Council of the
European Union

Brussels, 8 June 2018
(OR. en)

10594/02
DCL 1

EVAL 31
ELARG 232

DECLASSIFICATION

of document:	ST 10594/02 RESTREINT UE
dated:	9 July 2002
new status:	Public
Subject:	Analysis of information on justice in Lithuania

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

COUNCIL OF
THE EUROPEAN UNION

Brussels, 9 July 2002

10594/02

RESTREINT UE

EVAL 31
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NOTE

From :	the General Secretariat
To :	the Collective Evaluation Working Party
No. prev. doc. :	10874/1/00 EVAL 46 ELARG 117
Subject :	Analysis of information on justice in Lithuania

A. The Judicial System

The Court System

The Lithuanian court system consists of common courts, dealing with civil and criminal matters. The 1994 Law on Courts established a four-tiered court system with 54 district courts, 5 regional courts, the Court of Appeal and the Supreme Court.

In 1998, the law was amended to abolish the old economic court, whose functions were transferred to district and regional courts or to commercial arbitrators. There are no military courts in Lithuania, and extraordinary courts are prohibited in times of peace.

In the beginning of 1999, the system of specialised administrative courts was established to investigate administrative litigations. The latter consists of the following courts: the Highest Administrative Court, the Higher Administrative Court, district administrative courts.

The Constitutional Court of Lithuania is not a part of the court system, but is an independent judicial body with the authority to determine whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government conform to the Constitution or laws.

The decisions of the Court on issues assigned to its jurisdiction by the Constitution are final and may not be appealed. The Court has played an important role in mandating the current restructuring of the judiciary. As provided in the Constitution, the status of the Constitutional Court is regulated by a separate law from that governing the regular courts. The Court consists of nine judges appointed for non-renewable nine-year terms, with one-third of the Court being appointed every three years. Parliament appoints all judges, selecting three each from the nominees put forth by the State President, the Chairman of Parliament, and the President of the Supreme Court respectively. The Constitutional Court is financed directly from the State budget and has a separate budget line.

Public Prosecution

The Public Prosecutor's Office[1] is an independent component of the judiciary, which assists in the administration of justice and seeks to ensure lawfulness. The legal status of the PPO is defined by the Constitution, the Code of Criminal Procedure, the Law on the Public Prosecutor's Office and the Statute on Service in the Public Prosecutor's Office. The Constitution provides that the PPO is the integral part of the judiciary. However, the Constitutional Court has held that prosecutors may not perform judicial functions assigned to courts. The functions and tasks of the PPO are laid down in the Law on the Public Prosecutor's Office:

- to initiate and to conduct criminal prosecution;
- to control the activities of the agencies of preliminary inquiry;
- to conduct preliminary investigation;
- to pursue a public charge;
- to control the execution of sentences;
- to coordinate the actions of the agencies of preliminary inquiry and preliminary investigation directed against crime

[1] Source: Additional Information provided by Lithuania February 2002

The Prosecutor General is appointed for the term of 7 years and is removed from the office by the President of Lithuania under the approval of the Seimas. The PG does not have a legislative function, but he has the right to take part in the sessions of the Seimas and Goverment as an advisor.

The Code of Criminal Procedure, of Civil Procedure and the Administrative Code define the powers of public prosecutors in discharging their procedural functions. In executing their powers, public prosecutors are independent and observe only the Law. The Law on the Public Prosecutor's Office provides that "The institutions of state power and government and their respective officers, as well as political parties, public organisations and movements, and the mass media are prohibited from interfering with the work of the Public Prosecutor's Office during the investigation of cases and discharge of other functions of the Public Prosecutor's Office".

The PPO is formed following the principle of vertical subordination an its functions are discharged on the basis of the territorial principle, corresponding to the system of courts in Lithuania:
-The Prosecutor General's Office;
-County Public Prosecutor's Offices (5);
-District Prosecutor's Offices (51).

The main functions of the Prosecutor General's Office are:

- to develop criminal prosecution policy (analysis of activities, giving of priorities, methodological guidance, preparation of draft legal acts, programs, etc.);
- to control whether the decisions passed by territorial Public Prosecutor's Offices, agencies of preliminary inquiry and preliminary investigation are lawful, valid and fair. Pursuant to the Law on the Public Prosecutor's Office and the Code of Criminal Procedure, a public prosecutor directs preliminary investigation (preliminary inquiry and preliminary investigation, e.g. police, customs, etc.);
- to participate in pursuing a charge and to participate in cassation and appellate proceedings examined in County Courts, the Court of Appeal and the Supreme Court;

- to conduct preliminary investigation in complex criminal cases instituted on the basis of crimes against the State, serious crimes, organised crime, corruption crimes, crimes to the public service committed by public officials and crimes against public officials, as well as in criminal cases instituted on the basis of crimes against humanity. During the said preliminary investigation procedural, evidence is collected from the moment when the crime is detected until the case is forwarded to the court. The Code of Criminal Procedure defines the types of crimes which must be investigated by the PPO;
- to select candidates for the public prosecutors, to appoint public prosecutors and to remove them from offices, as well as other issues relative to the remuneration of public prosecutors and their disciplinary punishment;
- to arrange and to execute requests for legal assistance to and from foreign countries (the Prosecutor General's Office is the central authority for legal co-operation in criminal matters).

Shortcomings in practice

Information from the MS is awaited.

B. Independence, appointment and remuneration

Independence and appointment

Guarantees on independence of judges vis-à-vis the executive power

Over the years, Lithuania has made quite some progress with regard to the situation of its judiciary and judicial system based on the principles of the rule of law. Fundamental guarantees of judicial independence and the separation of powers are entrenched in constitutional jurisprudence, and a 1999 ruling by the Constitutional Court mandated a significant restructuring which -with the entry into force of the new Law on Courts- should put an end to the undue influence of the executive over judges.

In 1999, several Members of Parliament requested the Constitutional Court to review the constitutionality of certain articles of the Law on Courts dealing with the Ministry of Justice. It was argued that the provisions created direct and indirect opportunities for the Ministry to interfere with the activities of courts and thereby contradicted the principles of separation of powers and judicial independence as enshrined in the Constitution. The Court's 21 December 1999 ruling found 16 provisions of the Law on Courts unconstitutional.

According to the Constitution, a legal act is not applicable from the day a Constitutional Court ruling finding the act in contravention of the Constitution is published. Thus, from the ruling to the entry into force of the new Law in May 2002, an institutional and legal vacuum existed creating problems in practice concerning who had the authority over core judicial administrative issues and inadequate funding , working and salary conditions for the judiciary. Before the entry into force of the new Law, courts did not have effective control of their budgets, the executive's involvement in the budgeting process and the allocation of funds was significant, and the budget process itself remained insufficiently transparent. The Ministry of Justice exercised extensive administrative control over the courts, and judges' pensions were far lower than many other State officials involved in law enforcement. Regarding appointment of judges, despite the changes mandated by the 1999 ruling, the executive still retained undue influence over the careers of judges, especially during their initial probationary appointment. In some cases, the Council of Judges had taken over functions of the Ministry of Justice, but in others (for example, when court division presidents' terms expired) there was no authority clearly competent to act.

On 31 May 2001, a new Law on Courts was submitted to Parliament. It takes into account the conclusions drawn by the Constitutional Court in its decision of 21 December 1999. The ruling *inter alia* develops the concept of judicial independence by identifying the aspect of decisional independence of judges and the organisational independence of the judicial institutions. The Law on Courts was adopted on 24 January 2002 and its entry into force was foreseen on 1 May.

Under the new Law, the Minister of Justice does not have any right and competence in the procedure of appointment and dismissal of judges or in the professional carrier of judges and in administration of work of courts. The courts are independent managers of the budgetary allocations. Regarding procedures of selection, appointment and disciplinary measures for judges, the Council of Judges remains the main player. The main functions of the Council are to advise the President on the appointment of judges, the establishment and administration of the Court of Honour, management of the National Court Administration and other functions provided for in the Charter of the Judges. The Council of Judges will set up a Selection Commission to advise the President on the appointment of judges. Disciplinary cases against judges are heard by the Court of Honour of Judges. Only the presidents of courts and the Council of Judges have authority in the administration of courts. The Council of Judges consists (this needs to be verified) of 23 members, including the chairmen of the Supreme Court, the Court of Appeal, the Superior Administrative Court and the Regional Courts and an additional 9 members from the judiciary. Other members are the representatives of the Ministry of Justice, the Ministry of Finance, President Office, the Chairman of the Parliament's Committee on Legal Affairs.

(NB: information from the Member States on the practical state of play is awaited)

Code of Ethics

The "Rules of Ethics of Judges", regulating issues such as judges' independence, and their judicial and extra-judicial activities, were approved by the General Meeting of Judges on 18 December 1998. The Rules do not have legal force, but may be taken into account in interpreting disciplinary liability under the law.

Judges are prohibited from taking part in the activities of political parties or other political organisations. Judges may not hold any other elected or appointed post. In general, judges may not work in other branches of the State. Judges may not be employed in any business, commercial, or other private enterprise or institution. Judges are not permitted to receive any remuneration other than their judicial salary, although they may receive payments for educational, academic, or creative activities.

Rules on impartiality may also limit a judge's scope of participation in a case. Judges are required to recuse themselves if they have participated in a previous phase of the same case; if they are a relative of a party or other person participating in the case; if they or their relatives are directly or indirectly interested in the outcome of the case; or if there are other circumstances raising doubts concerning their impartiality.

Confidence of the public

One report published in 2001[1] (thus before the new Law on Courts was finalised) states that the judiciary operates in a 'not always hospitable' environment. According to its findings, courts and judges are, on the whole, mistrusted and not fully respected by a number of politicians, as well as substantial segments of the general public and media. What becomes clear of the report is that a clear lack existed (due to the attitude of some politicians) of public respect to support the separate position of the courts/independence of the judiciary. For example in 2000, certain Members of Parliament ignored repeated summons to appear as witnesses in a case before the district court in Svencioniai, leading the judge to fine them. In 1999, the President of Parliament appealed to the Minister of Justice to consider disciplinary actions against certain judges who had issued judgements in highly publicised cases that were subsequently overturned on appeal. Particularly in matters that have attracted media attention, public officials have on occasion pressed judges to avoid acquittals in criminal cases or to reach decisions favourable to specific parties in civil cases.

Further, public attitudes towards the judiciary as reflected in public opinion polls and in the media are generally negative[2]. According to 2 surveys, a high percentage of the population mistrusts the judiciary and believes them to be corrupt. There have been several cases in which judges of the district courts have been sentenced for corruption. The media is also generally critical of State institutions, including the courts, and frequently airs allegations of corruption. Periodically, individual judges are criticised in the media for allegedly unfair, partial, or biased decisions, and for being highly paid. Lack of respect for courts manifested by statements of politicians and journalists was seen as one of the main reasons for the lack of public confidence in the judiciary.

(NB: more information on this from the Member States is awaited)

[1] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[2] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)

Remuneration[1]

The reduction of the salaries of judges which took place in the end of 1999 was declared unconstitutional by a decision of the Constitutional Court and the level of salaries of judges was restored to previous one. According to Lithuania, the salaries of judges are the highest among the civil servants and public officials.

For example, the monthly salary of the judge without any working record, working in the district court (the first instance) could be LTL 4400[2] and, depending on time served in the judiciary, could reach LTL 6770. In comparison, an average monthly salary in Lithuania is approximately LTL 1068. The salary of the judge of the county court varies from LTL 7500 to 8950, depending on time served. The salary of the judge of the Court of Appeal varies from LTL 7500 to 8950, although courts' chairmen receive a higher salary (the salary of the chairman of the Court of Appeal is LTL 9660). The salary of a judge of the Supreme Court with maximum time served can reach LTL 9975.

Retirement at the age of 65 is mandatory. A judge reaching the age of 65 while a case is being heard continues to serve until the case is settled or the hearing is suspended. The pension schemes applicable to judges are the same as those applied to all permanent residences of Lithuania, but as judges' salaries are much higher, so is the level of pension. The new Law on Courts provides for the rules concerning pension guarantees for judges. The state social insurance pension will be awarded to judges who have reached the pension age and whose term of office has expired. Judges with more than 15 years of working experience as a judge and/or state arbitrator, who reached the pension age and whose term of office has expired, will receive a pension of a judge in the amount of 45% of their last wage as a judge. The amount of pensions provided for above should not exceed 1.5 of the average monthly wage. In total, there will be 2 types of pension schemes applicable for retired judges: ordinary pension maintenance (social security) and special judges' pension.

Prosecutors enjoy almost the same level of compensation as judges, while the compensation of private lawyers is quite varied and often higher. The work compensation of court employees (secretaries and registrars) is very low, which may cause corruption in the administration of the courts and in the processing of claims and cases.

[1]Source: Additional Information provided by Lithuania February 2002
[2] 1 Euro is approximately 3.6 Litas

C. Resources and Training[1]

Numbers:

-judges		total of 675 positions:
Court of Appeal:	23	(8 vacant positions)
County Courts:	139	(6 vacant positions)
District Courts:	408	(31 vacant positions, 7 candidates)
Regional Administrative Courts:	40	(4 vacant positions)
Higher Adminstrative Courts:	10	(5 vacant positions)

-Court staff 1650 (96-98% is filled)

-prosecutors	total number of 893:
General Prosecutor's Office	109
County Public Prosecutor's Offices	181
District Public Prosecutor's Offices	603

-investigators

-bailiffs

According to Lithuania (information December 2001), the lack of human resources does not constitute an obstacle to the proper functioning of the judicial system. Vacancies in the courts are reduced to a minimum and the vacant positions will be filled. Further,[2] the backlog of cases is continuously decreasing.

The number of criminal cases under investigation for more than 6 month in the courts of first instance decreased from 1120 on 1/1/2000 to 595 on 1/1/2001 (47%) and from 595 on 1/1/2001 to 412 on 1/1/2002 (31%) (viz. Table 1).

[1]Source: Additional Information provided by Lithuania February 2002

[2]Source: Additional Information provided by Lithuania February 2002

The number of civil cases under investigation for more than 6 month in the courts of first instance decreased from 2812 at 1/1/2000 to 1430 on 1 January 2001, or by 49 per cent and from 1430 at 1/1/2001 to 964 on 1/1/2002 (33%) (viz. Table 1.). The backlog of unsolved criminal cases in courts of first instance decreased from 4856 on 1/1/2001 to 4158 on 1/1/2002 (15%) whereas the backlog of civil cases decreased by 5 % within the same time period (viz. Table 3.).

Table 1. Number of cases under investigation in the courts of first instance for more than 6 months

	Criminal cases	Civil cases
1 January 2000	1120	2812
1 January 2001	595	1430
1 January 2002	412	964

Table 2. Number of cases under investigation in the county courts for more than 12 months

	Criminal cases	Civil cases
1 January 2000	42	168
1 January 2001	59	226
1 January 2002	51	247

Table 3. Number of cases remained unresolved (backlog) in the courts of first instance

	Criminal Cases	Civil cases
1 January 1998	6609	21008
1 January 1999	5878	20468
1 January 2000	4375	15362
1 January 2001	4856	15670
1 January 2002	4158	15037

Table 4. Number of requests dealt with by the Administrative courts

	Received	Dealt with (solved)
Per year 2000	10348	11253[1]
Per year 2001	14121	13471

Training[2] *(with special emphasis on a satisfactory system of training for judges, prosecutors, as well as other categories of personnel working within the legal system*

The Judicial Training Centre sustained efforts to provide training of judges, bailiffs and staff of the central institutions involved in judicial matters. In 2001, the Centre conducted 43 seminars with the total number of participants of 3574 (3237 of them were judges). Training judges is one of the most important priorities of the Ministry of Justice, therefore all efforts are taken to rise judges' qualifications, especially in the field of EU Law. The PHARE Twining project "Strengthening Capacity of Lithuania's Judiciary" will also provide for training of judges, prosecutors and personnel of central authorities in the field of judicial co-operation in criminal and civil matters.

The Training Methodology Division of the Prosecutor General's Office is responsible for the organisation of the training of public prosecutors. The Prosecutor General's Office co–operates with the Ministry of Justice, the Lithuanian Law Institute, national and foreign institutions and NGO's and funds related to training public prosecutors. Over 30 training programmes were conducted with the participation of more than 400 prosecutors of various specialisations in 2001. The programmes focused on: combating organised crime and corruption; protection of witnesses and victims; crime in international banking and money laundering; investigation of economic crimes in the appropriation of the VAT; the illegal turnover of telecommunication programmes, copyright and intellectual property.

The Prosecutor's General Office and the Ministry of Justice are planning to organise common studies of a new version of the Criminal Code and of the Code of Criminal Procedure. The 2002 Agreement with the Prosecutor General's Office of Sweden aims to improve the qualification of public prosecutors regarding economic crime investigation.

[1] Number of solved cases exceed cases received because of carry over of unsolved cases from preceding period that have been solved during the period in question
[2]Source: Additional Information provided by Lithuania February 2002

Training on combating juvenile crime and crime against minors was a top priority. The Prosecutor General's Office, while implementing the Juvenile Justice programme with assistance from the EU, concluded 5 agreements with national educational institutions on scholarly research of the causes of juvenile delinquency, and the influence of prosecutor's offices and the institutions of public administration institutions in this process. Methodical recommendations will be prepared.

A satisfactory statute for judges and prosecutors and favourable working conditions, in particular with regard to the (objective) distribution of tasks, wages, and access to case law

With regard to working conditions, according to Lithuania the lack of material resources does not constitute an obstacle to the proper functioning of the judicial system. However, one report states that "the physical infrastructure of courts and the conditions in which judges work are unsatisfactory, to the point where they may materially interfere with judges' independence and create unacceptable pressures on their impartiality."

The creation of a multi-layer court system with expanded responsibilities has significantly increased the need for financial, material and human resources. During the last 10 years the competence of courts, their public role, responsibility and workload has been expanding, and the number of judges increased by 35% between 1996 and 2001. However, the allocations have not increased accordingly. Despite the increase in the number of judges, the enormous increases in the number of cases has increased the average workload considerably, and there is a shortage of judges (31 vacancies in the district courts). Judges of the district courts have the heaviest workloads, which have been increasing: 40.48 cases per month in 1997, 45.77 in 1998, 55.34 in 1999, and 52.68 in 2000[1].

As regards infrastructure, the budget allocations for construction have reportedly lagged considerably behind the amounts required. Eventhough some courthouses have been built or renovated, others remain in very poor condition (e.g. the Vilnius Second District Court, Vilnius Regional Court and the Court of Appeal). Provincial courts are also siad to be in particularly poor condition. In district courts, about 40% of cases are tried in judge's offices[2].

[1] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[2] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)

Equipment of the courts

The efficient functioning of courts is hampered by the lack of necessary technical equipment, e.g. computers, typewriters, and copying machines. Some district courts even lack basic furniture and writing supplies. Computerisation of the courts system (installation of common network) will continue under the LITEKO programme. It should deliver and install 300 PCs in the courts bringing the total number up to around 834. 85 % of the courts have Internet connections. From July 2000 onward, all decisions and judgements of regional courts and the Court of Appeal are published on the website of the Ministry of Justice, and decisions of the Supreme Court on its website.

A high level of transparency within the court system, including access to previous judgements

One report states that access to information is inadequate[1] in that judges do not all receive the official gazette (although most have access to printed codes) and legal information can be accessed only by computer in courts that have installed LITLEX (a legislative databank) or are connected to the database via the Internet. LITLEX is available to the great majority of judges in the regional, appellate courts and the Supreme Court, but some district court judges do not have access to it.

(Objective) distribution of tasks[2]

Court presidents, their deputies and division presidents have no right to exert influence upon other judges when the latter administer justice, or in any other manner that compromises judicial independence. Instructions that would contradict the order established by law and exert influence on a decision are considered "gross interference in case processing", and are subject to disciplinary sanctions. There have been no reports of such interference.

Judges are generally not overly dependent on their court presidents; they do not depend on court presidents for performance assessments (these are conducted by the Department of Courts) nor for any benefits or promotions. Moreover, first instance judges set their own calendar.

Cases in first instance courts are assigned by the court president according to one of these methods:
- alphabetically according to name of the defendant;
- numerically according to the case number

[1] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)
[2] Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001)

- a combination of the alphabetical and numerical distribution also taking into account the specialisation of a judge.

The court president must follow one of these methods, but can change procedures for the next year if the chosen method proves to be ineffective. The court president's order on the method for annual case assignments is distributed to judges by the president or division of the court not later than 20 December each year, and deviations from these rules may be made only in exceptional cases (e.g. in case of the long absence of a judge). Although there is no formal legal prohibition, in practice court presidents cannot reassign a case except under exceptional circumstances, such as illness, a business trip, or another objective reason. Consequently, "judge shopping" hardly exists.

(NB: more practical information from the side of the Member States has been requestedd)

D. Criminal Law and Procedure, Conventions

Criminal Law and Procedure

With regard to the amendments to the Criminal Law and the Criminal Procedure Code, Lithuania has stated[1] that the new Criminal Code and the new Code of Criminal Procedure will enter into force on 1 January 2003. The Government has approved the draft new Code of Criminal Procedure which was submitted to Parliament in August 2001. Adoption of the new Code of Criminal Procedure was envisaged in the 1st quarter of 2002 (more updated information desirable).

The status of victims is defined in the Code of Criminal Procedure which provides for the legal basis of rights and obligations of victims to crime. The victim has *inter alia* the right to legal counsel during pre-trial and court proceedings and is entitled to appeal against the acts or decisions of an investigator, prosecutor, judge or court. Furthermore, legislation is being drafted, which will provide for the granting of financial assistance to victims who suffered from serious violent crimes, and for the establishment of a special Foundation that will provide such assistance. The draft legislation is based on the provisions of the European Convention on the compensation of victims of violent crimes.

[1] Draft Common Position on Chapter 24, Co-operation in the fields of Justice and Home Affairs (Brussels, 5 December 2001 14945/01 LIMITE ELARG 370)

As regards the need to prove one's innocence, Lithuania states that part 1 of the Article 31 of the Constitution of Lithuania states that: "Every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence." The current Criminal Code contains a similar provision in Article 3 (part 5).

Regarding the severity of minimum sentences, the current Criminal Code was amended in November 1999 in order to abolish or lower sentences in cases which do not constitute a high degree of danger for society (e.g. theft, fraud). Moreover, the new Criminal Code does in many cases not provide for a minimum sentence, thus giving the judge the possibility to adjust the sentence to the particular circumstances of the crime and the offender. It also provides for alternative sanctions, which do not relate to deprivation of liberty.

As concerns the right to be heard, Lithuania states that the provisions of the Code of Criminal Procedure provide for a wide range of rights granted to the suspect and the accused person: the right to raise objections to the prosecutor, interrogator, investigator, interpreter, specialist or expert. The accused person has the rights to take cognisance of charges and to submit explanations regarding the presented charge, to present evidences, to lodge requests, to take cognisance of the entire file underlying the case after completion of pre-trial investigation, to have legal counsel, to participate in the court hearing at first instance, to lodge appeals against actions of the interrogator, investigator, prosecutor, judge and the court and against the judgement itself. Further, the accused also has a right to "remain silent"; the right to refuse to give evidences against him/herself.

The courts' handling of criminal cases

Information is awaited.

Effective access for all citizens to justice including the right to defence and the existence of an effective system of legal aid

With regard to the completion of the legal framework of and ensuring effective access to free legal aid, Lithuania has stated that all necessary legal acts in this respect are in force and that the system of state guaranteed legal aid functions properly. An amount of LTL 5.390.000 was allocated from the state budget in 2001 to pay the lawyers providing state guaranteed legal aid.

The respect of 'reasonable delays' (ECHR Article 6) for judicial procedures (incl. pre-trial detention, particularly as concerns minors)

Information is awaited.

A satisfactory policy, with sufficient means, as regards dealing with minors

Information is awaited.

Exchange of magistrates

Lithuania has stated[1] that it fully commits itself to the objectives of the *Joint Action of 22 April 1996* and agrees that exchange of liaison magistrates could increase the speed and effectiveness of judicial co-operation, facilitate better mutual understanding between states' legal and judicial systems and could also help combat all forms of transnational crime, organised crime and fraud. However, at present, Lithuania is fully satisfied with the speed and quality of judicial co-operation with EU Member States and third countries. Given that the judicial co-operation with EU Member States is comparatively small, Lithuania does not intend to establish liaison magistrates in the near future. However, if judicial co-operation with particular countries reaches a sufficient level, Lithuania would reconsider the possibility of establishment.

Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation

The present Criminal Code provides for liability for criminal association, albeit only for very serious crimes. The new Criminal Code -adopted in September 2001 but not yet entered into force- provides for a more broad definition of serious crime which should bring Lithuanian legislation in line with the Joint Action.

Trafficking in human beings and sexual exploitation of children

According to Lithuania, the present Criminal Code is fully aligned. More information on the implementation of the Joint Action in practice is desirable.

[1] Draft Common Position on Chapter 24, Co-operation in the fields of Justice and Home Affairs (Brussels, 5 December 2001 14945/01 LIMITE ELARG 370)

Racism and Xenophobia

No information available.

Effective system of witness protection

In 1994, the Government adopted the Programme for Witness and Victim Protection from Criminal Influence. On 17 March 2001, Lithuania, Estonia and Latvia concluded the Agreement on Co-operation in Witness and Victim Protection (in force since 8 July 2001). On 17 January 2002, the Government adopted the Programme for Trafficking in Human Beings and Prostitution Control and Prevention for the years 2002-2004. In 1999, the Witness and Victim Protection Service was established in the Police Department (now under the Bureau of the Lithuanian Criminal Police). (*practical information on this issue would be desirable)*

Extradition and Mutual Assistance in criminal matters[1]

Lithuania has ratified the European Convention on Extradition and its two Additional Protocols and the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. Lithuania has not yet signed the Second Additional Protocol to this Convention. Lithuania intends to make a statement of good practice in accordance with the Joint Action on good practice in mutual legal assistance in criminal matters (29 June 1998) after its accession to the EU.

Equally after its accession, Lithuania intends to accede to the EU Extradition Conventions of 1995 and 1996 and intends to use as little as possible any of the reservations. The new Code of Criminal Procedure , which is currently under preparation, will take the instruments used for judicial co-operation in criminal matters in the EU Member States into account (in particular the Convention of 10 March 1995 on Simplified Extradition Procedures, the Convention of 27 September 1996 relating to Extradition between the EU Member States and the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the EU Member States.)

As far as the Protocol to the Convention on Mutual Assistance in Criminal Matters is concerned, Lithuanian authorities are competent to provide information on the following issues:

-whether a natural or legal person that is subject of criminal investigation holds one or more accounts in the territory, and if so to provide all the details of the identified accounts;

[1] Council of Europe Website: Main Framework Conventions (Status on 19/03/02)

-information concerning the particulars of specified bank accounts and of banking operations, which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account;
-monitoring, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State;
-providing mutual assistance in the case of fiscal offences.

Lithuania has stated that it is taking note of the European Arrest Warrant and other new EU initiatives, namely the setting up of Eurojust, on combating terrorism, on execution in the EU of orders freezing assets or evidence as well as on the adoption of the Protocol to the Convention on Mutual Assistance in Criminal Matters between the EU Member States.

Lithunia has ratified the Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol, the European Convention on the International Validity of Criminal Judgements and the European Convention on the Transfer of Proceedings in Criminal Matters.

Practical experience
Information is awaited.

Efficient international judicial co-operation bodies, with sufficient human and material resources
Information is awaited.

Bilateral agreements
Information is awaited.

Judicial co-operation in the framework of Schengen
The new Criminal Code and the draft Code of Criminal Procedure provide for the possibility of extraditing nationals, the simplified extradition procedure, establishing the possibility for direct contact between judicial authorities as well as possibility to send documents to the person concerned directly by post. As the draft Code of Criminal Procedure does not limit judicial co-operation to criminal matters, there will be no obstacles to provide judicial assistance in the cases provided in Articles 49 and 50 of the Convention implementing the Schengen Agreement.

The draft Code of Criminal Procedure is drafted in a way that will establish the procedure regarding the execution of requests. It provides that while executing requests of foreign institutions, the courts, prosecution agencies and pre-trial investigation institutions shall carry out procedural acts provided for by the Code of Criminal Procedure. While executing requests of foreign institutions the procedural acts that are not provided for by the Code may be carried out in accordance with international agreements to which Lithuania is party if execution of such acts does not violate the Constitution and Lithuanian laws and as long as it does not contradict fundamental principles of (Lithuanian) criminal procedure.

In 2001, the Prosecutor General's Office received 1209 requests for legal assistance to foreign law enforcement authorities, out of them:
a) 148 requests for extradition (of which 76 requests were satisfied);
b) 36 requests to transfer proceedings in criminal matters.

In 2001, the Division of International Relations and Legal Assistance of the prosecutor General's Office prepared and distributed among the law enforcement authorities concerned a methodological manual on 'Legal Co-operation in Criminal Matters'. It describes the requirements set for the request for legal assistance addressed to foreign authorities, specific issues of extradition as well as the procedure for the execution of foreign requests to carry out procedural acts and transfer proceedings in criminal matters.

As concerns direct contacts between competent judicial authorities, in civil matters direct contacts are very much facilitated by the Ministry of Justice, which is the central authority for judicial co-operation in criminal and civil matters. Requests for the service of documents from Lithuanian courts in civil matters are already addressed directly to central authorities indicated in the declarations of countries concerned. Moreover, the PHARE Twining project "Strengthening Capacity of Lithuanian Judiciary" deals particularly with judicial co-operation in civil and criminal matters and should further facilitate the establishment of direct contacts between judicial authorities.

Drugs

Lithuania has signed (in March 2002) but not yet ratified the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The National Focal Point for participation in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the REITOX network has been established in the State Mental Health Centre on 1 November 2001. The National Drug Information Point shall receive adequate financing and will be staffed upon establishment of the REITOX network in the first half of 2002. A national action plan for the establishment of the National Drug Information System will be developed and implemented with support of EU experts. Further, the administrative capacities of institutions fighting against illicit trafficking of drugs (police, customs and other services which are involved in drug control and drug addiction prevention activities) will be strengthened and their equipment upgraded. [1]Within the framework of the National Programme on the Drug Control and Prevention of Drug Addiction 1999-2003, "The Strategy of Fight of the Subjects of Operational Activities Against Illegal Circulation of Narcotic and Psychotropic Substances" was approved by the Government on 6 February 2002. It aims to more efficiently disclose and eliminate reasons and to reduce conditions that cause illegal circulation of narcotic and psychotropic substances; to improve co-operation of the subjects of operational activities during the investigation of these crimes and to continuously decrease demand and supply of drugs on the market. In 2001, € 417.000 was earmarked for the implementation of the Programme. The funds were used to purchase the equipment for search and detection of drugs, to logistically strengthen the forensic expertise agencies and specialised police units responsible for fight against drugs and to strengthen the Customs Training Centre/its staff training. Further, an information system of the fight against illegal circulation of drugs is being developed under the Programme. In 2002, € 167.000 from the State Budget will be allocated to the Police to further upgrade equipment.

[1] Accession Negotiations with Lithuania Chapter 24: Cooperation in the Fields of Justice and Home Affairs (Brussels, 8 April 2002 7697/02 LIMITE ELARG 85)

The Governmental Drug Control Commission -functioning since 1995- is a permanent inter-ministerial body, responsible for the implementation of a uniform drug policy in Lithuania. Representatives of 14 ministries, departments and other institutions are involved in the Commission's tasks. The Commission is chaired by the Minister of Health with support of the Vice-Minister of Health and the Vice-Minister of Interior. The Chief Specialist of the State Public Health-Care Service under the Ministry of Health acts as the Secretary for the Commission. An on-going technical assistance programme (financed by PHARE) is expected to strengthen the Commission Secretariat with clear administrative structures for the co-ordination of inter-ministerial co-operation and for the monitoring and evaluation of the national drug policy.

Terrorism

Lithuania has ratified the 1977 European Convention for Suppression of Terrorism. The National Programme for Fight against Terrorism foresees ratification by 4th quarter of 2003 of the following conventions:

- UN International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the UN on 9 December 1999;
- Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents, adopted by the General Assembly of the UN on 14 December 1973;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

Lithuania is taking note of the 1995 La Gomera Declaration on Terrorism.

E. Civil Law and Procedure, Conventions

The Code of Civil Procedure

Information is awaited.

Length of court proceedings, procedural delays, the quality of decisions

Information is awaited.

Practical, effective enforcement of court decisions, in particular in civil matters (which implies the existence of qualified professionals[1])

Court bailiffs enforce civil rulings. According to one report, as a rule, judicial decisions are respected by political authorities, although civil judgements often go unenforced. It states that the ineffective system of enforcement is often mentioned as one of the main reasons for public mistrust in courts. The problems seem to be caused by the significant increase of the number of cases on the one hand, and the current system of poorly qualified bailiffs with insufficient resources on the other.

In its additional information of February 2002, Lithuania reports an increase in the number of writs of execution per year as well as an increased backlog of judgements not yet executed:

Year	1999	2000	2001
Backlog in Writs of execution at the beginning of the year	145.712	192.818	236.576
Writs of execution received	420.958	438.453	440.751
Executed Writs of execution	360.314	393.010	409.787
Backlog in Writs of execution at the end of the year	206.346	238.261	265.535

However, Lithuania is taking steps to improve the system. The system of court bailiffs has been undergoing reform since 1999, starting with the adoption of the Guidelines for the Institutional Reform of Bailiffs. On 28 January 2002, a draft Law on Bailiffs was submitted to the Seimas. It was expected to be adopted in the 1st quarter of the year 2002. More updated information on the state of play would be desirable. The legal basis for the reform of the bailiffs' system (i.e. the Law on Bailiffs and other necessary legislation) will enter into force in the 4th quarter of 2002. Lithuania expects that the reform of the Court bailiffs system will significantly improve the effective enforcement of judgements.

[1] Such personnel must be competent and subject to satisfactory recruitment procedures and control.

The draft Law lays down the new content of the Court bailiffs under which a bailiff is not a civil servant but rather a person with rights empowered by the state with the state's delegated functions to establish factual circumstances, to implement documents concerning courts' decisions, and have the competence to serve documents. The Law was prepared in close collaboration with the International Union of Court's Bailiffs and Court's Official and National Chamber of Court's Bailiffs of France.

It provides for more strict requirements for persons willing to become a bailiff; a bachelor of law education, an irreproachable reputation and at least 1 year practice as an assistant to the court bailiff. The draft law also prescribes for self-government of bailiffs: self co-ordination of the activities of the bailiffs, representation of the interests of bailiffs in the state institutions, international organisations and organisations of the foreign states. The self-government of bailiffs also means responsibility for organising and implementing education/training of bailiffs. The Minister of Justice will have a broad authority with regard to assuring the development of the execution system and guaranteeing its effectiveness. He will have a right to employ and fire a bailiff; the right to institute a disciplinary case against bailiff and the right to perform control over bailiffs' activities.

(NB: more information on effective enforcement of judgements is awaited from the Member States)

Alternative methods of dispute solving

Information is awaited.

Conventions/bilateral agreements

Lithuania must still sign the 1980 European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and has not yet acceded to the 1954 Convention on Civil Procedure, the Convention on Juridiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) nor to the Convention on the Civil Aspects of International Child Abduction (1980). It has acceded to the Convention on the Taking of Evidence Abroad (The Hague, 1970) and the Convention on International Access to Justice.

Practical experience

Information is awaited.

Efficient international judicial co-operation bodies, with sufficient human and material resources

Information is awaited.

F. Data Protection[1] *(with special emphasis on the effective protection of personal data)*

Lithuania has signed and ratified the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It has signed the Additional Protocol regarding supervisory authorities and transborder data flows.

In September 2001, the Government adopted the Resolution on the Structural Reform of the State Data Protection Inspectorate, Granting Authorisation, Approval of the Regulations of the State Data Protection Inspectorate and the Amendments of the Related Resolutions. The reform restructured the Inspectorate into an independent governmental institution, authorised to supervise and control implementation of the Law on Legal Protection of Personal Data and designated as the authority responsible for the implementation of regulations of the 1981 Convention. The Inspectorate, in discharging the functions of data protection supervising and taking decisions relating to the performance of the functions laid down in the Law on Legal Protection of Personal Data, is independent: its rights may be restricted only by the law. The Inspectorate is accountable to the Government and obliged to submit its annual report to the Government by 1 February each year.

It is headed by the Director, who shall be appointed and dismissed in accordance with the procedure laid down in the Law of Public Service. He/she shall be the citizen of Lithuania with a university or equivalent degree, having experience in the field of data protection activities or legal work and meeting other requirements laid down in the Law on Public Service. The term of office Director is 5 years and he/she reports to the Prime Minister.

[1] Source: Additional Information provided by Lithuania February 2002, Council of Europe Website on Conventions

Amendments to several Articles[1] of the Law on Legal Protection of Personal Data which passed by the Seimas in January 2002 extended the scope of application of the Law in order to meet the requirements of the 1981 Convention and of Europol. Draft Amendments to the Law which should ensure full compliance with the EU legislation -in particular by strengthening the independence of the Inspectorate- will be submitted to the Seimas in the 2nd quarter of 2002.

With regard to the Inspectorate's administrative capacity, the maximum number of staff was increased from 8 to 22. The Inspectorate is funded from the State Budget (LTL 714000 in 2002). The computerised information system of Register of Personal Data Controllers was established and became operational in November 2001. The total number of the data controllers registered at the end of 2001 was 1269.

In December 2001, the method of direct inspection was renewed and approved in order to execute full and effective inspections of lawfulness of data processing. In 2001, 17 direct inspections and 46 inspections in the way of questioning were carried out. The Inspectorate investigated 9 complaints and requests lodged by the data subjects for checks on the lawfulness of their personal data processing. The data controllers and the data subjects received 656 consultations on data protection issues.

The Data Protection Development Programme for 2002-2004 will be submitted for consideration to other relevant institutions in December 2002.

The strategic objectives are:

- to create a credible and effective data protection system complying with the EU requirements;
- to set favourable conditions for the data subjects in order to protect his constitutional right to private life in an information society; to stimulate development of the technologies strengthening the security of data protection.

[1] Articles 1-3, 5, 7, 14-16, 18, 20, 22, 26

The tasks of the Programme are:

- to improve data protection legal basis;
- to strengthen the supervision of personal data processing and to develop co-operation between data protection supervisory authority and police authorities;
- to enhance co-operation with foreign countries and international organisations in order to adopt international practise in data protection and ensure safe and legitimate data flows on international level,
- to establish technical requirements in order to strengthen the safety of personal data and to improve the system of personal data protection management;
- to implement assistance for the data subject in order to collect his personal data or information about the processing of his personal data from registered data controllers,
- to develop the public information system of about data subject's rights;
- to increase public awareness on data protection issues.

Training of the Inspectorate was provided in 2001, inter alia through Phare Twinning seminars (the SIS Articles of the Schengen Treaty and their Application, Data Protection Legislation and the SIS, the Data Protection Technical Aspects), an international Conference on Information Society, a seminar on data protection organised by the Lithuanian Institute of Public Administration and other international conferences on the subject.

(NB: information on the effectiveness of personal data protection from the MS point of view is awaited)

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Sources:

- Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001) and Minority Protection (2001)
- The Council of Europe Website, Main Framework Conventions
- Hague Conference on Private International Law Website
- Draft Common Position on Chapter 24, Co-operation in the fields of Justice and Home Affairs (Brussels, 5 December 2001 14945/01 LIMITE ELARG 370)
- Accession Negotiations with Lithuania Chapter 24: Cooperation in the Fields of Justice and Home Affairs (Brussels, 8 April 2002 7697/02 LIMITE ELARG 85)
- Additional information (II) to the position paper of the Republic of Lithuania on Chapter 24 (14 February 2002, CONF-LT 6/02)