷ Stream data comprise data that indicate the rout of a message, its duration, time or volume, the used protocol, location of a final device of the sender or recipient, network, in which the message originated or ended up, time of commencement and closure of the connection.

¹⁸ The Data Protection Task Force as per Article 29 is an independent authority of the European Union, which was established in 1995 pursuant to Articles 29 and 30 of the Directive 95/46/EC. It submits opinions of experts and recommendations to the Commission, as well as authorities of member states. SDPI also takes part in the activity of the Task Force.

¹⁹ For example, in May 2005 first biometric passports were issued as an experiment to Lithuanian diplomats. On this occasion it was only stressed that Lithuania, together with Belgium, was the first in Europe to issue such passports, and Antanas Valionis, the Minister of Foreign Affairs, called it “a document of the top technology”, see the article Lithuania Started Issuing Electronic Documents, OMNI, 2 May 2005.

²⁰ Biometrics enrolment trial report, Great Britain, May 2005.

²¹ Attention to an Electronic Passport, Žydrūnas Damauskas, “Lietuvos rytas”, “Vartai” 31 October 2005.

²² Consent Given to the Change of Procedure of Spelling Name and Surname, BNS, 21 September 2005.

²³ B. Vėšaitė Proposes to Permit All Persons to Retain Spouse’s Surname After a Divorce, ELTA, 15 September 2005.

²⁴ Community “Viltis” objects against a genetic research, Delfi, 16 March 2005.

²⁵ Scheuten vs. Germany, No. 6959/75, 1977.

RIGHT TO A FAIR TRIAL

A continued penetration of politics into the work of law enforcement authorities and courts was typical to the year 2005, problems concerning the lack of independency and professionalism of the prosecution and pre-trial investigation authorities became more obvious, basic problems of the judicial power have not been solved and continued to deepen, faulty legal regulation of bailiffs activity and their abuse of powers were brought into focus of majority of national and non-governmental authorities. Unfortunately, the adequacy of measures taken in order to solve problems related to the implementation of the right to a fair trial is doubtful.

Penetration of Politics into Activity of Law Enforcement Authorities and Courts

The democratic principle of separation of powers requires that upon ensuring all guarantees of the right to a fair trial – impartiality, publicity, competitiveness of the parties, presumption of innocence, legal assistance, etc. – criminal prosecution is effected by law enforcement authorities, and the justice is effected by courts. However, the year 2005 distinguished for the failure to follow this principle. The Seimas and individual politicians roughly interrupted a work of law enforcement authorities and courts, and tried to replace them in certain cases.

Temporary commission of the Seimas for several months investigated a suspicion of corruption at the Municipality of Vilnius City. Alongside a pre-trial investigation of this suspicion was performed. Having assessed the submitted operational information and evidence the commission voted that the Mayor of Vilnius City may be considered a person, who accepted a bribe. The Seimas approved this decision.

Such act of the Seimas is in conflict with the Constitution, which consolidates the principle of the state under the rule of law and separates legislative, i.e. political, power from the activity of officials engaged in criminal prosecution, and prohibits the representatives of political power from interfering into this prosecution. On the other hand, such decision of the Seimas infringed the right of the aforementioned person to a fair trial and reduced the chances that, when the case of this person is transferred to court, he will face justice. If this person becomes convicted, he will have an argument difficult to argue against, i.e. that the sentence has been passed due to pressure of Seimas' politicians²⁶.

The temporary commission of the Seimas is a political rather than legal assessment body. For this reason its purpose should be political evaluation of publicly accessible facts instead of examination of the operational material or evidence in a criminal case. The Seimas must terminate the faulty practice of interfering the work of law enforcement authorities and clearly define the purpose and powers of temporary commissions of the Seimas.

In another case a group of politicians joined a hysterical campaign of a group of mass media means against the judge, who decided to bring the owner of the said mass media means by force to a trial, where the case on his administrative liability for anti-Semitic articles was heard. The public doubts concerning the legitimacy of this procedural action, expressed by the representatives of the Seimas and the executive power, as well as requests that actions of the judge in the case, a final decision in which had not been passed at that time, are evaluated by self-government institutions of courts, are to be considered as an attempt to influence the

independency and impartiality of the judge when deciding the case. This is a grave violation of the right to a fair trial.

Especially cynic were the statements by the Minister of the Interior and the head of Vilnius police, who declared that their subordinate officers will not fulfill this ruling. These declarations, which encourage a legal nihilism and undermine the authority of the judicial power, were assessed neither in political, nor in judicial respect²⁷.

It is already common that the Seimas covers possibly criminal activity – during the last year not a single permission was granted to bring criminal charges against the suspected members of the Seimas. This happens because the Seimas performs the function of a court – assesses the presented evidence and makes conclusion on innocence of the suspected person. In such cases the prosecution authority should demonstrate its independence and professionalism, and apply through court (pre-trial investigation judge) to the Constitutional Court with a request to investigate as to whether such act of the Seimas is not in conflict with the Constitution.

Lithuanian politicians become used to employ the law enforcement authorities and courts when defending themselves against criticism of other persons, including other politicians, by naming this criticism as an insult or libel action²⁹.

Attempts of politicians to assume functions of the law enforcement authorities and courts and to apply mechanism of criminal prosecution when defending themselves against criticism, constitute a threat that the law enforcement authorities and courts will become subject to political manipulations, therefore it is extremely important to ensure the independence and professionalism of the officers of the said institutions and courts.

Lack of Independence and Professionalism of the Pre-trial Investigation and Prosecution Authorities

The independence of the pre-trial investigation and prosecution authorities is still disputable. A high ranking official of the prosecution authority has admitted that "... an official is still being influenced by a negative syndrome of fear: the prosecution authority must act as indicated by the state powers"³¹. It is also recognized that quality of the pre-trial investigation is affected by an old-fashioned thinking and lack of professionalism of the investigators³². The announced in 2005 scientific research confirmed that the Code of Criminal Procedure provides for an opportunity for the prosecutors and pre-trial investigation officers to work faster and more efficiently. Unfortunately, due to a number of reasons, including lack of legal and administrative knowledge and not sufficiently clear division of functions, these opportunities remain unused³³.

In his annual report the President especially strictly evaluated the work of the legal system. He diagnosed its impotence, proven, according to him, by the resonant cases, the investigation of which lasts for several years already, but no clear results is achieved. The President noticed a paradox that sometimes the power of the legal system is used not for exercising the justice, but as a shield protecting against it³⁴. If these words will be followed by particular practical steps, special attention should be paid to reforms at the pre-trial investigation and prosecution authorities. The final act of justice depends also upon the quality of work of these, the least noticeable and criticized by the public, still the least influenced by democratic reforms since the restoration of independence, authorities.

Due to a serious mistake of investigators and officials of the prosecution authority, supplemented with an insufficient legal erudition and wish to please different sources of pressure, Vitas Tomkus, the author of anti-Semitic and homofobous articles, succeeded in avoiding justice³⁵. In September 2005, the Supreme Administrative Court of Lithuania terminated the case on administrative misdemeanor against this person, because Article 4 of the Seventh Protocol of the European Convention on Human Rights, which prohibits the repeated prosecution of the person for the same violation of law, has been violated during the pre-trial investigation. The prosecution authority instituted the case on administrative misdemeanor despite passing a ruling on the same facts in a criminal case. It should be stressed that this mistake was made by the officials of the Prosecutor General's Office, who performed a pre-trial investigation and supervised it³⁶.

In 2005, the former Mayor of Vilnius City and other persons, who were charged with preventing the use of the right of election, illegal restriction of freedom, illegal collection of information about personal life and an attempt to bribe, have been acquitted in the criminal case. The judgment of acquittal was passed due to mistakes of pre-trial investigation officers, over-estimation of value as evidence of the recorded phone conversation, and, the most important, failure to ensure that the evidence reach the court without prior discrediting³⁷.

Collection of information transmitted through electronic means and its use in criminal cases started to be applied in Lithuanian institutions of operational activity and pre-trial investigation. At the same time the law enforcement officials pay less attention to the collection of direct and more reliable evidence. In legal practice the use of evidence collected in the aforementioned manner in the criminal procedure is reasonably treated in a reserved manner, as modern means of technology provide a possibility to interfere in the electronic communication and to change or create a new content of the transmitted message³⁸.

Public disclosure of the content of phone conversations – non-confidential or confidential and handed over to the criminal cases, but not disclosed prior to the hearing – became wide spread in Lithuania as well. Such practice not only grossly violates the human right to private life³⁹, but prevents the execution of justice too, as it discredits the value as evidence of the information collected while controlling the electronic communication.

It has already been stressed that the necessity and rationality of at present effective norms of the Criminal Code, permitting the prosecutor to publicly disclose the material of criminal case, is doubtful, as it remains unclear in which cases and in order to achieve what legitimate objectives such disclosure is possible⁴⁰. Combination of unlimited discretion of prosecutors and lack of their independency is practice is used for disclosing the information collected during a control over electronic communication to the politicians of the Seimas. In regard of the execution of justice, permission to the members of the Seimas to listen to secretly recorded conversations is pointless as the Seimas is not a body that may define guilt of the suspects. Alongside, upon such public disclosure of evidence the chances that the guilty persons will face justice are reduced. This provision of the law should be revoked or immediately detailed by indicating particular cases of possible disclosure and restrictions applicable to the prosecutor.

Information collected while exercising control over electronic communication used to be disclosed to mass media, too. In early 2005, an employee of the Special Investigation Service handed over to a TV journalist the records of conversations between the Mayor of Vilnius City and businessmen that were recorded during the operational actions. Atmosphere of non-

punishment for such actions, that prevails in Lithuania, resulted in a situation where this officer did not bother to take adequate measures of security – he arrived to the TV channel office to hand over the sound record with his official vehicle.

The Pre-trial investigation authorities should immediately and efficiently react to the cases of illegal disclosure of operational information and evidence, and the offenders should assume the full liability when criminal cases are instituted. The heads of bodies engaged in operational activity and pre-trial investigation, responsible for ensuring the security of this information, should also be held liable for such violations. The institutions supervising the compliance with ethical standards in mass media should also assess the accomplished facts of public disclosure of information and take measures to strictly implement the rule reading that only the content of electronically transmitted information, which is disclosed at a public hearing and is related to a public interest, may be published in mass media.

Avoidance to Continue the Fundamental Reforms of Courts

In 2005, activity of courts saw lots of attention and criticism by politicians, mass media and the society. This attention is regular due to the increasing role of courts when deciding issues that are of importance to the public and individuals. More professionalism, efficiency of work and accountability is requested from the judges. The criticism is well grounded, as a closed, hierarchical, inefficient, and socially insensible system of courts emerged in Lithuania. No attention is paid to systematic problems. Therefore the same of them are characteristic to courts for several years already⁴².

The adopted in 2002 Law on Courts consolidated an independent (in the institutional regard) system of courts. Conditions were created for the development of a modern, transparent, competitive and accountable judicial power. However, having entrusted the judges with performance of these reforms this opportunity remained unused. Bodies of judicial power are not open to innovations enabling to amend and counterbalance the already achieved high level of independency of courts. Other elements of an efficient reform – implementation of the principle of accountability of courts and judges, acquisition of new competences, professional administration – face problems on their way. It is obvious that judges themselves are not able to implement an integrated reform of courts, as they lack necessary motivation and competence.

The initiative of the President to establish a work group for putting forth proposals related to legal acts regulating the selection of candidates to judges, appointment of judges, their career, disciplinary liability and other related issues, is highly welcome. Still, despite the determination “to radically change the situation” declared by the President⁴³, a composition of the work group is still unknown and information in mass media about the discussed drafts raises doubts as to whether fundamental changes will really take place. Majority of members of the work group are judges, and others are lawyers as well. Most of the proposals remind more a direct response to the public dissatisfaction with courts, its criticism, and requests to make the legal status of judges more strict, than a wish to continue the reform that started in 2002.

One informs that the work groups intends to propose to toughen the procedure of selection of judges, their disciplinary liability, to simplify the disciplinary process, to make it more transparent, and a possibility to permit the application of administrative liability in regard to judges is discussed, too⁴⁴. These and similar measures are not fundamental. Moreover, some of them even contradict the principle of independency of judges.

Proposal to increase the role of the institution of the President and the Ministry of Justice when forming the corps of judges, as well as managing and administering bodies of judicial power and courts, is especially unacceptable. Participation of political power in the process of judge selection and solving other issues is not only possible, but even desirable, but transfer of the function of selection of judges, their appointment and career to the executive power, especially if it is only one institution – the institution of the President – in this case, poses a threat that the judicial power will become once again under control of politicians. It is necessary to maintain the already achieved level of independency of courts and to draft a concept of an integrated further reform of courts, the development and implementation of which would require assistance by experts of various spheres.

Activity of Bailiffs

In 2005, a great public response was caused by critical remarks of a number of institutions⁴⁵ and experts on activity of bailiffs. The main idea of these remarks is that legal status of bailiffs, a system of remuneration for work, standards of professional ethics and liability for breach thereof are one-sidedly beneficial to this group. Faulty legal regulation of bailiffs activity creates conditions for abuse, and the rights of private persons and the public interest suffer from the activity of bailiffs⁴⁶. Similar to previous years⁴⁷, lots of notices about gross violation and inadequate behavior of bailiffs were received in 2005⁴⁸. It is expected that attention given by the Chairman of the Seimas to this problem and the initiative of the Minister of Justice to establish a work group on improving the legal regulation of bailiffs activity will contribute to the fundamental changes of activity of the bailiffs.

Legal Assistance Guaranteed by the State

A reformed system of legal assistance guaranteed by the state became effective in 2005. According to it the primary legal assistance in municipalities is available free of charge to all citizens of Lithuania, and the secondary legal assistance is submitted only in case their property and annual income does not exceed certain level of property and income. Due to the short period of functioning of this system it is still early to draw any conclusions concerning quality thereof, still it should be noted that complaints are already expressed that this system is not that easily available. For example, the secondary legal assistance was refused to a person, whose annual income amounts to 5000 Litas, and the motivation was that he has enough money to hire an advocate.

²⁶ For more information see <http://www.hrmi.lt/news.php?strid=1010&id=3380>

²⁷ For more information see <http://www.hrmi.lt/news.php?strid=1999&id=2811>

²⁸ In 2005, the Seimas refused to consent to bringing criminal charges against Jonas Ramonas, the member of the Seimas, who was suspected of organizing the infringements of public order. See the Certificate of the Temporary Commission of the Seimas of the Republic of Lithuania on the consent to bring criminal charges against the member of the Seimas Jonas Ramonas or to restrict his freedom in any other way of 28 April 2005, <http://www3.lrs.lt/owa-bin/owarep/inter/owa/U0144183.doc>

²⁹ In 2005, two cases initiated by the Chairman of the Seimas Art8ras Paulauskas against two political opponents were completed. In the same year the Prime Minister Algirdas Brazauskas applied to the prosecution authority concerning libel by political opponents.

- ³⁰ Kęstutis Betingis, the Chief Prosecutor of the Regional Prosecutor's Office of Kaunas
- ³¹ Legal Reform Resulted in Changes Not Only in Laws, but Thinking As Well, "Kauno diena", 17 May 2005.
- ³² The same
- ³³ Officers and Prosecutors Could Investigate Crimes Faster, Infolex, 18 May 2005.
- ³⁴ Annual Report by the President Valdas Adamkus, Bernardinai, 28 March 2006.
- ³⁵ See the Implementation of Human Rights in Lithuania. Review, HRMI, 2005, page 35 and the Implementation of Human Rights in Lithuania. Review, HRMI, 2004, pages 13-14.
- ³⁶ For more information see Delfi, 16 September 2005.
- ³⁷ On 11 October 2005 the Supreme Court of the Republic of Lithuania has revoked the sentence of acquittal due to possible procedural infringements when hearing the case at the court of first instance and the appellate court, and returned the case for hearing anew. However, on 30 March 2006 the Regional Court of Vilnius decided that both the court of the first instance and the court that heard the case upon the appellate procedure did not commit any procedural infringements and adopted the sentence of acquittal once again.
- ³⁸ For more information see Modern Technologies Provide a Possibility to Create and Destroy Criminal Evidence without a Track, "Kauno diena", 19 May 2005; The Human Rights Monitoring Institute Will Observe Whether Human Rights are Considered in Criminal Cases with Political Elements, <http://www.hrmi.lt/news.php?strid=1999&id=1651>.
- ³⁹ See the chapter Right to an Inviolability of Private Life.
- ⁴⁰ Restriction of Private Life in the Area of Electronic Communication for the Purpose of Investigation and Prevention of Crimes: Problems and Possible Solutions, HRMI, 2005.
- ⁴¹ P.Malakauskas: SIS is Accused of Absence of Evidence, Delfi, 15 February 2005.
- ⁴² See the Implementation of Human Rights in Lithuania. Review, HRMI, 2005, pages 20-26 and the Implementation of Human Rights in Lithuania. Review, HRMI, 2004, pages 23-28.
- ⁴³ Annual Report by the President Valdas Adamkus, Bernardinai, 28 March 2006.
- ⁴⁴ Do We Need to Tighten Liability of Judges?, "Kauno diena", 27 January 2006, Proposal Was Made to Impose Fines upon Judges, Delfi, 30 March 2006.
- ⁴⁵ Including the National Audit Office, the Special Investigation Service, the Ministry of Social Security and Labor, the Seimas Ombudsmen's Office, the Law Institute, The Human Rights Monitoring Institute, and the Center for Legal Projects and Research.
- ⁴⁶ See for example the Review and Legal Assessment of Reform of the Implementation Process, Law Institute, <http://www.infolex.lt/portal/start.asp?Tema=1&str=12836>; Analysis of Legal Acts Regulating Bailiffs Activity and Practice of Implementation Thereof: Report on the Research, the Human Rights Monitoring Institute and the Centre for Legal Projects and Research, <http://www.hrmi.lt/project.php?strid=1191&id=2110>.
- ⁴⁷ See the Implementation of Human Rights in Lithuania. Review, HRMI, 2005, page 25 and the Implementation of Human Rights in Lithuania. Review, HRMI, 2004, page 24.
- ⁴⁸ See for example How Bailiffs Became All-Mighty, "Lietuvos žinios", 16 February 2006; Bailiffs Embittered the Life, Infolex, 23 February 2005; Bailiffs Attempted to Benefit from Millions of the Stranger, „Lietuvos žinios“, 2 December 2005.

FREEDOM OF EXPRESSION

Events of 2005 in Lithuania showed that the right to freedom of expression is not understood – attempts by politicians suppress criticism of their political opponents by applying to courts upon a criminal procedure have been registered. The fact that representatives of the supreme power treated a public criticism in their respect as actions directed against the state and applied to special services in order to defend themselves from it causes a special concern. In 2005, attempts were made to amend the *Law on the Provision of Information to the Public* by obligating the journalists, upon the request of the Prosecutor General, to indicate the source of information. Amendments to the *Law on Assembly*, which were aimed at restricting the right of expression by prohibiting to publicly demonstrate soviet symbols and symbols of Nazi Germany even if this is made without an intention to inflict harm to the state and to stir up discord, have also been registered at the Seimas.

Persecution for Criticism

Possibility to apply a disproportionate restriction of freedom of expression and to persecute for criticism is based on the provision of the *Criminal Code* that permits the punishment for libel – imprisonment for the period of even up to two years⁴⁹. The imprisonment for the period of up to one year may also be applied in Lithuania for an insult or humiliation of a person⁵⁰. Although such draconic norms are in conflict with the spirit of the *European Convention on Human Rights*, in 2005 attempts were made in Lithuania more than once to use them in order to fight against criticism. It is a common practice of politicians in Lithuania to name the criticism as an insult or slander and take protective actions against it by applying to court or a prosecution authority upon a criminal procedure; the same actions are taken in regard to the statements of their colleagues – other politicians – as well.

In 2005, two cases initiated by the Chairman of the Seimas Artūras Paulauskas against two political opponents were completed. One of these opponents, Valentinas Mazuronis, was sentenced for taking libel actions against the Chairman of the Seimas – in the press release signed and distributed by its party on 22 December 2003 he accused the latter with sending the leader of the former anti-State organization “Jedinstvo” to the meeting of supporters of Rolandas Paksas. The Prime Minister Algirdas Brazauskas applied to the prosecution authority with a complaint concerning philosophizing of the leaders of the conservative party about the business of his wife and relations with the head of the company “LUKoil Baltija”. The Prime Minister called this philosophizing slander.

Freedom of expression is the basis of a democratic society and it covers not only positive, non-insulting or indifferently accepted information and ideas, but the information that confuses, insults a person or results in a shock as well. This is the price for pluralism and tolerance, in the absence of which no democratic system may exist. Moreover, limits of permitted unpleasant or insulting criticism in regard to private persons and politicians are different. When joining the politics persons consciously, with no chance of avoidance, place themselves in a situation, when every word or act is assessed by public and mass media especially thoroughly and critically. For this reason politicians must demonstrate a higher level of tolerance to criticism in comparison to private persons. Of course, the right of the politicians to defend themselves against slander is not withdrawn, but in this case their right will always be assessed in the context of necessity of open political debates.

Tolerance of the politicians to criticism must be even higher when they are criticized by other politicians and representatives of state power. The European Court of Human Rights has stressed that freedom of expression is especially important to the politicians as they are representatives elected by the nation and they are empowered to reflect and comment the most important issues of the state, as well as to represent and protect interests of their electors. This freedom is especially important to the politicians of the oppositional party. That is the reason, why the politicians of the dominant position should refrain from the initiation of criminal action in regard to other politicians, especially when other measures to respond to unreasoned critics by the opponents or press exist.

Lithuanian politicians, who feel insulted, can make use of the possibilities offered by a political process (for example, apply the Commission on Ethics and Procedure), easier access to mass media, and only in exceptional cases should apply to court upon a civil procedure. Their attempts to employ the criminal mechanisms may transform the prosecution authority and/or courts into subjects of politically motivated manipulation and thus undermine their independence and freedom of expression.

It was surprising in 2005 that attempts were made by some to protect themselves against criticism and thus to restrict the freedom of expression by identifying themselves with the State. For example, the Prime Minister Algirdas Brazauskas named the criticism in his regard as a sabotage of image of Lithuania and discrediting the executive power. This fact proves that the top officials of the state and their advisors lack the understanding of the principles of the democratic state and the rule of law.

The prohibition of persecution for criticism is consolidated in the *Constitution of Lithuania* and the *Law on the Provision of Information to the Public*. Still the greatest concern is related to the fact that in 2005 lots of parliamentarians and top officials of the state assessed the public criticism in their regard as a destructive and anti-national action, which should be curbed. When series of articles were published in the newspapers of “Respublika” group, in which activity of the non-governmental organizations funded by the George Soros was criticized, the Labor party, holding majority of votes at the parliament, addressed special services and other authorities with a request to investigate as to whether these organizations pose no threat the national security of Lithuania⁵¹. The highest ranking officials presented shocking statements that organizations, which are not funded from the Lithuanian budget, “in no case may criticize authorities of the state power” and that by such actions they “interfere into the internal affairs of the state”⁵². The representatives of the state power clearly demonstrated that they did not understand the essence of democracy and principles of behavior of democratic society, especially that through public criticism of the representatives of the state power the society implemented its right to freedom of expression and right to participate in the government of the state not only through the elected representatives, but directly as well.

Right Not to Disclose a Source of Information

In 2005, an amendment to the *Law on the Provision of Information to the Public* was drafted and registered at the Seimas, according to which the Prosecutor General could receive in certain cases the data of the source of information of the journalist⁵³.

Only the court may enjoy competence to decide upon the duty of a journalist to disclose the source of information, when it is necessary for the execution of justice or other important interests. The amendment has not been adopted by the Seimas, however the fact that such a proposal was made itself reflects inadequate understanding of the politicians of the content of the right to the freedom of expression and a fair trial. One should make positive evaluation of the fact that the new *Draft Law on Amending the Law on the Provision of Information to the Public* provides that only court may obligate the journalist to disclose the source of information⁵⁴.

Spreading the Information

In 2005, the *Draft Law on Amending the Law on Assembly* has been registered at the Seimas, by means of which one strives to prohibit the organization of meetings, in which flags or coats of arms of Nazi Germany, USSR or their allies, symbols of Nazi or communist organizations, reproductions of their leaders, or uniforms are demonstrated and hymns of the aforementioned countries are played.

Doubts exist whether the prohibition to demonstrate in public the soviet or Nazi symbols is in compliance with the freedom of expression, consolidated in Article 25 of the *Constitution of Lithuania* and Article 10 of the *European Convention on Human Rights*. These legal acts grant the right to individuals to freely express their conviction and spread ideas. Freedom of expression may only be restricted when it is necessary in order to ensure security of the state, society and individuals and their health. Criminal liability for the demonstration of these symbols is provided for only in cases where it causes threat to the security of the state, instigates racial discord, or attempts are made to change the constitutional order of Lithuania, infringe the sovereignty of the state, desecrate national symbols or carry out coup d'état.

Attempt to bring criminal charges against a person for the expression of his attitude towards soviet or Nazi leaders, sale of symbols or their distribution in any other way, if it poses no harm to anyone, should be considered as disproportionate restriction of freedom of expression⁵⁵. In 2005, in the case concerning the Resolution of the Government *On the Constitutionality of the Control over Information that is not to be Published in Public Computer Networks and the Procedure of Restricted Public Information* the Constitutional Court stressed that the spread of information through Internet is not duly regulated in Lithuania.

In June 2003, on the basis of the Government Resolution *On the Approval of the Control over Information that is not to be Published in Public Computer Networks and the Procedure of Restricted Public Information* the State Security Department (SSD) closed the Internet site "Kavkazcenter" as the one that instigates national and religious discord. The Constitutional Court was applied in order to find out whether the aforementioned Government resolution, which sets forth that the provider of information services must block the access to the information on the server according to the infringements registered by police officers, is not in conflict with the *Constitution* and the *Law on the Provision of Information to the Public*.

In its ruling the Constitutional Court stated that the present laws entrenched the too general legal regulation. Not enough attention is paid to the specifics of Internet as a medium of spreading the information. This may create prerequisites for arousal of such legal situations, where the freedom of information would not be ensured due to insufficient legal regulation or, on the other hand, society will not be protected against the impact of inadmissible information. Moreover, due to uncontrolled spread of such information human rights and freedoms may become unprotected and non-defended⁵⁶.

⁴⁹ Code of Criminal Procedure, Article 154.

⁵⁰ Code of Criminal Procedure, Article 155.

⁵¹ Leaders Raised by Democracy Now Tread the Idea of Freedom, Nerijus Adomaitis, Panorama, 3 December 2005.

⁵² Person of the Week – Viktoras Uspaskich, the First in Lithuania to Ask “What really goes on in our Country?”, Ramunė Vaičiulytė, “Respublika”, 26 November 2005.

⁵³ The current wording of the *Law on the Provision of Information to the Public* provides that the person/entity that prepares or spreads the information, owner of the entity that prepares and/or spreads the information, or journalist shall have the right to keep the secret of the source of information and not to disclose it. By its ruling of 23 October 2002 the Constitutional Court recognized that the right of the journalist to maintain the secret of the source of information is not absolute in a democratic state. It may be restricted in cases when due to the spread information an extraordinary event took place in public, where such event placed the interest of society above the freedom to spread and receive information, the interest to curb the license of officials, and to disclose criminal acts and abuse.

⁵⁴ *Draft Law on Amending the Law on the Provision of Information to the Public*, 30 June 2005, XP-658.

⁵⁵ Prohibition of Soviet and Nazi Symbols Would Infringe Human Rights, ELTA, 28 September 2005.

⁵⁶ Constitutional Court Recognized that the Closure of “Kavkazcenter” Site was Legitimate, ELTA, 19 September 2005.

DISCRIMINATION, RACISM, ANTI-SEMITISM AND OTHER FORMS OF INTOLERANCE

Lithuania continues as one of the most intolerant countries in Europe, and intolerance of representatives of certain ethnic and religious groups and persons sharing other attitudes is increasing. A survey made in late 2005 revealed that 31% of population would not like to live in the neighborhood of Jewish people (this number is 18% higher than in 1990). The wish not to live in the neighborhood of Muslim people increased from 31% to 51%, Romany people – from 59% to 70%, immigrants – from 15% to 34%. It may be considered that the level of intolerance towards homosexual persons reduced: in 2005, 66% did not wish to live in the neighborhood of such people, while in 1990, 87% of the interviewed expressed such an opinion⁵⁷.

The European Commission against Racism and Intolerance (ECRI) states that Lithuania fails to implement or only partially implements the previous recommendations on fight against racism and intolerance. The presented to the society information about discrimination and its forms is not sufficient. Some means of mass media contribute to the creation of unfriendly to minorities atmosphere. Protection of refugees decreased. It is noted that the Romany that reside in Lithuania continue being offended, they suffer from preconceived notion and discrimination in various spheres. The Commission is worried about repeated cases of anti-Semitism. It is stressed that upon adoption of the *Law on Equal Opportunities* the legal basis of the fight against discrimination and intolerance improved, but it is still to be made better. Special attention should be paid to the fact that the effective provisions on the fight against manifestations of racism are not sufficiently applied⁵⁸.

Situation of the Romany

Total approx. 3.000 Romany people live in Lithuania. The small number means that the state should be both financially and in administrative regard able to form such measures of the policy, which would enable the implementation of fundamental changes of life of the Romany. However, the status of Romany does not improve in Lithuania. The Romany minority is the most vulnerable ethnic group, its members face a preconceived negative notion of the society, they are constantly discriminated in most spheres of life, including education, employment, housing, health care, and issuing of personal documents.

State authorities not only fail to take effective means of fight against these phenomena and reduction of separation of the Romany, but also takes illegal repressive actions against them. The destruction of housing, that took place in 2004 in Kirtimai settlement in Vilnius, was one of the most significant violations of rights of the Romany in Europe of the last years. Despite the fact that the gross violations of rights of the Romany minority was recognized by the Equal Opportunities Ombudsman, the Seimas Ombudsman and the European Commission Against Racism and Intolerance, families with small kids from the houses destroyed by the Municipality of Vilnius City spent the winter in plastic tents. However, the representatives of the Municipality of Vilnius City, who arbitrarily destroyed Romany houses and thus grossly violated their rights, are still unpunished, and one of them is even promoted⁵⁹.

Insufficient provision of information to the public about discrimination and its forms, as well as indisposition to take positive measures in regard to the vulnerable groups is illustrated by the address of Vilnius population residing close to the Kirtimai settlement to the Municipality of Vilnius City, other authorities and the Human Rights Monitoring Institute. The address contains

an especially negative response about residents of the Kirtimai settlement, the blame that the rights of the Romany are protected while ignoring their rights, and request to protect their rights instead of rights of the Romany⁶⁰. Authors of this address were invited for a conversation at the Romany Society Center more than once, but they did not make use of this proposal.

In 2005, negative national stereotypes directed against the Romany minority were escalated in mass media. After burning the permanent police station at the Romany settlement in Vilnius the mass media declared that this was done by the Romany, although no persons of this nationality were among the detained suspects⁶¹. In addition, notwithstanding the fact, according to the data of Vilnius Addictive Diseases Center, in the first half of the year 2005 less than twenty drug addicts, the majority of which underwent medical treatment, were registered in the Romany settlement in Kirtimai with approx. four and half hundred people, the scale of drug addiction in the Romany community was exaggerated⁶².

The state power bodies should react to the escalation of negative stereotypes, violations of rights of the Romany and take immediate actions to solve a great number of chronic problems.

The very third of Lithuanian Romany have no Lithuanian citizenship⁶³. The fact that an individual has no citizenship or personal documents makes it impossible for the Romany to receive social or healthcare services. The persons, who have problems related to personal documents (for example, having not renewed the period of validity of a document), face difficulties when solving them, including the situations when unprecedented problems occur (there are no documents proving the birth, a place of birth of an individual is unknown), and employees of certain institutions avoid making decisions, when there is a lack of information⁶⁴.

Education continues as one of the most important problems of the Romany community. Majority of the Romany are illiterate or bad spellers. Only few Romany have secondary education, and it is a single Romany girl, who studies at a high school at present⁶⁵. Almost half of the current Romany community in Lithuania is younger than 20 years, therefore education is especially important for them to be able to integrate into the society.

Poor education of the Romany causes much worse situation of the Roma in a labor market. It is supplemented with the racial superstitions that have emerged in the society, for example that the Romany are not reliable employees. Employer or intermediary, who performs a selection, chooses a Romany applicant without seeing a person and invites it for an interview, but when he sees that a chosen candidate is the Romany, he refuses to accept it for work. There were cases registered where a candidate was refused a job namely due to his Romany appearance. In all cases no special training was needed for the jobs that used to be applied for – a sewer, builder, or washer-up.

In 2005, the Municipality of Vilnius City joined those, who used to form negative stereotypes. It was announced that community works were proposed to the people from the Kirtimai settlement, but they refused as they did not want to work. However, the society was not informed that the Romany, who wanted to perform these works would have to go to other parts of the city. In some cases remuneration for work would not be enough to cover a bus ticket from the Romany settlement to the place of work and back⁶⁷.

Illiteracy or bad spelling also means that irrespectively of obvious discrimination in their regard the Romany people extremely rarely apply to the Equal Rights Ombudsman and law

enforcement authorities. No facts on discrimination of the Romany and cases at courts exist. Very few of them know to which institution to apply and how to document a complaint.

One of the more important problems is housing of the Romany, especially in Vilnius. The Municipality of Vilnius City has no clear vision of the reconstruction of the Romany settlement in Kirtimai, but its actions – destruction of houses of the Romany and intention “not to accommodate gypsies or persons of other nationalities, who arrive from other regions of Lithuania or other countries, at the camping-ground – prove that it intends to eliminate this settlement. However, the proposed alternatives – social housing and temporal accommodation at the lodging-house – are not adequate.

Actions of the Municipality of Vilnius City that prove the intention to liquidate the Kirtimai settlement, are not transparent and violate the duties of the Republic of Lithuania undertaken under the *European Convention for the Protection of National Minorities*, that prohibits the countries from taking measures that would change the proportion of residents in the areas where people of national minorities reside⁶⁹. For several years the Romany try to legalize their houses, but in 2005 they were again unable to do that due to passive behavior of the responsible state authorities and the Administration of the Municipality of Vilnius City, who did not assume actions and measures within their competence to solve the problems of legalizing land and buildings used by the Romany in Vilnius. The experimental research revealed that no legal obstacles for legalizing constructions at the Kirtimai settlement exist⁷⁰. Refusal to deal with the requests of Kirtimai residents is not in line with the *Recommendation No. 1203 of the Parliamentary Assembly of the Council of Europe* of 1993, which encourages the member states to solve housing and accommodation problems of the Romany, who live under unfavorable social conditions⁷¹.

Anti-Semitism

In 2005, in Lithuania there were cases of spreading anti-Semitic ideas and instigating discord. In April an announcement was made about an intention to establish nationalistic-labor party, which would “fight against the Jewish people of the entire world”, as the founder Mindaugas Murza said. In the declaration made by M. Murza the Jews of the world are called the most cruel and crafty enemy of the European race and total mankind, as well as instigators of the global war. In the declaration they promise “to push the Jews of the world to the scrapheap of history”. According to mass media, this declaration was also put and showed on the Internet site⁷². A positive fact is that the Prosecutor General’s Office commenced a pre-trial investigation based on these statements.

In 2005, acts of vandalism against Jewish minority were registered in Lithuania. There were cases of desecration of Jewish cemetery, monuments and other constructions. National hatred assumed other forms as well, for example on the day of commemoration of victims of war some bikers wearing Nazi uniforms drove over the house of Jewish community in Vilnius and shouted out Nazi woops. These forms of intolerance lack more attention and strict reaction of Lithuanian society and politicians. It means that the society and its representatives do not fully understand the duty to protect itself from various manifestations of radicalism and intolerance.

Intolerance against Homosexual Persons

The *Law on Equal Opportunities*, which became effective in Lithuania in 2005, prohibited discrimination based on sexual orientation. Despite the fact that upon coming into effect of this law an opportunity emerged for the persons discriminated due to the sexual orientation to apply to the Institution of Equal Opportunities Ombudsman, only two such complaints were received by the office in 2005⁷⁴. As the intolerance against this sexual minority remained of a large scale in 2005 as well, we may conclude that the number of received complains is so small because homosexual persons still tend to conceal their sexual orientation or fact of their discrimination.

It is of a concern that in 2005 the intolerance against homosexual persons was demonstrated not only by the society, but its representatives at the Seimas as well. Vytautas Čepas, the member of the oppositional Liberal and Central Fraction, has publicly called gays and lesbians “anomalies that still occur in the society”. Lithuanian parliamentarians showed a negative reaction concerning the planned Conference for the European Region 2007, which will be organized in Vilnius by the International Lesbian and Gay Association (ILGA). At this conference the issues of discrimination and harassment at work, school or neighborhood, violence against the gay, availability of housing, sports and other public services, as well as social risk and risk related to health, as well as unequal legal protection will be discussed. Unfortunately, in the opinion of the parliamentarians, permission to organize this event in 2007 would be unjustified and humiliating to the Lithuanian nation⁷⁵. Thus the representatives elected by the nation demonstrated that they don't understand the right to expression, association and assembly, too. Opportunities of self-expression of various groups, if they are not in conflict with laws of the country and pose no threat to the state, should be ensured in a democratic society, therefore no reasons exist for not permitting the organization of the above mentioned event in Lithuania.

Movement of homosexual persons was also criticized by various youth organizations that organized public demonstrations and invited the society to oppose to the “universal attack of the homosexual”. The Office of the Equal Opportunities Ombudsman equated such actions to the instigation of discord⁷⁶.

In 2005, there was a notorious event, when the Lithuanian Blind and Weak-Sighted Association refused to rent premises to the Lithuanian Gay League (LGL). The representative of this association of people with disability said that they are not going to rent premises to “such” people⁷⁷. Having examined the complaint of LGL the Office of Equal Opportunities Ombudsman recognized that this was a fact of indirect discrimination.

The fact that the project “Open and Safe at Work”, drafted by the Gay League and its partners, won the tender of EQUAL program and received funding from the European Union and the Government of Lithuania, saw a lot of negative response in the society⁷⁸. The project is aimed at revealing a scale of discrimination of sexual minorities, creating jobs and fighting against the discrimination of sexual minorities in Lithuania, but society decided that the contribution of the Government to this program is negative and considered it to be a failure to stick to priorities⁷⁹. Such attitude was also supported by political parties, that formulated sensational theories of “conflict of interests” and stated that “there are people in governing bodies, who are personally so much concerned by the problems of sexual majorities that they easily set aside problems of demography and, all the more, disabled persons”⁸⁰. We can only regret that people in Lithuania still don't understand that development of tolerance should be one of priorities of the state, to which one of the highest levels of intolerance against various minorities in Europe is characteristic.

Necessity to Improve and Efficiently Apply a Legal Basis

Lithuania saw a significant progress in improving the legal basis for the fight against discrimination and intolerance. In 2005, it was seriously strengthened by the coming into effect of the *Law on Equal Opportunities*, which prohibited discrimination on the basis of age, sexual orientation, disability, race or ethnic dependency, religion, believes, and other grounds provided for in treaties and laws of the Republic of Lithuania. The Office of Equal Opportunities Ombudsman was granted the right to investigate issues related not only to gender equality, but also the discrimination based on racial and ethnic origin, religious believes and other motives set forth in the above mentioned law. Last year the Office of Equal Opportunities Ombudsman investigated 133 cases of possible discrimination: individuals submitted 128 complaints and 5 investigations were performed on the own initiative⁸¹.

Still some opportunities remain unused while expanding the arsenal of legal means. The European Commission against Racism and Intolerance strongly recommends to Lithuania to ratify, among other international instruments, the *Protocol No 12 to the European Convention on Human Rights*, which prohibits any form of discrimination, and Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, that provides for the opportunity to every interested person or group of persons to submit complaints to the Committee on the Elimination of Racial Discrimination⁸².

The European Union directive, requesting to implement the principle of application of equal terms to the individuals irrespective of their race or ethnic group has not been transferred to the national legislation yet. This directive obligates to provide in the national legal acts the efficient, proportionate and deterring sanctions with a possible compensation to the victim, for violations of equal opportunities.

Lithuania accepted an obligation to transfer provisions of this directive to the national legislation by 1 May 2004 and the Government had to submit to the European Commission a report on implementation of this directive by 19 July 2005. When this review was drafted, in March 2006, there was no information about the said report.

There are some acts in the legal system that discriminate individuals on the basis of ethnic origin. For example the provision of the *Law on Citizenship*, which regulates the loss of the citizenship of Lithuania, is clearly discriminative. This law provides that the citizenship of Lithuania is lost upon receipt of citizenship of another state. However, this provision is not applicable to individuals of Lithuanian origin. People of Lithuanian origin are also exempted from national fees when applying for the permission to constantly reside in Lithuania. These and other legal acts implementing the obsolete concept of an ethnic state must be revoked.

Although the *Criminal Code* provide for the liability for racial discrimination and instigation of racial hatred, Lithuania remains one of the few countries in Europe, in which racial motive of the crime does not constitute an aggravating circumstance.

The European Commission against Racism and Intolerance expressed its concern about efficiency of current provisions of criminal law⁸³. In fact very few pre-trial investigations related to racial crimes are performed in Lithuania, especially small number of such cases reaches the court, and information about persons convicted for the racial crimes is not available. One of the most important pre-conditions of such situation is insufficient professional training of lawyers: advocates, police and prosecution officers, and judges. Persons employed in the criminal system should be informed about the necessity to react to the manifestations of racism and other forms of intolerance and trained to use and apply the current legal norms in a due way.

⁵⁷ <http://www.civitas.lt/files/060202%20Lietuviu%20tolerancija%20mazta%20.pdf>.

⁵⁸ The European Commission against Racism and Intolerance, Third Report on Lithuania, 2005, page 13.

⁵⁹ <http://www.hrmi.lt/news.php?strid=1999&id=3099>.

⁶⁰ Population of Vilnius Asks to Protect the Rights not only of the Romany, but Their as Well, "Atgimimas", 14 April 2005.

⁶¹ Officers Guarding the Camp-Ground will not Shake from Cold, Milda Kuizinaitė, „Lietuvos rytas“, „Sostinė“, 6 January 2005.

⁶² What is the Difference Between the Romany and Gypsy, and Between the Last and Current Year, Tadas Leončikas, Omni, 31 March 2005.

⁶³ The European Commission against Racism and Intolerance, Third Report on Lithuania, 2005, page 25.

⁶⁴ The Romany: Situation Review, HRMI, 2005, page 13.

⁶⁵ The Lithuanian Romany will Study Various Specialities, BNS, 28 September 2005.

⁶⁶ Discrimination of the Romany in the Area of Employment, HRMI, 2005, page 6.

⁶⁷ Experts on Human Rights Ask for Punishment for Functionaries of Vilnius, who Raised to Fight the Camp-Ground, BNS, 7 September 2005.

⁶⁸ The Program of Supervision of the Romany Community and Territory Located near the Camp-Ground, Ensuring of Security and Reduction of Segregation of the Romany for the year 2005-2010. For more information see <http://kristoforas.tic.lt/VA/doc.aspx?id=30075568>.

⁶⁹ Article 16: The Parties shall not undertake any measures changing the proportion of population in the areas, in which persons of national minorities reside, and restricting rights and freedoms originating from the grounds of this Principles of Convention. Problem of Housing of the Romany in Vilnius: Legal Analysis, HRMI, CLPR, 2005, pages 7-8.

⁷⁰ See the same, page 6.

⁷¹ <http://assembly.coe.int/mainf.asp?link=/Documents/adoptedText/ta93/EREC1203.htm>.

⁷² M. Murza is Going to Face the Trial for the Hits at Jews, Omni, 29 October 2005.

⁷³ Incident in Vilnius, Leonora Abraitytė, Delfi, 8 May 2005.

⁷⁴ Blow a Kiss to a Person of Another Gender Only, BNS, 14 February 2006.

⁷⁵ V.Aleknaitė-Abramikienė: Gay and Lesbian Parade in Lithuania Would Humiliate the Lithuanian Nation, ELTA, 4 November 2005.

⁷⁶ What Lies Behind the Rights Claimed by the Homosexuals?, Natalija Mogučaja, "Vakarų ekspresas", 12 December 2005.

⁷⁷ The Homosexuals Challenge the Blind, Delfi, 27 January 2005.

⁷⁸ 1.6 million Litas support from the European Union and the Government of Lithuania (the contribution of the latter amounts to 400.000 Litas).

⁷⁹ Good and the Best?, Marius Kundrotas, "Atgimimas", 18-24 February 2005.

⁸⁰ Liberal-Democrats: State Powers Considers the Gay to be More Important than the Disabled, Omni, 21 January 2005.

⁸¹ During the year 1999-2005 the Office received total 453 complaints and performed 90 investigations on its own initiative.

Blow a Kiss to a Person of Another Gender Only, BNS, 14 February 2006.

⁸² The European Commission against Racism and Intolerance, Third Report on Lithuania, 2005, page 7.

⁸³ The European Commission against Racism and Intolerance, Third Report on Lithuania, 2005, pages 9-11.

WOMEN RIGHTS

Employment Problem

In 2005, one of the basic problems was related to ensuring the women employment. Pursuant to the "TNS Gallup" research, which was announced in early 2006, 67% of women claimed that women face different terms when accepted for work. Only 37% of Lithuanian population believe that men and women enjoy equal terms of competition at the labor market. In comparison to the year 2004 this indicator reduced by 6%. 57% of women believe that conditions of work for women are worse than that for men. Respondents – 65% of women and 43% of men – assented to the statement that women are not equally fairly remunerated for work. In Lithuania a comparative remuneration of women is by 20% smaller than that of men (the average difference in the European Union is 15%). However, in Lithuania we have a paradoxical situation – the difference between remuneration for women and men in public sector, where particular actions when implementing provisions on equal rights should be taken first of all, is bigger than this difference in private sector.

In the profession dominated by women salaries in average are smaller than in spheres, where men dominate. Besides, the faulty practices and stereotypes that become established at the place of employment create obstacles for a woman to make a professional career and improve the

material situation. All these reasons caused in 2005 a feminization of poverty, lower pensions and social guarantees for women.

Sexual harassment remained a significant obstacle for a woman to make a career as well. The established legal mechanisms lack efficiency as they face the indifference by society. The *Law on Equal Opportunities* prohibits sexual harassment and places the burden of proof on the defendant. However, the final decision is made upon considering the submitted evidence, which are especially difficult to collect in cases of sexual harassment. Harassment usually takes place without witnesses, in presence of the victim and the caviler only, and a stereotype is popular in the society that it is a woman, who is guilty for such a situation. For this reason those, who dare to apply for help, are usually labeled as provocateurs, they face lots of negative attention and pressure of the surrounding. Complaints by the women on sexual harassment are assessed more than a wish to cause a malignant harm or become well-known very fast, but not as a serious problem of the society. This is proven by the fact that upon the application of the Equal Opportunities Ombudsman to the prosecution authority, when a suspicion arouse that characteristics of a criminal actions are present in the complaints, in two cases no pre-trial investigation was commenced due to the reason that these cases are not of public importance. In 2005, 3 applications were registered, but 7 cases were terminated.

The official statistics of unemployment shows that in the early 2006 women comprised 60% of all unemployed persons. In comparison to all population of the work-able age the unemployed women amount to 5,1% and unemployed men – 3,2%⁸⁴. Still, this statistics do not reveal both hidden unemployment of women, and a partial employment. Among the people, who are unemployed for a long period, who have higher education and who are of elder age, we have more women than men. Lots of women work at home, and in such cases their economic exploitation and social sensitiveness become invisible. In this regard women in villages are in especially difficult situation.

Pregnant women and women, who raise children, are discriminated in the labor market. The labor Code protects the rights of women, who are to give birth and who are to return to labor market after the vacation of the childcare. However, in 2005, patriarchal attitudes, placing the burden of socialization and care of children on women, where still popular in the society. Such attitudes form the situation, where employers believe that women are a “risky” and unattractive work-force. Thus women face the psychological hostility not only from the employer, but from the employees as well. They face obstacles in making career.

Discrimination of women in the area of employment had impact upon other violations of rights of a woman, too: violence in the family, trafficking in people, sexual abuse.

Situation in a Family

The national policy of social welfare in order to fight poverty of women and their children, remained undirected and unclear in 2005. On one hand, programs on integration of women in the labor market are funded, but, on the other hand, the patriarchal ideals of purportedly traditional family, where a man bears the burden of material responsibility and a woman – responsibility for the household, are propagated. Women have to take up more than 75%⁸⁵ of all household activity, which is not remunerated. This reduces a number of hours left for rest and possibilities to invest the energy in the professional career, i.e. the remunerated work. Only 1% of men take

vacation for taking care of the child, and this means that socialization of children becomes financial punishment to women⁸⁶. Such a typical attitude towards the roles of genders in a family not only makes the women competitiveness at the labor market more aggravated, but also creates prerequisites for the discrimination of single mothers. The current laws only strengthen this stigmatization.

One third of children in Lithuania are born in an unofficial family, and 19% of them – in a family comprising only a single mother⁸⁷, which, according to the *Law on Cash Social Assistance form Low-Income Families (Single Residents)*, is not entitled to social benefit unless she proves at court that it is impossible to establish the fatherhood. This legal norm turns the single mother *a priori* into potential abusers and creates prerequisites for the discrimination of the most vulnerable group of women and their children. Instead of creation of legal mechanisms (compensation through taxes) encouraging men to declare their dependents, the state transfers the whole responsibility for raising children to women, thus stigmatizing them.

Reproductive Rights

Due to the impact by the Catholic Church and lack of political will the *Law Reproductive Health and Artificial Insemination* has not been yet adopted in 2005. Thus, Lithuanian laws do not guarantee to women neither the right to family planning, safe pregnancy and giving birth, artificial insemination, medical abortion, reproductive healthcare and security, information and education, including the information about contraceptive measures, as well as benefit, risk and efficiency of these methods, nor the right to use new, secure, efficient, and individually acceptable technologies of reproductive healthcare.

In 2005, adequate attention has not been paid to the issues of women healthcare, and situation of women in villages was of especially great concern. Contraceptives are too expensive to women with low income, legalization of medical abortion is suspended. There is no consistently implemented program on sexual and reproductive education and prevention of undesirable pregnancy.

For the aforementioned reason an artificial abortion continues in Lithuania as a popular method of family planning and significantly exceeds the indicators of other countries of the European Union. Approx. 20.000 abortions are made in Lithuania every year. Even 90% thereof are a repeated termination of pregnancy⁸⁸. A number of murdered children increases.

Violence against Women

In 2005, violence in families remained an acute problem, which was not duly addressed by the state authorities, especially on municipal level. The *National Strategy on Reduction of Violence Against Women in a Family* has not been drafted yet. We lack the knowledge about the interrelation of efficiency, practice of application and improvement opportunities of the current legal acts aimed at prevention of violence against women, especially – isolation of the violator from the family. Serious doubts exist about the exception “if it is reasonably possible” as set forth in Articles 120 and 132a of the *Code of Criminal Procedure*, which is related to the eviction of the violator. No data is collected about the economic costs of violence against women. In 2005, integrated social assistance to the victims has not been granted. Besides, no preventive work was done with violators. There was lack of educational-informational programs developing intolerance to violence.

The Pension of Mother and Child of Vilnius was the sole institution in Lithuania funded by municipality. It provides the service of temporal accommodation, legal consultancy and social assistance to women in Vilnius. In other regions of Lithuania the government in 2005 did not undertake to establish such type of institutions funded from municipal budgets. It was proposed to women, who have suffered violence, to ask for accommodation at the already established boarding-houses and to temporarily leave the children at the care authorities. Of course, such a cynic, humiliating and injuring attitude of functionaries prevented women from any fight for their rights and forced them to resign to the violator's license.

Trafficking in Women and Girls

In 2005, in the sphere of trafficking in people Lithuania continued as a country of import and export, as well as a point for sexual tourism. However, it is unknown, how many women became victims of this crime. According to the estimations approx. 1.200 women are taken away or voluntarily leave Lithuania per year⁸⁹. The fact that in 2005 the level of trafficking juvenile girls increased is especially disturbing⁹⁰.

Unfortunately in Lithuania we don't have an integration of victims of trafficking in people and a system of information and coordination of institutions fighting against trafficking. There are no laws providing for damage recovery in favor of a person. In 2005, the *Law on Compensation of Damage Incurred by Crimes of Violence* became effective, however victims of trafficking in people are not automatically assigned to the group of persons, who may expect a compensation. They do not meet the criteria of the victim as per this law.

In our country no computerized system of search for lost people is created. Reintegration of victims of trafficking in people is more difficult due to an especially negative attitude of employers.

In 2005, the *Amendment to the Code of Administrative Misdemeanors* was adopted. It provides for an administrative liability of the person, who used the services of prostitution for certain fee. Still, nobody rushes to implement these legal norms. In the mass media or public spaces (for example, taxi cars that wait for passengers at the airport, hotels and even brochures of the Municipality of Vilnius City) women are still [presented as subject for sex, information is presented about the possibility to get service of the girls-prostitutes, and contact numbers are indicated.

In this context the images of advertisements and mass culture are of great concern. They not only constantly reproduce a sexualized image of women, who is turned into an item for sale, but also consolidate the patriarchic stereotypes concerning genders. They constantly renew and maintain models of social behavior, and then national programs of prevention are needed to fight against them. However, the effective institutional mechanisms of implementation of equal opportunities will never enjoy sufficient potential and funds for arranging an efficient encouragement of women progress and equality of genders, if consequent educational programs and public education campaigns are not performed simultaneously.

⁸⁴ Data of the Lithuanian Labor Market, http://www.ldb.lt/LDB_Site/index.htm.

⁸⁵ Public opinion about EU and Lithuanian gender policy. Statistic analysis, <http://gap.lt/vnaes>.

⁸⁶ Attempts are Made to Ensure Greater Popularity to a Child-Care Vacation, BNS, 3 June 2005.

⁸⁷ Unpublished report of the Demographic Research Center at the Social Research Institute.

⁸⁸ Women Should Have Right to Their Body – Requests the Parliamentarian, Omni, 23 March 2005.

⁸⁹ Prevention and Control Over Trafficking in People, http://sos.vrm.lt/mod_richtextr.php?pid=2.

⁹⁰ New Division on the Fight against Trafficking in People, Justinas Vanagas, Delfi, 25 October 2005.
Diverse Support to the Victims of Trafficking in People, “Vakarų ekspresas“, 15 December 2005.

CHILDREN RIGHTS

According to the data collected by the Controller on the Protection of Rights of Child, a number of complaints concerning violations of the rights of child significantly increased in 2005 – from 122 complaints in 2004 to 430 complaints in 2005. During the first quarter of the year the amount of received complaints was equal to the total amount per 2004⁹¹. The most frequent infringements – violence against children and absence of care in the family, violations of rights and legitimate interests of the child at the care and education authorities, improper representation of children rights at courts, communication with children, who live separately from the family, establishment of care.

National Policy on Children Rights

In Lithuania we lack well-directed policy on Children rights and constructive cooperation of respective establishments. This is recognized in the approved in 2005 *Strategy of the National Policy on Children Rights* and the *Plan of Measures of its Implementation for the Year 2005-2012*⁹². Even the United Nations (UN) Committee on the Rights of the Child (Committee) in its remarks concerning the second report of Lithuania on the Implementation of the *UN Convention on the Rights of the Child* paid attention to this fact⁹³. The Committee stated that one of the major problems was insufficient coordination of the implementation of the *Convention on the Rights of the Child* on the national and municipal levels. One of the most painful consequences of poor coordination – inefficiency of the network of Services of Protection of the Rights of the Child (SPRC) and inability to solve problems in a fact and professional manner. For example frequent messages in mass media about the children in asocial families, who are left without care and not sufficiently fast reaction of SPRC to the children in critical situations proved the faulty organization of SPRC work. If not to consider other mechanism of the system of protection of the rights of the child, the fates of children, who suffer violence, who beg for money in the streets, who live in asocial families or are poor due to other reasons, orphans and careless, and who have disability or are sexually exploited, largely depend upon efficiency of work of these authorities.

Violence at Home, at School, and Kindergarten

In 2005, violence continues as a dominant problem related to children rights in Lithuania. The experts of examination of the Lithuanian system of protecting the child from violence and coercion revealed that in Lithuania we have no sufficient protection of children against violence and coercion. Moreover, the current legal acts do not provide clear definitions of violence, coercion and victim⁹⁴. Without clear legal definition, force used against children, especially when these actions do not result in marks on a body, are treated as “disciplinary measure”. Pursuant to this logic, minor and average bruises seem to fall into a “grey zone”. Parents, who use violence against their children usually manage to avoid legal liability due to unclearly regulated assessment of violence.

Most often children suffer from violence in families. It is common to believe that one cannot or should not interfere in the life of another family, and such thoughts frequently cause gross and repeated violations of the rights of the child, as well as crimes against children⁹⁵. It is partially influenced by laws, as only the failure to inform about a grave crime is punishable. In Lithuania we should immediately apply the practice of other states, when the [person, who knows about violence against a child and fails to inform about it, is equaled to the concealer of it and an associate.

In 2005, the reaction of the authorities to infringements was passive. In certain cases, even if information was acquired about violations, no actions used to be taken at all⁹⁶. There were frequent cases, where seriously beaten or harmed in any other way by parents children used to be returned for the care by parents. For example, in early 2005 in Biržai region six children of one family were taken to the foster house, although the constant violence of parents against children and forcing them to starve to death was known one year ago already⁹⁷.

In 2005, the problem of violence and jeers against children at school was made public. Personnel at schools state that jeering and violence among children became more cruel and more sophisticated, physical violence is supplemented with psychological⁹⁸. In Pirėnų school in Kaunas four students of the eight grade became suspected of beating their class mate during the break, recording the execution and them showing it older children⁹⁹. But frequently violence and jeering cases are concealed in order not to spoil the good reputation of the school. In 2005, violence has been registered at kindergartens as well. Majority of the presented problems are deepened by viridity and ignorance of Lithuanian society in regard to the rights of the children. This is proven not only by the tendency of beating the own children, but an attitude towards the children, who act violently. One does not go into details and find out possible reasons of force, and most often it is stated that these are the consequences of law that excessively protects children¹⁰¹. Due to obviously faulty prevailing opinion of the society the doubts arise whether the national policy on the rights of the child is formulated in a correct direction, and even if such a policy even exists. It is to be recommended to start without delay the program of educating society on the issues of the right of the child.

Dead End Kids

The dead end kids could be assessed as the most problematic and vulnerable part of children in Lithuania: majority of them drink alcohol, smoke and use drugs, have suffered physical and sexual coercion, even 49% of girls and 28,3% of boys attempted to commit a suicide at least once¹⁰². Unfortunately, no analysis of the situation with the dead end kids is made on a national level, thus we have neither a strategy, nor a plan of its implementation. And even more, there is no separate notice about the dead end kids in the *Strategy of the National Policy on Well-Fare of Children and Measures of Its Implementation for the Year 2005-2012*.

Official statistics, which reflects that a number of children, who do not attend school, is reducing, does not reveal the true situation. The official statistics include only those children, who are excluded from the list of students at school, and those, who come to school once a week once a month are not registered. In fact, a number of children who drift out of home is increasing, although a scale of the problem is unknown yet.

Children in Asocial Families

The research proves that even approx. 5 percent of Lithuanian children live in untended families. Level of poverty of children in Lithuania is the biggest among Baltic states¹⁰³. In 2005, 18,000 families were included in the list of risk¹⁰⁴. In 2004, a number of such families amounted to almost 20,000. Having considered that a number of children in regard to the total number of residents is also decreasing, the reduction of risky families is not that outstanding. Especially, when a number of cases where parents don't take care of their children is relatively increasing. Due to this reason the rights of parents are restricted more often and children go to live in care institution.

Improper network of social services to the problematic families. In cases of social risk, social workers most frequently take a child from the family and accommodate him at the stationery social services authority. The Services of Protection of the Right of the Child are only partially engaged in performance of this function. It is stated that no time is left for such activity, as the greatest part of time employees are forced to spent at courts while representing the interest of the child or perform other administrative actions. Centers on the Family Support are open only in some municipalities (for the time being)¹⁰⁵. In 2005, preparation of a new wording of *the Draft Law on Social Services* begun. It is expected that this Draft will pay much attention to the enhancement of the system of social services that are provided to the family.

Public care

In 2005, the already mentioned basic problems, related to the care institutions, remained: on a national level – decentralization of the care institution is not effected, on an internal level – lack of qualified experts of education and psychologists¹⁰⁶. In 2005, the problem concerning the lack of employees became even more burning – quite often care institutions are assigned with a non-full time workers, and there is a lack of certain specialists. We know that personnel rotation in these institutions is minimal (majority of employees stay here for 20-30 years each), so in several years, if the tendency in the labor market remains the same, the situation may become event worse.

Another negative feature of the “old” personnel – obsolete and quite often unacceptable methods of work with children, sometimes failure to follow the rights of the child. For example, in February 2005 the Controller on the Protection of Rights of Child recorded physical and psychological violence used against the children at t care institution. Moreover, it was found out that employees take food home, the premises of the care institution are very cold, and there is a lack of medicine. Unfortunately the powers of the controller in such cases are limited – she may apply to the founder (county or municipality) and recommend to take actions¹⁰⁷.

In 2005, number of children in care institutions of various types increased. The main reason of placing children in the care institutions was that parents did not take care of their children – only 1 child out of 13 placed in the care institution was an orphan. This fact only confirms the aforementioned problem of inefficiency of social support to problematic families.

It is very seldom that a child, who is place din a care institution, comes back to the family. When the child come to the care institution the work of services that provide social services becomes reduced to a minimum. Family is not encouraged to get the child back from the care institution. Belief that upon placing a child in a care institution the problem is solved, prevents from reintegration of the child in the family and, alongside, in the society. Integration in the society of the children from care institution when they become adults is problematic in most cases – The

young have neither necessary skills, nor conditions to adapt to the society and life full-fledged life. This is especially true about children, who have various forms of disability.

Education of Children With Disability

In 2005, in Lithuania the special needs of education were not guaranteed: surrounding of the education institution and curricula has not been adapted. Children with disability of movement are most often taught at home¹⁰⁸.

During the school year 2004-2005, 545.300 students attended the daily schools. Among this number 58.500 of students had various disorders and 51.970 children were integrated into ordinary classes. As majority of schools are not quipped with classes, in which student with special could be taught according to the special curricula, a question rises – is it in line with the interests of the child. Experts notice that special needs students, who study in ordinary classes, are significantly “behind” their classmates. Even if they are later transferred to special schools, it takes time for them to catch up the class mates who have studied according to the special curriculum. There is no doubt that today ordinary schools try to retain special needs students because they “carry” bigger students benefit.

In order to ensure the successful rather than detrimental integration of special needs students into the ordinary schools, opportunities should be created at first for the teachers to acquire knowledge and skills of work with special needs students and to create adequate curricula according to the needs of such students.

Sexual Abuse

A child, who suffers sexual abuse in an early age, gets psychological trauma and becomes scared for the rest of his life. Children with various forms of disability are even more vulnerable. However, similar to previous times, children avoid applying to the law enforcement authorities due to the negative attitude of officers towards the children, who suffered the sexual abuse, and juvenile prostitutes. Due to various reasons the victims of sexual abuse most often avoid the application for help to other services or has no possibility to do so¹⁰⁹.

In 2005, sexual abuse and coercion manifestation was noticed more often in public places, too. Paedofils frequently aim at small children – they start talking to them at the street, in kindergarten, school, etc.¹¹⁰

A number of rulings of the court illustrate that the *Criminal Code* (CC) provides for too light punishments to the molesters¹¹¹. The CC provides for the imprisonment for the period of up to 2 years or only a fine if the molester pleads guilty. A person (or legal entity), who tried to attract the victim in the prostitution or tried to organize the benefit from the prostitution of that person, or tried to use him for a pornography or compulsory work, shall be punished by imprisonment for the period of 2 to 10 years¹¹².

It is noted in the remarks of the UN Committee on the Rights of the Child (Committee) concerning the second report of Lithuania on the Implementation of the UN Convention on the Rights of the Child that Lithuanian national law contains no provision indicating the age, when a person is responsible for his sexual relations. The Committee also expressed a concern that in our country there are not enough judges, dealing with juvenile cases. Attention should be drawn to

the fact that in Lithuania children may be detained at police headquarters for a long period up to the commencement of the trial.

Irrespective of the approved *Program of Prevention of Trafficking in People and Its Control for the Years 2005-2008*, the scale of trafficking in children under 18 years did not reduce. We still have no reliable data about victims of the trafficking in people¹¹³. As per data of Vilnius Division of the International Migration Organization, even 16% of victims of trafficking in people are juvenile girls¹¹⁴.

In 2005, the journalistic research revealed that some companies in Lithuania, under the cover of the status and activity of model agency, easily engage in export of people, especially juvenile girls, to cathouses of other countries¹¹⁵.

Psychological Assistance to Children

In 2005, after an evaluation of situation in Lithuania with psychological assistance to children and their families, which was performed at the Office of Controller on the Protection of Rights of Child, it turned out that an obvious lack of psychological assistance to children exists in Lithuania and the information about the service of psychological assistance is not coordinated¹¹⁶. There are not enough psychologists at schools; there is no information about provision of psychological services at other institutions. The evaluation reads that people living in villages, towns and distant areas have problems in accessing psychological assistance for their children and members of the family, as pedagogical-psychological services and centers of mental health and crisis are located in bigger towns and centers of counties. No psychological assistance to the children and family is provided in police establishments, too¹¹⁷.

Negative Impact by Mass Media

Information with improper content, which is published in various means of mass media, causes a big threat to physical, mental and ethical development of a juvenile person. The content of information, which is presented publicly and may be accessed by the juveniles is regulated in Lithuania by the *Law on the Protection of Minors against Detrimental Effect of Public Information*.

The said law used to be systemically violated in 2005 – the inspector of ethics of the journalists paid attention to the series of publications that were not in line with the requirements of the law and demanded that the *Law on the Protection of Minors against Detrimental Effect of Public Information* was not violated in future¹¹⁸.

The inspector of ethics of the journalist paid attention also to the fact that in Lithuania there was no institution directly responsible for the control over Internet. Besides, there are no technical means for restricting the detrimental information in the Internet. The problem of pornography arouse in Lithuania only few years ago. However, it is admitted that the regulation of public information in the Internet is not sufficient and consistent¹¹⁹. For example, when using Internet at home a great number of children browse the pages of porno-sites; meanwhile their parents don't know what to do in such situations and simply pay no attention.

⁹¹ Information Bulletin of the Controller of the Republic of Lithuania on the Protection of Rights of Child, January – March 2005, No. 1.

⁹² On Approval of the Strategy of National Policy of Welfare of Child and the Plan for the Year 2005-2012 of Measures of its Implementation. Seimas of the Republic of Lithuania, 17 February 2005.

⁹³ United Nations (UN) Committee on the Rights of the Child (Committee) in its remarks concerning the second report of Lithuania on the Implementation of the UN Convention on the Rights of the Child (Convention). 27 February 2006.

⁹⁴ System of Protection of Children against Violence – not Effective, ELTA, 13 September 2005.

⁹⁵ Care of the Child Becomes a Source for Benefit, “Lietuvos rytas”, 6 January 2005.

⁹⁶ Without Any Mercy A Man Bet his Three Children, “Lietuvos Rytas”, 20 December 2005.

⁹⁷ Government did not Rush to Rescue Children from Hell of Their Parents, “Lietuvos rytas”, 6 January 2005.

⁹⁸ Students Seriously Pricked with Needles at School, Bernardinai, 28 January 2005.

⁹⁹ Execution Organized to the Eighth-Grader at School, “Lietuvos žinios”, 23 November 2005.

¹⁰⁰ Children were forced to eat their own puke, their heads were dive into the toilet or under the teacher’s skirt, the little were forced to kneel and keep with their hands a chair above the head. Teacher is accused of turning the kindergarten into a cell of torture. “Vakarų ekspresas”, 16 March 2005.

¹⁰¹ For example, in the article (published in the daily “Klaipėda”) about eleven year old boy, which was harmed by the classmates, a position of the journalist reflects also an aggressive attitude of the society: “The reason for impunity lies also in the laws that protect juveniles up to level of stupidity”, says author. No account is taken of the facts, although they are given in the same article, about violence suffered by the boy in childhood. Comments of the readers are also biased – they propose to beat the child or humiliate him some other way, isolate him in the institution of detention or mental healthcare, etc. Terror of classmates – in the Classroom, “Klaipėda”, 2 March 2006.

¹⁰² L. Bulotaitė, A.G.Davidavičienė, A. Lekeravičiūtė, L. Trakinskienė, Quick Assessment of Use of Intoxicating Materials and Sexual Behavior of Dead End Kids that Stay in the Institutions and the Answer, Vilnius, 2000.

¹⁰³ Among Baltic States in Lithuania Level of Poverty of Children is the Biggest, Lietuvos radijas, 28 January 2005.

¹⁰⁴ R.Šalaševičiūtė: In Lithuania Children are the Most Jeered at In Europe, Omni, 21 March 2005.

¹⁰⁵ On Approval of the Strategy of National Policy of Welfare of Child and the Plan for the Year 2005-2012 of Measures of its Implementation. Seimas of the Republic of Lithuania, 17 February 2005.

¹⁰⁶ Human Rights Implementation in Lithuania: Review, HRMI, 2004.

¹⁰⁷ Children Harmed at the Care Institution. Lietuvos radijas, 2 February 2005.

¹⁰⁸ On Approval of the Strategy of National Policy of Welfare of Child and the Plan for the Year 2005-2012 of Measures of its Implementation. Seimas of the Republic of Lithuania, 17 February 2005.

¹⁰⁹ Disabled Girl Became Victim of Her Perverted Father, ELTA, 5 July 2005.

¹¹⁰ A case is described, where a paedophilic man from Klaipėda proposed 5 Litas to the children “for photo-session” and made photos of naked children. Wave of Paedophilia – in Klaipėda, “Vakarų ekspresas”, 25 August 2005.

¹¹¹ A man, who molested a little girl and who has been previously convicted for 5 times for similar crimes, was punished with 6 months imprisonment, by postponing the execution of the sentence for 1 year. Mother Chose Molester Instead of Her Little Daughter, “Lietuvos rytas”, 19 January 2005.

¹¹² Criminal Code, Article 147.

¹¹³ United Nations (UN) Committee on the Rights of the Child (Committee) in its remarks concerning the second report of Lithuania on the Implementation of the UN Convention on the Rights of the Child (Convention). 27 February 2006.

¹¹⁴ Research by the International Migration Organization, 2005.

¹¹⁵ Presentation of O.Valiukevičiūtė, the member of the Seimas: “Is Lithuanian Police Able to Stop Export and Sexual Exploitation of Children?”, BNS, 24 October 2005.

¹¹⁶ Research of the Office of Controller on the Protection of Rights of Child – Summing-up the Situation in Lithuania Concerning Psychological Assistance to Children and Their Families, 18 November 2005.

¹¹⁷ See above.

¹¹⁸ Notification by the Inspector Of Ethics of the Journalists about the adopted decision, BNS, 22 September 2005.

¹¹⁹ Lithuania Plays a Game against Pornography With no Chance to Win, “Vakarų ekspresas”, 18 January 2005.

POLICE AND HUMAN RIGHTS

When assessing the activity of police authority from the point of view of an ordinary person, one has to state that problems named last year¹²⁰ are not being solved. Inadequate personnel policy, poor conditions of work at commissariats and precincts, insufficient remuneration for work of the lowest and medium rank officers results in poor professional ethics, violations of human rights and mistrust of the population in police. Representative interviews show that in 2005 approx. 8% of Lithuanian population trusted in police officers and 53% - did not¹²¹.

Inadequate Personnel Policy, Organization of Work, and Remuneration

In Lithuania 50 police officers serve 100.000 citizens, while in the EU countries this proportion is 333 policemen to 100.000 citizens¹²². However, in Lithuania the distribution between the lowest, average, higher and top ranks is irrational. Despite the fact that in average number of police officers is higher, there is a lack of policemen of two lower ranks. This statement is especially applicable to the officers of the lowest rank – inspectors, traffic patrol and other officers directly dealing with people. In late 2005, the lack of police officers in majority of police commissariats exceeded 11%, and total 1.500 officers were needed all over the country¹²³. Akmenė region with 29.000 population has 3 regional inspectors¹²⁴.

Low salaries and shortage of proper work environment and equipment – employees of commissariats of towns and regions often have to work in premises that require emergency renovation, there is constant deficit of paper, fuel, office equipment and other items – make them search for other job. They are replaced in police by less educated and not that professionally trained young generation¹²⁵, that why infringements of law and discipline occur more often.

In 2005, there were lots of cases where due to abuse of alcohol the police officers committed criminal actions against property of an individual and a person. For example, a drunk police officer caused an accident in Šiauliai, during which a seventeen year old girl died¹²⁶. The Minister of the Interior and the heads of the Police Department also admitted that more and more drunken police officers tend to drive cars¹²⁷.

Policemen frequently imposed penalties, but did not provide details to the violators about the content of the drafted documents and resulting consequences. There were cases when persons found out that a fine had been imposed only from the invitations of bailiffs to pay it. In this case bailiffs requested to pay the amount of money, which had increased two or three times due to expenses of administering the fine¹²⁸.

In Lithuania we have unreasonably big number of police officers of the top rank. Moreover, they are paid disproportionately big salaries. For example, the employees of the Police Department, who provide various services, are granted the ranks of police officers and they are paid premiums due to these ranks.

In 2005, proposals of experts how to improve efficiency of police work were presented¹²⁹. The Police Department should use them and immediately revise the organization of work of the police system – reduce managerial and administrative apparatus, increase the number of policemen of the lowest rank, take care of proper selection of new-coming officers, redistribute the salary fund in favor of the lowest ranks, modernize the material–technical infrastructure.

Problem Related to Violence or Other Inappropriate Behavior of Officers

In 2005, the Seimas Ombudsmen held that the number of violations of human rights, including the cases of inhuman and cruel behavior of police officers, is not reducing in Lithuania¹³⁰.

Some cases were registered, where the traffic police officers used violence and jeered at drivers and passengers. Mass media reported of a case, where policemen resorted to violence against a young driver and jeered at his pregnant wife, who had to kneel on wet ground, and later forced to go home for several kilometers with slippers to bring documents to the policemen¹³¹. Another event that attracted public attention happened in Neringa, where a person has crashed into the car of a police officer and refused to step out of his car, so the officer broke windows of the car of the latter and sprayed gas inside the car¹³².

Cruel behavior of police officers has been registered in the detention rooms. The District Prosecutor's Office of Kėdainiai Region instituted a pre-trial investigation in the case on violence resorted to by the police officers against the person R.S., who complained that he was kicked, beaten and shaken with electricity by the officers in the detention room. Mass media informed about a case, where a person suspected of committing a crime, who was a disabled person of I group, was kept in the police detention room without the necessary medicine. When the Ombudsman of the Seimas commented this situation, he recognized that in Lithuania pre-trial investigation officers often exceed their powers, therefore human rights are violated¹³³.

It is suspected that the arrested persons are exploited. In 2005, a criminal case was instituted against the former head of Vilnius police, who was suspected of exploiting the detained persons by compulsory work in his homestead even for two years. People say, that even persons punished for administrative misdemeanors – drivers, who failed to pay fines in due time or who were punished for speeding, or market traders, who did not have the necessary permissions – were forced to work¹³⁴.

Problem Related to Detention Rooms at Police

Attempts to draw attention of representatives of the government to the necessity to modernize the detention rooms and ensure the security of the detained persons are made for more than one year¹³⁵. Although certain progress is achieved, majority of problems remain unsolved. Only in ten detention rooms out of 46 detention rooms of police commissariats of the entire Lithuania conditions are suitable. According to the Ombudsman of the Seimas, a part of detention rooms should not be used at all, as conditions therein are inhuman and depriving the dignity of the person¹³⁶.

The due supervision of the detained persons is not ensured. For example, a 30 years old man suspected of committing several crimes, hung himself in the detention room of Police Commissariat of Anykščiai Region. The man, who was kept alone in the cell, hung himself with a rope from the blanket¹³⁷.

¹²⁰ See the Implementation of Human Rights in Lithuania. Review, HRMI, 2005, and the Implementation of Human Rights in Lithuania. Review, HRMI, 2004.

¹²¹ Lithuania Trusts the Notary the Most, and Mistrusts the Bailiffs, Delfi, 22 August 2005.

“Sprinter tyrimai” 13 August 2005. Interview of population, in which legal institutions of Lithuania were assessed N = 1007.

¹²² Police: Overstaffed Structure, Impossible Conditions of Work, Small Salaries, “Keliai. Mašinos. Žmonės“, LTV channel, 10 November 2005.

¹²³ According to the data of the Police Department the lack of officers is especially big in Telšiai, needed 29.8% of officers, Kelmė – 25,5%, Skuodas – 21,4%.

¹²⁴ R.Arbušis. Officers Quit Job, “Ekstra žinios”, 4 february 2006.

¹²⁵ Police: Overstaffed Structure, Impossible Conditions of Work, Small Salaries, “Keliai. Mašinos. Žmonės“, LTV channel, 10 November 2005.

¹²⁶ Drunken Guardian Angels, I.Baubinaitė, Delfi, 6 June 2005.

¹²⁷ The Minister of the Interior is Worried About Behavior of Police Officers, 22 February 2005, www.vrm.lt.

¹²⁸ For example, a fine was imposed upon the person T., but he knew nothing about it. Later bailiffs informed him that a fine of 125 Lt is imposed, but he has to pay 237 Lt, because expense of bailiffs work were added. “Policemen are Concerned about Punishment Only”, L.Gelaitė, “Ekstra žinios”, 11 June 2005.

¹²⁹ For example, inefficiently organized structure of police – waste of tax payers’ money. Fund of New Public Management, http://www.nvv.lt/index.php?option=com_content&task=view&id=20&Itemid=23&lang=lt.

¹³⁰ Ombudsman of the Seimas Commenced Investigation on Violence Used by Patrol Officers, BNS, 17 November 17.

¹³¹ See above.

¹³² Policeman from Neringa Invoked Truncheon and Gas to Deal with an Accident, “Vakarų ekspresas”, 25 March 2005.

¹³³ TV show Initiated an Investigation by the Ombudsman of the Seimas, Omni, 23 May 2005.

¹³⁴ E.Kaliačius Wishes to Court to Award 1 Litas from the Police, BNS, 4 April 2006.

¹³⁵ For more information see: the Implementation of Human Rights in Lithuania. Review, HRMI, 2005, and the Implementation of Human Rights in Lithuania. Review, HRMI, 2004.

¹³⁶ Police Detainment Rooms – Worse Than Prison, “Lietuvos žinios”, 4 August 2005.

¹³⁷ Detainee Committed a Suicide at the Detainment Room of Anykščiai Police, BNS, 15 March 2005.

RIGHTS OF THE DETAINED PERSONS

The basic problems in 2005 were the unsuitable conditions and failure to ensure human rights in the detention institutions, improper implementation of the right to the convicted persons to the healthcare, and non-adequate social integration upon their release. The ensuring of rights of the convicted persons in 2005 was impeded by non-existence of an independent authority empowered to pay regular visits to the places of detention without prior notice as well.

Conditions of Detaining Convicted Persons

In 2005, Lithuania has lost a case at the European Court of Human Right (ECHR) related to conditions keeping the persons that stay in the places of detention. The court recognized that especially small living area (1,5 sq. m.), anti-sanitary conditions, too short period for walking in the yard (one hour per day), and to poor food are in violation of Article 3 of the Convention, which prohibits the torture of a person, cruel or inhuman behavior, and degrading of his dignity¹³⁸.

Irrespective of the fact that the ruling of the ECHR concerns the year 1997-1999 and measures were taken lately to improve the situation¹³⁹, the problem of condition of keeping the person at the place of detainment remained unsolved. For example, a number of persons accommodated in the Šiauliai Isolation Ward exceeded the permitted limit by one third¹⁴⁰. Moreover, the persons, who commit a misdemeanor, in this institution are placed in a “rubber” camera without windows and furniture, the area of which is only 4 sq. .n. According to the prisoners, they are kept with hands cuffed in the room. Such cameras were liquidated in Lukiškės Isolation Ward-Prison and Kaunas Juvenile Isolation Ward-Prison back in 2004, when this was requested by the European Committee against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CPT). Therefore, the Prison Department should ensure this camera is liquidated in the Šiauliai isolation Ward, too.

Although Lithuania in 2005 lost more than one case at the ECHR concerning breaches of privacy of correspondence of persons, kept in the places of detention, this problem has not been solved¹⁴². There were cases, when administration of the place of detention censored the complaints, requests, proposals of the detained persons, which were sent to various institutions, and based its actions on an argument that it strives to solve problems of the detained persons at the same place. They said that funds of the state are saved this way. Such actions constitute a grave violation of the laws of the Republic of Lithuania and the *European Convention on Human Rights* (ECHR), therefore. Therefore the Prison Department must immediately take necessary measures to ensure the privacy of correspondence of the convicted persons¹⁴³.

The fact that the right to life may not be ensured in Lithuanian places of conviction is disturbing and Lithuanian judicial practice when examining cases on loss of life at the place of detainment may be not in line with the practice of the ECHR. In 2005, the Supreme Administrative Court handed down the ruling in the case, where the father of a convicted person, who was murdered by other detainees, requested the damage recovery as the detainment institution failed to guarantee the security of his son and the persons who committed the crime had not been found. The Supreme Administrative Court held that employees of the institution of detention took no actions that could have resulted in the murder of the convicted person. In the opinion of the court the prisoner was murdered not due to illegal activity of employees of the colony, but due to the fault of undetermined criminals.

This ruling causes doubts as ECHR provides for positive obligations of the state – institutions or officials to the care of which the person is transferred, become responsible for him and must not only refrain from any actions that could violate his rights, but to take efficient means to guarantee them¹⁴⁴. In this case the employees of the institution of detention had to ensure the security of the deceased, especially as it was known that other convicted persons have already resorted to violence against him more than once.

It is disturbing also that even five years have passed from the murder of this person, but the crime had not been investigated and the murderers found. Having considered the jurisprudence of the ECHR, the duty of the state to guarantee the right of the person to life pursuant to Article 2 of the ECHR, comprises also the duty to ensure the efficient investigation of crime, when the persons is deprived of life due to the use of power. The main purpose of this investigation is to ensure the effective application of laws defending the right to life in the cases related to the representatives of state or institutions in order to ensure their liability for deaths that took place within the limits of their responsibility. The ECHR has established violations of Article 2 of the ECHR more than once due to the fact that state failed to efficiently solve crimes similar to this¹⁴⁵.

Rights of the convicted persons would be ensured more effectively if a system of regular visits without prior notice to the places of detainment, which would be effected by an independent institution, is created in Lithuania. The CPT in its reports recommended Lithuania to do so more than once¹⁴⁶.

Insufficient Health Care and Social Integration

In 2005, the proper healthcare has not been ensured in the places of detainment. Last year, for the first time in the history of Lithuania the convicted person instituted an action against the place of detainment and requested to recover damage caused upon his health. It is suspected that due to negligence of doctors the convicted person while serving his sentence became disabled¹⁴⁷.

In 2005, control over the spread of HIV in the places of detainment was carried out inefficiently. Taking due account of the fact that in the places of detainment HIV used to spread mainly due to the use of intravenous drugs and due prevention of drug addiction had to be ensured in order to solve this problem. According to the data of the Drug Control Department, approx. 15% of convicted persons use drugs¹⁴⁸. The interview performed by the Prison Department revealed that almost half of those, who use drugs, started using them upon arrival to the place of detainment¹⁴⁹.

However, as stressed in mass media for many times, in 2005 majority of places of detainment did not have social rehabilitation centers. The drug-free areas, in which the prisoners, wishing to give up this habit, used to be taught of social skills and prepared for life in freedom, were established upon initiative of heads of some individual prisons¹⁵⁰. When exercising the policy of drug prevention in the places of detainment, it is necessary to establish centers of rehabilitation, where the convicted persons wishing to give up their malignant habits could come together.

Problems related to the social integration of the persons, who have returned from the places of detention, are solved slowly. Moreover, when the *Law on Social Security of Unemployment* became effective in 2005, the integration of persons, who returned from the places of detained, in

the society became more difficult. Pursuant to this law they face problems when receiving benefits from the Labor Market – those, who wish to receive the benefit, should have at least 1,5 years unemployment insurance experience during the last 3 years prior to registration at the Labor Market.

Prohibition of Parcels

In 2005, prohibition of parcels was introduced as an efficient measure to prevent dissemination of narcotic substances in imprisonment institutions. The Seimas adopted the *Law on Supplementation and Amendment of the Penal Code* to the effect that as of 2006, convicts who are serving their sentence in the place of deprivation of liberty shall not have the right to receive parcels and packages containing food, sanitary or other domestic articles. Convicts will be entitled to receive only one parcel containing clothing and footwear once in six months. The Law also provides that once per month convicts will be entitled to a benefit of up to 0.3 of minimum standard of living (MSL) payable from the funds of the place of detention or corrective institutions.¹⁵¹

It is premature to judge about the efficiency of the measure, although arguments that it will restrict access to and use of narcotic substances are not convincing. It is also doubtful, whether detention institutions have other appropriate alternatives in place. The most problematic is the procedure for entitlement to a benefit.¹⁵² Due to the fact that convicts will no longer be eligible to receive parcels money will be used to purchase domestic articles of prime necessity in a store of the place of imprisonment. Since it is provided that convicts shall be allocated a benefit in the amount of 0.3 MSL per month, the exact amount remains unclear because only the ceiling amount not to be exceeded is specified. There is an impression that it can also be smaller, moreover that no minimum threshold of the benefit amount is established¹⁵³. Furthermore, only the possibility rather obligation to allocate those benefits is provided even for those convicts who meet the established criteria¹⁵⁴. This leads to the conclusion that the issue of benefit allocation is left for the excessive discretion of heads of imprisonment institutions.

It is also specified that the administration of the imprisonment institution may allocate those benefits in consideration of the amount of funds allocated to the payment of benefits in cash to convicts. Thus the question whether imprisonment institutions will be in possession of sufficient means remains open.

There are also doubts about the fact that benefits will not be allocated to convicts if at the beginning of the current month they have a 0.3 MSL or a bigger money amount on their personal account. This means that the personal accounts of convicts will be checked for the amount of monies the convict has. This kind of inspection of accounts may infringe convicts' right to privacy.

¹³⁸ Karalevičius v. Lithuania, No. 53254/99, 7 April 2005.

¹³⁹ For example, in 2005 the Panevėžys Remand Establishment was renovated and equipped according to the EU requirements. The occupancy levels at this establishment have been reduced

by allocating not less than 5 sq. m. of space per one inmate. The renewed remand established is nicer and more spacious. V. Petrauskienė, Lietuvos Rytas, 1 February 2005.

The media reports that the Kybartai Correction House has also been renewed according to these requirements. Nuteistiesiems pakvipo prabanga (*Smell of Luxury for Inmates*), Tomas Jaruševičius, Kauno Diena, 27 January 2006.

¹⁴⁰ 617 persons were held despite that only 425 could be accommodated pursuant to the standards. The Seimas Ombudsman was astonished at “rubber” cells, Delfi, 5 April 2006.

¹⁴¹ Ibid.

¹⁴² Karalevičius v. Lithuania, No. 53254/99, 7 April 2005; Jankauskas v. Lithuania, No. 59304/00, 24 February 2005.

¹⁴³ The Law on Remand Detention specified that their requests, suggestions and complaints to various state institutions and competent international organisations shall not be subject to censorship and shall be posted within one working day after the moment of receipt thereof; furthermore, Article 8 of the ICHR protects the secrecy of correspondence of individuals.

¹⁴⁴ Paul and Audrey Edwards v. UK, No. 46477/99, 14 March 2002.

¹⁴⁵ Ibid.

¹⁴⁶ CPT Reports on Lithuania of 2000 and 2004, <http://cpt.coe.int/en/states.ltu.htm/>

¹⁴⁷ The convict demands 6 million from the house of correction, Jurgita Žukauskienė, Kauno diena, 21 March 2006.

¹⁴⁸ Almost half of the convicts start using drugs at imprisonment institutions, ELTA, 26 September 2005.

¹⁴⁹ Ibid.

¹⁵⁰ R. Remeika: Lithuanian prisons – a ticking bomb of infections, BNS, 14 July 2005.

¹⁵¹ Article 173/7.

¹⁵² Regulations for the award and disbursement of benefits in cash to convicts serving arrest, terminal imprisonment and life imprisonment sentences, Order No. 4/07-260 of 23 December 2005.

¹⁵³ Paragraph 2.1. of the Regulations states only that “convicts serving the arrest sentence and those serving imprisonment sentences and falling into the light and ordinary group with respect to whom no disciplinary punishments were applied in the month for which benefits in cash are awarded, may be awarded benefits in the amount of up to 0.3 MSL”. Similarly, Paragraph 2.2. of the Regulations states that “convicts falling into the disciplinary group and also those kept in cell-type facilities with respect to whom no disciplinary punishments were applied in the month

for which benefits in cash are awarded, may be awarded benefits in the amount of up to 0.2 MSL”.

¹⁵⁴Eligibility for the benefit will be awarded to those who do not refuse the paid job offered by the administration and to those who do not commit a gross violation of the rules of procedure in the month for which the benefit is awarded.

RIGHTS OF VICTIMS OF A CRIME

Even though according to the statistical data the number of registered victims of a crime in 2005 decreased by 1,8% (in 2004 there were 61467 registered victims, and in 2005 – 60337¹⁵⁵), the victims' research of 2005 showed contrary tendencies: 18,6% of respondents declared being affected by criminal offences. In 2004 there were 15,8% of persons who indicated being victims of criminal offences¹⁵⁶.

One of the main problems in the field of rights of victims of a crime remained the declaratory nature of assistance and support, especially in guaranteeing state legal assistance and damage recovery in cases of crimes of violence. The same as it was before the law enforcement institutions are still eluding to start pre-trial investigations based on statements of victims, the right of victims to be informed about the unbinding of the accused or convicted person from imprisonment establishments is not implemented.

Declaratory Nature of Damage Recovery to Victims of Crimes of Violence

In July 2005 the new law came in force, according to which the compensations to victims of crimes of violence for material and immaterial damage has to be paid¹⁵⁷. Nevertheless none received any compensation from that fund even though nearly 0,5 million Litas were accumulated¹⁵⁸. Meanwhile according to the statistical data the number of severe and very severe crimes in Lithuania is increasing: in 2005 there were registered 226 victims of serious bodily injuries, 2616 victims of unserious bodily injuries and 227 victims of rapes.

The analysis of the situation showed that nor inhabitants, neither law enforcement institutions are aware about the possibility of damage recovery, because of the lack of appropriate means for dissemination of information. For example, there were no information leaflets, only few publications appeared in mass media and internet. Moreover, there are no appropriate information establishments in districts' or regions' centers to help persons with the consultations, to fill up necessary documents or to provide any other information, therefore the person wishing to get compensations has to go to Vilnius. Therefore we regret to state that in 2005 the possibility for victims of crimes of violence to get compensations was only theoretic – this possibility was not implemented in the reality.

Declaratory Nature of Legal Assistance Guaranteed by a State

The situation of victims of crimes remains problematic as concerns the provision of legal assistance. Even though according to the *Law on Legal Assistance Guaranteed by a State* of 2005 the victims of crimes are provided for primary and secondary legal assistance free of charge, in practice these persons are rarely receiving appropriate and qualitative

legal assistance. There were some cases when even after the law came in force, in some regions the legal assistance was not provided for several months, with the excuse that there are no institutions or persons to deal with it or that there are no financial means. There were some cases when only the primary legal assistance was free of charge for victims of crimes.

Therefore there is a need to organize effective and efficient information campaigns, during which the persons should be informed about the novelties of laws, the possibilities to realize personal rights with legal assistance. The monitoring of newly created means – damage recovery and legal assistance guaranteed by a state – should be ensured, as well as formation and dissemination of effective practice.

Right of a Victim to Receive Information

According to the legal acts in force there is no obligation to inform the victim of crime nor about unbinding of the accused or convicted person from imprisonment establishments, neither about remittal, even though it is directly related with person's security. In 2005 the draft amendments to the *Penal Code*, the *Execution of Penalties Code* and the *Law on Pre-Trial Detention* were prepared and presented to Seimas. In these draft amendments the obligation of officers to inform the victim about the detention of the accused person and to ascertain whether the victim wants to be informed about the unbinding of this person from imprisonment establishment is provided for. The delay to adopt these amendments is unjustifiable¹⁵⁹.

Refusal to Perform a Pre-trial Investigation

It was underlined before that after the start of investigation the victims of crimes are often not recognized as the aggrieved party and they can not make use of the procedural rights enshrined in the *Code of Criminal Procedure*¹⁶⁰. The ongoing monitoring of HRMI also shows that even after recognition of applicants as victims of crimes the law enforcement officers are very often canceling the pre-trial investigations. For example, from 82% of persons recognized as victims of thefts from cars, as many as 66% indicated that the pre-trial investigation was cancelled and 7% – that it was not performed at all¹⁶¹.

Therefore we are able to declare that in order to improve their indices of solving crimes, the law enforcement institutions are creating secondary “victimization”, i.e. the victim without direct damage loses the possibility to solve his problem by legal means. Because of this reason the faulty practice of law enforcement institutions to “use” victim of crime only as an information source and to provide the aggrieved party only with a “service” of registration of criminal offence should be abolished as soon as possible.

¹⁵⁵ Statistic report of the Department of informatics and communications of Ministry of internal affairs – Data on persons, which are victims of criminal offences in the Republic of Lithuania 2004-2005 (Form 50-SAV).

¹⁵⁶ Uscila R., Kiškis A. Victimologic research “Factual practice of criminal offences of Lithuanian inhabitants” of 2005 of the Lithuanian Center of Crime Prevention, “Teisės problemos”, Vilnius, 2005/4.

¹⁵⁷ The Law on Compensation of Damage Made By Crimes of Violence, 30 June 2005, No. X-296.

¹⁵⁸ The Victims of Crimes are heavily applying for compensations, “Lietuvos žinios”, 14 December 2005.

¹⁵⁹ <http://www.teisingumas.lt/portal/start.asp?act=news&Tema=1&Str=15156>.

¹⁶⁰ For more information: <http://www.hrmi.lt/project.php?strid=1191&id=2054>.

¹⁶¹ Uscila R., Kiškis A. Victimologic research “Factual practice of criminal offences of Lithuanian inhabitants” of 2005 of the Lithuanian Center of Crime Prevention, “Teisės problemos”, Vilnius, 2005/4.

RIGHTS OF MENTAL PATIENTS

Lithuanian mental health care is based on the framework of large closed-type mental health care institutions. Mental hospitals and psycho-neurological boarding-houses represent the tradition of paternalism and social exclusion and therefore contradict contemporary health and social policies, which are based on the principle of individual autonomy, empowerment and the right to live in the least restrictive environment. International experience has proven that in-patient care institutions are unambiguously harmful and inadequately cost-consuming with only a very small part of persons isolated therein truly unable to live in the society.¹⁶²

Official claims are that since 1998 Lithuania's key policy of social services has been decentralization of services and development of out-patient services. However, only in one year the Government allocates several times more funds to finance traditional psycho-neurological boarding-houses than it allocated to the development of modern alternatives in six years.¹⁶³ These investments do not solve the problems of human rights either in mental hospitals or in psycho-neurological boarding-houses.

Violations in mental hospitals

In 2005 mental patients, as previously, were treated not in general-type, but in specialized mental hospitals. The framework of large isolated mental hospitals provides preconditions for different violations of human rights and deepen patients' social exclusion and stigmatization.

Human rights and freedoms in a mental hospital are conditioned by the prescribed regime, which is selected according to mental condition, however, irrespective of the prescribed regime, patient rights to respect for private life are quite frequently violated accompanied with unreasonable restrictions to the use of property and to the right of mobility; patients receive insufficient information about their disease, therapies and prospects. Complaints have been received about violations of patients' physical integrity.

At mental hospitals, patients' right to respect for private life is significantly restricted, whereas in acute condition departments this right is almost impossible to exercise. Patients are deprived of the opportunity to perform their hygiene procedures in private (the practice of unclosed doors or their absence is still vital), use the telephone (the pay-phone environment is not adjusted for private conversations), and the requirements regarding the number of patients in a ward are not observed (some cases were found where more than ten patients were treated in one ward). This right is also infringed by not adhering to the requirements pertaining to the protection of patients' personal data. For instance, the patient's condition is discussed in the general ward where other patients are present.

The right to property is unreasonably restricted by prohibiting the possession of private articles which pose no danger to the patient. The opportunity to use the permissible private articles is being limited. There is normally no mechanism for securing and administrating the articles used by patients.

The implementation of the patient's right to information depends on the level of doctors' benevolence and respect for patients. Communication of information to the mental patient about their disease, prospects, suggested therapies and the possible alternatives as well as greater involvement of patients into decision making is not the usual practice and can rather be observed

in individual cases. Neither are patients informed about the opportunities to move freely around the hospital's territory and beyond its boundaries where the patient's condition allows to do so. This is how the freedom of movement is violated. The principles of least restrictive environment requires that restrictions to mobility, use of property and other restrictions are applied only to the extent necessary in consideration of the patient's condition.

In 2005, information was received that some hospitals did not ensure patients' physical integrity. There have been complaints about violence on the part of other patients and staff, punishments and the exercising of violence when administering/injecting medications.

Violations in Psycho-neurological Boarding Houses

In psycho-neurological boarding houses the right to information is violated on a continuous basis – the scope of information provided to residents often depends on the knowledge of the staff of the rights of the residents as well as their goodwill. Questions of the residents are usually answered; however these answers are limited to minimal information. Internal mechanisms for consideration of complaints fail to ensure the right to submit complaints and receive the answer.

The right of residents of boarding houses to the immunity of privacy remained to be substantially violated in 2005, i.e. their life is public and constantly open to the staff and other residents. They rarely have an opportunity to stay on their own. It is a paradox; however, people who suffer psychological difficulties due to constant publicity themselves request to be placed in the isolation ward. The right to establish and maintain intimate relationships is also violated. Since boarding houses have no explicit policy in terms of intimate relationships, the situation in boarding houses is different, depending on the attitude of the staff and administration. Termination of pregnancy is compulsory; if a woman is unwilling to terminate pregnancy, she is subject to different measures consisting in pressure and deception.

There are also instances of discrimination: those residents who please the staff or obedient residents enjoy privileges; household conditions are improved from the funds of material support from relatives; patients with more severe health condition are discriminated (the most severe patients are usually accommodated in the blocks of the boarding house that are in the worst condition; there was only one boarding house with a modern section for the most severe patients).

Quite numerous cases of inadequate treatment of residents by the staff have been observed. The most frequent forms of such behavior are ignoring residents' requests (regarding both health and social issues), restrictions to residents' freedom of movement as punishment for the behavior which is inadequate in the staff's opinion (locking up in isolators; restricting movement beyond the boundaries of the boarding-house), exercising of violence (there are complaints about psychological, physical and sexual violence), making decisions on issues pertaining to the resident's private life (invasive contraception, termination of pregnancy).

The right to work and adequate pay has also been rarely implemented. There are no attempts to search for opportunities to employ the boarding-house residents who are willing to work, often no employment contracts are concluded with working persons, and there is no mechanism to protect residents from abuse.¹⁶⁴

Delay to Approve the Mental Health Strategy

In 2005 the *Mental Health Strategy of 2005-2010*¹⁶⁵ envisaging the reorganisation of the existing institutional mental health care system was developed, however, it has not been approved. The Strategy recommends the introduction of specialised community services that would be accessible 24 hours a day and would ensure the care of individuals suffering from mental disorders, the provisions of such services where people work and live, and the development of rehabilitation services that would help optimising the inclusion of the mentally disabled into the society. This Strategy needs to be adopted and measures to implement it need to be taken as soon as possible.

In order to implement the Strategy changes in the legislative framework as well as in the procedure of financing the mental health system are necessary. First and foremost, laws and other legal acts should explicitly regulate the procedure for providing community mental health care and social services and establish the financing. It is possible to change the existing funding procedure and at the same time to encourage municipalities to develop the network of community services by developing the Mental Patient's Basket. The right of such patients to choose whether to receive services from in-patient institutions or community units thereby "bringing along" their basket to the selected institution should be provided in the law. This would create a competitive environment and would likely stimulate municipalities to develop an alternative structure of community services instead of handing over the Patient's Basket to in-patient institutions.

Violation of the Rights of Incapacitated Individuals

Ensuring the rights of incapacitated person has remained a problematic area in 2005 – there is a persisting trend to render decisions on compulsory medical treatment (or extension of such treatment) of incapacitated individuals *in absentia*. Despite the fact that such possibility is provided by the law as an exception, now it has become a universally applicable rule. This is an obvious violation of the rights of incapacitated individuals to both fair trial and proper medical treatment. Another environment for human rights violations is inability due to the absence of this right by incapacitated individuals to initiate the replacement of their caretakers, to complain about improper provision of care by caretakers or to apply to court in general in order to defend their rights.

Lithuania, contrary to many other states of Western Europe, has not legitimised the institute of diminished capacity. In Lithuania, only those who abuse alcohol, drugs, narcotic or toxic substances can be considered as persons of diminished capacity. Thus, in case of persons with a mental illness or mental disorder, no account is taken of the person's capacity to run his or her life and work.

Such a person is deprived of all the rights, regardless of his possibilities to fend for oneself.

¹⁶² Tobis D. Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe and the Former Soviet Union. 2000, The World Bank.

¹⁶³ WHO: The Lithuanian Strategy on Mental Health – a model, BNS, 28 September 2005.

¹⁶⁴ For more information about the situation in psychiatric hospitals and psycho-neurologic pensionates: “Monitoring of Human Rights in Closed Institutions of Surveillance and Care of Mental Health”, HRMI, 2005.

¹⁶⁵ Some of drafters of the Strategy on Mental Health 2005-2010 directly participated in the project “Monitoring of Human Rights in Closed Institutions of Surveillance and Care of Mental Health”, which was implemented by HRMI’s initiated coalition of nongovernmental organizations, composed of “Global Initiative in Psychiatry”, “Care Society of Lithuanian Mentally Disabled People “Viltis””, “Center of Psychosocial Rehabilitation of Vilnius” and HRMI. The data collected during monitoring and conclusions in most cases coincide with ideas presented in the Strategy.