



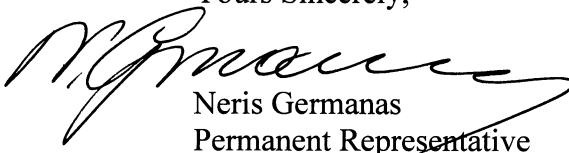
**LIETUVOS RESPUBLIKOS NUOLATINĖ ATSTOVYBĖ
PRIE EUROPOS TARYBOS
REPRÉSENTATION PERMANENTE DE LA RÉPUBLIQUE DE
LITUANIE AUPRÈS DU CONSEIL DE L'EUROPE**

Strasbourg, 21 February 2006

Dear Secretary General,

I have the honour to refer to your letter of 21 November 2005 and would like to submit for your attention the explanations prepared by the Government of the Republic of Lithuania concerning the specific questions mentioned in the attachment of your letter.

Yours Sincerely,



Neris Germanas
Permanent Representative

Mr. TERRY DAVIS
Secretary General
Council of Europe
Strasbourg

EXPLANATIONS OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA TO THE REQUEST OF THE SECRETARY GENERAL OF THE COUNCIL OF EUROPE

The Government of the Republic of Lithuania in accordance with Article 52 of the European Convention on Human Rights has the honour to submit to the Secretary General of the Council of Europe the explanations to the request of 21 November 2005.

1. Explanation of the manner in which internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls.

The legal acts valid in the Republic of Lithuania do not provide a legitimate basis for foreign special agencies to carry on activities in the territory of the Republic of Lithuania, except for such acts by foreign officials that are in compliance with the relevant international treaties of the Republic of Lithuania as ratified by the Seimas of the Republic of Lithuania. Paragraph 4 of Article 67 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as the “CCP”) states that officials of foreign courts, prosecutor offices and pre-trial investigation institutions or the International Criminal Court or other international organisations are allowed to conduct only such proceedings in the territory of the Republic of Lithuania that are provided for in an international treaty of the Republic of Lithuania and only with the participation of Lithuanian officials.

Acts by officials of foreign agencies are subject to controls in compliance with subparagraph 2 of paragraph 1 of Article 9 of the Law of the Republic of Lithuania on Operational Activities which allows entities of operational activities to conduct operational investigations provided that information is available about the activities of the special services of other states. In accordance with the provisions of subparagraphs 2, 3, and 5 of Article 3 of the Law of the Republic of Lithuania on Operational Activities, the State Security Department of the Republic of Lithuania (hereinafter referred to as the “State Security Department”) has the right to conduct operational actions provided that information is available about the activities of foreign special services in the territory of the Republic of Lithuania. In the event that any elements of illegal deprivation of liberty of any person or restriction of freedom to act by any person are identified in the course of such actions, the State Security Department, acting in compliance with subparagraph 5 of Article 8 of the Law of the Republic of Lithuania on the State Security Department, has the right to initiate pre-trial investigations.

2. Explanation of the manner in which internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty.

Article 20 of the Constitution of the Republic of Lithuania states that the liberty of an individual shall be inviolable. No one may be subjected to arbitrary detention or arrest. No one may be deprived of liberty save on the grounds and in accordance with the procedures prescribed by law. A person detained in *flagrante delicto* must, within 48 hours, be brought before a court for the purpose of determining, in his presence, the validity of the detention. If the court does not pass a decision to arrest the person, the detainee shall be released immediately.

The existing legislation of the Republic of Lithuania provide for a limited number of cases where a person's liberty may be temporarily restricted. Such cases include administrative detention for up to 5 hours or, in the event of special circumstances, detention for up to 48 hours under Article 267 of the Republic of Lithuania Code of Administrative Offences (hereinafter referred to as the "CAO"), administrative penalty – arrest for up to 30 days under Article 29 of the CAO, temporary detention for up to 48 hours under Article 140 of the CCP, arrest under Article 122 of the CCP, court conviction providing for arrest, fixed term imprisonment or life imprisonment, court ruling replacing public works, fines or imprisonment with arrest under Articles 46-48 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the "CC"), court ruling on mandatory imposition of medical measures under Article 98 of the CC, mandatory hospitalisation of a person in accordance with the procedure laid down in the Law on Mental Health, detention of a foreign national on the grounds provided for in Article 113 of the Law on the Legal Status of Aliens, detention of a person who has committed a criminal act in accordance with Article 29 of the CC, etc. In fact, in all such cases, only those representatives of Lithuanian authorities whose right to detain a person is conferred on them by the relevant laws have the required authorisations to do so, e.g. the CCP, the Republic of Lithuania Law on Police Activities, the Republic of Lithuania Law on the Prosecutor's Office, Republic of Lithuania Law on the State Border Guard Service, etc. In some cases, any private person may restrict the liberty of another person on legitimate grounds, e.g. where a person who has committed a criminal act is temporarily detained, however only in strict compliance with the requirements of legitimacy and proportionality provided for by the laws.

3. Explanation of the manner in which internal law provides an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims.

Deprivation of liberty of a person, which is not in compliance with the requirements of legitimacy, is a crime under Article 146 or 156 of the CC, and imposes criminal liability. A person who organises, instigates or assists in such acts is also held liable. In cases where such acts performed by persons who enjoy immunity from criminal jurisdiction under international law or existing legislation, the matter of their liability is dealt with in compliance with the international treaties of the Republic of Lithuania and the Criminal Code of the Republic of Lithuania.

Articles 6.271 and 6.272 of the Civil Code of the Republic of Lithuania provide for the grounds of liability to compensation for damage caused by illegal actions of institutions of public authority, pre-trial investigation officials, prosecutors, judges and the court. The damage must be compensated, irrespective of the fault of public servants or other employees of public authority institutions.

The Republic of Lithuania Law on Compensation for Damage Caused by Illegal Actions of Institutions of Public Authority and the Representation of the State provides for the use of allocations for compensating the damage caused by unlawful actions of institutions of public authority, the procedure of out-of-court compensation for damage resulting either from illegal conviction or illegal custody (arrest), as well as from illegal detention or application of illegal procedural coercive measures or unlawful infliction of administrative penalty - arrest, the enforcement of judgements by the European Court of Human Rights and the United Nations Human Rights Committee and other international institutions whose jurisdiction or competence to make decisions in respect of the violation of rights of individuals within the jurisdiction of the Republic of Lithuania has been recognised by Lithuania, and also the procedure for implementing the right of recourse of the State in respect of the person who has caused damage. In the event that a person is entitled under the said law to an out-of-court compensation for damage, but does not agree with the compensation proposal by the Ministry of Justice, he has the right to appeal to court for the compensation of damage in accordance with the procedure laid down in the Code of Civil Procedure of the Republic of Lithuania.

Article 5² of the Law on Compensation for Damage Caused by Illegal Actions of Institutions of Public Authority and the Representation of the State regulates the compensation of damage caused by officials from a joint investigations group. The conditions and procedure for compensating damage caused by the actions (omission of such actions) of foreign officials who participated in a EU joint group of investigations and conducted criminal proceedings in the Republic of Lithuania is equivalent to the procedure applied to the officials of the Republic of Lithuania. The rights and obligations of the parties arising from the damage done are set forth in accordance with the law of the Republic of Lithuania. Unless otherwise provided by the international treaties of the Republic of Lithuania, the provisions of the aforementioned article on the compensation of damage are also applied in cases where the joint investigations group is set up in compliance with international treaties.

In addition to the possibility of appealing against the actions of officials to law enforcement institutions, the right of appeal to the Seimas Ombudsmen Office that investigates complaints concerning any abuse of official position, any instance of bureaucracy or violation of human rights and freedoms in the field of public administration is guaranteed in the Republic of Lithuania.