

COUNTRY
LAW STUDY
OF
THE REPUBLIC OF LITHUANIA
FOR
UNITED STATES EUROPEAN COMMAND

PREPARED BY UNITED STATES COUNTRY REPRESENTATIVE
OFFICE OF THE JUDGE ADVOCATE
UNITED STATES EUROPEAN COMMAND

Stuttgart, Germany

September 2002

HEADQUARTERS
UNITED STATES EUROPEAN COMMAND
OFFICE OF THE JUDGE ADVOCATE

The Country Law Study for Lithuania has been prepared in compliance with DOD Directive 5525.1, which implements the Senate Resolution of Advise and Consent to the Ratification of the NATO Status of Forces Agreement (SOFA.)

Lithuania is not a member of NATO but is a signatory to the Partnership for Peace (PfP) framework document. The PfP Status of Forces Agreement (SOFA) agrees to apply the provisions of the NATO SOFA as if Lithuania were a party to the NATO SOFA. Furthermore, Lithuania has applied for membership in NATO. Accordingly, this Study serves to implement the wishes of the United States Senate that an examination be made of the laws of any country where United States personnel may be subject to trial in the local criminal courts. This Study contains a comprehensive discussion of the Constitution of Lithuania and describes its more important provisions as they would relate to United States personnel involved with the Lithuanian criminal justice system. Although not modeled after the United States Constitution, concepts similar to those found in the U.S. Constitution and its Bill of Rights are readily apparent. This Study also discusses other laws of Lithuania relating to criminal defendants involved in its criminal justice system including the European Convention for the Protection of Human Rights and Fundamental Freedoms and related Protocols (ECHR), of which Lithuania is a signatory.

Lithuania's criminal justice system is presently operating under criminal laws and procedures similar to those imposed by the former Soviet Union. Lithuania has adopted a new Civil Code, now in force and which complies with the requirements of the European Convention on Human Rights (ECHR.) Lithuania has also just recently adopted a new Criminal Code and Code of Criminal Procedures. Neither code is yet in force but both are expected to be in force by May 1, 2003 or possibly sooner. English translations are not presently available, except in Draft form. Because of the lack of English translations of the official codes, secondary sources, together with comments from eminent individuals working with Lithuanian law, have provided the pertinent information.

With the exception of right to jury trial and some minor nuances discussed in the study, the Lithuanian Law Study shows that under the Lithuanian Constitution, the new Criminal Code, Code of Criminal Procedures, and the rights guaranteed under the NATO/PfP SOFAS and the Europe Convention on Human Rights (ECHR), United States Constitutionally guaranteed procedural safeguards are ensured for United States personnel.

RUSSELL R. McKINNEY
CAPT, JAGC, USNR
ASSISTANT JUDGE ADVOCATE

BIBLIOGRAPHY

1. The Constitution of the Republic of Lithuania (1992)
2. Department of Defense Directive (DOD DIR) 5525.1 of August 7, 1979 with Administrative Reissuance Incorporating Change 2, July 2, 1997
3. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, and 7 with the Registry of the European Court of Human Rights (ECHR).
4. Criminal Code of the Republic of Lithuania (Draft).
5. Code of Criminal Procedure of the Republic of Lithuania (Draft, 23 May 2001)
6. The Constitution of the United States (1787) and first ten Amendments thereto (Bill of Rights (1791)).
7. "Background Note: Lithuania. PROFILE", U.S. Department of State, Bureau of European and Eurasian Affairs. January 1998.
8. Republic of Lithuania Law on Police Activities. 17 October 2000 No. VIII-2048. Vilnius, as amended by 12 December 2000 No. IX - 74.
9. Republic of Lithuania Law on The Seimas Ombudsmen. 3 December 1998 No. VIII - 950, Vilnius.
10. "LITHUANIA Criminal Justice Systems in Europe and North America" by Gintaras Svedas, page 8. printed by Tammer-Paino Oy, 2000, Tampere, Finland (ISBN 952-5333-03-5).
11. The American Bar Association Central and East European Law Initiative (CEELI) study dated October 28, 1998 entitled "Analysis of the Police Reform Program for the Republic of Lithuania"

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Preface	iv
I. Introduction	1.
A. Lithuania	1
B. Post WWI History	1
C. WWII History	1
D. Post WWII History	2
E. Form of Government	3
II. Constitution of Lithuania	3
A. General Provisions	3
B. Rights of the People	4
1. Nationality	4
2. Equality Before the Law	4
3. Personal Liberty and Equal Protection	4
4. Recourse to Courts	5
5. Presumption of Innocence	5
6. Fair and Impartial Hearing by Impartial Court	5
7. Persons Cannot Be Compelled to Be Witness Against Themselves	5
8. No Double Punishment for the same Offense Twice	5
9. Right to Defense Counsel	5
10. Freedom to Choose Place of Residence and Travel Outside State	5
11. Freedom to Vote, to Form Associations, to Assemble Peacefully	6
C. The Constitutional Court	6
D. Organization of the Courts	6
III. Code of Criminal Procedure of Lithuania	7
A. Current Code of Criminal Procedure Will Be Superseded in 2003	7
B. Background	7
C. New Code of Criminal Procedure (CCP) Effective 2003	8
1. Only the Courts Administer Justice	8
2. The Gathering of Information and Investigation	8
3. Suspension and Termination of Pre-Trial Investigation	10
4. Proceedings in the Court of the First Instance	11
5. Time Limits of the Hearing	11
6. Attendance of the Accused at the Hearing (Trial)	12
7. Modes of Objecting to Decisions of the Court	12
8. Execution of Sentence	13
9. Miscellaneous Rights of Convicted Persons	13
10. Conditional Early Release	14
11. Force of Final Judgment	14

Table of Contents (Continued)

IV	Criminal Code of Lithuania	14
A.	The Current Code Will Be Superseded in 2003	14
B.	Background	14
C.	New Criminal Code of Lithuania	15
1.	Tradition of Written Laws	15
2.	Purpose of Criminal Code is to Define Crimes, Set Penalties	15
3.	Principles of Criminal Liability	15
4.	Crimes Recognized Internationally	15
5.	Crimes and Misdemeanors	15
6.	Guilt Based on Intentional and Negligent Acts; Mens Req.	16
7.	Attempts, Conspiracy, Accomplices, Aiding and Abetting	16
8.	Defenses	16
9.	Penalties	16
10.	Penal Sanctions	16
11.	Guidelines for Selection of Appropriate Penalties	16
12.	Reasons for Early Release From Prison	17
13.	Juvenile Offenders	17
14.	Effect of Prior Convictions	17
15.	Statutes of Limitation	17
16.	Genocide and Crimes Against Humanity	17
17.	Laws of Armed Conflict	17
18.	Crimes Against the State	17
19.	Homicide	17
20.	Crimes Against Human Health	17
21.	Crimes Against Liberty of the Person	18
22.	Crimes Against Freedom of Sexual Self-determination	18
23.	Crimes Against Children	18
24.	Crimes Against Privacy	18
25.	Crimes Against Voting and Election Rights	18
26.	Crimes Against Property Rights and the Economy	18
27.	Counterfeiting	18
28.	Bribery and Crimes Against Public Interests	18
29.	Obstruction of Justice, Contempt, Perjury, Crimes Against Justice	18
30.	Organized Crime, Terrorism, Hijacking, Hostage Taking	19
31.	Illegal Possession of Firearms and Weapons	19
32.	Possession of Narcotics and Controlled Substances	19
33.	Crimes Against the Environment	19
34.	Crimes Against Traffic Safety	19
35.	Crimes Against Public Order	19
36.	Resisting Arrest, Blackmail, Interference with Police Duties	19
37.	Illegal Border Crossing, Illegal Information Gathering, Revealing State Secret(s)	19

Table of Contents (Continued)

	38. Forgery	19
	39. Prostitution and Pornography	20
	40. Desecration of a Corpse or Gravesite	20
	41. Crimes Against Intellectual Property	20
	42. Crimes Against the National Defense Service	20
V	U.S. Department of Defense Directive (DOD) 5525.1 and U.S. Constitution Procedural Safeguards for U.S. Personnel in Lithuania	20
	A. U.S. Senate Resolution Ratifying NATO Treaty	20
	B. DOD Directive 5525.1 Regarding Country Law Studies	20
	C. Fundamental Procedural Safeguards to Guarantee a Fair Trial	21
	1. Criminal statute alleged to be violated must set forth specific and definite standards of guilt.	21
	2. Accused shall not be prosecuted under an ex post facto law.	22
	3. Accused shall not be punished by bill(s) of attainder.	22
	4. Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.	22
	5. Accused is entitled to have the assistance of defense counsel.	23
	6. Accused is entitled to be present at the trial.	23
	7. Accused is entitled to be confronted with hostile witnesses.	24
	8. Accused is entitled to compulsory process for obtaining favorable witnesses	24
	9. Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited	24
	10. Burden of proof is on the Government in all criminal trials	25
	11. Accused is entitled to be tried by an impartial court	25
	11. Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence	25
	13. Accused shall not be subjected to cruel and unusual punishment	26
	14. Accused is entitled to be tried without unreasonable (prejudicial) delay	26
	15. Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused	26
	16. Accused is entitled to a public trial.	26
	17. Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.	27
VI	CONCLUSION	27
Enclosure (1):	Comparison of Fair Trial Guarantees Under DODDIR 5525.1 And Lithuanian Laws	

PREFACE

Because of the concern for the protection of persons subject to military jurisdiction when they are exposed to trial by foreign jurisdictions, in giving its advice and consent to the ratification of the Status of Forces Agreement between the parties to the North Atlantic Treaty, the United States Senate resolved that an examination be made of the law of such jurisdiction with particular reference to the procedural safeguards guaranteed thereunder in comparison with those guaranteed by the United States Constitution.

While Lithuania is not a party to the NATO treaty or SOFA agreement, a document known as the Partnership for Peace includes Lithuania as a signatory. Annex B of the "Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of their Forces (PfP SOFA)", Brussels, 19 June 1995 applies the provisions of the NATO SOFA to the parties to the PfP SOFA.

In the event of any stationing of United States service members, their dependents and United States civilian personnel in Lithuania pursuant to commitments under the North Atlantic Treaty, it could be possible for such persons to be subjected to trial under Lithuanian criminal law. It is for this reason that a study has been conducted - to determine the safeguards afforded to them in such an event.

The Department of Defense (DoD) DIRECTIVE Number 5525.1 establishes DoD policy and procedure on trials by foreign courts and treatment in foreign prisons of United States military personnel, nationals of the United States serving with, employed by, or accompanying the Armed Forces of the United States, and the dependents of both. Enclosure 2 of DoD DIRECTIVE 5525.1 sets forth the procedural "fair trial" safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The said Enclosure 2 states that the list of "fair trial" guarantees "...is intended as a guide for the preparation of country law studies..." and thus the scope of this study is defined.

Source material for Lithuanian law has been somewhat limited because of the lack of English translations of the new Criminal Code and Code of Criminal Procedures, both of which have been passed by the Lithuanian parliament (Seimas) but which will not in effect until 2003. However, translations of Drafts of the new Criminal Code and Code of Criminal Procedure, together with comments from eminent individuals working with Lithuanian law, have provided the pertinent information.

I. INTRODUCTION

A. Lithuania.

The name "Lietuva", or Lithuania, is thought to be derived from the word "lietus," which means rain or land of rain, or from the word "lietava," meaning a small river.

Lithuanians are neither Slavic nor Germanic, but historical unions with Poland and Germanic colonization and settlement have left cultural and religious influences.

Lithuania is a highly literate society that places strong emphasis upon education, which is both free and compulsory until age 16.

B. Post WW I History.

The German army occupied Lithuania in 1915. The occupation administration allowed a Lithuanian Conference to convene in 1917. The Conference adopted a resolution demanding the restoration of an independent Lithuanian state and elected the Lithuanian Council. In 1918, the Council declared Lithuania's independence. Lithuania's War for independence proceeded from 1919-1920 against three factions: the Red Army which in 1919 controlled territory ruled by a Bolshevik government, the Polish army; and the Bermondts army, composed of Russian and German troops. Lithuania did not regain the Polish-occupied Vilnius region.

In the Moscow Treaty of 1920, Russia recognized Lithuanian independence. The Seimas (Parliament) of Lithuania adopted a constitution in 1922 declaring Lithuania a parliamentary republic. A military coup occurred in 1926 in which Nationalist party leader Antanas Smetona became President and he gradually introduced an authoritarian regime. Relations with Poland were strained by its annexation of the Vilnius region in 1922, and in 1939, Germany forced Lithuania to surrender the Klaipeda region (but the Nurnberg trials declared the treaty null and void).

The interwar period saw introduction of a system of education with Lithuanian as the language of instruction, development of the press, literature, music, arts and theater. The Molotov-Ribbentrop Pact pulled Lithuania first into German influence in August of 1939 but the Soviet-German agreement of September 1939 brought Lithuania under Soviet domination. Soviet pressure and a complicated international situation forced Lithuania to sign an agreement with the Soviets in October 1939. This agreement gave back to Lithuania the city of Vilnius and part of the Vilnius region seized by the Red Army during the Soviet-Polish war but, in return, some 20,000 Soviet troops were deployed in Lithuania.

C. WW II History.

On June 14, 1940 the Soviet Government issued an ultimatum to Lithuania, demanding the formation of a new Lithuanian government as well as permission to station additional Soviet troops. Lithuania capitulated to these demands and 100,000 Soviet troops moved

into the country the very next day. The Soviet government began implementing its plan to incorporate Lithuania into the U.S.S.R. as one of the Soviet Socialist Republics. Totalitarian rule was established and Sovietization of the economy and culture was commenced. Lithuanian public figures and state employees were arrested and exiled to Russia. A mass deportation campaign was conducted by the Soviets from June 14-18, 1941 and about 7,439 families (12,600) people were deported to Siberia without trial; 3,600 people were imprisoned and over 1,000 were massacred.

Lithuanian revolt against the Soviets followed soon after the outbreak of the war against Germany in 1941. The rebels announced the restoration of Lithuania's independence via Radio Kaunas on June 23rd and actively operated a Provisional Government, without German recognition, from June 24 to August 5. Lithuania became part of the German administrative unit of Ostland. People were repressed and taken to forced labor camps in Germany. The Nazis and local collaborators deprived Lithuanian Jews of their civil rights and massacred about 200,000 of them.

Forcing the Germans out of Lithuania by 1944, the Red Army reestablished control, and Sovietization continued to occur.

D. Post WW II History.

Communist party leaders arrived to create a local party administration. The mass deportation campaigns continued and it is estimated that between 1941-1952, 29,923 families were exiled to Siberia and other remote parts of the Soviet Union. Official statistics state that over 120,000 people were deported from Lithuania during this period but Lithuanian sources estimate the number at 300,000. In response to these events, thousands of resistance fighters conducted unsuccessful guerilla warfare against the Soviet regime from 1944-53.

Until mid-1988, all of Lithuanian political life as well as its economic, and cultural life was controlled by the Lithuanian Communist Party (LCP). The political and economic crisis that began in the U.S.S.R. in the mid-1980s affected Lithuania and Lithuanians and other Balts (Latvians and Estonians) offered active support to Gorbachev's social and political reform program. The Lithuanian reform movement Sajudis was formed in mid-1988 and won nation-wide popularity with a program of democratic and national rights. On Sajudis' demand, the Lithuanian Supreme Soviet passed constitutional amendments on the supremacy of Lithuanian laws over Soviet legislation, annulled the 1940 decisions proclaiming Lithuania a part of the U.S.S.R., and legalized a multi-party system. With Sajudis support, Algirdas Brazauskas was elected First Secretary of the Central Committee of the LCP in 1988. In December 1989, the Brazauskas-led LCP split from the CPSU, became an independent party, and renamed itself in 1990 the Lithuanian Democratic Labor Party.

In 1990, Sajudis-backed candidates won the elections to the Lithuanian Supreme Soviet. On March 11, 1990, its chairman Vytautas Landsbergis proclaimed restoration of Lithuanian independence and adopted the Provisional Fundamental Law of the state plus

by-laws. The U.S.S.R. demanded revocation of the act, began political and economic sanctions against Lithuania as well as demonstrating military force. In January 1991, the Soviets seized the central publishing house and other premises in Vilnius and took over the TV tower, killing 14 civilians and injuring 700 others. In a national plebiscite in February 1991, 91% of those who took part in the voting (76% of the eligible voters) voted for an independent, democratic Lithuania. However, Soviet military-security forces continued forced conscription, occasional seizure of buildings, attacks on customs posts, and killed some customs and police officials.

During the August 19, 1991 coup against Gorbachev, Soviet military troops took over several communications and other government facilities in Vilnius and other cities. The People stacked and manned barricades around their Seimas building to defend it against attack by Soviet tanks but no direct attack on the Seimas took place. The Soviet military troops returned to their barracks when the coup failed. The Lithuanian government banned the Communist Party and ordered confiscation of its property.

Despite Lithuanian independence, sizable numbers of Soviet forces remained on Lithuanian territory. The removal of such forces was among the top of Lithuania's foreign policy objectives. Lithuania and Russia signed an agreement on September 8, 1992 that called for Russian troop withdrawals by August 31, 1993. These have now been completed in full, despite unresolved issues such as Lithuania's claims for compensation.

E. Form of Government.

The form of Lithuania's government is a parliamentary democracy. It has three branches of government that include an Executive, Legislative and Judicial branch. The Executive branch consists of a popularly elected President (Chief of State); Prime Minister (Head of Government.) The Legislative branch is the Seimas (Parliament) consisting of 141 members with four (4) year terms. The Judicial branch is its Supreme Court and is called the Constitutional Court. The Constitutional Court acts independently of any other State institution and consists of 9 judges appointed for non-renewable terms of nine (9) years each. The terms are staggered so that three (3) of the judges are replaced every three (3) years.

The Lithuanian Nation established the State of Lithuania many centuries ago, having based its legal foundations on Lithuanian Statutes and the Constitution of the Republic of Lithuania (see Preamble, Lithuania - Constitution.) Lithuanian shall be the State language (Article 14.)

II. CONSTITUTION OF LITHUANIA.

A. General Provisions.

The Constitution of Lithuania was adopted on 25 October 1992 and signed on November 6th of that year. It states that Lithuania shall be an independent and democratic republic

(Article 1), created by the People and with sovereignty vested in the People (Article 2.) The people can exercise their power either directly or through their democratically elected representatives (Article 4.) The powers shall be exercised by the Parliament, the President of the Republic and Government, and the Judiciary and the scope of powers shall be defined by the Constitution (Article 5.) The Constitution shall be an integral and directly applicable statute under which every person may defend his or her rights (Article 6.) The Constitution is considered the supreme law of the land, in that any law or other statute that contradicts the Constitution shall be invalid (Article 7.)

B. Rights of the People.

Chapter 2 of the Lithuanian Constitution sets out in some twenty (20) articles the rights of the people (see Articles 18 through 37 and discussion under paragraph 3. below entitled Personal Liberty and Equal Protection.) These twenty articles could be looked at as the Lithuanian counterpart to the Bill of Rights (Amendments one to ten to the Constitution of the United States of America.) [While many of the provisions found in the Bill of Rights are addressed in the Lithuanian Constitution, in this writer's opinion, it does not attain the perfection of the latter instrument.]

1. Nationality.

Article 12 under Chapter 1 sets out the qualifications for being a Lithuanian citizen. Citizenship is acquired by birth or on other bases established by law. Loss of citizenship is also provided for under Article 12 as shall be established by law.

2. Equality Before the Law.

Article 29 under Chapter 2 states that all people shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way nor be granted any privileges on the basis of sex, race, nationality, language, origin, social status, religion, convictions, or opinions.

3. Personal Liberty and Equal Protection.

Personal liberties are guaranteed in various Articles under Chapter 2. Rights and freedoms of individuals shall be inborn (Article 18.) Individual's right to life is protected by law (Article 19.) Personal freedom shall be inviolable and no person shall be arbitrarily arrested or detained (Article 20.) The person shall be inviolable, human dignity protected by law, and it is prohibited to torture, injure, degrade, or maltreat a person or to establish such punishments (Article 21.) The private life of an individual as well as personal correspondence and communications shall be inviolable and information concerning the private life of an individual may be collected only upon a justified court order in accordance with the law (Article 22.)

Property rights shall be inviolable, the rights of ownership protected by law, and property may only be seized for the needs of society according to the procedure established by law

and upon payment of adequate compensation (Article 23.) A person's dwelling shall be inviolable and there shall be no entrance into a dwelling place without the consent of the resident(s) except upon court order according to procedure established by law and in order to protect public order, apprehend a criminal, or save a person's life, health, or property (Article 24.)

Individuals have the right to have their own convictions and to freely express them, seek and disseminate information, and obtain any available information which concerns them from State agencies in the manner established by law (Article 25.)

Freedom of thought, conscience and religion shall not be restricted (Article 26) nor amount to the violation of law (Article 27.)

4. Recourse to Courts.

Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court and the law shall establish the procedure for compensating material and moral damage inflicted on a person (Article 30.)

5. Presumption of Innocence.

Every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence (Article 31(1).)

6. Fair and Public Hearing by Impartial Court.

Every indicted person shall have the right to a fair and public hearing by an independent and impartial court (Article 31.)

7. Persons Cannot Be Compelled to Be Witness Against Themselves.

Persons cannot be compelled to give evidence against themselves or against their family members or close relatives. (Article 31.)

8. No Double Punishment for Same Offense.

No person may be punished for the same offense twice (Article 31.)

9. Right to Defense Counsel.

From the moment of arrest or first interrogation, persons suspected or accused of a crime shall be guaranteed the right to defense and legal counsel (Article 31.)

10. Freedom to Choose Place of Residence Inside and Travel Outside State.

Citizens may move and choose their place of residence in Lithuania freely, and may leave

Lithuania at their own free will (Article 32.)

11. Freedom to Vote, to Form Associations, to Assemble Peacefully.

Citizens over 18 years of age may vote in elections, freely form societies, political parties, and associations that do not contradict the Constitution, and they may not be prohibited or hindered from assembling in unarmed peaceful meetings (Article 36.)

C. The Constitutional Court.

1. Decides Constitutionality of Laws. The Constitutional Court decides whether laws and acts adopted by the Parliament (Seimas) conform to the Constitution. It also decides if the legal acts of the President and the Government violate the Constitution or other laws. (See Article 102 and Article 105.)

2. Composition of Constitutional Court. The Constitutional Court consists of 9 judges appointed for a non-renewable term of 9 years. Every three years, one-third of the court is reconstituted, meaning that one-third of the judges are replaced every three years. Only citizens trained in law, with an impeccable reputation, and who have served for at least 10 years in the legal profession or in an area of education related to the law, shall be eligible for appointment as a judge of the Constitutional Court.

3. Independence of the Constitutional Court. In fulfilling their duties, judges of the Constitutional Court shall act independently of any other State institution, person or organization, observing only the Constitution of the Republic of Lithuania (Article 104.)

4. Finality of Decisions. The decisions of the Constitutional Court on issues assigned to its jurisdiction by the Constitution shall be final and may not be appealed (Article 107.)

D. Organization of the Courts.

The Constitution of Lithuania sets out a four-level system of common jurisdiction for justice to be administered exclusively by courts. These courts are the district courts (of which there are 54), the county or regional courts (of which there are 5), the Court of Appeal, and the Supreme Court. The courts are independent and obey only the written law. There is also the Constitutional Court which decides only constitutional issues and whether acts of Parliament, the President and the Government are constitutional. There are also Administrative Courts which handle administrative issues relating to labor, family, and other miscellaneous matters from parking tickets to illegal burning of leaves, and the like. The Code of Administrative Offences has been published in Lithuanian (ISBN 9986-452-57-0).

District and regional courts are the courts of first instance for the hearing of criminal cases. Regional courts hear appeals in cases that have been heard by district

courts. The Court of Appeal of Lithuania hears appeals in cases that have been heard by regional courts deciding under the appellate procedures. The Supreme Court of Lithuania hears cases under the cassation procedure. Criminal cases, normally brought before district courts in the first instance, are heard by a single judge. The criminal cases in the first instance brought before regional or county courts are heard by a single judge, or by a panel of three judges depending on the seriousness of the charges. For example, the following alleged crimes would be heard by a chamber of three judges: intentional murder under aggravating circumstances, crimes alleged to have been committed by members of the Parliament or the Government, or judges, or prosecutors. The Code of Criminal Procedure contains a comprehensive list of such serious crimes. Likewise, in regional courts and the Court of Appeal of Lithuania, criminal cases are heard under the appeal procedure by a chamber of three judges.

The Supreme Court of Lithuania hears criminal cases under the cassation procedure by a chamber of three or seven judges, or by a plenary session of the court. When hearing cases under the cassation procedure, the Supreme Court of Lithuania reviews the judgment or ruling that is the subject of appeal from the point of applying both material and procedural law. The rulings of the Supreme Court are precedents. The Lithuanian court system no longer allows lay persons to participate in court proceedings, although it formerly allowed this. For example, human rights advocates used to be permitted to sit at defense counsel table and participate in the proceedings.

III. CODE OF CRIMINAL PROCEDURE OF LITHUANIA

A. The Current Code of Criminal Procedure Will Be Superseded in 2003.

The discussion that follows relates to the new Code of Criminal Procedure (CCP) that will become effective in 2003. (For questions relating to the law on criminal procedure effective currently and before the new code comes into effect refer to the Code of Criminal Procedure, officially published in Lithuanian (ISBN 9986-452-53-8).

B. Background.

The statutory law on criminal procedure in Lithuania has a complicated history due to the collapse of the State of Lithuania, its frequent occupation and annexation into other countries, since Lithuania often had to yield to the laws of criminal procedure of the annexing state.

(Caveat: this discussion is based upon the 23 May 2001 draft of the Lithuanian Code of Criminal Procedure because this is the only English translation of the actual code that is presently available. Lithuania's Vice Minister of Justice represented that the final version of the code of criminal procedure is very close to the English translation draft, containing only minor differences. The Vice Minister of Justice was one of the drafters of the new Code of Criminal Procedure.)

■ C. New Code of Criminal Procedure (CCP).

1. Only The Courts Administer Justice.

As set forth previously, the Constitution of Lithuania provides for a Constitutional Court for crimes against the state and crimes by officials, and a four tier system of criminal courts: the Supreme Court of Lithuania, the Court of Appeal of Lithuania, the county courts, and the district courts. Only the courts administer justice (CCP Art. 6.)

2. The Gathering of Information and Investigation.

a. Pre-trial investigation is conducted by officers of pre-trial investigation institutions, organized and led by a prosecutor. A pre-trial judge may also conduct some pre-trial investigations. (CCP, Article 159.) Pre-trial investigation commences upon receipt of a complaint or report about a criminal act or discovery of the same.

b. Pre-trial investigation can be conducted by various agencies including the police, the Border Guard Service, the Special Investigations Service, the Military Police, institutions of State Security, the State Control, State Tax Inspectorate, State Labor Inspectorate, State Fire Prevention Service, Customs, heads of correctional institutions/detention centers, and captains of ships on long voyages.

c. Pre-trial investigations must be carried out in an expedited manner and Prosecutors are required to supervise compliance with this requirement (CCP Article 171.)

d. The suspect, his counsel or the victim have the right to request the prosecutor in writing to perform the requested actions provided for in the CCP. (Article 173.) The Prosecutor may then perform the actions himself, direct a pre-trial investigation institution to perform the requested actions, or refuse to perform the requested actions. Any refusal must be documented in the form of a decision. If the person requesting the actions is not satisfied with the Prosecutor's decision, he may lodge a complaint with the pre-trial judge. The pre-trial judge must examine the complaint within three days and the judge's decision is final. Where the judge decides that the requested actions must be performed, the Prosecutor must do so without any delay or direct that the same be so performed by a pre-trial investigation institution.

e. When performing investigation actions, records shall be made. Records may include photographs, audio and video recordings, prints and castings, plans and schemes may be made, and other methods of recording (investigative findings) may be used. Records may also include testimony, statements, or a description of other investigative actions and their results along with the date and time of the actions, who participated in the same and the manner and conditions used in performing investigation actions by technical means (CCP Article 174.)

f. The records shall be signed by the person(s) who performed the investigation actions and in the case of a refusal or inability of any such person(s) to sign such record(s), an explanation of the reasons shall be included in the record (CCP Article 174.)

g. The suspect and his counsel have the right to examine the material (the physical evidence) of the pre-trial investigation. A request to examine is made submitting an application to examine the material to the pre-trial investigator or to the prosecutor. If there is a refusal to allow such examination, the prosecutor must document the refusal in a decision that may, within seven days, be appealed by the suspect or his counsel to the pre-trial judge, who must examine (and presumably rule) within three days. Where the suspect is in custody, only defense counsel shall have the right to examine the material of the pre-trial investigation (CCP Article 176.)

h. Code of Criminal Procedure Article 177 provides for calling persons for questioning by a summons including the date, time, place and consequences for failing to appear for questioning. Article 158 establishes sanctions for failure to comply with the "directions of a pre-trial investigation officer, prosecutor or the court" (presumably meaning the summons to appear). Sanctions can include a fine of up to 30 minimum living standards (MLS) or up to one month's detention. The imposition of such sanctions can be appealed.

i. A prosecutor shall apply to the pre-trial judge to have witnesses examinations where it is thought that:

- 1) it will not be possible to examine the witness during the trial;
- 2) the witness may change his testimony during the trial or exercise his right to refuse to testify;
- 3) the witness (may) give a more detailed testimony to the pre-trial judge. (See CCP Article 179.)

During such pre-trial examinations of witnesses, the witnesses are put under oath. Also, the pre-trial judge must notify the suspect and his counsel about the time and place of the examination in cases where it is thought that it will not be possible to examine the witness at trial. The suspect and his counsel have the right to participate in such an examination and put questions to the person under examination, to receive a copy of the record of the examination, and to make comments about it. A detained suspect shall be brought to the place of the examination but failure of a suspect who is not in custody and his defense counsel to appear at the examination of a witness shall not prevent proceeding with such an examination. (CCP Article 179.)

j. The victim who has sustained personal injury, property damage or moral damage as a result of a criminal act shall be summoned and examined as a witness. (CCP Articles 180 and 181.)

k. Special procedures are established in CCP Chapter Four, Articles 193 - 199 involving what appears to be a procedure similar to what is called a "witness protection program" in the United States.

1. CCP Articles 200 through 206 deal with procedures for the examination of evidence by specialists and experts. Upon receiving the report of expert examination, the prosecutor shall send a notification in writing to the suspect, his counsel and other parties to the proceedings who have requested expert examination or who made motions for ordering expert examinations, and indicate the time and place where the expert examination report may be studied (Article 206.)

3. Suspension and Termination of Pre-Trial Investigation.

a. The prosecutor may stay pre-trial investigations under certain circumstances with the confirmation of the pre-trial judge (CCP Article 207.)

b. If during one year from the stay of the pre-trial investigation the suspect commits a new criminal act, the prosecutor may decide to renew the stayed pre-trial investigation; however, such decision to renew (reopen) the investigation must be confirmed by the pre-trial judge (CCP Article 207.)

c. There are various reasons listed in the CCP Articles 208 through 212 that provide for the suspension of pre-trial investigation including, but not limited to the following reasons:

1. there are no elements (there has been a failure to include the elements) of a crime or misdemeanor in the act;

2. the period of limitation for criminal liability has expired;

3. an act of amnesty has repealed the penalty for a committed act;

4. the perpetrator of a criminal act has not reached sufficient age in order to be held liable under the criminal law;

5. where the accused is dead, except where necessary to rehabilitate (the reputation) of the deceased or where new circumstances are discovered involving other persons and justifying the reopening of the case.

d. Conclusion of Pre-Trial Investigation by Drawing up the Indictment.

1. If the prosecutor is satisfied that sufficient information has been gathered in the pre-trial investigation to show the culpability of the

suspect for committing a criminal act, he shall notify the suspect, his defense counsel and the victim, about the termination of the pre-trial investigation and shall draft the indictment.

2. CCP Article 214 sets forth the contents that shall be stated in the indictment including, but not limited to, a brief description of the criminal act, the place, time forms, motives, consequences, and other important circumstances, information about the victim, and extenuating and aggravating circumstances for the suspect, plus the article of the Criminal Code (paragraph and subparagraph) which provides liability for the committed act; the name of defense counsel of the suspect if he had such counsel during pre-trial investigation, and the version of the suspect if he rejects the suspicion.

4. Proceedings in the Court of the First Instance.

a. Composition and jurisdiction of the court is addressed in CCP Articles 216 through 225.

b. Transfer of the case for trial and preparation for the hearing is addressed in CCP Articles 226 through 235. These articles include a requirement that within two days after receiving the case by the court, the judge(s) who will prepare the case for hearing, and after its referral for trial, are appointed to hear the case. Upon examining the case, the judge may, among other things, order to submit the case for trial, defer the case, or discontinue the case (see Article 227.) Proceeding shall be deferred where the accused falls seriously ill owing to which he is unable to be present at the trial, until his recovery, or where the whereabouts of the accused are unknown (with certain exceptions laid down in Part Six Chapter Five) or when a case has been appealed to the Constitutional Court, until its decision is made (Article 229.)

c. Compulsory process (writ of summons) is used to bring parties, witnesses, experts, specialists and interpreters to the trial (CCP Article 231 and Article 177.)

d. The prosecutor, the accused, his legal representative, defense counsel, and the victim and his representatives all have a right to examine all the materials of the case and make copies of appropriate excerpts (CCP Article 232.)

5. Time Limits of the Hearing (CCP Article 235.)

a. Referral of the case for trial must be determined by the judge within fifteen days from the date of receipt of the case by the court - where the accused is in detention, and within one month - where the accused is at large.

b. The case must go to trial within twenty days from rendering the order by the judge to refer the case to trial.

the explanation is contained in a writ appended to the court judgment and sent to the convicted person.

10. Special Leniency Rules Relieving Convicted Persons of Punishment Due to Illness, Pregnancy, Disability, and Pensionable Age.

In cases involving illness, pregnancy, disability, or attaining pensionable age, the institution executing the sentence can bring a motion to the court to relieve the convicted person from serving the entire sentence. (CCP Articles 356 and 357.) In case of mental illness, compulsory medical treatment may be ordered (Article 356(3) and Articles 391 through 405.) There is a right to appeal such orders (CCP Article 403.)

11. Conditional Early Release.

The institution executing the sentence can recommend to the court to grant the convicted person conditional early release (presumably for good behavior) and to change the remainder of the sentence to a more lenient one (CCP Article 358.)

12. Force of Final Judgment.

The Lithuanian Constitution, Article 31(4) states: "No person may be punished for the same offense twice." It does not prohibit being put twice in jeopardy of life or limb (as does the 5th Amendment of the United States Constitution) by a subsequent trial. The Lithuanian CCP Articles 406 through 412 address the reopening of a criminal case if new circumstances are discovered. These new circumstances include false testimony or expert evidence or forged judgment or order. Also included are grounds where newly discovered circumstances show that the convicted person is innocent or that he committed a less grave or more grave offense than that of which he stands convicted. The time limit for a court review of a judgment or order based on newly discovered circumstances is one year from the day of the discovery of the circumstances.

IV. CRIMINAL CODE OF THE REPUBLIC OF LITHUANIA.

A. The Current Criminal Code Will Be Superseded in 2003.

The discussion that follows relates to the new Criminal Code (CC) that will become effective in 2003. (For questions relating to the penal law effective currently and before the new code comes into effect refer to the Penal Code, officially published in Lithuanian (ISBN 9986-452-54-6).

B. Background.

The statutory law in Lithuania covering responsibility for crimes has a complicated

history due to the collapse of the State of Lithuania, its frequent occupation and annexation into other countries, since Lithuania often had to yield to the laws of criminal procedure of the annexing state.

(Caveat: this discussion is based upon the 23 May 2001 draft of the Lithuanian Code of Criminal Procedure because this is the only English translation of the actual code that is presently available. The final version of the code of criminal procedure has been represented to be very close to this draft, containing only minor differences. Said representation about the English Draft version of the code was made by Lithuania's Vice Minister of Justice. He who was one of the drafters of the new criminal code.)

C. The new Criminal Code of the Republic of Lithuania (CC).

1. Tradition of Written Laws. According to the tradition of Lithuanian criminal law, definitions of crimes are laid down only in the Penal (Criminal) Code. In addition, there is also a Code of Administrative Offenses which defines such offenses and determines the system of administrative penalties, rules for hearing cases involving such offenses, and the procedure for execution of administrative penalties that have been imposed.

2. Purpose of Criminal Code is to Define Crimes, Set Penalties. Article 1 of the Criminal Code contains the purposes of the criminal statutes, to define which acts are crimes and misdemeanors and prohibit those acts. It also establishes penalties and reformatory sanctions for committing crimes and misdemeanors, and establish conditions for holding liable those who commit criminal acts as well as grounds for excluding criminal liability and excusing such persons from punishment.

3. Principles of Criminal Liability. Article 2 contains principles of criminal liability. For example, there is criminal liability only when the act committed is forbidden by a criminal statute in force at the time of commission of the crime. Mental culpability must correspond to a definition under the criminal statute. Ignorance of the law is no excuse. No one shall be punished for the same criminal act twice.

4. Crimes Recognized Internationally. Article 7 addresses criminal liability for crimes specified in international agreements including

- a. crimes against humanity and war crimes (Articles 93 to 102);
- b. counterfeiting (Article 99);
- c. money laundering (Article 233)
- d. act of terrorism (Article 233);
- e. hijacking of an aircraft (Article 234);
- f. taking of hostages (Article 235);
- g. unlawful handling of radioactive materials (Articles 242, 243);
- h. crimes related to narcotics or controlled substances (Articles 245 to 252.)

5. Crimes and Misdemeanors. Article 10 divides forbidden criminal

acts into crimes and misdemeanors. Article 11 defines a crime, a minor crime (carries less than 10 year sentence), and a major crime (in excess of 10 years.) Article 13 sets the age for criminal liability at 18 years except that persons between 14 and 18 years can be criminally liable for numerous crimes including crimes against human life (Articles 120 to 124), human health (Articles 125 to 134), crimes connected with possession of firearms, explosives, or radioactive substances (Articles 238 to 244) or narcotics or psychotropic substances (Articles 245 to 252) and so forth.

6. Guilt Based on Intentional and Negligent Acts; Mens Rea Required. Articles 14 to 16 address guilt for crimes if the person acted intentionally or negligently, punishable only in cases provided for by law, and no criminal liability for acts performed without mens rea. The following articles cover legal incapacity (Articles 17, unable to appreciate the wrongfulness of the criminal act or control his behavior due to chronic mental disease, etc.), diminished capacity (Article 18), in a state of physiological intoxication from alcohol, drugs, etc. (Article 19), mistake of fact (Article 20), mistake of law (Article 21), and criminal liability of enterprises (Article 22.)

7. Attempts, Conspiracy, Accomplices, Aiding and Abetting, and Repeated Commission of Crimes. Articles 23 to 29 address attempts to commit a criminal act, renunciation of effort to commit a criminal act, conspiracy, accomplices, aiding and abetting, and repeated commission of crimes.

8. Defenses. Defenses (which exclude criminal liability) include self-defense (Article 30), performance of professional duty (Article 32 and 34), immediate necessity (Article 33), execution of a lawful order (Article 35), justifiable economic risk (Article 36), and scientific experiments with voluntary and informed consent (Article 37.)

9. Penalties. Penalties for adults are covered in Articles 38 to 48 and range from deprivation certain jobs or positions, to fines, to restriction of liberty, detention, a term of imprisonment and the most severe penalty, life imprisonment. There is no capital punishment. Fines are calculated in amounts of minimum monthly wages (MMWs). Fines range from 5 to 50 MMWs for misdemeanors up to 500 MMWs for serious crimes.

10. Penal Sanctions. The court may also impose penal sanctions in conjunction with penalties such as disenfranchisement, suspension of driver's license, performance of unpaid services to social care or public care organizations like centers for senior citizens or the disabled, or even contribution to crime victim's funds (CC Articles 49 to 56.)

11. Guidelines for Selection Appropriate Penalties. Articles 57 to 70 provide principles and other guidelines for determining the appropriate penalty to fit the crime including mitigating or aggravating circumstances, the dangerousness of the offense, manner of participation in the crime, personality of the offender and so forth. There is provision for release from minor criminal liability when the victim and the culprit reach a voluntary restitution agreement (similar to reaching a civil compromise

under the laws of some of the 50 American states.)

12. Reasons for Early Release From Prison. There are provisions for release from punishment by imprisonment if the person becomes ill with a grave incurable disease or mental disease rendering him unable to understand the nature of his actions or to control them (Article 74.) Article 75 provides for release from criminal liability or release from serving the sentence by an amnesty act passed by the Seimas. Such an act was passed in the year 2000 to help with the problem of overcrowding in the prisons. Article 76 provides for the granting of clemency by the President of the Republic that relieves a person who committed a criminal act from serving the sentence.

13. Juvenile Offenders. Criminal liability of juvenile offenders is covered by CC Articles 77 to 88 that range from community service, to a fine, to detention, to a term of imprisonment. Reformatory sanctions may be placed on juvenile offenders that range from a warning, to restitution for damage caused, to unpaid labor for 20 to 100 hours in homes for the aged or disabled, to placement into custody of parents, to restrictions on conduct, to placement in reformatory and disciplinary institutions.

14. Effect of Prior Convictions. The effect of previous convictions is addressed in CC Article 89. Compulsory medical treatment measures for persons with diminished capacity or who become mentally ill after committing a criminal act are addressed in Article 90.

15. Statutes of Limitations. Statutes of limitations are found in Articles 91 and 92.

16. Genocide and Crimes Against Humanity. Article 93 addresses genocide and crimes against humanity. Any person who causes an aggressive war against another state or who is command of the hostilities shall be punished by imprisonment for a term of 10 to 20 years. (Article 94.)

17. Laws of Armed Conflict. Articles 95 to 106 deal with international Laws of Armed Conflict (LOAC.)

18. Crimes Against the State. Crimes against the State of Lithuania such as a coup d'etat, high treason, disclosure of a state secret, etc. are covered by Articles 107 to 119.

19. Homicide. Crimes against human life such as homicide, manslaughter, killing a newly born baby, promoting or aiding and abetting suicide, etc. are covered by Articles 120 to 124.

20. Crimes Against Human Health. Crimes against human health such as by torture, recklessness, battery and other acts of violence, illegal abortion, leaving a person in a life threatening situation without providing aid, threatening murder, etc. are covered by Articles 125 to 135.

21. Crimes Against Liberty of the Person. Crimes against liberty of the person such as abducting a person and holding him against his will, illegally committing a person to a mental hospital, or threatening or coercing someone to commit illegal acts or refrain from performing legal acts, etc, are covered by Articles 136 and 137.

22. Crimes Against Freedom of Sexual Self-determination. Crimes and misdemeanors against freedom of sexual self-determination such as rape, sexual assault, sexual abuse, sexual harassment, are covered by Articles 138 to 142 while illegal acts committed like libel and insult are covered by Articles 143 and 144.

23. Crimes Against Children. Crimes against the child and the family such as kidnapping or selling or abandoning a child, using a child for pornography, avoiding child support, incest, etc. are covered by Articles 145 to 155.

24. Crimes Against Privacy. Crimes against privacy of the home, mail or electronic communications, illegal wiretaps, or illegal disclosure of information so obtained, etc. are covered by Articles 156 to 159. Crimes and misdemeanors committed against equal rights such as discrimination on the basis of nationality, race, sex, religion, etc. are covered by Articles 160 to 163.

25. Crimes Against Voting and Election Rights. Crimes and misdemeanors against voting rights and election related matters are covered by Articles 164 to 168.

26. Crimes Against Property Rights and the Economy. Crimes and misdemeanors against property rights such as theft, robbery, aggravated robbery, extortion, fraud, misappropriation of lost property or property entrusted to him, embezzlement, handling of stolen goods, etc. are covered by Articles 172 to 184. Crimes against the economy such as smuggling, unlawful exporting, illegal alcohol production or trafficking or sale, business espionage, and the like are covered by Articles 185 to 198.

27. Counterfeiting. Crimes against the financial system including counterfeiting money (securities, postage stamps, travel tickets), tax evasion, fraudulent accounting, etc. are covered by Articles 199 to 206.

28. Bribery and Crimes Against Public Interests. Crimes and misdemeanors to public service and against public interests such as making or taking bribers, abusing authority, and nonfeasance of duties of office, etc. are addressed in Articles 207 to 211.

29. Obstruction of Justice, Contempt, Perjury and Crimes Against Justice. Crimes and misdemeanors against justice such as obstruction of justice, contempt of court, influencing a witness, perjury, concealing a crime, harboring an offender, misprision of a crime, freeing a prisoner, escape from custody, violation of court injunctions and orders, etc. are covered in Article 212 to 231.

30. Organized Crime, Terrorism, Hijacking, Hostage Taking. Crimes against public safety including organizing crime, causing an act of terrorism, hijacking an airplane, taking a hostage, etc. are covered in Articles 232 to 237. With regard to Article 237, it makes the violation of safety rules in construction, mining or work involving self-propelled machinery a crime when it results in death or serious injury or damage.

31. Illegal Possession of Firearms and Weapons. Crimes against public safety related to the possession of firearms and other weapons designed to maim, ammunition, explosives or radioactive substances, etc. are covered in Articles 238 to 244.

32. Possession of Narcotics and Controlled Substances. Crimes against public safety related to possession of narcotic, psychotropic, poisonous, or other controlled-substances, etc. are covered by Articles 245 to 252.

33. Crimes Against the Environment. Crimes and misdemeanors against the environment and human health such as pollution of the sea, the inland waterways, the atmosphere, soil, or violations of regulations dealing with biological contamination, illegal hunting, ravaging a protected site like a national park, reserve, sanctuary, or violations of regulations designed to prevent the spread of contagious disease, etc. are covered in Articles 253 to 268.

34. Crimes Against Traffic Safety. Crimes against traffic safety that include violations of regulations governing water, railroad, or air transport safety, road traffic safety, etc. are covered by Articles 269 to 273.

35. Crimes Against Public Order. Crimes against public order such as inciting a riot, vandalism, making false reports about a public danger, etc. are covered by Articles 274 to 276.

36. Resisting Arrest, Blackmail, or Interference with Police Duties. Crimes against activities of a public servant or person of equivalent status who are discharging their duties by use of force or threat of force (like resisting arrest, or making threats, or blackmail), etc. are covered by Articles 277 to 281.

37. Illegal Border Crossing, Illegal Information Gathering, Revealing State Secret(s), Failing to Aid a Ship After a Collision. Crimes and misdemeanors against public administration such as illegal crossing of the national border, illegal transporting of people across the national border, illegal installation or illegal use of technical equipment for gathering of information, theft or revelation of an official secret, failure to provide help to a ship after a collision, etc. are addressed in Articles 282 to 290.

38. Forgery. Crimes and misdemeanors against prohibitions pertaining to forgery of documents, seals, or measuring devices are covered in Articles 291 to 297.

39. Prostitution and Pornography. Crimes and misdemeanors against morals such as prostitution and pornography are covered in Articles 298 to 300.

40. Desecration of a Corpse or Gravesite. Crimes and misdemeanors against the memory of deceased persons such as desecration of a corpse or a grave or disturbing the peace at a funeral are covered in Articles 301 to 303.

41. Crimes Against Intellectual Property. Crimes against intellectual property such as appropriation of the rights of authorship, infringement of copyright, distribution without permission of the author of a computer program or database, or infringement of the rights of intellectual property of a performer, etc. are covered in Articles 304 to 307.

42. Crimes Against the National Defense Service. Crimes and misdemeanors against the national defense service such as evasion of conscription to mandatory military service, insubordination, threats and violence against a superior officer or a subordinate, bullying a serviceman, giving an illegal order, going absent without leave (AWOL), deserting, negligently losing military property violating guard duty or national border protection regulations, a captain abandoning his ship without carrying out all of his duties, etc. are covered in Articles 308 to 323.

V. U. S. DEPARTMENT OF DEFENSE DIRECTIVE NUMBER 5525.1 AND U.S. CONSTITUTION PROCEDURAL SAFEGUARDS FOR U.S. PERSONNEL IN LITHUANIA

A. When the United States Senate gave their advise and consent to the ratification of the North Atlantic Treaty regarding the status of their forces, signed at London on June 19, 1951, the Senate passed a Resolution expressing the sense of the Senate that when a person subject to United States military jurisdiction is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States. DODDIR 5525.1 implements the Senate Resolution accompanying the Senate's consent to ratification of the North Atlantic Treaty (NATO) Status of Forces Agreement. The Resolution is enclosure E1 to DODDIR 5525.1.

B. DOD DIRECTIVE 5525.1 addresses the making of Country Law Studies of the laws and legal procedures for each foreign country where United States forces are subject to criminal jurisdiction of foreign authorities. It also provides that studies of the laws of other countries shall be made when directed by the designated commanding officer for such countries. This Country Law Study of Lithuanian criminal laws and procedures is intended to be a general examination of the substantive and procedural criminal law of Lithuania. This study also contains a comparison thereof with the procedural safeguards of a fair trial in the State Courts of the United States as required by DODDIR 5525.1(4.4).

C. Following are the seventeen (17) fundamental fair trial safeguards that the

United States Department of Defense has enumerated in Enclosure E2 to DODDIR 5525.1 as the procedural safeguards considered important along with a discussion about each:

1. Criminal statute alleged to be violated must set forth specific and definite standards of guilt.

Discussion:

a. The Lithuanian Constitution (Article 20) provides that no person may be arbitrarily arrested, detained, or deprived of freedom except on the bases, and according to the procedures, that have been established in the laws. The Constitution (Article 31) also provides that every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence.

b. The new Criminal Code, in pertinent part, provides as follows:

Article 2. Basic Principles of Criminal Liability

1. A person shall be held criminally liable only when the act which he commits is forbidden by a criminal statute in force at the time of the commission of the crime.

2. Only the person whose act is committed with mental culpability and corresponds to a definition of a crime or misdemeanour under the criminal statute shall be liable under criminal statutes....

6. Any person who commits a criminal act shall be criminally liable only if at the time of commission of the act the conduct of the person could have been reasonably expected to conform to the requirements of law.

Article 14. Form of Guilt

1. A person shall be found guilty of committing a crime or misdemeanor if the person acted intentionally or negligently.

3. A person shall not be liable under criminal statutes for acts performed without mens rea.

c. The new Code of Criminal Procedure (Article 19(5)) addresses admissibility of evidence and provides that "Judges shall assess the evidence according to their inner conviction based on a scrupulous and objective review of all the circumstances of the case in accordance with the law."

d. The Europe Convention for the Protection of Human Rights and Fundamental Freedoms and its related Protocols (ECHR), of which Lithuania is a signatory, (Article 7) provides for no punishment without law and Article 6 provides rights for a fair trial including being presumed innocent until proved guilty according to law.

e. While the above provisions do not themselves necessarily set an explicit standard with respect to conduct made an offense by law, they do provide the basic principles that must be met before a person may be legally punished for any act or omission under Lithuanian law.

2. Accused shall not be prosecuted under an ex post facto law.

a. The new Criminal Code (Article 2) subparagraph 1. provides for criminal liability only when the act committed is forbidden by a criminal statute in force at the time of commission of the crime. Article 2, subparagraph 6 further refines this and allows criminal liability only if at the time of commission of the act the conduct of the person could have been reasonably expected to conform to the requirements of law.

b. The ECHR Article 7 protects against this as well. In addition, ECHR Article 7 provides that no heavier penalty shall be imposed than the one that was applicable at the time the criminal offense was committed.

3. Accused shall not be punished by bills of attainder.

a. The discussions on ex post facto law prohibitions discussed above are applicable to bills of attainder.

b. In addition, all of my discussions with eminent individuals knowledgeable about Lithuanian law indicated that Lithuanians have an innate resistance to retrospective legislation except as it relates to matters like the World War II genocide that occurred in Lithuania and violations of human rights that occurred after World War II by the occupying Soviet forces.

4. Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.

a. The Code of Criminal Procedure (Article 21(3)) provides that the accused is entitled to be provided with a transcript of the indictment.

b. ECHR Article 6 (3) (a) provides that every accused has the right to be informed promptly, in a language that he understands and in detail, of the nature and cause of the accusation against him.

c. The NATO SOFA is applicable to Lithuania by virtue of Lithuania having signed the Partnership for Peace (PIP) SOFA. NATO SOFA Article II (9)(b) likewise provides for the right to be informed of the charges.

d. ECHR Article 6 (3)(b) provides that everyone charged with a criminal offense has the right to have adequate time and facilities for the preparation of his defense.

5. Accused is entitled to have the assistance of defense counsel.

a. The Lithuanian Constitution Article 31(5) provides that from the moment of arrest or first interrogation, persons suspected or accused of a crime shall be guaranteed the right to defense and legal counsel.

b. The new Code of Criminal Procedure Articles 10, 21(3) and 47(1) also provide for the right to counsel.

c. The NATO SOFA Article VII (9)(e) provides for the right to have legal representation of his own choice or to have free or assisted legal representation under conditions existing for the time being in the receiving State.

d. Lithuania provides for representation of indigent defendants and has State paid Public Defenders. However, according to the "Country Reports on Human Rights Practices" released by the Bureau of Democracy, Human Rights, and Labor, March 4, 2002, in practice such legal assistance is not always available and that there is a shortage of trained lawyers who find it difficult to cope with the burgeoning numbers of criminal cases brought before the courts. However, in my discussions with various individuals, these claims were not confirmed. For example, I interviewed a public defender with considerable experience. She advised that there are about 500 certified defense lawyers around Vilnius and about 900-1000 total throughout the country and that the number is growing. That approximately 13 new lawyers are licensed at each session of the Council of Lawyers and the Council meets every other month. Thus, there are about 100 new lawyers certified to practice every year. The Judge who sits as Chair of the 2nd District Court stated that there are sufficient State funded public defenders for indigent defendants who request such assistance. Also, the Judge was aware of no recent complaints of lack of available defense counsel for indigents. He sees plenty of Public Defenders around the Courthouse. Furthermore, the Seimas Ombudsman made no mention of lack of available defense counsel for indigent defendants being a problem.

6. Accused is entitled to be present at the trial.

a. The Code of Criminal Procedure (Article 21(3)) entitles the accused to be present during the examination of evidence, to examine in court the materials of the case, to ask questions during the hearing, to provide explanations, to make motions, to make challenges, to make arguments personally or through defense counsel, and to address the court with a last plea.

The new Code of Criminal Procedure (Article 270) does provide for temporary exclusion of the accused from the courtroom by the court "where there are sufficient grounds to presume that the presence of the accused will prevent the other accused person, the victim or witness from giving correct testimony...(and) in such event, upon his return... to the courtroom, the presiding judge shall inform him of the substance of the given testimony and allow him a possibility to pose questions to the persons questioned, also to give his explanations as to the testimony."

b. ECHR Article 6(3)(c), (d) and (e) also supports the right of the accused to be present at the trial.

7. Accused is entitled to be confronted with hostile witnesses.

a. The new Code of Criminal Procedure (Article 271) provides for the right of an accused to pose questions to the victims, witnesses and experts under examination in the court and Article 275(5) allows an accused to also request the court to re-open questioning a witness who has already been questioned and excused from the courtroom.

b. ECHR Article 6(3)(d) also ensures the accused the right to "examine or have examined" the witnesses against the accused.

c. NATO SOFA Article II (9)(c) entitles an accused to be "confronted by the witnesses against him."

8. Accused is entitled to have compulsory process for obtaining favorable witnesses.

a. The new Code of Criminal Procedure (Article 75) provides that any person about whom there is evidence that he has knowledge of any circumstances relevant to the case "shall be summoned as a witness." Likewise, Article 231 provides that parties, witnesses, experts and interpreters shall be summoned to the trial by a writ of summons as set forth in Article 177.

b. ECHR Article 6(3)(d) entitles an accused "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

c. NATO SOFA Article II (9)(d) entitles an accused "to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State.

9. Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.

a. The Lithuanian Constitution Article 22(3) provides that "(i)nformation concerning the private life of an individual may be collected only upon a justified court order and in accordance with the law."

b. The new Code of Criminal Procedure (Article 139) describes the rules on search and seizure of evidence "subject to an order of a pre-trial investigation judge. In cases of utmost urgency a search may also be carried out by a decision of a pre-trial investigation officer or a prosecutor but in this case, within three days an approval of a pre-trial judge on the lawfulness of a search must be obtained." In addition, Article 137

regulates searches of the person. Article 138 regulates the taking of samples for comparative analysis.

c. The Judge who is the Chair of the 2nd District Court confirmed that if evidence is obtained illegally or in violation of the procedures of the criminal codes, it cannot be used.

10. Burden of proof is on the Government in all criminal trials.

a. Neither the Constitution nor the new codes talk in terms of the burden of proof being on the government. The Constitution (Article 31(1)) does presume every person innocent "until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence."

b. ECHR Article 6(2) also provides for the presumption of innocence "until proved guilty according to law."

c. Discussions with Senior Prosecutor, three law professors from the Law University, and the Judge who is the Chair of the 2nd District Court confirmed that the burden is on the government. How to measure that burden and by what standard (i.e., preponderance of the evidence, clear and convincing, or beyond a reasonable doubt) are concepts not yet contained in the laws of Lithuania.

d. The new Code of Criminal Procedure (Article 19(5)) provides that "Judges shall assess the evidence according to their inner conviction based on a scrupulous and objective review of all the circumstances of the case in accordance with the law."

11. Accused is entitled to be tried by an impartial court.

a. The new Code of Criminal Procedure (Articles 109 and 113) speak in terms of an independent Court.

b. ECHR Article 6(1) assures everyone to a fair trial and an "independent and impartial tribunal established by law."

12. Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

a. The Lithuanian Constitution Article 21(3) states that it is prohibited to torture, injure, degrade, or maltreat a person.

b. ECHR Article 3 prohibits torture as well as inhuman or degrading treatment. Article 6(1) ensures a fair trial and a public trial.

13. Accused shall not be subjected to cruel and unusual

4 punishment.

- a. The Lithuanian Constitution Article 21(3) states that it is prohibited to torture, injure, degrade, or maltreat a person as well as to establish such punishments.
- b. ECHR Article 3 prohibits torture as well as inhuman or degrading treatment. Article 4 prohibits slavery and forced labor and although there are some exceptions (emergencies, condition of probation such as community service in homes for the aged or disabled) they appear to be justified and understandable.

14. Accused is entitled to be tried without unreasonable (prejudicial) delay.

- a. ECHR Article 6(1) entitles everyone to a fair and public trial "within a reasonable time."
- b. NATO SOFA Article VII 9(a) ensures "a prompt and speedy trial."

15. Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

- a. The Lithuanian Constitution Article 117 requires that court trials be conducted in Lithuanian and that persons who do not speak Lithuanian shall be guaranteed the right to participate in investigation and court proceedings through an interpreter.
- b. ECHR Article 6(3)(e) ensures the accused to a free interpreter if he cannot understand or speak the language used in court.
- c. The NATO SOFA 9(f) guarantees the services of a competent interpreter.

16. Accused is entitled to a public trial.

- a. Lithuanian Constitution Article 31(2) provides that every indicted person shall have the right to a fair and public hearing. However, in certain circumstances there can be trials or portions thereof closed to the public such as those involving juveniles, rape cases, and cases involving State secrets.
- b. ECHR Article 6(1) likewise protects the right to a fair and public trial but with exceptions in the interests of "morals, public order or national security."

17. Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

a. Lithuanian Constitution Article 31(4) prohibits punishing any person twice for the same offense but does not specifically prohibit successive trials.

b. The NATO SOFA Article 8 does prohibit a second trial for the same offense by the same authorities.

VI. CONCLUSION.

Lithuania is among several newly emerging democratic republics that were formerly eastern bloc countries occupied by the former Soviet Union. Since Lithuania's independence was regained in 1992 and with the last Soviet troop withdrawals in 1993, it is working hard to build a strong foundation of self-government and a sound legal system. Lithuania has a long history of governance under Lithuanian written laws. A nation that traditionally values education, its bar and bench appear to be intelligent and well educated. Any shortage of criminal lawyers available to assist indigent defendants appears to have been cured or is moving in that direction.

Even though Lithuania is presently operating its criminal justice system on a less enlightened Criminal Code and Criminal Procedure Code (modeled after the Soviet system that was emplaced after World War II), few complaints are being by foreigners about unfair treatment by the system according to the Lithuanian Human Rights Association. The new Criminal Code and Code of Criminal Procedure have been passed by the parliament and will go into effect in 2003. These new codes show that Lithuania has made considerable progress in establishing a substantial and procedural system of law that meets the particular needs of Lithuania and yet measures up to the standards generally recognized by the countries both of the West and the East.

The new codes, Constitution, NATO and PfP SOFAs, ECHR treaty, and the working relationship between the United States Embassy in Vilnius and local Lithuanian officials, assure that the safeguards, so much the concern of the United States Senate, are preserved to American citizens should any become stationed in Lithuania pursuant to United States NATO commitments.

COMPARISON OF FAIR TRIAL GUARANTEES UNDER DODDIR 5525.1 AND LITHUANIAN LAWS:

<u>DODDIR 5525.1 Rights</u>	<u>LITH. CONST</u>	<u>Engl. Draft LITH. CRIMINAL CODE</u>	<u>Engl. Draft LITH. CRIMINAL PROCEDURE CODE</u>	<u>INTL TREATY/ SOFA</u>
Stat needs specific & definite standards of guilt	Art. 20(2), Art. 31(1)	Art. 14(1)(3) Art. 2(2)(6)	Art. 19(5)	ECHR Art.7
No prosecution under ex post facto law		Art. 2(1) Art. 2(6)		ECHR Art. 7
No punishment under bills of attainder		Art. 2(1) Art. 2(6)		ECHR Art. 7
Informed of nature and cause of charges			Art. 21(3)	NATO SOFA Art II (9)(b) ECHR Art. 6(3)(a)
Reasonable time to prepare defense				ECHR Art. 6(3)(b)
Assistance of defense counsel	Art. 31(5)		Art. 10 Art. 21(3) Art. 47(1)	NATO SOFA VII, 9(e)
Present at the trial			Art. 241 Art. 21(3)	ECHR Art. 6(3)(c.d.e)
Confronted by hostile witnesses			Art. 271 Art. 275(5)	NATO SOFA VII, 9(c) ECHR Art. 6(3)(d)
Compulsory process for favorable witnesses			Art. 75	NATO SOFA VII,9(d) ECHR Art. 6(3)(d)
Evid from unreas Search & Seizure prohibited	Art. 22(3) Art. 24		Art. 139(3) Art. 137 Art. 138	

COMPARISON OF FAIR TRIAL GUARANTEES UNDER DODDIR 5525.1 AND LITHUANIAN LAWS:

<u>DODDIR 5525.1 Rights</u>	<u>LITH. CONST</u>	<u>Engl. Draft LITH. CRIMINAL CODE</u>	<u>Engl. Draft LITH. CRIMINAL PROCEDURE CODE</u>	<u>INTERNATIONAL TREATY OR SOFA</u>
Burden of proof on Government	Art. 31(1) Presumption of innocence			ECHR Art. 6(2) Presumption of innocence
Trial by impartial court	Art. 109(2) Art. 113(1). (2)			ECHR Art. 6(1)
Not compelled to witness against self	Art. 31(2)			
No use of confession by torture, etc.	Art. 21(3)			ECHR Art. 3
No cruel, unusual punishment				ECHR Arts. 3, 4
Trial without unreasonable (prejudicial) delay				NATO SOFA Art. VII 9(a) ECHR Art. 6(3)
Competent interpreter	Art. 117(3) interp.			NATO SOFA VII, 9(f) ECHR Art. 6(3)
Public trial But can be closed trials (rape, Juv., state secrets)	Art. 31(2) & fair trial			ECHR Art. 6(1)
No consecutive trials for same offense that are so vexatious as to suggest fundamental unfairness	Art. 31(4) No punishment twice for same offense			NATO SOFA Art. 8

Note:

1. CCP Art. 4(3) states: "Where an international agreement of the Republic of Lithuania prescribes rules other than this Code, the international rules apply."
2. CCP Art. 171 requires pre-trial investigation to be expedited and places a duty on the Prosecutor to require compliance.

