"An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU"
JLS/D3/2007/01

Lithuania[1]

1. Introduction

Lithuania today has a population of about 3.36 million people.[2] Having been part of the USSR between 1940 and 1990, it regained independence on 11 March 1990. The first Lithuanian Republic was established on 16 February 1918. Later, part of Lithuania (Vilnius County) was occupied by Poland between 1920 and 1939. The population is rather homogenous, with more than 83% Lithuanians. Major other ethnic groups are Poles (6.7%), Russians (6.3%) and Belarusians (1.2%). Most Lithuanians are Roman Catholic.

Lithuania is a member of the United Nations since 17 September 1991 and of the Council of Europe since 14 May 1993. It is party to both International Covenants since 20 February 1992 and to the Convention on the Rights of the Child since 1 February 1992. Lithuania ratified the European Convention on Human Rights on 20 June 1995 and Protocol Nr. 6 on abolishing the death penalty in 1999. It ratified the European Convention for the Prevention of Torture on 26 November 1998. Since May 2004, Latvia is a member of the European Union.

Statutory law on criminal procedure in Lithuania was traditionally heavily influenced by Russian law. In 1918, when the independence of Lithuania was restored after being part of the Russian Empire, the Russian Statute of Criminal Procedure of 1864 was proclaimed to remain in force in Lithuania. On 15 June 1940, the Soviet Union occupied Lithuania and on 6 November 1940 the Code of Criminal Procedure of the Russian Soviet Socialist Federal Republic was brought into force. In 1961, the Criminal Procedural Code of the Lithuanian Soviet Socialist Republic was adopted and entered into force. After the restoration of the independent state of Lithuania in 1990, the validity of the Code of Criminal Procedure of 1961 was reinforced. However, during the period of independence it underwent several fundamental reforms (in 1994, 1996 and 1997-1998). Important aspects were: dispensing with lay advisory jurors, the introduction of a three-tier court system (guaranteed also in Art. 111 of the Constitution), reforming the appellate procedure and the cassation courts, reforming the grounds and procedural rules for the imposition of pre-trial detention, and introducing provisions on extradition and mutual legal assistance with foreign countries.[3]

Today, the criminal procedure is determined by the Constitution of the Republic of Lithuania, by the international legal norms mentioned, and by the Code of Criminal Procedure (CCP – "Lietuvos Respublikos baudziamojo proceso kodeksas") of 2002, in force since May 2003 (currently in the version of 15 April 2008). The Lithuanian Constitution ("Lietuvos Respublikos Konstitucija"), which was approved in a referendum on 25 October 1992, is a successor of the constitution of 1922; new constitutions similar to the other Soviet constitutions were also adopted in 1940 and 1978.[4] Its second chapter, bearing the title "The Individual and the State", contains a catalogue of basic human rights, including procedural rights. Judicial power is vested in the courts; judicial independence is guaranteed by Art. 109 of the Lithuanian Constitution. The court system

---

[1] The author, Christine Morgenstern, wishes to thank Dr. Skirmantas Bikelis for providing legal and statistical materials (in particular translations of the CCP), for commenting on and correcting earlier drafts of this report, and for taking part in the 2nd expert meeting, 27-30 November in Greifswald, Germany. Dr. Skirmantas Bikelis is a researcher at the Criminal Justice Research Department of the Institute of Law ("Teisės institutas", www.teise.org), a research establishment, founded in 1991 by the Government of the Republic of Lithuania, seeking to coordinate the reform of the legal system and law institutions. Dr. Bikelis holds a Ph.D. degree in criminal law.

[2] As in Latvia, the number of inhabitants has decreased significantly within the last 10 years: from 3.588 million people in 1997 to 3.366 million in 2008 (http://epp.eurostat.ec.europa.eu, last retrieved 17 November 2008).

[3] Švedas 2000, p. 8.

[4] The official translation of the Constitution can be found in the document library of the website of the "Seimas" (the Lithuanian Parliament) at http://www3.lrs.lt/home/Konstitucija/Constitution.htm (last retrieved 7 November 2008).

consists of 54 District Courts, 5 County Courts, the Court of Appeals and the Supreme Court (guaranteed also by Art. 111). According to Art. 102 pp. of the Constitution, the Constitutional Court, as an independent constitutional body, decides upon the constitutional conformity of laws. The courts and (at least) 1/5 of the members of Parliament, in certain cases also the President, have been given the right to submit applications for constitutional reviews (Art. 106); individual applications by citizens are not possible.

In December 1994, the institution of the Seimas Ombudsmen's Office was established, in accordance with Art. 73 of the Lithuanian Constitution. It operates under the Law of the Seimas Ombudsmen of 3 December 1998 (amended as of 25 November 2004). Five Ombudsmen are appointed for the term of five years from the candidates nominated by the Chairman of the Seimas of the Republic of Lithuania. All of them are law graduates, have equal rights and duties, and operate independently – one of them being the Head of the Office. They have, *inter alia*, the right to enter the premises of institutions and agencies (including prisons and police cells), and to meet and interview persons present in the premises without any restrictions.[5] In 2007, the Seimas Ombudsmen made 1,065 decisions regarding complaints about the actions of state institution officials. Many complaints related to police officials, 37% of which were classified as justified. However, the majority of decisions, i.e. a total of 317 decisions, were made with respect to the actions of officers of correctional institutions subordinate to the Prison Department. Only 15% of these complaints were considered justified, but this is a 4% rise compared to the year 2006.[6] If, in the Ombudsman's view, certain events make this necessary, he can also act on his own initiative.

In the human rights chapter of the Constitution of Lithuania, several norms are of relevance for criminal proceedings and, in particular, for arrest and detention: In accordance with Art. 20, a *habeas corpus* norm, "no one may be arbitrarily detained or held arrested. No one may be deprived of his freedom otherwise than on the grounds and according to the procedures which have been established by law. A person detained *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of the detainee, on the validity of the detention. If the court does not adopt a decision to arrest the person, the detainee shall be released immediately." Art. 21 protects human dignity and states that "it shall be prohibited to torture, injure, degrade or maltreat a person as well as to establish such punishments". Art. 30 and 31 can be regarded as basic procedural rights, guaranteeing the right to appeal to a court when constitutional rights or freedoms are violated. Additionally, a law regulating the procedure for compensating material and moral damage inflicted to a person is stipulated. Art. 31 contains the presumption of innocence and the fair-trial principle. It states explicitly that "from the moment of arrest or first interrogation, persons suspected or accused of a crime shall be guaranteed the right to defence and legal counsel". In addition, Art. 117 contains important judicial rights, guaranteeing an "investigation of the case open to the public" (unless the "secrecy of a citizen or the citizen's family's private life" require a closed-court session) and the assistance of an interpreter in investigations and court proceedings for those who do not speak Lithuanian.

In addition to the constitutionally guaranteed rights, international human rights treaties were incorporated into domestic Lithuanian law by ratification. Thus, the European Convention on Human Rights, with regard to remand detention in particular Art. 3 (Prohibition of torture) and Art. 5 (Right to liberty and security) as well as Art. 6 (fair trial, presumption of innocence), is directly applicable in domestic law since 1995.

The new Penal Code of Lithuania came into force as late as 1 May 2003, although reform codes had been drafted since 1996 and the text of the new Penal Code had been established on 26 September 2000. Most of the amendments of the old Penal Code of 1961, in particular those coming into force on 1 September 1994, as well as the reform bills were characterized by a harsher criminal policy leading to harsher sentences.[7] This development was partly a reaction to rising crime rates – reported crimes quadrupled between 1988 and 2004 (from 21,337 to 93,419); the number of solved crimes and the number of convicted prisoners doubled during this period.[8] The trend continued until the turn of the millennium; since 2003/2004 the overall numbers – but also those for violent crimes – are slowly decreasing. A turnaround in penal policy can be seen in the

---

5 http://www.lrski.lt/index.php?l=EN (last retrieved 7 November 2008). The Seimas Ombudsmen's Office publishes annual reports. All summaries (in English) of these annual reports from 2003 onwards can be found on the website.

6 This data was taken from Seimas Ombudsmen of the Republic of Lithuania 2007.

7 Sakalauskas 2006, p. 19 pp.

8 A comprehensive collection of criminological statistics (also in English) can be found at http://www.nplc.lt/stat/stat.htm.

amendments of the Lithuanian Penal Code of 21 July 2007, which partly increase the maximum terms of imprisonment for serious crimes, but – with more practical relevance – lower or abolish the mandatory minimum terms for a lot of crimes.[9]

Pre-trial detention is mainly regulated by the Code of Criminal Procedure, the CCP of 2000. In Art. 1 CCP, the aim of the criminal procedure is laid down: "The criminal procedure aims in defence of human and citizen rights and freedoms at a speedy and detailed detection of criminal acts and a proper application of the law in order to ensure that any person who has committed a criminal act is given a fair punishment and that no one who is innocent is convicted (…)." Note that the need for a speedy procedure is emphasized in the very first section of the law. Other important basic regulations with regard to pre-trial detention are Art. 11, stipulating the principle of proportionality for all provisional measures and acts during the investigation, and Art. 44, a comprehensive provision titled "Protection of Human Rights in the Criminal Procedure", repeating the *habeas corpus* norms from the Constitution.

With the first reform of the CCP of 1961 in 1998, stricter rules for imposing pre-trial detention were introduced. The new CCP of 2002 introduced the new position of "investigating judge" (or "pre-trial judge"), who decides on pre-trial detention and monitors the observance of human rights during the criminal procedure stage. He is situated at the District Courts. New statutory (partly stricter) limits for pre-trial detention, depending on the complexity and scope of the case, were also established, including a shorter overall term for minors.

In the third part of the CCP of 2002 (Art. 119 pp.), bearing the title "Procedural coercive measures", the provisional measures are regulated; among them are arrest, detention and house arrest. General principles of the application of provisional measures are laid down in Art. 121 CCP, according to which detention, house arrest and the obligation to live separately from the victim (restraining order) may only be ordered by a judge. This has to be done within the boundaries specified by law (in particular only when a reasonable ground exists to believe that a suspect committed a criminal act), assessing the proposals of an investigator or public prosecutor, hearing the views of the detained person, and taking into account the nature of the criminal offence as well as the detainee's personal circumstances.

Other statutory law with relevance to arrest and detention is the "Lietuvos Respublikos Kardamojo Kalinimo Istatymas", the Law on Pre-trial Detention of 18 January 1996, amended 1 June 2006 in the latest wording of 21 August 2008. It basically regulates the execution of arrest and detention. The amendments and a new name (Law on the Execution of Pre-trial Detention) will come into force in April 2009.

2. Empirical background information

The prison population (including remand detainees) in Lithuania is still high compared to that in Western European countries. With respect to human rights, the situation remains problematic. Among the prisoners are many remand detainees (see Table 1); currently, their share is about 12%. This number was significantly higher in years following large-scale amnesties, reaching 31.9% in 1999 and 24.8% in 2000.

The current situation can be seen in Table 1. This table comprises data from different sources (which nevertheless all rely on official data from national authorities). It must be noted, however, that the number of prisoners has decreased significantly over the last years (see Figure 1); compared to the peak number (during the covered period) of 14,412 in 1999, the prison population decreased by 46% to 7,774 at the end of 2007. This development is even more striking with respect to the number of remand detainees: the peak was reached earlier, with 3,337 remand detainees in 1994, and the number decreased by more than 70% to 948 in 2007.

[9] Sakalauskas 2009.

Source	Date	Total prison population	Number of remand detainees	Pre-trial detainees as % of the total prison population	Total prison population rate per 100,000	Remand detention rate per 100,000	Foreigners in prison (numbers and percentage)[10]		Female prisoners (number and percentage)[11]		Juveniles under 18 (number and percentage)[12]	
							All prisoners	Remand detainees	All prisoners	Remand detainees	All prisoners	Remand detainees
(International Centre for Prison Studies)[13]	1 January 2008	7,866	952	12.1	234	28	0.9%*	---	4.4%*	---	2.4%*	---
SPACE I (Council of Europe)[14]	30 September 2006	8,078	1,405	17.4	237	41	78 1.0%	32 2.3%**	309 3.8%	---	183 2.3%	---
National Statistics[15]	31 December 2006 31 December 2007	8,079 7,774	997 948	12.2	230	30 28	43 0.6%*	29 2.9%**	308 3.8%*	78 7.8%**	188 2.3%	105 11%**

Table 1: Prison population characteristics (latest data from different sources)

--- no data available; * of all prisoners; ** of all remand detainees; data in italics represent own calculations

[10] Malisauskaite-Simanaitiene 2007, p. 549.

[11] Sakalauskas 2009, Table 1 for 31 December 2006.

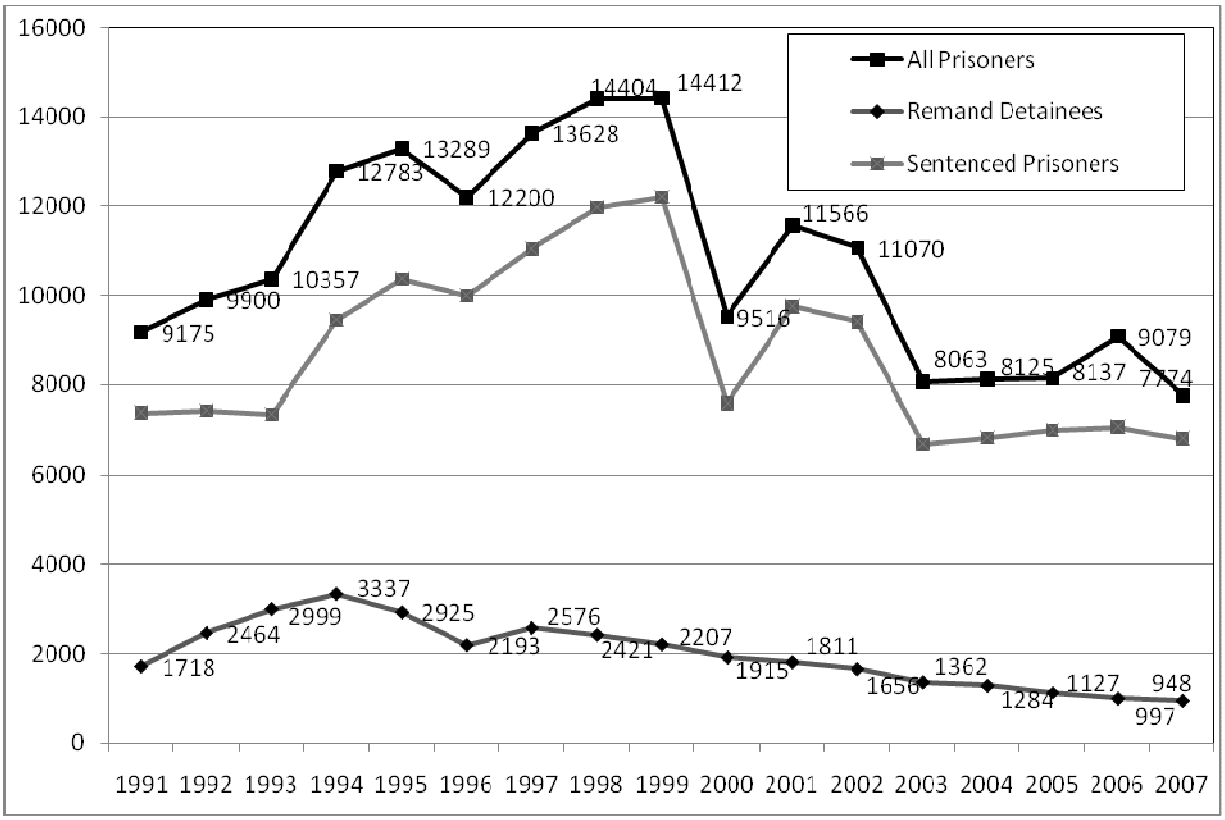
[12] Sakalauskas 2009, Table 1 for 31 December 2006.

[13] International Centre for Prison Studies, World Pre-trial/Remand imprisonment list January 2008 (http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=149, Last visit: 25 October 2008).

[14] Aebi/Delgrande (2007): *Council of Europe Annual Penal Statistics (SPACE I)*. Survey 2006. PC-CP (2007) 9 rev o3. Strasbourg. http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/. Earlier surveys can be found on the same website (last retrieved 28 October 2008).

[15] National Prison Statistics, available at http://www.nplc.lt:8000/asis/ cited after Sakalauskas 2009, Abb. 1 for 31 December 2006 and 31 December 2007.

Figure 1: The prison population according to legal status (absolute numbers), 1991-2007[16]



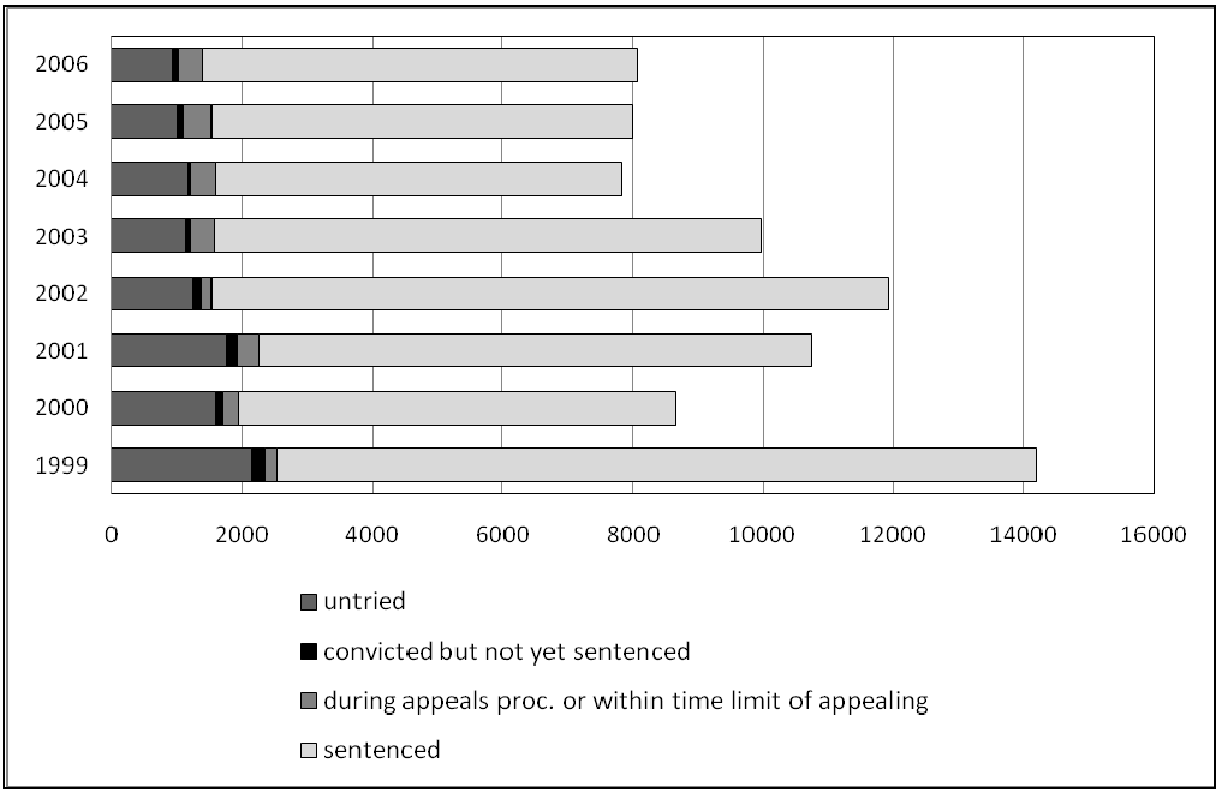
With regard to the composition of the group of prisoners kept in remand prisons, the Lithuanian Prison Statistics distinguish several sub-groups according to their legal status: untried prisoners (meaning those who are in pre-trial procedure or during trial but without conviction), convicted but not yet sentenced prisoners, prisoners who have appealed or who still could do so within statutory time limits, and sentenced prisoners (with a final sentence). The different groups of persons who can be kept in places of pre-trial detention are listed in Art. 6 of the Law on Pre-trial Detention of 1996. These distinctions are also reflected in the statistics compiled on behalf of the Council of Europe (SPACE I). See Figure 2. However, even after consultations with the national expert,[17] it remained unclear why a group of "convicted but not yet sentenced prisoners" was kept in the statistics, because Lithuanian law does not make a distinction between conviction and sentencing. Maybe this group includes those waiting for convoy to the regular prison where the sentence will be enforced. Another problem must be mentioned in that regard (see also 3.3): In accordance with Lithuanian law, it is possible that, during his appeals procedure, a prisoner applies for the beginning of the execution of his punishment in a regular prison. According to the experts,[18] the number of prisoners who apply for this option is very low. The percentage of detainees who have been convicted in first instance and appeal was about 5% in 2007.[19]

Lithuania is one of the countries that tried to regulate the enormous and expensive prison population by granting large-scale amnesties – this is why the number of sentenced prisoners fluctuated so much in earlier years (see Figure 1). The effects of amnesties never lasted long; especially after the large amnesty of 2000, the prison population soon increased again rapidly. Only since the introduction of new sentencing structures with the Penal Code of 2003, the situation has become more stable; this is reflected in the number of sentenced prisoners.[20] As can

16 Source: Lithuanian Prison Statistics, cited from Sakalauskas 2009.
17 Personal communication by Skirmantas Bikelis, footnote 1 above.
18 Bikelis (footnote 1) and an official from the Ministry of Justice via personal communication.
19 http://www.nplc.lt:8000/asis/.
20 Sakalauskas 2006 op. cit., p. 53.

be seen in Figure 2, all groups, except the group of detainees in appeals procedures, have become smaller if we compare the years 1999 and 2006.

Figure 2: Prisoners according to legal status, 1999-2006 (SPACE I) [21]



3. Legal basis: scope and notion of pre-trial detention

3.1 Definition of pre-trial detention

According to the Lithuanian CCP, detention is one of the provisional measures that can be applied to secure proper functioning of the criminal procedure or to prevent new offences. It lasts until the final conviction, which means that detainees keep their status also during appeals procedure and stay in remand prisons or the respective units. Another form of custody within the criminal proceedings is the so-called "provisional arrest" (in accordance with Art. 140 CCP), meaning the period between actual arrest and detention order (see below).

Other forms of deprivation of liberty by placement in a police cell have to be distinguished: administrative detention (up to thirty days) of persons found guilty of administrative infringements (e.g. petty theft), preliminary detention (up to five hours) during the completion of police proceedings concerning administrative offences, detention for identification (up to 48 hours) under aliens law provisions, and detention for sobering up. Foreigners can be detained in criminal proceedings when a request to extradite or surrender (International Criminal Court or under the European Arrest Warrant) exists (Art. 122 (5) CCP) or under the provisions set in the Law on the Legal Status of Aliens of 2004.[22] The CCP also provides for the detention of persons with mental disorders for medical examination (Art. 141 CCP).

3.2 Primary objective and underlying principles of pre-trial detention

The primary objective of all provisional measures is laid down in Art. 119 CCP. They may be applied when there is a need to secure the presence of a suspect, an accused or convicted person

[21] Aebi/Delgrande 2007 op. cit.

[22] An official translation can be found under http://www3.lrs.lt/cgi-bin/getfmt?C1=e&C2=319034.

during the proceedings, and to guarantee unhindered pre-trial investigation, the accomplishment of the trial or the execution of the judgement. Another goal is the prevention of new criminal offences. The aim of provisional measures involving the deprivation of liberty does not differ in this regard.

Detention, house arrest and the obligation to live separately from the victim are particularly far-reaching interventions into personal freedoms. This is why they are permitted only upon order of a judge (Art. 121 (1) CCP), thus respecting the rule of law. Art. 121 CCP also contains the principle of proportionality by laying down that detention may only be ordered when less severe provisional measures cannot secure the above-mentioned purposes (Art. 121 (7) CCP) and only for cases where the relevant offence provides for a penalty of more than one year according to the Penal Code (Art. 121 (8) CCP). Fair-trial aspects (also with regard to Art. 30 and 31 of the Constitution of Lithuania (see above)) can, for instance, be seen in the public prosecutor's duty to record all provisional arrests (Art. 140 (5) CCP), in the judge's duty to explain to an offender what his rights are and what remedies exist in case these rights are violated (Art. 45 and 46 CCP), or in the obligatory presence of defence counsels in cases where the accused is in detention (Art. 51).

The imperative of a speedy procedure (see also Art. 1 of the CCP) is specified in various provisions regulating e.g. the absolute time limits for detention or the provision (Art. 129 (7) CCP) that the judge may not extend the detention in cases where no investigative actions have been performed and the public prosecutor cannot give satisfactory reasons for that inactivity.

With regard to the principle of proportionality (Art. 11 CCP), it is important to note that according to a survey of the Office of the Prosecutor General[23] in less than 0.3% of all cases that were closed, detention was imposed before. According to the report, this shows that "prosecutors have applied for the imposition of detention only in cases where is actually sufficient ground to believe that an accused person may be found guilty". In its "Conclusions and proposals", the report emphasizes that "prosecutors must pay exceptional attention to the principle of proportionality. (...) Upon deciding for detention, they must consider not only grounds and conditions for detention set in the CCP, but also whether the objectives of criminal procedure could be achieved by other coercive measures." The Supreme Court also emphasized in a survey[24] the principle of proportionality and the need for clear motives for the assumption that grounds for detention exist.

3.3 Beginning, end and duration of pre-trial detention according to law

For all questions with respect to the duration of detention (see Table 2 for an overview), the time elapsed since the actual arrest has to be taken into account.

Art. 140 CCP regulates the time limits for provisional arrest. In accordance with Art. 140 (6) CCP, the arrested person has to be questioned within 24 hours by an investigating police officer or public prosecutor. In this provision, no wording such as "as soon as possible" is included, to avoid the risk that Art. 140 (6) CCP is interpreted in a way that allows the investigating personnel to keep the detained person in suspense for a longer period. But the provision has to be read in connection with Art. 140 (4), which provides that "arrest shall not last longer than it is necessary for identification of a person and for taking indispensable procedural steps". So legally, it is not possible to keep an arrested person just to pile on the pressure, not even for 24 hours (see below for the sometimes problematic practice).

The maximum term for provisional arrest is 48 hours. As an exception to this rule, the maximum term for provisional arrest is 24 hours if a person has already been questioned as a suspect earlier in the process (although a prosecutor is entitled to extend this term up to 48 hours). If the public prosecutor is of the opinion that detention is necessary, the arrested person must be brought, within 48 hours, before the judge, who then decides the issue of applying detention under the CCP. During this hearing, the judge has to assess carefully whether there are enough grounds for detention or not.

The detention period that is basically regulated in Art. 127 CCP starts with the judge's decision to issue a detention order. The detained person keeps the status of "pre-trial detainee" or "remand detainee" until the final sentence becomes valid, which means also during appeals procedure, any waiting periods, transfers etc.

---

23 Office of the Prosecutor General 2007.

24 The Supreme Court of Lithuania 2004.

The time a suspect or accused person can spend in pre-trial detention is limited; the time limits are from three months (the period that can be ordered initially) up to six months. These standard periods can be extended under certain circumstances: If the case is very complex or has a particularly large scope, a judge of a higher court can grant extensions of three months respectively – the overall duration may not exceed eighteen months for adult detainees and twelve months for juveniles. It is important to emphasize that it is not the gravity of the crime but the complexity of the case that is crucial for possible extensions of detention. It has to be noted, however, that the absolute time limits prescribed in the CCP are relevant only for the pre-trial stage, which means that once the investigation has been closed and the procedure has progressed to the trial stage, the possibility of further extensions is not limited.

To balance the needs of the investigating authorities and the right of suspected and accused persons to a speedy procedure, three provisions for the extension procedure can be found in the CCP: During the pre-trial investigation, at least ten days before the expiration of the term of detention, the prosecutor must make an application to the pre-trial judge to extend the term. If the duration of detention was shorter than one month, the application has to be made at least five days before the expiration of the initially ordered term. In cases where the overall term of detention after the extension of the term may exceed six months or detention already lasted longer than six months, the application to extend the period has to be directed to a County Court. In the latter case, the prosecutor also has to "state the reasons why the case qualifies as very complex or large-scale, and give a list of the principal steps of the pre-trial investigation after the detention was imposed or the last term was extended" (Art. 127 (4) CCP). The strict implementation of the principle of a speedy procedure is somewhat watered down because Art. 147 (5) CCP states that "the court may not dismiss the prosecutor's application for extension of the term of the detention merely for the reason that such an application was filed after the deadline indicated in section 3 of this Article".

Arrest and detention may also end when the maximum terms under the CCP have expired – this is explicitly regulated in Art. 140 (8) CCP for the arrest: "An arrested person shall be released immediately if the maximum term of the arrest under this Code expires." A corresponding provision for detention cannot be found in the CCP but can be taken from Art. 35 (2) of the Law on Pre-trial Detention of 1996, in accordance with which the director of the respective place of detention has to release the detainee without awaiting further orders from the court or prosecutor.

Table 2: Timeline for arrest and remand detention (for adults) in Lithuania

TIME Max.	PROCEDURAL ACTION OR EVENT	LEGAL BASIS	WHO? (competent authority to decide/execute)	WHERE? (detention facility, competent authority for execution)
0.00 Immediately after arrest	Arrest *in flagrante delicto* or immediately after the offence Report to the police concerning the arrest	Art. 140 (1) CCP	Public prosecutor, pre-trial investigating police officer, any other person In cases where other persons have arrested the alleged offender	In general, arrest and detention shall be enforced in "places of pre-trial solitary confinement (houses of detention)" under the authority of the Ministry of Justice in
24.00	Questioning of the arrested person as a suspect	Art. 140 (6), 187 CCP	Public prosecutor, pre-trial investigating police officer	

As long as necessary, max. 24-48.00	Identification of a person and taking indispensable procedural steps (24 hours in cases where the suspect has already been questioned, extendable to 48 hours)	Art. 140 (4) CCP	Public prosecutor, pre-trial investigating police officer; extension only by a public prosecutor	accordance with Art. 5 (1) of the Law on Pre-trial Detention of 1996. Short-term police detention facilities (under the authority of the Ministry of the Interior) may be used in accordance with Art. 5 (3) of the Law on Pre-trial Detention of 1996 for a maximum of 15 days. This short term placement can be repeated if necessary for the investigation.
48.00	Hearing by a competent judge	Art. 140 (4), 124 (4) CCP	Investigating judge, or, if impossible, another judge of the District Court (Art. 123 (3) CCP) where the case is investigated, or, in cases where this is impossible, a judge of another District Court (Art. 124 CCP)	
A definite term, max. 3 months	Initially ordered detention	Art. 127 (1) CCP	Pre-trial investigating judge	
6 months	Prolonged detention	Art. 127 (1) CCP	The same pre-trial investigating judge or another pre-trial investigating judge of the same District Court or another District Court	
9-18 months	Extension of detention during the pre-trial investigation due to great complexity or large scope of the case; the first extension is 3 months, the extension may be repeated	Art. 127 (2) CCP	Judge of a County Court	
over 18 months	Further extensions are possible in the trial stage and the stage of appeals			

3.4 Competent authorities for arrest/further detention etc.

An overview of competent authorities during the different stages from apprehension to detention can also be taken from Table 3. A first arrest can be ordered and enforced by any person, the police or the public prosecutor if the person concerned is caught in the act (*in flagrante delicto*), Art. 140 (1) CCP. If the person is not caught red-handed, only the prosecutor or an investigating police officer may decide upon arrest, provided that a ground for arrest exists (see Paragraph 4). The public prosecutor or the investigating police officer then remains the master of pre-trial proceedings. To exercise some control over the police, however, a prosecutor has to be notified in any case about the arrest of a person by means of a copy of a written arrest protocol (Art. 140 (3)

CCP). It is the prosecutor who has to file an application to the investigating judge of the competent District Court (meaning the court of the district where the investigation is being conducted) if he is of the opinion that a person who is not in custody should be detained (Art. 140 (2) CCP). The already arrested person has to be brought before the competent judge by the prosecutor within 48 hours, together with an application to order detention (Art. 123 (4) CCP). The prosecutor is entitled to appeal against a decision by the investigating judge in case the detention he applied for is not granted (Art. 131 CCP). In case detention (or another provisional measure) is no longer necessary, or can be substituted by a less severe measure, the prosecutor may decide on the matter himself (he subsequently has to inform the competent judge) during the pre-trial phase (Art. 139 (2) CCP).

In principle, once an application for detention has been filed, the investigating judge (located at the District Court) takes over (Art. 123 CCP). This position of "pre-trial judge" or "investigating judge" is a relatively new one for Lithuanian Criminal Procedure, introduced with the CCP of 2000. It was assessed by experts[25] as "inevitable" and implements the "State's obligation to effectively protect the rights" of suspects as well as the public. In general, the investigating judge is competent for all decisions relating to the detention order. The initial decision concerning the application must be made within 48 hours, after a hearing of the arrested person has taken place. The judge may order detention, refuse any coercive provisional measures or order other provisional measures. If he is not entirely satisfied with the material the public prosecutor presents to substantiate his application, he may order or uphold detention but direct the public prosecutor to collect additional materials within a certain time limit (Art. 123 (5) CCP). If the competent investigating judge of the District Court who initially ordered detention (or a colleague of the same court) cannot be reached within 48 hours, e.g. because a fugitive was apprehended in another part of the country, the person must be brought before the pre-trial judge of another District Court. This judge, after questioning the detained person, shall uphold the decision to apply detention and set the term of detention, or shall change or dismiss the coercive measure (Art. 124 (1) CCP).

The investigating judge stays competent until six months of detention are over; this means that he is also competent for the first prolongation (see above and Table 2). If a further extension of detention is deemed necessary, a higher judge has to decide whether the case is so complex or voluminous that a longer duration than six months is necessary (Art. 127 (2) CCP).

3.5 Procedure and procedural rights of the accused at the time of arrest/during detention

Besides the conditions of detention, obviously the legal reality with regard to procedural rights differs the most from the (theoretical) legal provisions. This is why for some of the norms observations by monitoring organisations, namely the CPT and the Seimas Ombudsmen, will be included in this part of the report.

Initially, several procedural rights for suspects (this status is defined in Art. 21 (2) CCP) are laid down in Art. 21 (4) CCP and 187 pp. CCP. It is provided that, before the start of the first questioning, the suspect must be informed – subject to his signature – about the criminal offence with which he is being charged. The rights of the suspect must also be explained, e.g. the right to have a defence counsel from the moment of the first questioning, to testify, to offer evidence, to make motions, to make challenges, to get acquainted with the material of the case, and to appeal against the actions and decisions of an officer of the pre-trial investigation, a prosecutor or a pre-trial judge. The initial questioning has to take place as soon as possible, after 24 hours at the latest. According to the last Ombudsmen's Report,[26] this term, at least in the examined case, was not complied with. To avoid irregular or even secret arrests by the police, the prosecutor has to be notified of an arrest and shall make a written record of the provisional arrest as soon as possible (Art. 140 (3) and (5) CCP).

After arrest (Art. 140 (7) CCP) or when detention is ordered (Art. 128 (1) and (2) CCP), the prosecutor must notify a relative indicated by the detainee or, if the detainee does not indicate a special person, the prosecutor must, at his own initiative, notify any relative unless the detainee explicitly gives a reason that such a notification might endanger his relatives. The detainee must also have an opportunity to inform his relatives himself. Here also, obviously, theory and practice

[25] Kukaitis 2006.
[26] Seimas Ombudsmen of the Republic of Lithuania 2007, p. 15.

sometimes differ significantly. In its report on the 2004 visit, the CPT states that although the provisions of the CCP in that regard were now stricter since its last visit in 2000, the "right of notification of custody often was not fully in practice".[27]

With respect to information obligations, it is further important to note that the victim of the alleged offender shall be notified of arrest or detention and also of future release (Art. 128 (4) CCP) if he so requests. In the latter case, the prison has to inform the victim; this is why the prison itself has to be informed about such a request by the investigating authorities. The note containing this information is not accessible for the suspect or accused and his counsel. Both provisions are doubtful with regard to the presumption of innocence.

In general, the person concerned is entitled to be informed about his rights and how to exercise them (Art. 45 CCP). Here, the CPT discovered a flawed practice as well because detainees in police detention centres often were not allowed to keep a form with their rights and obligations.[28] As mentioned above, a defence counsel is obligatory in cases where the accused is in detention (Art. 51 (1) CCP). The prosecutor, the investigating police officer or the investigating judge may also order that the participation of a defence counsel is obligatory in other cases where the suspect might not be able to defend himself properly. This right is secured by the provision of Art. 51 (3) CCP, in accordance with which the co-ordinator of state-guaranteed legal aid has to appoint a counsel in cases where the defendant has not chosen a counsel himself. With respect to this, the CPT made the observation that "a significant amount of time could elapse before apprehended persons had any contact with a lawyer; in a number of cases – and nearly always, in cases of court-appointed lawyers – such contact first occurred during the initial court appearance (…)" (this often means: 48 hours after apprehension). It should be added that, according to a study carried out in 2002, around 95% of all defence counsels that attended the examined cases were appointed *ex officio*.[29]

A defence counsel is obligatory in all cases where the suspect or accused is in detention (Art. 51 (1 No.7) CCP). If the detained person has not contacted a defence counsel, a pre-trial investigation officer, prosecutor or the court shall notify the coordinator of the provision of State-guaranteed legal aid in criminal matters that the person requires a defence lawyer and appoint a counsel (Art. 51 (3) CCP). The general rights and duties of the defence counsel are laid down in Art. 48 CCP. Among them is the right to examine the files during the pre-trial investigation, but only "in accordance with the procedure prescribed in this Code", meaning that this right can be restricted.

The procedures for the application of detention in pre-trial proceedings are laid down in Sec. 123 CCP. The prosecutor's application as well as the judge's order for detention have to include the formal particulars stated in Art. 125 (2) CCP, emphasizing in particular that the order has to be "reasoned". As mentioned above, a hearing of the arrested suspect or accused within 48 hours is a prerequisite before the judge can decide upon a detention order. Participation of all parties involved (including the defence counsel) is ensured, meaning that a hearing has to be organised with prior notification of the public prosecutor, the defendant and the defence counsel. The presence of the arrested person is obligatory, the defence counsel and the prosecutor may be present according to Art. 123 (3) and (4) CCP. A record of the hearing shall be made and has to contain explanations by the person brought before the judge as well as motions and comments of the other parties involved (Art. 123 (7) CCP). A special problem is the hearing by another district's investigating judge, because he is obliged to uphold detention in cases where he "assumes" that this is necessary but does not have access to all relevant information. In such a case, he has to set a term for a proper hearing. However, as this term is not specified by the law, this can lead to a restriction of the rights of persons arrested elsewhere.

4. Grounds for pre-trial detention

4.1 Grounds for arrest

The justification for an initial arrest has to be distinguished from the justification for detention. According to Sec. 140 CCP, persons can be arrested provisionally when they are caught red-

27 CPT 2008, § 25.
28 CPT 2008, § 29.
29 Valatkevicius/Sesickas 2003.

handed. In cases where a person is not arrested *in flagrante delicto* or immediately after the offence, one of the following conditions have to be fulfilled: a ground for detention exists, the aims set in Art. 119 require an arrest, or a court cannot be reached to decide about detention (Art. 140 (2) CCP). A threshold that considers the nature of the offence or a threshold concerning the penalty is not determined for provisional arrest directly following the offence, but it applies indirectly to the other reasons for arrest because, generally, detention is only possible when the case involves an offence punishable with imprisonment of over one year (Art. 122 (8) CCP) (see below).

With respect to the objectives of detention, it is always questionable whether practitioners limit themselves to the aims prescribed by law. At least with regard to provisional arrest by the police, in two subsequent years, the Seimas Ombudsmen felt the need to examine a case of extra-legal provisional arrest,[30] stating in 2007: "The information that reaches the Seimas Ombudsman makes one to feel concern and constitutes a basis for stating that pre-trial investigation officers frequently abuse their powers in applying temporary detention to persons as there are no imperative grounds, (…) thus seeking to impose psychological pressure on such persons to testify, etc. Therefore, such cases must be unambiguously deemed to be violations of human rights and freedoms and they require special attention and response from all concerned institutions."

4.2 Grounds and other preconditions for detention

a) Preconditions

According to Sec. 122 (2) CCP, as one of the provisional measures, detention may be applied only if a "reasonable ground" exists that justifies to believe that a suspect committed a criminal act. When deciding about applying for detention or ordering it, the competent officials have to take into account the gravity of the criminal act committed by a suspect, his personality, whether he has a permanent residence and a job or any other legal source of livelihood, his age, the condition of his health, his marital status, and other circumstances which might be pertinent when determining this issue (Art. 121 (4) CCP).

The wording "reasonable ground" is not defined any further; according to a survey published by the Supreme Court it has to be made sure that courts examine whether there is any reasonable evidence that the suspect could have committed a crime.[31] An important aspect in this connection, however, is the observance of the principle of proportionality: detention can only be ordered if other provisional measures do not suffice. The decision has to take into account not only the gravity of the crime but also personal circumstances that might make it disproportionate to lock somebody up. As mentioned before, the crime must be punishable by more than one year of imprisonment (meaning the abstract order of the penalty, not the penalty that is probable in the concrete case). Nevertheless, the practical relevance of this last provision is doubtful, as most crimes are punishable by a longer custodial sanction. Finally, there is no mandatory pre-trial detention.

b) Grounds

Art. 122 CCP gives three grounds for a detention[32] order. These can be labelled roughly as: 1. (the risk of) escape; 2. the risk of obscuring evidence by the suspect or accused; and 3. the risk of the committal of new offences.

The first ground is explained further by Art. 122 (2) CCP, in accordance with which detention is possible if there is "probable cause to believe that a suspect might escape/go into hiding from the pre-trial investigation officers, prosecutors or the court". According to this provision, not only the personal circumstances such as marital status, place of residence etc. have to be taken into account but also the record of convictions. To what extent this last aspect is relevant to assess the risk of absconding, remains unclear. It has to be noted, however, that the law does not provide for an automatic connection between the risk of absconding and a person's status as a foreigner or the lack of a fixed abode.

With respect to the risk of collusion, detention is possible when there is evidence that a suspect himself, or through other persons, might make an attempt to tamper with victims, witnesses,

---

[30] Seimas Ombudsmen of the Republic of Lithuania (2006): *Annual Report of 2006*. Summary, p. 22; Seimas Ombudsmen of the Republic of Lithuania (2007) op. cit., p. 15.

[31] Supreme Court 2004.

[32] A fourth ground is the request to extradite a person or surrender him to the International Criminal Court; detention is also possible in procedures connected to a European Arrest Warrant (Art. 122 (5) CCP).

experts, other suspects or convicted persons, or to destroy, conceal or forge tangible objects and documents relevant to the case. When there is reasonable ground to believe that a suspect will commit new offences, detention might be imposed when a person is suspected or accused for having committed one or several serious or very serious crimes (according to the gradation specified in the Penal Code), or aggravated theft, robbery, extortion or aggravated damaging of property, and might, before rendering of the judgement, commit a new very serious crime or one of the crimes mentioned above. The same is possible when there is evidence that when at large, the suspect, suspected of a threat or an attempt to commit an offence, might actually commit the offence. This offence can be any crime.

It must be noted that the provisions on how grounds for detention have to be substantiated, are distinct for the different grounds mentioned: with regard to the risk of absconding, the law speaks of "probable cause"; in the other cases of "reasonable grounds" or even evidence that has to be found for certain circumstances. As for the arrest grounds, also with respect to ordering detention, it can never be excluded that in some cases "extra-legal" purposes such as a "taste of prison" etc. are pursued as well. The available research and literature, however, do not give much evidence to that assumption. On the contrary, according to the self evaluation of the justice system (which is, as shown above, at least partly self-critical), prosecutors and judges are rather cautious with the use of detention. In the above-mentioned survey, the Supreme Court of Lithuania noted that the seriousness of a crime and the gravity of the possible sanction may be sufficient ground for the assumption that the suspect may abscond from justice, and that detention may be grounded solely on this circumstance. However, in practice, this remark has not lead to the practice that detention is ordered automatically after a serious offence; other relevant factors such as prior convictions, source of living, family relations or relations abroad are taken into account as well. This can also be deducted from the jurisdiction of the Court of Appeals.[33]

5. Grounds for review of pre-trial detention

The review procedure with regard to the application of detention and its extension is basically regulated in Art. 130 CCP. Not only the preconditions for lodging an appeal but also detailed time limits for the appeals procedure are laid down to effectively implement the principle of a speedy procedure.

With respect to the initial decision to apply detention, as well as with regard to further extensions, the legal remedy consists in the appeal to a higher court. An appeal against imposition of detention may be filed within twenty days from the moment of deciding upon the issue of extension of detention. The appeal shall be filed through the court that imposed or extended the detention. The court must communicate the appeal, without delay, to a higher court. A judge of the higher court must consider the appeal within seven days from the receipt of the appeal. A hearing shall be held to consider the appeal against the imposition of detention, and the detainee and his counsel or only the counsel shall be summoned to the hearing. The presence of the prosecutor during such a hearing is obligatory. The prosecutor shall provide the higher court with all necessary case materials. If the appeal is filed during the trial phase – the hearing of the case in the competent court –, the court shall provide the higher court with all necessary case materials.

A further appeal with regard to the decision of the judge of a higher court is not possible: the decision is definitive and not subject to appeal. In cases where detention is ordered or the term of detention is extended by the Court of Appeals of Lithuania, appeals regarding imposition of detention or extension of the term of detention shall be heard by the three-judge chamber of the Court of Appeals of Lithuania. The judges hearing the case will not be appointed to this chamber.

As the extension periods are always three months, the suspect or accused and his counsel have the chance to argue against detention during the pre-trial phase every three months when it comes to the decision whether to extend the period of detention or not. In accordance with Art. 127 (6) CCP, for determining the issue of extension of detention during the pre-trial investigation, the competent judge holds a hearing to which he must summon the defence counsel (who is, as

[33] See for example the decision of the Court of Appeals of Lithuania Nr. 1S-33/2008 (21 March 2008), communicated by S. Bikelis.

mentioned above, a mandatory counsel, Art. 51 CCP) and the prosecutor (whose presence during such a hearing is obligatory). If needed, the detainee may be brought to the hearing as well; this is mandatory when detention lasts for more than six months. The judge must adopt an order not to extend the term of detention if he discovers that during the last two months, when detention was applied, no pre-trial investigative actions have been performed and the prosecutor fails to give any objective reasons for this. As a legal remedy is possible against each of these decisions, the suspect or accused, in principle, gets the chance to have his detention examined twice every three months.

6. Length of pre-trial detention

The legal provisions in the current CCP with regard to the length of detention have been described above. Nevertheless, in the following part of the report, some problematic points in practice shall be reviewed, relying mainly on the reports of the CPT as well as on the government's responses, reports of the Seimas Ombudsmen and jurisdiction of the European Court of Human Rights. It has to be noted, however, that these reports and the case law partly date back quite some time.

The most recent report is the above-mentioned survey of the Office of the Prosecutor General. It has to be acknowledged that the Prosecution Service is self-critical when stating: "The average term of detention could be reduced if prosecutors would follow more strictly requirements of Sec. 2 of Art. 139 CCP and would pass an order to release a detainee immediately after grounds or conditions for detention disappear. It is an intolerable practice, when prosecutors, knowing the fact that grounds or conditions for detention have disappeared, wait until the term of detention set by the court expires and do not immediately decide to release a detainee."

The overall length of criminal proceedings in Lithuania was examined in a study in 2002,[34] which concluded that the average length was nine months. The average length of the pre-trial (investigative) proceedings was slightly more than five months, the trial stage before the court of first instance was two to six months, and appeals were handled in just under two months. Cassation appeals took longer, about eighty days. Still, the authors of the study found that in 6% of the examined cases proceedings lasted over two years – in some instances almost ten years had passed between the institution of proceedings and the final judgement. It is hard to assess what this means for the average time spent in remand detention. However, it can be assumed that persons are more often detained provisionally when the crimes they committed are either more serious or their cases more complicated (like fraudulent or other economic crimes). Those crimes, according to the study, are investigated by the court for the longest periods. With regard to the length of detention, statistics[35] show that the average time spent in remand prison has increased between 1999 and 2007 from five up to 7.2 months. For a large part, this development can be explained by much longer detention periods in murder and rape cases, whereas the average period spent in remand detention decreased in cases of theft and remained stable in cases of robbery.

In some of the older cases against Lithuania before the European Court of Human Rights, e.g. in the cases Jecius vs. Lithuania[36] and Grauslys vs. Lithuania[37], the applicants complained, *inter alia*, about the length of their respective detentions. Subject to a reservation of Lithuania with regard to Art. 5 (3) ECHR until June 1996, no breach of Art. 5 (3) ECHR, taking into account the length of detention, could be found. Later on, in the Stašaitis case of 2002,[38] a violation of Art. 5 (1), (3) and (4) was confirmed. The applicant, whose conviction was finally quashed by a court of higher instance, was held in remand detention for three years, eight months and three days, including a period of over four months between the quashing of his prior conviction and his final release. The court awarded the applicant 21,700 Euros for non-pecuniary damage and 8,700 Euros for costs and expenses.

Two points seem to be noteworthy with regard to the length of detention: the lack of time limits beyond the pre-trial period and the length of accommodation of remand prisoners in police

---

34 Valatkevicius/Sesickas 2004, p. 10.

35 These statistics are available (also in English) at http://www.nplc.lt:8000/asis under the search item "length of detention".

36 Jecius vs. Lithuania (application No. 34578/97), decision of 31 July 2000.

37 Grauslys vs. Lithuania, (application No. 36743/97), decision of 10 October 2000.

38 Stašaitis v. Lithuania (application No. 47679/99*),* decision of 21 March 2002.

custody facilities for periods of fifteen days (as mentioned above and in Table 2). With respect to the first point, the CPT stated in its report for the 2004 visit: "However, there is no time-limit for detention of juveniles during trial/appeal procedures. Given that the average period of a trial at first instance amounts to six months, and taking into account the potential duration of appeals procedures, there were cases where juveniles were held on remand up to two years."[39] Nevertheless, it can be concluded that the significant drop in the number of pre-trial and remand prisoners also has something to do with shorter remand detention periods, so that a generalisation of the examples above has to be made with care.

The second point is obviously more problematic according to the observations the CPT made during its visits in 2000 and 2004. The findings were confirmed also in the last annual report by the Seimas Ombudsmen. As mentioned above, pursuant to the Law on Remand Detention, persons remanded in custody may be held in a police detention centre for a period not exceeding fifteen days. Further, on the decision of the relevant judge following a request made by an investigator or prosecutor, remand prisoners may be returned to police custody from prison (and again placed in a police detention centre for up to fifteen days), if this is considered necessary for the investigation. This practice is unusual in comparison with other European countries. It is problematic given the very bad conditions in most of the facilities and given the still relatively high risk of ill-treatment by the police in such places. With respect to the actual practice, the delegation found "cases where persons were being held in a police detention centre for 30 consecutive days. However, given the frequent practice of returning remand prisoners to police detention centres for further questioning, the cumulative periods of detention could amount to several months."[40] This observation was confirmed by the Seimas Ombudsmen, who reported problems concerning police detention time limits "due to different interpretation of legal acts by police officers" in his 2003 annual report. However, this finding was not repeated in the summaries of later reports.

7. Other relevant aspects

7.1 Consideration of remand detention with regard to the final sentence

In accordance with Art. 65 and 66 of the Penal Code, the time spent in remand custody shall be included in the term of the imposed sentence "in accordance with the rules set forth in Article 65 of this Code, where one day spent remanded in custody (in detention) shall be equal to one day of imprisonment or custody, fine of the amount of two MLS (Minimum Living Standards), six hours of community service or two days of restriction of liberty" (Art. 66 (2) PC). This also holds true for time spent in remand detention abroad; no further regulations exist in that regard.

7.2 Compensation

In accordance with Art. 30 II of the Lithuanian Constitution, the law has to establish the procedure for compensating material and moral damage inflicted on a person whose constitutional rights or freedoms have been violated. Art 46 (1) CCP provides that after the termination of the criminal procedure, where the person was arrested but no elements of crime or misdemeanour were established in the act committed by him, and also upon rendering an acquittal, the prosecutor and the judge must, *inter alia*, explain to the person the procedure of compensation for damage. The compensation procedure itself is regulated in the Civil Code of Lithuania, following the general provisions for State liability, and in the Law on Compensation for Damages Caused by Illegal Actions of State Institutions and on Representation of the State.[41]

7.3 Alternatives to pre-trial detention?

In accordance with Art. 120 CCP, the following provisional measures exist apart from detention:

- house arrest;
- the obligation to live separately from the victim;
- bail;
- seizure of documents;

---

[39] CPT 2008, § 76.

[40] CPT 2008, § 11.

[41] Valstybės žinios (Official Journal), 2002, Nr. 56-2228.

- the injunction to periodically report to the police;
- recognizance (a written obligation by a suspect not to leave his place of residence or temporary residence without the permission of a prosecutor, a judge, or the court).

More details are regulated in Art. 132 pp. CCP, for instance the provision that in cases where the suspect violates an obligation, a more severe provisional measure shall be applied. The suspect must be warned about this. According to recommendations of the Prosecutor General, the sum of bail may not be less than 30 MLS (Minimum Living Standards), which at the moment amounts to 3,900 LTL (1,130 Euros).[42] All provisional measures can be substituted by a stricter or less strict measure if this is appropriate in the course of the proceedings (Art. 139 CCP). As can be seen in Table 3 below, in practice, house arrest and bail do not have much impact. However, when analyzing the data, it must be noted that several provisional measures can be employed at the same time (Art. 121 (3) CCP).

Table 3: Provisional measures during pre-trial investigation, 2006 and 2007[43]

	2006	**2007**
Detention	2,074	1,839
House arrest	157	97
Obligation to live separately from the victim	---	---
Bail	109	74
Seizure of documents	1,241	1,359
Obligation to periodically report to the police	3,025	2,637
Recognizance	10,932	10,024
Observation/supervision by the command of the unit (for soldiers)	30	40
Committal to the supervision of parents, guardians etc. or the administration of a children's institution (for minors)	265	301
Total number of suspects	**24,832**	**22,707**

7.4 Execution of pre-trial detention

The Law on Pre-trial Detention regulating the execution of pre-trial detention dates from 1996, and will carry the title Law on the Execution of Pre-trial Detention from 1 January 2009 onwards. In five Chapters (37 Articles), this law lays down general conditions for the admission of persons to pre-trial detention, the execution with regard to segregation of different types of prisoners, rights and duties while in detention (with particular attention to correspondence and personal contacts, work etc.), the rights and duties of prison wards with regard to, *inter alia*, the use of measures of restraint and firearms, and release. Its purpose is laid down in Art. 2 and mainly comprises three aspects: it shall ensure that persons kept in places of pre-trial detention will be unable to escape preliminary investigation or trial (or the enforcement of the sentence), will not obstruct the establishment of truth in a criminal case, or commit an offence. The provision thus continues and implements the provisions of the CCP with regard to the purpose of detention itself. The basic principle for safeguarding the rights of the detained can be found in Art. 8 of the said law, basically stipulating that duties and rights of detainees shall be the same as for all other citizens and can be restricted only according to the CCP. It further repeats the prohibition of torture laid down in the Lithuanian Constitution.

Places of detention are, according to Art. 5 of the said law, remand prisons under the authority of the Ministry of Justice and police houses of arrest for short term detention up to fifteen days under the authority of the Ministry of the Interior. In 2006, in Lithuania, 46 detention establishments in police commissariats[44] and four remand prisons were in operation. Two remand

[42] Prosecutor General on Control of Observance of Conditions of Provisional Measures (Except Detention) – 13 June 2008, Nr. I-58.

[43] Source: Department of Communications and Informatics of the Ministry of the Interior, http://www.vrm.lt/.

[44] Seimas Ombudsmen of the Republic of Lithuania 2006, p. 13.

prisons are separate institutions (in Šiauliai and, opened only in 2004, in Kaunas); one is a section of the Prison of Vilnius and one is a section of the prison for juveniles in Kaunas. Some of the prisons and departments are of immense size; Art. 5 (2) of the Law on Pre-trial Detention puts an absolute limit of (still) 1,000 inmates. The latest data available can be seen in Table 4.

Table 4: Remand prisons and their capacity/occupancy[45]

	Places available	**Occupied at the end of 2006**	**Occupied at the end of 2007**
Vilnius Lukiškės Detention Prison	848	470 (55%)	457 (54%)
Šiauliai Detention Prison	382	284 (74%)	323 (85%)
Kaunas Detention Prison	239	177 (74%)	174 (74%)
Kaunas Juvenile Detention Prison	108	44 (41%)	52 (48%)

During its 2004 visit, the CPT delegation reported that it found severe overcrowding with regard to the factual situation in the visited police detention centres, but also a numerical overcrowding with regard to the visited (remand) prisons: Kaunas Juvenile (Remand) Prison, with its capacity of 150, held 162 inmates. In the Vilnius Lukiskes Remand Prison, the official capacity had been reduced from 1,200 to 864 places; nevertheless, at the time of the visit, the prison was accommodating 1,208 inmates, mostly remand prisoners.[46] However, as can be seen in the statistics provided above, the numbers of remand detainees have gone down considerably in the meantime, and the alleviation of the situation with regard to the population density is significant. Nevertheless, it has to be taken into account that the occupancy is measured according to the official capacity, and that the official living space for each prisoner, although it was legally enhanced in 2000, still only is 5 m^2 per person in multi-occupancy cells and 3 m^2 in dormitories.[47] These findings can be supplemented with findings from 2006 of the Seimas Ombudsmen,[48] who reported a case where the complainant, initially detained in the Siauliai Remand Prison, was transferred to the Vilnius Lukiskes Remand Section with the aim of alleviating the occupancy level in Siauliai. The result was that in Vilnius he was accommodated with four other prisoners in a 7.45 m^2 cell, leaving 1.5 m^2 for each person. The administration of the Vilnius Lukiskes Remand Section could not even specify how many persons were detained in one cell.

Generally, it can be said that the discrepancy between the legal provisions and the legal reality with regard to detention is the biggest when it comes to the existing living conditions. Particularly problematic points are the overall living conditions, the rights to correspond and file complaints as well as to have contact with the outside world – in remand prisons, but particularly in police detention facilities. To sum up the findings of the different monitoring institutions for several years – including 2007 -, the annual report of the Seimas Ombudsmen for 2006 can be quoted: "Countrywide, there are a total of 46 detention establishments in police commissariats. Of these, only ten establishments are in good condition. The remaining detention establishments do not meet the requirements of legal acts: the sanitary conditions of cells are poor, the norm of five square metres per person is violated, the procedure for the distribution of people to cells is not observed, individuals' right to a walk and use of a shower is violated and the sufficient healthcare of people kept in detention establishments and their provision with recreational and hygienic items are not ensured."[49] The report further underlines that working conditions for police officers

45 Source: Prison Department of the Ministry of Justice, Annual Report for 2007, http://www.kalejimudepartamentas.lt/getfile.aspx?dokid=95D01365-B273-45CE-9493-309258AB87A8.

46 CPT 2008, § 50.

47 *Lietuvos Respublikos teisingumo ministro įsakymas dėl kardomojo kalinimo vietų vidaus tvarkos taisyklių patvirtinimo* (Order of the Ministry of Justice of the Republic of Lithuania to affirm the rules of conduct in remand institutions of 07 September 2001, Nr. 178 (Žin.,2001, Nr. 78-2741)).

48 Seimas Ombudsmen of the Republic of Lithuania 2006, p. 22.

49 Seimas Ombudsmen of the Republic of Lithuania 2006, p. 22. Details with regard to inadequate food, health provisions and lack of exercise in the open air can also be found in the annual report for 2007, p. 26.

employed in detention establishments are also unenviable and do not meet the set standards; in the annual report for 2007, the risk of acquiring tuberculosis for detainees as well as officers working there is pointed out.[50]

Another particularly problematic point is the aspect of contact with the outside world, with regard to receiving visitors as well as parcels, making phone calls and sending letters. According to Art. 16 of the Law on Pre-trial Detention, "the administration of the place of pre-trial detention shall allow untried prisoners visits from relatives or other persons only with the consent of the officer investigating the case or the court in whose jurisdiction the case is. The duration of visits shall be up to two hours." This means that no minimum number and duration of visits is laid down by law; the internal regulations even restrict visits by specifying that at most once every two weeks a visit is possible.[51] The new law does not provide a better solution to that problem. The possibility to receive parcels was, according to the relevant law, always quite restricted, but from 2009 onwards, detainees will no longer be able to receive packages except small ones with periodicals, clothes and/or shoes once every three months. This is justified as a measure to prevent the illegal flow of drugs, cell-phones etc. The reform was also criticized by the Seimas Ombudsmen. The amendments in the new Law on the Execution of Pre-trial Detention, however, contain a provision that detainees will now have the right to make unlimited phone-calls to their relatives (but only with the consent of the public prosecutor). The reason given for this novelty is "that the law aims at improving detention conditions so that they would not be worse than imprisonment conditions".

With regard to the aspect of contact with the outside world, two decisions of the European Court of Human Rights should be mentioned. In the case Ciapas vs. Lithuania[52] as well as in Jankauskas vs. Lithuania[53], a violation of Art. 8 ECHR was found with respect to unjustified censorship. In the Ciapas case, obviously all or at least the most private letters were censored. Art. 15 (1) of the Law on Pre-trial Detention, serving as the legal basis for routine censorship without further restrictions, according to the Court, thus lacked sufficient specification. The Jankauskas case was similar; here, the censoring also concerned letters to his lawyer and complaints directed to other State authorities.

Finally, it should be noted that, according to Art. 15 (2) of the Law on Pre-trial Detention, detainees have a right to submit proposals and file complaints. Nevertheless, a comprehensive complaints procedure concerning conditions in detention and decisions within the facility (namely regarding disciplinary measures) does not exist.

8. Special groups

8.1 Juveniles[54]

At the end of 2006, more juveniles in Lithuanian prisons were remand prisoners (105) than sentenced prisoners (83). It is also noteworthy that the percentage of juveniles (under 18) among the remand prison population is much higher (10.5%), than among the total prison population (2.3%).[55] The only remand facility where the number of juvenile remand prisoners has increased over the last years, is the remand section of the Kaunas Juvenile Prison (from 40 in 2005 to 52 in 2007).[56]

For juveniles only, a few special regulations exist in the CCP. According to Art. 51 CCP, a defence counsel always has to take part in the proceedings. Parents or other legal representatives may take part in the proceedings if this is not contrary to the best interest of the juvenile. They have to be notified immediately after an arrest; in this regard, the CPT had serious misgivings when it discovered that this notification was sometimes delayed for days.[57] Besides the procedural

50 Seimas Ombudsmen of the Republic of Lithuania 2007, p. 26.
51 Seimas Ombudsmen of the Republic of Lithuania 2007, p. 27.
52 Application No. 4902/02, decision of 16 November 2006.
53 Application No. 59304/00, decision of 24 February 2005.
54 See for more details Sakalauskas 2009a.
55 National Prison Administration, quoted from Sakalauskas 2009, and own calculation.
56 Bikelis, direct communication, data taken from the annual report of the Prison Department, www.kalejumudepartamentas.lt.
57 CPT 2008, § 25.

measures which can be applied against adult suspects or accused, the CCP mentions another measure with regard to juveniles: according to Art. 120, 138 CCP, supervision by parents, legal representatives or other suitable persons can be ordered. As mentioned above, pre-trial detention ordered for juveniles is limited to twelve months (instead of eighteen months for adults).

Juvenile detainees in Lithuania can be accommodated in all remand prisons but most of them are placed in the remand section of the prison in Kaunas. The segregation principle is laid down in Art. 12 of the Law on Pre-trial Detention. Nevertheless, it is possible to detain juveniles together with adults if the prosecutor consents. The CPT criticized this practice with regard to police detention centres.[58] It will be finally changed when the new provisions of the (then) Law on the Execution of Pre-trial Detention come into force, guaranteeing separation in all cases. Legally, juveniles have slightly better conditions, e.g. when it comes to exercise in the open air (two hours daily instead of one). In reality, this provision is also often violated. Particularly problematic in the opinion of the CPT was that juveniles often did not have any activities in police detention facilities and had to stay in their cells almost the whole day without doing anything.[59] Some measures of restraint, in particular the use of firearms, cannot (or only in a restricted manner) be used against juveniles, except in cases of self-defence or when detainees use firearms themselves (Art. 33 of the Law on Pre-trial Detention).

8.2 Women

At the end of 2006, 308 women were incarcerated in Lithuania, of whom 78 in remand detention. Again, the percentage among the remand prison population (7.8%) was higher than among the total prison population (3.8%).

Several provisions in the CCP as well as in the Law on Pre-trial Detention deal with female prisoners. Sometimes, only pregnant women or mothers with baby children are taken into account. The segregation principle is considered in Art. 12 of the Law on Pre-trial Detention, providing that men shall be kept separate from women and, at their request, women who are over three months pregnant, separate from other women. As is the case with juveniles, women are entitled to two hours of exercise in the open air. In accordance with Art. 18 of the said law, pregnant women and nursing mothers shall be provided with better accommodations and everyday-life conditions (leaving the actual implementation of that provision entirely to the institutions). Some measures of restraint, in particular the use of firearms, cannot (or only in a restricted manner) be used against women, except in cases of self-defence or when detainees use firearms themselves (Art. 33 of the Law on Pre-trial Detention). When the new Law on the Execution of Pre-trial Detention will have come into force in 2009, pregnant women will be the only detainees entitled to receive food packages under certain circumstances.

8.3 Foreigners[60]

As in many other eastern European Countries, the share of foreigners in Lithuanian prisons is small. It amounted to 2.57% at the beginning of 2006 (29 out of 1,127 remand detainees). It has to be mentioned, however, that this percentage is higher than the percentage of foreigners among all suspects or accused persons (being 1.11%, 280 foreign suspects out of 26,070) and foreign sentenced prisoners (0.62%, 43 prisoners out of 6,899). The majority of foreign prisoners come from former Soviet Republics; in the period 1998-2005, they made up more than 90% of all foreign prisoners.

A number of provisions in the CCP and in the Law on Pre-trial Detention regulate specific rights for foreigners, mainly concerning the right to contact the embassy, and the implementation of the constitutionally guaranteed right to be informed about rights and obligations in a language the detainee understands and, if necessary, to be assisted by an interpreter. If detention is imposed on a foreign national, the prosecutor shall notify the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detainee so requests, a diplomatic mission or a consular institution of his own country (Art. 128 (3) CCP). However, the law does not stipulate that the prosecutor himself has to inform the foreign national that he has the right to request such a notification. Although the number of foreigners who do not speak Lithuanian or Russian is small, it is interesting that the

58 CPT 2008, § 38-40.
59 CPT 2008, § 38 and § 69.
60 All data from Malisauskaite-Simanaitiene 2007.

Seimas Ombudsmen had to deal with a complaint in regard to that problem in 2006. Art. 13 (1) of the Law on Pre-trial Detention stipulates that all detained (arrested) persons have the right to receive information about the rules and conditions in pre-trial detention facilities, and about their own rights and obligations, in a language they understand – verbally and in writing. According to the report of the Ombudsmen[61] "(…) the investigation of a complaint regarding the violation of rights of a Belgium citizen detained at Šiauliai Remand Establishment revealed that the prisoner, on the day of his arrival to the establishment, did not receive any information about his rights, obligations or conditions of detention in a language he could understand. It was also established that some detention establishments tended to hand out a brochure in Lithuanian, whereas the information in a language the person understood was given verbally. Such practice is considered flawed. Cells and areas of common use in remand establishments have notice boards that contain information about detention conditions and rights and obligations of prisoners in the Lithuanian language. Ombudsman Albina Radzevièiute emphasised that people who did not understand messages in the Lithuanian language found it even more difficult to adapt at the detention establishments. Therefore, a brochure in the Lithuanian language and a single verbal explanation were not sufficient measures."

There is only fragmentary information about Lithuanians imprisoned abroad,[62] and usually this information does not distinguish between sentenced and remand prisoners. Nevertheless, information that might serve as an example could be found with regard to Norway, where Lithuanians make up the largest group of foreign prisoners. The Norwegian newspaper Aftenposten[63] reports: "Efforts are being made to send them home to ease the burden on Norwegian prisons. Many of the Lithuanians convicted of various crimes in Norway resist being sent back to their homeland, suggesting that prison conditions are tougher there. The Ministry of Justice of Norway therefore tries to reduce chances to appeal deportation successfully and wants to strengthen cooperation between Norway and Lithuania, to achieve the most efficient prison transfers." According to the report, in November 2007, 80 Lithuanians were incarcerated in Norwegian prisons, 31 serving prison terms after being convicted and 49 in remand custody.

8.4 Alleged terrorists

With respect to the imposition and enforcement of remand detention, no special regulations for alleged terrorists exist in Lithuania.

BIBLIOGRAPHY

1. Aebi/Delgrande (2007): Council of Europe Annual Penal Statistics (SPACE I). Survey 2006. PC-CP (2007) 9 rev o3. Strasbourg.
2. http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/. Earlier surveys can be found on the same website (last retrieved 28 October 2008).
3. CPT (2008): Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 February 2004 (CPT/Inf (2008) 15). The document can be found at www.cpt.coe.int (last retrieved 30 October 2008).
4. International Centre for Prison Studies/Walmsley, Roy (2008): World Prison Brief Lithuania. http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=149 , last visit: 25 October 2008).
5. Malisauskaite-Simanaitiene (2007): Lithuania. In: van Kalmthout, A., Hofstee-van der Meulen, F., Dünkel, F. (eds.): Foreigners in European Prisons. Wolf Legal Publisher 2007, p. 537-571.
6. National Prison Statistics, available at http://www.nplc.lt:8000/asis/.
7. Office of the Prosecutor General (2007): Survey of grounds for the termination of pre-trial inverstigations where detention was imposed (for the year 2006). 2007-05-22 Nr. 7.7.12. Vilnius. Available at

[61] 2006 Annual Report, Summary, p. 22.

[62] Malisauskaite-Simanaitiene 2007, p. 569.

[63] It can be found at http://www.aftenposten.no/english/local/article2100040.ece (last retrieved 15 November 2008). The article was published on 13 November 2007.

8. http://www.prokuraturos.lt/LinkClick.aspx?fileticket=K03Q1VCsNJc=&tabid=178 (in Lithuanian). S. Bikelis (footnote 1) provided for an unofficial translation of the document.
9. Prison Department at Ministry of Justice (2008): Annual Report for 2007, http://www.kalejimudepartamentas.lt/getfile.aspx?dokid=95D01365-B273-45CE-9493-309258AB87A8.
10. Sakalauskas, Gintautas (2006): Strafvollzug in Litauen. Mönchengladbach, p. 19 pp.
11. Sakalauskas, Gintautas (2009): Litauen. In: Frieder Dünkel, Tapio Lappi-Sepälä, Christine Morgenstern, Dirk van Zyl Smit. Kriminalität, politische Systeme und Bestrafungstendenzen in Europa – Die Entwicklung von Gefangenenraten in Europa. Mönchengladbach: Forum-Verlag Godesberg, (to be published).
12. Sakalauskas, Gintautas (2009a): Litauen. In: Frieder Dünkel, Joanna Grzywa, Ineke Pruin. Juvenile Justice Systems in Europe. Mönchengladbach: Forum-Verlag Godesberg, (to be published).
13. Seimas Ombudsmen of the Republic of Lithuania (2006): Annual Report of 2006. Summary. http://www.lrski.lt/index.php?l=EN (last retrieved 11 November 2008).
14. Seimas Ombudsmen of the Republic of Lithuania (2007): Annual Report of 2007. Summary. http://www.lrski.lt/index.php?l=EN (last retrieved 7 November 2008).
15. Švedas, Gintaras (2000): Criminal Justice Systems in Europe and North America –Lithuania. HEUNI (ed.), Helsinki, p. 8.
16. The Supreme Court of Lithuania (2004): Survey of The Judicial Practice Concerning Application of Detention or Home Arrest and Extention of the term of Detention (30 December 2004, Nr. 50, available at www.lat.lt (only in Lithuanian, translation of the relevant parts provided by S. Bikelis).
17. Valatkevicius, Darius/Sesickas Linas (2003): Study on the legal assistance in assigned criminal cases in Lithuania, Teises Institutas (Law Institute), Vilnius. www.teise.org/docs/publications/4%20Valstybes%20skiriamos.pdf
18. Kukaitis, Vytautas (2006): Procedural status of the judge of pretrial investigation in the criminal procedure codes of foreign countries and Lithuania (English abstract of the article in Lithuanian). Law 2006 (www.leidykla.eu/en/Journals/law).