**28/10/2013**

 **Answers of the Republic of Lithuania to the questionnaire related to the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful**

* 1. *If your State is a party to the International Covenant on Civil and Political Rights, how is Article 9 (4) of the Convent incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption.*
	2. *If your State is not a party to the International Covenant on Civil and Political Rights, is the right of anyone deprive of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention incorporated into your country’s domestic legislation?*

*X Yes*

* *No*

*If yes, please provide the legislation, their wording and year of adoption.*

Article 9 (4) of the International Covenant on Civil and Political Rights is incorporated in these provisions of the legislation of the Republic of Lithuania:

* Article 20 of the Constitution of the Republic of Lithuania: “1. Personal freedom shall be inviolable. 2. No person may be arbitrarily arrested or detained. No person may be deprived of freedom except on the bases, and according to the procedures, which have been established in laws. 3. A person detained in flagrante delicto must, within 48 hours, be brought to court for the purpose of determining, in the presence of the detainee, the validity of the detention. In the event that the court does not pass a decision to arrest the person, the detained individual shall be released immediately.” The Constitution of the Republic of Lithuania was adopted 25 October 1992.
* Part 4 of Article 140 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter – CCP): “The provisional arrest could last no longer than it is necessary to establish the person’s identity and to execute necessary procedural actions. The maximum period of provisional arrest is forty-eight hours. <…>. If the arrested person has to be detained, he must be brought before the pre-trial judge within forty eight hours to uphold the decision on the detention in accordance to established procedure.” This provision was adopted 14 March 2002 and amended 28 June 2007.
* Part 2 of Article 123 of the CCP: “If the prosecutor is of the opinion that a suspect, who is not in custody, must be detained, he must submit an application to the pre-trial judge of the local court where the investigation is conducted. <…>. If the judge decides to grant the prosecutor’s application he must issue an order of detention; if the judge rejects the prosecutor’s application, he must issue an order on refusal of detention.” This provision was adopted 14 March 2002.
* Part 3 of Article 123 of the CCP: “The person detained in accordance to decision provided in Part 2 of Article 123 must be brought before the pre-trial judge by the prosecutor within forty eight hours of the moment of detention; if there is no possibility - before any other pre-trial judge of the local court where the investigation is conducted. The judge must question the person brought to ascertain whether there are grounds for his detention. The detainee’s counsel and the prosecutor may be present at such questioning. After questioning the detainee, the judge may take on of these decisions: to uphold the order of detention (in such a case the judge must specify the term of detention) or modify or reverse the pre-trial measure.” This provision was adopted 14 March 2002.
* Part 4 of Article 123 of the CCP: “If the person arrested in accordance to Article 140 must be detained, prosecutor within forty eight hours of the moment of arrest must bring him before the pre-trial judge of the local court where the investigation is conducted together with the application on detention. The judge must question the person brought to ascertain whether there are grounds for his detention. The detainee’s counsel and the prosecutor may be present at such questioning. After questioning the detainee, the judge may grant the prosecutor’s application and issue an order on detention specifying the term of detention or to refuse to grant the application and issue an order on refusal of detention.” This provision was adopted 14 March 2002.
* Part 2 of Article 130 of the CCP: “The detainee or his counsel may appeal to a higher court against the imposition or extension of detention. The appeal can be filed within twenty days of the issuance of the respective order <…>.” This provision was adopted 14 March 2002.
* Part 3 of Article 141 of the CCP: “A suspect shall be committed to an examining institution and his period of stay at the institution shall be determined and extended following the same procedure for ordering, extending or appealing against detention.” This provision was adopted 14 March 2002.
* Article 264 of the Code of Administrative Offences of the Republic of Lithuania (hereinafter – CAO): “In cases directly established in laws of the Republic of Lithuania, in attempt to put a stop to administrative violations of law, to draw up protocols, to ensure that cases be considered timely and fairly and decisions be implemented in legal cases of administrative violations of law, an administrative detention <...> shall be permissible. For the purposes provided for in this article, the procedure for administrative detention <...> shall be established by this Code and other laws of the Republic of Lithuania.” This provision was adopted 13 December 1984 and amended 26 May 1992.
* Article 267 of the CAO: “Administrative detention may last no longer than five hours, save in the instances when different time limits of administrative detention are applied under exclusive necessity. Persons being subject to administrative liability for violations of the regulations of the frontier or the rules of border crossing point operations may be detained for up to three hours for the purposes of drawing up an infringement record; for up to 48 hours, when it is necessary to establish the person’s identity and to ascertain the circumstances of the violation; and persons subjected to administrative liability for petty hooliganism or infringements of the rules of assemblies and other mass gatherings may be detained until the district court judge or the police commissioner considers the case within the prescribed time limits, but not longer than for 48 hours. This provision was adopted 13 December 1984 and amended 18 December 1989, 26 May 1992, 18 July 1994, 13 February 1996, 17 February 2000, 5 July 2002, 29 January 2004 and 14 December 2010.
* Article 271 of the CAO: “Administrative detention <…> may be appealed by the person concerned to superior body (officer) or regional (city) District Court <…>”. This provision was adopted 13 December 1984 and amended 17 February 2000.
1. *Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalization, immigration detention, or any other reason?*

*X Yes*

* *No*

*If yes, please provide the list of the forms of detention to which the mechanism is applicable.*

All forms of the deprivation of liberty are listed in the answer to the first part of the questionnaire.

1. *Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?*
* *Yes*

*X No*

*If not, please explain in which case(s) your country’s laws do not provide remedies and cite relevant legislation.*

The institute of preventive detention that allowed detention aimed at prevention of banditry, organization of criminal groups or terrorizing of individuals, does not longer exist in Lithuania.

1. *Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?*

*X Yes*

* *No*

*If yes, please state and explain the relevant remedies.*

Part 8 of Article 140 of the CCP: The detained person must be released immediately if:

* the suspicion that he has committed a criminal offense has not been confirmed;
* it was established that there are no grounds and conditions of detention foreseen in Article 122 of the CCP or the detention is not necessary;
* the statutory term of detention has expired;
* the court issues an order on refusal of detention.

A Person also has a right to lodge a claim to the Ministry of Justice for pecuniary and non-pecuniary damage arising from the unlawful actions of investigating authorities or courts in the context of a criminal case (Part 1 of Article 6.272 of the Civil Code of the Republic of Lithuania) in extrajudicial procedure no later than three years from the time when he find out or should have find out that it was established in accordance with the law that temporary detention, conviction, arrest, the use of coercive procedural measures or the imposition of administrative penalty - detention was unlawful (Part 1 of Article 3 of the Law on Compensation for Damage Inflicted by Unlawful Actions of State Institutions and the Representation of the State)

1. *Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country’s domestic law?*

*X Yes*

* *No*

*If yes, please state who?*

The detainee may be represented by his counsel - he can initiate the criminal proceedings and to appeal the coercive measure - detention (Part 1 of Article 130 of the CCP). The same rules of the appeal apply in the case the person is given to the institution of expertise (Part 3 of Article 141 of the CCP).

The person concerned may appeal against administrative detention (Article 271 of the CAO). The right of the appeal against administrative detention also holds the authorized representative of the detainee (lawyer or other authorized representative having higher juridical or other equivalent education) (Article 275 of the CAO).

1. *What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.*

The above mentioned requirements and procedures are stipulated in these provisions of the legislation of the Republic of Lithuania:

* Part 1 of Article 130 of the Code of Criminal Procedure: “The detainee or his counsel may appeal to a higher court against the imposition or extension of detention. The appeal can be filed within twenty days of the issuance of the respective order. The appeal is filed through the judge (court) who imposed or extended the detention. The judge must communicate the appeal to a higher court without any undue delay. The judge of the higher court must consider the appeal within seven days of its receipt. The appeal against the imposition of detention must be heard at a hearing attended by the detainee and his counsel or the counsel alone. The presence of the prosecutor at such a hearing is obligatory. The prosecutor must submit to the higher court all the material of the pre-trail investigation necessary for the examination of the appeal. Where the appeal is filed during the proceedings in court, the court whose order of detention is appealed against must present to the higher court all the material necessary for the examination of the appeal.”
* Article 271 of the CAO: “Administrative detention <…> may be appealed by the person concerned to superior body (officer) or regional (city) District Court <…>”.
1. *Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what is the maximum time in the number of:*

*X 20 days*

* *Months (How many?)*
* *Years (How many?)*