



Alternative Report

prepared for the United Nations Human Rights Committee on the occasion of its review of Lithuania's Third Periodic Report under the International Covenant on Civil and Political Rights

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I. Executive Summary

Lithuanian Forum for the Disabled (hereinafter LNF) is NGO whose primary aim is to advocate human and civil rights of Lithuanian people with various disabilities and Global Initiative on Psychiatry (hereinafter GIP) - an NGO, that advances human rights of people with psycho-social (mental health) disabilities submit the following written comments concerning Lithuania for consideration by the Human Rights Committee (hereinafter Committee).

In the Present Report, LNF and GIP wish to draw the Committee's attention to the situation of the most vulnerable and marginalised people in Lithuania – people with disabilities, namely, people with intellectual and mental disabilities, including those who are deprived of their legal capacity and placed under guardianship. These individuals suffer disproportionate and objectively unjustifiable interference with the following rights guaranteed by the Covenant:

Equal rights of men and women (Article 3)

Still remains the heightened risk for girls and women with disabilities of becoming victims of domestic violence and abuse. Still remains lack of measures being adopted to ensure that both services (including shelters) and information for victims become accessible to women and girls with disabilities

Prohibition of Torture (Article 7)

Residents of big institutions could not receive appropriate care, they live in insufficient sanitary conditions, are exposed to violence, unwarranted restriction of freedom of movement (isolation, capture, denial of leave outside the residential areas off-site)

Prohibition of Arbitrary Detention (Article 9)

Involuntary hospitalization in psychiatric institutions is determined by Lithuanian law. Patients are not sufficiently informed about their involuntary hospitalization, involuntary treatment, other actions regarding their hospitalization and treatment as well as their right to appeal against the court decision on involuntary hospitalization and the right to state-guaranteed legal aid (primary and secondary).

Conditions of Detention (Article 10)

The lack of psychologists and mental health nurses, doctors and medicines could not provide adequate treatment.

Right to Equality before Courts and Tribunals and to a Fair Trial (Article 14)

The person's participation in the court hearings and accessibility to primary and secondary legal aid is restricted.

Recognition as a Person before the Law (Article 16)

Full incapacity means that individuals lose all the civil, economic, political and other rights usually enjoyed by other adults. Personal skills, health status and/or level of mental disorder may vary in time. Changes in those objective circumstances, care may become obsolete, and the person should again be recognized as capable. Lithuanian legislation does not allow for a limited guardianship for persons with intellectual and psycho-social disabilities. Moreover legislation does not foresee a periodic review of established incapacity and guardianship.

Right to a family (Article 23)

Persons being under legal incapacity can live together as a family, but may not register their marriage. The sexual education still remains on the very low level not only among people with intellectual or mental disabilities. Besides, if a child is born in such ‘family’ he is taken from the biological parents.

Rights of the Child (Article 24)

People have had history of mental illness or currently are suffering from mental illness can not be adoptive parents. The list of illnesses when adoption is prohibited includes almost all mental illnesses, including such as anorexia, bulimia, and depression, as well as mental and behavioural disorders of post-natal period.

Electoral Rights (Article 25)

Persons deprived of legal capacity and placed under guardianship do not have the right to vote. The restriction is based on person’s legal statute but not on a person’s actual capacity.

II. Expertise and Interests of LNF and GIP

LNF

Lithuanians Forum for the Disabled (Reg. 125703071).- the Lithuanian Umbrella organization for Disability Organisations and was founded in 2001. At the moment it has 14 national member organisations representing about 200 000 Lithuanian people with disabilities and their families.

- Representatives of LNF are included in the work groups of Lithuanian Ministry of Social security and Labour and Lithuanian Ministry of Health to develop new legislation which will be based on principles of antidiscrimination and equal rights. Special attention is paid to:
- the implementation of United Nations Convention on the Rights of Persons with Disabilities (CRPD),
- educational policy – the education must be accessible and available for all;
- services for disabled –the system of all kind services for disabled in municipalities must be created, strengthening of position of disabled persons' organisations (DPO);
- employment policy – the government must be responsible for creating work places for disabled and the state institutions have a good chance to show a good examples of that.

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GIP

Global initiative on psychiatry (Reg. 125446837) – is non for profit making organisation that was found in 2000. For the last 10 years of its activity GIP is actively working in an area of reforming mental health care, promoting and protecting human rights of mental health care service users. While being project based organisation GIP runs various projects both in Lithuania and abroad facilitating development of new mental health services, fighting stigma, strengthening other disability non governmental organisations for their active participation in the advocacy and lobbying activities. In the framework of its activity in Lithuania GIP is participating in various interministerial working groups that develop new legislation and/or policy on mental health care provision, reforming social care homes system for persons with intellectual and psychosocial disabilities, etc. With regards to CRPD, GIP was actively involved in preparatory phase for ratification of CRPD in Lithuania, as well as after its ratification played the relevant role in the processes for planning of its proper and effective implementation.

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Article 3

The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

1. With relevance to the ratification of CRPD, situation of disabled girls and women, suffering from violence, have not changed much recently. There are no temporary shelters for women or girls to run out from their careers or families where they might be abused or suffer violence as well.
2. Today girls who have mental disabilities suffer the most, because depending on the level of their disability they are still subjects to sexual abuse and violence in the institutions, as well as in families occasionally. Women who are grown up but have a mind of a 5-6 year old child are more likely to become victims as they are an easy target for abusers. Furthermore such girls usually would not share about being abused with anyone, or even if they would, they would not get attention, hardly would anyone believe them. Some are not even able to talk, as their verbal language is limited due to their disability. In addition to this, the uniqueness of the disability many times appears in the lack of understanding of abuse or violence as such. Not always mentally disabled girls can understand or acknowledge they were abused, or even if they can, many times they don't have possibilities to express that or to reach some help. Their rights for addressing for justice are limited many times due to the lack of legal capacity.
3. So far the situation have not changed much, as large care institutions are still existing in the country from which not all of them belongs to the governments, some are under the control of municipalities, there's lack of interest and enforcement to ensure that rights of people with intellectual or psycho-social disabilities would not be broken. Only few workers in care institutions are aware of the situation and would take active actions to stop it. Others though as researches show would just not pay attention, or the care institution would try to hide such incidents from the public, as for each person who is sent to care institutions they are getting financial contributions from the government or municipality. Thus the abused children, grown up people with disabilities many times do not get the support neither from outside nor from inside the institution. Sometimes incidents happen outside the institutions, in the families, but in day care centres workers usually don't want to find out whether the girl or boy have faced violence or abuse at home.
4. Women with intellectual and psycho-social disabilities in many cases are forced to take contraceptics and have abortions against their will if pregnancy cases would appear in large institutions¹. Their right to sexual life is restricted as well as closer relationships with opposite sex is forbidden or not tolerated as well.
5. No information about their right not to be abused or where to address for help if such cases appear is available in large institutions. There is a lack of easy-to-read and accessible information in the media and other public spheres too.
6. The large care institutions recently are being revised more due to the ratification of CRPD. Though, situation is not going to improve soon as smaller day care centres and effective social care at home is not available yet in many places. Families who need social care daily or people without careers are forced to go to large institutions as they don't have choice of other relevant care.

¹ Press article Club 13 and Co http://www.club13.lt/straipsniai/kz36/teis_gyn2.htm last accessed 2011 07 15

7. Phone lines for help and emergency lines are available, nevertheless they are not in accessible format for all people with disabilities. For example, there are no possibilities for deaf people to use the emergency Number 112, when they want to call for help, so that elaborate those people with deafness. New initiatives has been taken on that in the inferior ministry together with NGO's though it's still not available in practice, lack of legal basis on those issues is obvious.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

8. There still remain stigma and negative attitudes to people with psycho-social and intellectual disabilities . Social care homes² are located far away from the cities, many of which are surrounded by fences, windows with bars. People there are discouraged to be independent, i.e. they are insufficiently acquainted with their rights and not encouraged to study. In many of institutions persons do not have conditions to scour their clothes by themselves. A lot of institutions cause for the poor material condition: necessary overhaul for buildings, the lack of showers, as well as sanitary facilities do not meet the statutory requirements, lack of chairs in living rooms, cupboards, shelves, people will not open windows in rooms and (or) does not close, and so on.

9. Residents of social care homes often complain about inadequate nursing assistants (sanitary) behaviour with them: violence, unwarranted restriction of freedom of movement (isolation, capture, denial of leave outside the residential areas off-site).

10. Isolation facilities still are in those institutions. Various restrictions on freedom (physical constraints, capture, medical effect) are used in institutions. The internal rules for the applying of these restrictions are not correctly or completely described, so there is an opportunity for abuse. For example, according the Law on mental health care (hereinafter Mental Health Act)³, activities of person with mental disorder may be limited only if there is a real threat to a person by his/her actions, or those actions can cause substantial damage for health or life of his/her or surrounding persons⁷.

11. Meanwhile, approved procedures in the institutions foresee such cases for restrictions of freedom like “in case a resident damage the inventory and do not adequately respond to the comments, resident are drunk or resident make a noise”. Residents said that isolation is often used as a punishment for the exit from the social care house without staff warning, smoking in the lavatory room, conflict with other residents or suspicion of theft.

12. Not all isolation and other constraints' cases are recorded or are recorded incorrectly (without detailing the nature of the measure, and the beginning and duration, there is no psychiatrist's signature). There have been cases when people (patients) were not guaranteed access to the toilet, a measure of constraint was applied to other populations (patients) in sight, was not ensured sufficient nursing during the isolation or capture⁴.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such

² Big residential institutions established to reside people with intellectual and psycho-social disabilities. From 100 to 400 persons are residing in those institutions.

³ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290

⁴ Human Rights Ombudsman report <http://www.lrski.lt/files/373.pdf> / pages 36 - 38 last accessed 2011 07 20

procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

13. Involuntary hospitalization in psychiatric institution is determined by Lithuanian law: Mental Health Act⁵ as well as Civil Code of the Republic of Lithuania⁶ Article 2.26

14. The Mental Health Act article 27 indicates very concrete requirements for an involuntary hospitalization which restricts person's freedom to be legitimate. A person who has a severe mental illness and refuses hospitalization may be admitted involuntarily to the custody of the hospital only if there is real danger that by his actions he is likely to commit serious harm

- to his health or life; or
- to the health or lives of others

15. As well as Civil Code Article 2.26 indicates additional conditions for the involuntary hospitalization: "a person who has a severe mental illness and refuses hospitalization may be admitted involuntarily to the custody of the hospital only if there is real danger

to his health or life; or
to the health or lives of others; or
to wealth"

16. So here is conflict of legal norms in Lithuania in regard to involuntary hospitalization. Mental Health Act [1995] is a special law in nature, since it regulates all the issues and relationship that happen in providing mental health care within the mental health care institutions, including involuntary hospitalization and involuntary treatment. Nevertheless Civil code is higher within the hierarchy of legal acts, and it's provision on involuntary hospitalisation can also be applied in courts. The broad provision on involuntary hospitalization (danger to one's life, health and property) is included in the new draft Law of Mental health care⁷. Such provisions will broaden the scope for involuntary detention because permit involuntary hospitalization based on danger to property⁸.

⁵ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290

⁶ Civil code of the Republic of Lithuania // State News , 2000, No. 74-2262.

⁷ Draft Law on Mental Health care was prepared by the interministerial group and presented for hearing at the Parliament (Seimas) on April 30, 2009. No hearing is being held since then.

⁸ Comments received from international legal experts on the draft Law on Mental health care upon the request of Global initiative on psychiatry.

17. With regards to the court practises on involuntary hospitalisation and treatment, it is argued that when deciding questions of involuntary hospitalisation of the patients' real danger with regards to their actions should be proven⁹.

18. According to Mental Health Act article 29, the procedure of involuntary hospitalization should be determined by government authorities. However, such official procedure is still not confirmed.

19. Lithuanian Parliament Ombudsmen's investigation¹⁰ showed that only five of the eleven Lithuanian psychiatric institutions have their own forced hospitalization and treatment procedures approved (Republican Vilnius Psychiatric Hospital, Rokiškis Psychiatric Hospital, Kaunas Hospital unit Marių Hospital, Kaunas Hospital unit Psychiatric Hospital, Panevėžys Hospital). Number of psychiatric institutions¹¹ have transferred provisions from Mental Health Act without foreseeing any specific orders. In other psychiatric institutions' internal working documents of the organization of forced hospitalization and treatment procedure is not regulated.

20. Involuntary hospitalization is legal:

- Up to 2 days without the court's permission. (in this case we have some misunderstandings if person would be involuntary hospitalized in Friday, after the courts working time)
- Up to 1 month from the beginning of hospitalization, with the court permission;
- Extension of involuntary hospitalization and treatment should be reviewed by the court every 6 month.

Court decision is obligatory for involuntary hospitalize the person or extend his hospitalization in the psychiatric institution. If the court decision is not received involuntary health institution has the right to terminate involuntary hospitalization earlier following recommendations of the psychiatrist. Upon the hospitalization administration of mental health care institution is responsible for informing the person about his involuntary hospitalization and rights within the psychiatric institution. It should immediately inform patient's representative about involuntary hospitalization taken place.

These conditions must be met in order for a person's involuntary hospitalization to be lawful. Otherwise legal liability applies to the persons in charge¹².

21. The two separate procedures should be submitted for decision of involuntary hospitalization and for decision for involuntary treatment. The person should sign that he/she is acknowledged about his/her involuntary hospitalization¹³ as well as his/her representative¹⁴. The psychiatrist must inform the patient and his/her representative about designation of involuntary treatment and consequences of such treatment¹⁵.

22. Situation analysis¹⁶ showed patients were not sufficiently informed about their involuntary hospitalization, involuntary treatment, other actions regarding their hospitalization and treatment as well as

⁹ It is provided in the decision of the Lithuanian Supreme Court on March 20, 2006. The Court argued that involuntary hospitalisation is permissible and justifiable only in case of real danger. „There should be enough data, proving the reality of danger presented. Suicidal thought or mood variations are not sufficient basis for involuntary hospitalisation“. Lithuanian Supreme Court decision 2006-03-20. Civil case No. 3K-3-200/2006.

¹⁰ Lithuanian Parliament Ombudsperson Romas Valentukevičius. Statement No. 4d-2010/1-528 of 15 October, 2010. Available at: <http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=4646> (last accessed 08.02.2011).

¹¹ , Šiauliai Hospital's psychiatric hospital, Klaipėda Hospital Švėkšna Department, Republican Psychiatric Hospital, Republican Klaipėda hospital Psychiatric unit.

¹² There are 3 cases decided by the Supreme Court of the Republic of Lithuania on the recognition of the permission for involuntary hospitalisation as being unlawful and compensation of damages as a result.

¹³ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290, Art. 30

¹⁴ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290, Art.28.1

¹⁵ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290, Art. 16.1; Art. 15.

¹⁶ Lithuanian Parliament Ombudsperson Romas Valentukevičius. Statement No. 4d-2010/1-528 of 15 October, 2010. Available at: <http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=4646> (last accessed 08.02.2011).

their right to appeal against the court decision on involuntary hospitalization and the right to state-guaranteed legal aid (primary and secondary).

23. Psychiatric institution's administration must apply for secondary legal aid in case of involuntary hospitalisation of patients if they are not represented by their representatives¹⁷. The representatives may be the spouse, parents or adult children, if the patient can not be regarded as capable of rational assessment of their interests and not duly authorized in writing another person to act on its behalf, and if these people refuse to represent the patient¹⁸.

24. Obligation to apply for secondary legal aid for patient is not regulated by any internal institutions' document. The administration must to apply for the secondary legal aid only in cases if the patients had no legal representative or representative under contract.¹⁹ Meanwhile, representatives of the involuntary hospitalized persons may not always provide adequate legal representation, or a subsidiary may be in conflict situation with the person he represents.

25. Although Mental Health Act²⁰ provides the patient's right to be heard and to participate in court, when dealing his/her involuntary hospitalization and involuntary treatment questions, a mechanism to implement this right is not provided for: the administration of psychiatric institutions. They do not inform the patient about this right, do not ask the opinion of the patient whether he/she would like to participate, do not state what and how to deliver patient to judge (or, that a discussion take place at the court).

26. The Civil Code of Lithuania²¹ do not foresee the patients' right to appeal court decisions regarding his/her involuntary hospitalization. Involuntary hospitalization could be interpreted as detention.

27. Specific reference is made to the situation of residents deprived of their legal capacity in the CPT report²². Such persons could be admitted to the social care home solely on the basis of the application of their guardian. However, they are considered to be voluntary residents, even when they opposed such a placement. In the CPT's view, placing people deprived of their capacity in a social care home which they cannot leave at will, based solely on the consent of the guardian, entails a risk that such persons will be deprived of essential safeguards.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

¹⁷ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290, Art. 28.4

¹⁸ Civil code of the Republic of Lithuania // State News , 2000, No. 74-2262. Art 6.744

¹⁹ Lithuanian Parliament Ombudsperson Romas Valentukevičius. Statement No. 4d-2010/1-528 of 15 October, 2010. Available at: <http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=4646> (last accessed 08.02.2011).

²⁰ The Law on Mental Health Care of the Republic of Lithuania, No. I-924 // State News, 1995, No. 53-1290,

²¹ Civil code of the Republic of Lithuania // State News , 2000, No. 74-2262

²² Report to the Lithuanian Government on the visit to [Lithuania](#) carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2008. Access at <http://www.cpt.coe.int/documents/ltu/2009-22-inf-eng.htm> (last accessed 29.10.2010)

28. People with disabilities according to the law²³ are granted for the targeted compensations for nursing or attendance (assistance) expenses, which comes up to 2 basic pension amount (BPA) (1,5 BPA for nursing and 0,5 BPA for attendance)

29. Person with disabilities, who is in custody, loses these benefits, however his/her needs for nursing and attendance still remains the same.)²⁴ as well as the custody is not accessible for people with disabilities. There are not accessible toilets, showers and elevators.

30. According to the data received upon the request of LNF from the Prison Department under the Ministry of Justice of the Republic of Lithuania²⁵ there are the lack of medical doctors, psychiatrists and staff governors in the health care institutions under the Department's responsibility.

31. Average salary of custodial health care professionals is approx. 2215,4 Lt (641,62 EUR) before taxes. It is up to 50% more than salary of mainstreaming health care professionals²⁶ Patients of custodial institutions have more psychological problems. A significant number of patients have dangerous infections. The patients are from lower social class and less educated. As a result, the treatment of serious infections is very expensive. There is always felt lack of medicine. Financing for additional acquisitions of those would improve the quality of care.

32. Medical rehabilitation is very limited in the custodial health care institutions.

33. Some of Social care institutions do not guarantee a right to affordable health care. It was found the lack of psychologists and mental health nurses, doctors. Psychiatrists advise irregularly. At the same time the residents has no possibility to refuse treatment which is appointed by psychiatrist. Psychotropic drugs are given (injected) in violation of the requirement to obtain the consent of the person as required by the law, etc. i.e. is used in violence or other sanctions²⁷.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty

²³ Republic of Lithuania Law on State Social Assistance Benefits // State News, 2005, Nr. [44-1406](#)
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=277600 (English version) last accessed 2011 07 20

²⁴Lithuanian Parliament Ombudsmens' annual report 2010 page 31 <http://www.lrski.lt/files/402.pdf> last accessed 2011 07 24

²⁵The letter 2011-07-25 No 18-2582

²⁶There is no official data about health care specialists salaries. The data received upon informal LNF survey.

²⁷ Human Rights Ombudsman report <http://www.lrski.lt/files/373.pdf> / pages 36 - 38 last accessed 2011 07 20

according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

34. Deprivation of the incapacity of the person is indicated in Article 10.2 of the Civil Code. The Code of Civil Procedure²⁸ [2002] regulates the process by which the courts can place a person under guardianship. Two groups of persons can be recognised as incapable (medical test) under specific criteria:

- Persons with mental disorders;
- Intellectually disabled persons.

35. **As the person is recognized as incapable, he/she lose all his/her rights. i.e. he/she** can not act independently. The court must to appoint guardian and guardianship for him/her. The court is obligated immediately to begin proceedings for the determination of guardianship for this person. The cases of guardianship recognition are examined separately.²⁹

36. The law does not require that incapable person must to attend the court hearing regarding his/her guardianship determination. The person has a right to attend the court hearing and to say his/her opinion

²⁸ Code of civil procedure // State News, 2002, No. 36-1340; 2002, No.42

²⁹ The Code of Civil Procedure comment. Chapter XXVIII. The case of an individual recognition of incapacity or diminished capacity, and a minor recognition as capable (emancipated). Driukas A. Justitia, 2005, no. 2 (56), p. 24; Supreme Court of Lithuania in 2004 April 15 consultation No .A3-104,. The Code of Civil Procedure, Article 507.

regarding guardian determination³⁰ In practice, the most of incapable person do not know about the hearing and is absent, so the realisation of this right fails.

37. The composition is necessary for the process of court hearing regarding the recognition of incapacity: a person, which is intended to be recognized as incapable, the applicant and guardian as the person concerned. It is an ambiguous situation. The Code of Civil Procedure³¹ says, that if person which is intended to be recognized as incapable for health reasons, approved by the expert's report, can not be summoned and heard before a court or deliver him to court documents, the court examines the case in absentia. Thus, the law does not require the person to necessary attend the hearing. There might be really situations when in fact such a person may not, in the reason of their health condition to participate in court hearing. But there are possible cases of abuse when person could not be informed and thus would not attend the proceedings pending on the determination of his/her incapacity. Lithuanian legislation does not provide state responsibility for the legal representation of persons whose cases are considered in the courts on recognition of incapacity.

38. Persons with disabilities and their families in the reason of their financial situation often could claim for the state guarantied free legal aid - Law on state guaranteed legal aid [2005]³². Nevertheless realization of this right for people with disabilities is more difficult. There are only eight institutions that provide free legal assistance, of which one is in Šiauliai, two - in Kaunas and Klaipeda, three - in Vilnius. There is a clear lack of such institutions and their limited accessibility for people with disabilities, especially those in other Lithuanian cities and districts in rural areas, or are residents of social care homes. The legal aid procedure is very complex: it is long, it is necessary to provide personal income and property declarations, and various certificates.

39. The law specifies that persons with disabilities are recognized as the socially disadvantaged, so the assistance should be provided much quicker and easier.

40. Primary legal aid is funded from the municipal budget, which is often in deficit, and therefore does not cover the total demand for such services. On the other hand, lot of municipalities have not concluded a contract with the advocates or the agencies who can provide legal assistance although such kind of outcomes is provided in their budgets.

41. Meanwhile, in the provision of state legal aid financial compensation foreseen for the advocates and advocates assistants for legal representation is not adequate. In this reason, the services they provide are not of good quality. Majority of users, who have been appointed with the state guaranteed legal aid during their involuntary hospitalization, indicated never having seen and talked to appointed advocate before or after the court hearing on the involuntary hospitalization³³.

42. The right to participate and have representation in court proceedings for person who has committed a crime while in a state of ‚mental incompetence‘ in his court hearing regarding his/her involuntary hospitalization and treatment is not fully guarantied. Criminal Code³⁴ provides that counsel's participation is necessary in the context of blind, deaf, dumb and other persons, physical or mental defect, unable to exercise

³⁰ The Code of Civil Procedure Art. 507

³¹ Code of civil procedure // State News, 2002, No. 36-1340; 2002, No.42, Art. 464.2

³² Law on state guaranteed legal aid // State News, 2000, No. 30-827.

³³ Information provided by the users interviewed during the ITHACA project, as well as information received from the Patients' Person of trust persons about their most usual complaints received from the patients. Information gathered within the framework of various meetings and focus groups with users performed. No official publication available.

³⁴ Criminal Code // State News, 2000-10-25, No. 89-2741

their right to defence matters. Involuntary hospitalization is applied for indefinite period of time. The Court should review the necessity for prolongation of involuntary hospitalisation every six months. Access to the necessary participation of defence counsel should be guaranteed for a person each time reviewing the person's involuntary hospitalization. Especially if the mental health of person is restored and he may be sent to serve the sentence.

43. The participation of counsel at the court hearing regarding when reviewing the person's involuntary hospitalization is not specifically required. Process is carried out formally, only in accordance with the conclusion about a person's health status, provided by the health care professionals. Involuntary hospitalization really limits the person's freedom, but the Lithuanian legislation does not fully regulates judicial proceedings on these issues and would not give individuals the right to participate or be represented by themselves and discussing the matter in court for their involuntary hospitalization, and in each case when court deciding on the extension or termination of hospitalization

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

44. In Lithuania system of full guardianship still exists and is applied specifically to persons with intellectual disabilities and mental health problems. This protection regime is provided for adults, who are no longer able to care for their personal interests or their property and affairs.

45. Recognition of the incapacity for the person is regulated in Article 10.2 of the Civil Code. The Code of Civil Procedure³⁵ [2002] regulates the process by which the courts can place a person under guardianship. There are two groups of persons that can be recognized as incapable (based on the medical criteria):

- Persons with mental disorder;
- Intellectually disabled persons.

46. In these cases, the court must designate psychiatric expertise and examine all relevant medical documents. The laws in Lithuania do not recognize that people with mental disorder and intellectual disability can have limited capacity to use at least some of their rights or freedoms according to their understandings or abilities, as well as act at their own discretion. Full incapacity means that individuals lose all the civil, economic, political and other rights usually enjoyed by other adults. Therefore, guardianship is significant human rights issue affecting incapable individuals today in Lithuania, because it has a profound effect on the lives of those placed under its protective status³⁶.

46. The partial incapacity maybe established, but only in cases when there is abuse of alcohol, drugs, narcotic or toxic substances.

48. Lithuanian legislation does not impose a limited guardianship appointment for incapable person and does not foresee a periodic review of guardianship need. A person is recognized incapable and shall be determined in guardianship indefinitely, under Lithuanian law. It is possible to request the court to recognize a person as capable, if the person has restored the health or his/her health condition became significantly better. However, the incapacitated person as himself can not to apply to court. It violates the person's rights to apply to the court. Lithuania incapacitated person becomes totally dependent on the goodwill of the surrounding.

49. **As the person is recognized as incapable, he/she lose all his/her rights. i.e. he/she can not act independently.** The court must to establish guardianship for him/her and appoint guardian. The court is

³⁵ Code of civil procedure // State News, 2002, No. 36-1340; 2002, No.42

³⁶ "Lithuanian guardianship system in the context of European Union declared values". 2007, Vilnius, available in Lithuanian language http://www.old.gip-vilnius.lt/leidiniai/GIP_neveiknumas.pdf (last accessed 24.11.2010)

obligated immediately to begin proceedings for the determination of guardianship for this person. The cases of guardianship recognition are examined separately.³⁷

50. The law don't require that incapable person must attend the court hearing regarding guardianship determination. The person has a right to attend the court hearing and to say his/her opinion regarding guardian determination³⁸ In practice, the most of incapable person do not know about the hearing and is absent, so realisation of this right fails.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

51. The person recognized by court as incapable can not to establish a family³⁹. Nevertheless, nothing prohibits persons declared as legally incapable to live together and to have intercourse. The sexual education still remains on the very low level not only among people with intellectual or mental disabilities.

52. According to the Civil Code, only capable persons can become guardians for a minor. Guardianship is established to under-aged children if their parents or the only parent is recognized by the court as incapable⁴⁰. Children, born in such 'families' are taken from their biological parents.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

53. According to the Civil Code of the Republic of Lithuania (State News, 2000, Nr.74) 3.217 and paragraph 1 and List of Contraindications in Which a Person Can't Be Adoptive Parent, approved by Minister of Health and Minister of Social Security and Labor in 2001 07 24 No. 404/96, people, People who were ill or are ill

³⁷ The Code of Civil Procedure comment. Chapter XXVIII. The case of an individual recognition of incapacity or diminished capacity, and a minor recognition as capable (emancipated). Driukas A. Justitia, 2005, no. 2 (56), p. 24; Supreme Court of Lithuania in 2004 April 15 consultation No .A3-104,. The Code of Civil Procedure, Article 507.

³⁸ The Code of Civil Procedure Art. 507

³⁹ Civil code of the Republic of Lithuania // State News , 2000, No. 74-2262. Art. 3.15

⁴⁰ Civil code of the Republic of Lithuania // State News , 2000, No. 74-2262. Art. 3.257

mental illness can't be adoptive parents. The list includes almost all mental illness, while among the diseases listed are such as anorexia, bulimia, depression, mental and behavioral disorders of post-natal period.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

54. The Constitution of Lithuania⁴¹ Art. 34 deny the right to participate in voting process for incapable persons . All relevant electoral legislation for presidential, parliamentary, municipal or European Parliament elections proscribes voting by persons who have been declared as incapable by a court order.

55. Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) provides that the Parties should ensure that persons with disabilities should effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.

56. Even in cases when legal measures of plenary guardianship are not being applied, still persons with intellectual disabilities and mental health problems may not be considered as the primary decision-makers, and their family members or caregivers may act on their behalf.

57. **Nevertheless** Most people with intellectual disabilities are fully operational to vote if they are granted access to all necessary and appropriate assistance. The survey showed⁴² that most people do not participate in elections because they are legally deprived of their right to vote because of the care measures appointed.

58. An important factor which not allow people with intellectual disabilities to participate in the elections is the lack of information presented in a suitable form in order they could make an informed decision for vote.

59. Blind, deaf people also have difficulty in getting full information about voting and the electoral process. The information is not provided in accessible formats, for example, gesture language or subtitles for deaf in TV broadcasting.

60. The law provides no obligation for voting points' personnel to be trained to interact with people with intellectual disability.

61. Although theoretically Lithuanian election laws give people with disabilities possibility to vote at home (as alternative to voting at voting points), but in practice most of them do not have this choice. An important barrier preventing people with intellectual disabilities to participate in the elections is lack of accessible information during election campaigns and inaccessible voting points.

⁴¹ Constitution of the Republic of Lithuania // State News, 1992, No. 33-1014

⁴² Inclusion Europe „Making European Elections more Accessible for People with Intellectual Disabilities“, 2011, 14pages

III. Recommendations

In light of the above mentioned shortcomings, LNF and GIP presents the following recommendations to the Lithuanian Government to take appropriate measures in full consultation with organisations of people with disabilities.

1. To amend Mental health Act in accordance to the requirements indicated in CRPD on securing liberty and security of person, as well as prohibition of torture or other inhumane and degrading treatment in psychiatric institutions (including social care homes). Changes in the legal regulations as well as practice of involuntary hospitalisation and involuntary treatment should be introduced, establishing procedural safeguards, proper legal representation of the person concerned.
2. Legislation providing for plenary guardianship should be abolished, and supported decision making mechanisms should be introduced in the legislation as requested in the Art. 12 of CRPD. Appropriate safeguards (following the priority for person's wishes, principals of proportionality of support measures and their duration, as well as proper review mechanisms), should be introduced for proper realisation of the right to equal recognition before the law to all persons including those with intellectual and psycho-social disabilities.
3. The right to establish a family should be guaranteed for persons with disabilities (despite of the level and type of their disability), providing proper sexual education, developing of parenting skills and support needed for maintaining children-parents relationship.
4. To annul the discriminatory provision of the Lithuanian Constitution denying the right to participate in the voting process for incapable persons. To amend accordingly all electoral legislation, providing for the right to vote and participate in elections for all citizens on an equal basis without discrimination based on the disability status or voting capacity.
5. Proper realisation of the right of persons with disabilities to access justice should be guaranteed both through legal measures (amending legal regulations on state guaranteed legal aid), as well as appropriate practices in adequate representation of the rights of persons with disabilities upon deciding on such issues as involuntary hospitalisation, establishing of legal incapacity, etc. Ensuring obligatory participation of the persons with disabilities concerned in all the legal, administrative processes that may affect their daily life or taking any kind of decisions in their regards.