



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of Lithuania to the conclusions and
recommendations of the Committee against Torture**

[7 December 2004]

1. With reference to the conclusions and recommendations of the Committee against Torture, presented to the Republic of Lithuania 5 February 2004 (CAT/C/CR/31/5), and paragraphs 6 (d), (e) and (f) in particular, the Republic of Lithuania provides the following information.

Paragraph 6 (d) reads: The Committee recommends that the State party ensure in practice that the public prosecutor's actions are monitored to ensure that any persons who allege ill-treatment or torture or who require medical examination are permitted by the public prosecutor to receive such examinations at their request and not only at the order of an official.

2. On the basis of the recommendations of the Committee against Torture Order No. 96 of the Prosecutor General on "Prosecutorial control in ensuring protection of detained and arrested persons against torture and inhuman or degrading treatment or punishment" of 8 June 2001 was amended. With this order chief prosecutors are obliged:

(a) To ensure that every prosecutor who receives information about an incident of torture or inhuman or degrading treatment or punishment of an inmate immediately initiates a pre-trial investigation, if there is no ground provided in article 3 or article 168 (1) of the Criminal Code making a criminal procedure impassable. Under the procedure provided in article 205 the prosecutor should himself assign a specialist, in writing, the task of carrying out the investigation, i.e. to conduct the medical examination;

(b) To ensure that every prosecutor who receives notice of the initiation of a pre-trial investigation into the torture or inhuman or degrading treatment or punishment of an inmate under the procedure provided in article 205 should himself assign a specialist, in writing, the task of carrying out the investigation, i.e. conduct the medical examination, or assign an officer of the detention centre concerned to do so;

(c) To oblige prosecutors to carry out an investigation in cases where there is a suspicion that criminal acts were committed by the officers conducting the pre-trial investigation;

(d) To control the execution of the above-mentioned obligations, and in cases of non-compliance to react according to the laws.

3. It should be mentioned that prosecutors can decide whether there are grounds for starting a pre-trial investigation into acts of torture or inhuman or degrading treatment or punishment when the information about such criminal act is received, i.e. at the procedural phase. At the subsequent stage the duty to ensure that the inmate has a medical examination lies with the establishment in which the person is kept.

4. Prisoners' medical examinations in penal institutions, including in cases of alleged torture or ill-treatment, are ensured by the following legal acts:

(a) The Law on Remand Detention. According to article 19 (3), a thorough medical examination (including psychiatric examination of newly arrived prisoners in remand prisons) is mandatory;

(b) The Internal Regulations of Remand Detention Establishments approved by Order No. 178 of the Minister of Justice dated 7 September 2001. Article 63 provides for the medical examination of newly arrived inmates (both detained and sentenced), and the results of the examination are to be entered into their personal medical case-record;

(c) The Internal Regulations of Correctional Labour Establishments, approved by Order No. 194 of the Minister of Justice of 2 July 2003. Article 62 provides for the medical examination of newly arrived sentenced prisoners and the results of the examination are to be entered into their personal medical case-record;

(d) The Internal Regulations of Remand Detention Establishments and the Internal Regulations of Correctional Labour Establishments. Articles 267 and 268 of the former and articles 262 and 263 of the latter provide for the medical examination of every injured inmate (both detained and sentenced) by a member of the prison medical staff and the issuance of a document certifying the nature of the injury, where it occurred and when. A member of the medical staff enters all the details of the examination into a special register and reports the facts of the injury to either the deputy director of the remand or correctional establishment responsible for the guarding and security of the inmates or, in case that officer is absent, to the head of the internal investigation division of the penal institution. Every incident of this kind is reported immediately to the territorial prosecution office in writing by the director of the penal institution or his/her deputy;

(e) Article 194 of the Internal Regulations of Remand Detention Establishments and article 252 of the Internal Regulations of Correctional Labour Establishments provide for the obligatory registration with a physician of persons in penal institutions where access to medical services is limited (e.g. both sentenced prisoners and detainees are locked in their cells on a permanent basis). An officer of the penal institution authorized by the director of the institution carries out the registration daily and is also responsible for the medical specialists' visits to the inmates.

5. The above-mentioned legal acts guarantee the right of access to the medical services in the shortest possible time for all prisoners who suffer violence (torture) or any other kind of ill-treatment during their stay in the penal institution or during their transfer. It also guarantees that the proper records of such incidents are kept and that the administration of the penal institution and the territorial prosecution office are informed about the facts; it also ensures that the incident is investigated by the competent institutions and that legal sanctions are applied in respect of the guilty persons.

Paragraph 6 (e) reads: The Committee recommends that the State party take urgent and effective steps to establish a fully independent complaints mechanism, ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecutions, and punish, as appropriate, the alleged perpetrators.

6. The Constitution of the Republic of Lithuania determines that the Seimas Ombudsman shall examine complaints of citizens about the abuse of authority and bureaucracy by State and local government officials, with the exception of judges.

7. The Law on the Seimas Ombudsman establishes that the legality and validity of procedural decisions of the prosecutors, investigators and officers conducting an inquiry shall be outside the Seimas Ombudsman's powers of investigation. A broad interpretation of this provision by the prosecutors often was an obstacle to the Ombudsman's investigating complaints against officers of the violation of human rights in the course of procedural actions.

8. On 4 November 2004 a new version of the Law on the Seimas Ombudsman was adopted extending the competence of the Ombudsman. Like the earlier version, it establishes that the legality and validity of procedural decisions of the prosecutor, investigators and officers conducting an inquiry shall be outside the Ombudsman's powers of investigation, but it also determines that the Ombudsman shall investigate complaints regarding violations of human rights and freedoms when in the course of procedural actions. This provision should strengthen the right of the Ombudsman to investigate complaints regarding improper behaviour of officers conducting pre-trial investigations, without investigation of the legality and validity of procedural decisions. The implementation of this legal provision will contribute to an impartial and independent complaints mechanism.

Paragraph 6 (f) reads: The Committee recommends that the State party ensure that officials in the army promptly investigate reports of brutality against conscripts that may amount to ill-treatment or torture, and investigate other reports of abuse fairly and impartially, and hold those responsible to account.

9. The existing legal acts ensure a proper complaints procedure for abused members of the armed forces. They are:

- (a) The Law on the Organization of the National Defence System and Military Service;
- (b) The Armed Forces Regulations on Military Discipline (adopted by the law);
- (c) The Law on Military Police;
- (d) The Code of Criminal Procedure and the Criminal Code.

10. The legal acts provide for the possibility to complain about illegal use of force, which involves disciplinary liability in the following way:

- (a) Complaint within the chain of command;
- (b) Complaint directly to the supervisory institution within the national defence system - General Inspection, which is independent from the military chain of command and responsible to the Minister of National Defence (a complaint concerning a decision of the General Inspection may be filed with the Minister of National Defence).

11. An abused person may lodge a complaint in accordance with the provisions of the Code of Criminal Procedure, provided in articles 62, 166, 167:

(a) Where the abuse involves criminal liability, the person may file suit with the courts of general jurisdiction;

(b) Complaints of improper actions of military investigators may be submitted to the prosecutor in charge of the investigation, or to the judge of a pre-trial investigation if the prosecutor does not accept the complaint.

12. In accordance with the order of the Minister of National Defence, complaints may be submitted to the General Inspection by means of “The Hot Line” (confidential telephone line or e-mail). Such complaints are registered and investigated if they are not anonymous, contain grounds for investigation and a decision to do so is taken by the Inspector General. “The Hot Line” enhances the guarantee that complaints are examined impartially and objectively.

13. The promptness of the investigation of complaints is guaranteed by the terms of the relevant legal acts. Regarding cases involving disciplinary action, according to the Armed Forces Regulations on Military Discipline the general rule is that the complaints must be processed within one month from the day it is received. For certain cases the Minister of National Defence may extend the time limit to up to six months when there is a need to examine or collect additional information, or other measures. In cases where complaints are self-evident and do not require investigation, they must be completed no later than within 15 working days.

14. The promptness of the complaint procedure is enhanced by the possibility of using various means of communication to file the complaint with the General Inspection. In accordance with the Armed Forces Regulations on Military Discipline complaints may be filed with the Inspector General orally or in writing. Written complaints may be mailed, faxed or presented to the Inspector General during the course of an inspection. During non-workdays and holidays or non-working hours the complaint may be left on the answering machine. In accordance with the order of the Minister of National Defence complaints may be submitted to the General Inspection by means of “The Hot Line”, as mentioned above.

15. Concerning cases involving criminal liability for the illegal use of force, the order of the Commander of the Armed Forces “Concerning the Transfer of Information” stipulates the requirement to notify the duty officer of the Military Police of criminal acts immediately after the relevant information is received. Internal regulations of the Military Police stipulate that this information must be immediately transferred to the military investigator, who must immediately verify the information and start a criminal investigation. Thereafter, the criminal procedure is subject to the provisions of the Code of Criminal Procedure. Thus, its promptness is subject to the requirements stipulated in the Code.

16. In cases of illegal use of force in the armed forces when it is qualified as a disciplinary offence, disciplinary punishment is imposed in accordance with the Armed Forces Regulations on Military Discipline. Disciplinary punishment is imposed by the company commander or higher commander upon the individuals subordinate to him. The Regulations specifically characterize the insult of a military or civil person by use of force to be an offence (arts. 90 and 91). Other offences determined in the Regulations also may cover the illegal use of force.

17. In accordance with the Regulations of the General Inspection adopted by the Minister of National Defence, the General Inspection investigates reports, applications and complaints concerning the actions of officers of the National Defence System (the armed forces, including the Military Police). According to the Regulations, the General Inspection controls how disciplinary punishment, as defined by the Regulations or other military discipline regulations, is executed in the National Defence System.

18. Criminal liability for the illegal use of force is applicable together with disciplinary liability. Criminal liability applies in accordance with the provisions of the Criminal Code and the Code of the Criminal Procedure.
