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28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

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**“Emerging issues of access to justice for
vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

**Report presented by the Minister of
Justice of Lithuania**

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Mr Minister of Justice of Spain, Mariano Fernandez Bermejo,
Ministers of Justice of European States,
Ladies and Gentlemen,

It is a great honour for me to participate in this conference and I would like to express my most heartfelt gratitude to the hosts for their marvellous and hospitable welcome.

I was most interested to hear Minister Bermejo's report on access to justice for vulnerable groups and I would like to make my own modest contribution by explaining the situation in Lithuania.

In the case of Lithuania, the Minister of Justice is not competent for questions of immigration and granting refugee status, so my report will be limited to matters affecting child victims of crime and child perpetrators of crime, as well as their legal situation.

1. Legal situation of child victims of criminal acts in Lithuania

It has to be said that Lithuania has no special law dealing with victims of crime. For that reason questions of the legal situation of crime victims, including children, are dispersed between a variety of legal acts.

The law establishing the bases for protection of children's rights, in line with the United Nations Convention on the rights of the child, recognises a child as a person under the age of 18 years. The law lays down the basic rights and freedoms of children as well as the obligations of state bodies, other organisations and private individuals in respect of children, enshrining, here too, the principles of the child's higher interest, non-discrimination and respect for the child.

Under the Criminal Code, which entered into force on 1 May 2003 alongside other criminal laws, committing a criminal act against young children (ie children under 14) is in all cases considered an aggravating circumstance. Furthermore, the committing of crimes against young or minor children is a factor in classifying certain crimes, making the charge a more serious one against the accused. The Code provides for significantly stricter punishment for acts such as murder of or causing bodily harm to a child aged under 14, child rape, trafficking in children, use of children in pornography, profiteering from child prostitution, distributing child pornography etc.

The legal situation of victims in the criminal process is laid down in the Code of Criminal Procedure. Victims and their representative are afforded the following general rights in proceedings: submitting of evidence; lodging of applications; lodging of challenges; familiarising themselves with the case during pre-trial investigation and in court; participating in the examination of the case material in court; lodging appeals against the acts of a pre-trial investigation official, the prosecutor, the judge responsible for the pre-trial investigation and the court, as well as appeals against a judicial sentence or decision; summing up.

In addition, the Code of Criminal Procedure establishes that a witness or victim aged under eighteen years is usually questioned no more than once in the course of pre-trial investigations. An audio or video recording may be made during their questioning. If a suspect or his/her representative participates in the questioning of a witness or victim aged under eighteen years, the judge responsible for pre-trial investigation is obliged to ensure that no undue influence is exercised on the witness or victim. A witness or victim aged under eighteen years is asked to attend court sittings only in exceptional cases. Their representative is entitled to participate when they are questioned. At the request of the parties to the proceedings or at the initiative of the pre-trial investigation official, prosecutor or judge responsible for the pre-trial investigation, a representative of a state authority for child rights protection or a psychologist may be asked to attend the pre-trial investigation and must be asked to attend the court examination for the purpose of assisting with the questioning of the minor taking due account of his/her social and psychological maturity.

During the criminal proceedings the victim of a criminal act and his/her representative are entitled to lodge a civil claim for damages, which is considered at the same time as the criminal case. The victim may file a civil claim and this is examined in accordance with the rules of civil procedure.

The Law on legal aid guaranteed by the State, radically amended two years ago, is one of the most modern laws in Europe. It provides for broad possibilities for receiving free legal assistance. It stipulates that any individual, regardless of his/her income and property, is entitled to free legal aid, including assistance from lawyers in court representation if the court is dealing with a matter of compensation for damage caused by a criminal act.

The Lithuanian Law on compensation for damage caused by violent crimes has been in force since 1 July 2005. It entitles the victims of violent crimes to receive compensation from the State if the damage resulting from a crime has not been repaired by the guilty party.

II. Legal situation of child perpetrators of crimes in Lithuania

As has already been mentioned, in the criminal justice reform process in Lithuania three codes have been adopted, which entered into force on 1 May 2003: the Criminal Code of the Republic of Lithuania, the Code of Criminal Procedure of the Republic of Lithuania and the Code of Execution of Sentences of the Republic of Lithuania, which brought in different provisions regulating the criminal liability of minors, their procedural rights and guarantees and the rules governing the execution of sentences handed down to them.

Where the procedural rights and guarantees applying to minors are concerned, it must be pointed out that under the Code of Criminal Procedure they are afforded the same rights to legal aid and challenge to the lawfulness of detention enjoyed by everyone else. Fundamental procedural rights and guarantees to protect the individual are laid down in the code:

1. No one may be deprived of his/her liberty other than in the cases and following the rules established in the Code of Criminal Procedure of the Republic of Lithuania;
2. Anyone detained or arrested shall be informed immediately, in a language he/she understands, of the reasons for their detention or arrest;
3. Anyone detained or arrested shall be entitled to lodge a complaint with a court for unjustified detention or arrest;
4. Anyone detained or arrested without justification shall be entitled to compensation in accordance with the rules laid down by law;
5. Anyone accused of a crime shall be entitled to a just, fair and public hearing within the shortest possible time by an independent and impartial court;
6. Anyone suspected or accused of a crime shall be considered not guilty until such time as his/her guilt is proven in accordance with the rules established by the Criminal Code of the Republic of Lithuania and the corresponding judicial decision has entered into legal force;
7. Anyone suspected or accused of a crime shall be entitled to be informed promptly and in detail, in a language which he/she understands, of the nature and grounds of the accusation against him/her, shall be given adequate time and facilities for the preparation of his/her defence, may examine or have examined witnesses against him/her and shall be entitled to free assistance from an interpreter if he/she cannot understand or does not speak Lithuanian;
8. Anyone suspected or accused of a crime may defend him/herself in person or through legal assistance of his/her own choosing or, if he/she does not have sufficient means to pay for legal assistance, shall receive free legal assistance in accordance with the law governing the provision of state-guaranteed legal aid;
9. Everyone shall have the right to respect for his/her private and family life, as well as the right of inviolability of the home and secrecy of mail correspondence, telephone conversations, telegraphic messages and other communications. Such rights may be

restricted during criminal proceedings in the cases and following the rules established in the Code of Criminal Procedure of the Republic of Lithuania;

10. Anyone recognised as a victim shall be entitled to demand that the individual having committed the criminal act concerned be identified and justly punished and also to demand compensation for damage resulting from the criminal act.

For people to be able to exercise these rights and for these rights to be guaranteed throughout the procedure, officials are under the obligation to explain to the parties to the proceedings their procedural rights and guarantee the possibility of exercising them. Despite the Code of Criminal Procedure not having a section defining the procedural situation of minors, it does set out standards governing certain aspects of the procedure where minors are concerned. For example, the duration of pre-trial detention is reduced, and for the first arrest may last only up to 3 months. In order to shorten periods of pre-trial detention of minors, it is stipulated that if the detention period is prolonged in connection with a particularly complex or sizeable case, the accumulative detention period may not exceed 12 months.

In the Code of Criminal Procedure it is stipulated that the participation of a defence lawyer is mandatory for the examination of cases involving acts of which minors are suspected or accused. Under the Law on legal aid guaranteed by the State these minors are entitled to free legal assistance regardless of their income or property. In addition, at the petition of parties to the court examination or at the initiative of the court a representative of a state authority for child rights protection or a psychologist may be asked to attend for the purpose of assisting with the questioning of the minor taking due account of his/her social and psychological maturity.

The Criminal Code defines the minimum age for criminal liability as 16 years but for certain crimes (e.g. murder, grievous bodily harm, rape, theft, robbery with violence, etc.) the minimum age for criminal liability is set at 14 years.

The following are the statistics for crimes committed by minors for 2000-2006

Year	2000	2001	2002	2003	2004	2005	2006
Minors suspected of criminal acts	3578	3668	3522	3274	4232	4135	3583
Expressed as a percentage of all individuals suspected of criminal acts	14.3	13.8	13.7	13.8	15.2	15.9	14.4

(Data from the Department of information technology and communications of the Ministry of Internal Affairs)

Unlike the Code of Criminal Procedure, the Criminal Code has a special section XI regulating the criminal liability of minors. The norms laid down are applicable to individuals aged up to 18 years who have committed criminal acts. It is noteworthy that the code stipulates that the norms established in this section may also be applied to individuals aged up to 21 years if the court, taking account of the nature and motives of the crime, other circumstances, and, where necessary, the analysis or conclusions of a specialist, takes the decision that such an individual is comparable to a minor in terms of social maturity. The following forms of punishment are applicable to persons having committed criminal acts when minors: 1) community service; 2) a fine; 3) judicial restraint; 4) arrest; 5) a term of imprisonment. A life sentence may not be imposed on a minor; the maximum prison term for a minor is 10 years. Furthermore, the minimum prison sentence provided for in the special section of the Criminal Code is reduced by half. The Code provides for the possibility of exempting minors from criminal liability and punishment under more favourable conditions. The court may decide on educative measures.

From 2000 to 2002 the first Criminal justice for minors programme was implemented with funding from the United Nations Development Programme, and a second Criminal justice for minors programme for 2004-2008 established by order of the Government is now ongoing. The aims of these programmes are to create conditions for the targeted, long-term and comprehensive improvement of the judicial system concerning minors, plan and implement the corresponding measures to help the system work effectively and professionally and gear efforts more closely to the differentiated needs of minor offenders, the bodies and individuals working with them and society as a whole. Under this programme a reform has been carried out of the legal basis of justice applied to minors, institutional changes have been made and courses have been run for officials working with minors. You can find more detailed information on these programmes and their implementation in the material distributed on Lithuania.

The conditions and characteristics of detention of minors in places of deprivation of liberty are governed by the Code of Execution of Sentences of the Republic of Lithuania, which replaced the previously applicable Code on Corrective Labour of the Republic of Lithuania as of 1 May 2003. The Code of Execution of Sentences stipulates that minors serving custodial sentences shall be held in a place of detention separate from adults and in prison medical facilities they must be separated or isolated from adults.

The number of minors in detention facilities (as of the start of the year) is as follows:

Year	2000	2001	2002	2003	2004	2005	2006	2007
Minors held in detention facilities (including those in custody)	185	132	170	139	110	114	92	105
Percentage of the whole	1.3	1.4	1.5	1.3	1.4	1.4	1.1	1.3

(Data from the Prisons Department of the Ministry of Justice)

One type of corrective institution provided for in the Lithuanian Code of Execution of Sentences is the house of correction for minors, and there is a separate chapter of the code governing the activities of such facilities. Houses of correction for minors are for the serving of sentences by minors and adults placed in them for corrective purposes and it is advisable, for the purpose of assessing the results of this corrective work, that minors remain in these facilities until their sentence reaches its term but not beyond the age of 21 years.

Convicted persons serving custodial sentences in houses of correction for minors are assigned to a standard or privileged category. Under the Code, minors in the privileged category enjoy substantial entitlements but all the inmates, regardless of which category they are assigned to, enjoy the rights generally afforded to convicted minors. Additional minor protection measures are laid down in the Code: where minors are concerned, it is forbidden to use special means, utility dogs, water jets and firearms (apart from handcuffs or other means of pacification), unless they initiate an attack or engage in violent or armed fights.

I would further point out that on 28 June this year the *Sejm* of the Republic of Lithuania passed the Law on minimum and medium-level supervision of children, which will enter into force on 1 January 2008. This law lays down the principles for the minimum and medium-level supervision of children, the grounds and procedure for prescribing, extending, amending and withdrawing these measures and also the key norms for applying medium-level supervision of children in centres of child socialisation. The law provides for measures of assistance and supervision to be applied to minors with behavioural disorders committing criminal acts or administrative infringements. The following minimum supervision measures may be applied to a child: 1) work by a specialist (consultations) with the child; 2) obligation to attend a children's day centre; 3) obligation to participate in programmes for social education, rehabilitation, integration, prevention and other purposes; 4) obligation up to the age of 16 years to follow primary education programmes. The law also provides for a medium-level supervision measure, namely transfer to a residential child socialisation centre, which may be prescribed for a period of no more than 3 years before the child reaches the age of 18.

Minimum and medium-level supervision measures are prescribed by the director of the local authorities competent for the child's place of residence. The medium-level supervision measure may be prescribed only on the basis of a court authorisation.

It is envisaged that once this law enters into force assistance and supervision measures for delinquent minors will be promptly applied in an effort to stop minors embarking on a potentially criminal path and prevent them running into criminal justice at an excessively young age.

This concludes my report. Thank you for your attention.

Petras Bagushka
Minister of Justice of the Lithuanian Republic

