

TO: EUROMIL 113th Presidium in Montenegro, Podgorica

**NATIONAL REPORT
ON THE SITUATION OF THE RIGHTS OF SERVICEMEN GUARANTEED BY THE
CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND THE EUROPEAN
CONVENTION ON THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

20-04-2016

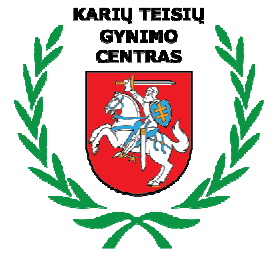
Vilnius

Servicemen serving in the armed forces of Lithuania encounter a number of violations of their human rights, guaranteed by the Constitution of the Republic of Lithuania (RL) and the European Convention on the Human Rights and Fundamental Freedoms which, in our opinion, are tolerated by the Ministry of National Defence of the Republic of Lithuania (MND). Association "Soldiers Rights Defence Center" monitors the situation of the servicemen rights in Lithuania since 2009, and draws a conclusion that the situation in relation to violations of servicemen rights in Lithuania today has deteriorated. The MND not only makes no reasonable effort to eliminate the same violations reoccurring for a number of years, but has initiated a number of processes in which the human rights guaranteed to servicemen are completely disrespected and understated. Since 2009, the years 2015-2016 are the first years showing strong signs of discrimination in the Lithuanian armed forces compared with military forces of other NATO states.

RE: REQUIREMENT FOR SERVICEMEN TO COMPENSATE THE ARMY'S COSTS FOR THE UPGRADE OF THEIR QUALIFICATIONS

P. 24.8 of the Military Service Statute provides that each commander has a duty to ensure conditions for subordinates for education and training, improvement of their motivation, and, based on p. 10.6 of the same statute, every serving serviceman has the obligation to go to military training and courses because he must improve abilities, enhance professional knowledge and develop skills.

From 2015 the MND has been forming the case law where it requires every reserve serviceman to reimburse all costs incurred by the MND and the Lithuanian Army for his training and education. The amounts often range from 1 000 to 13 000 euro. Association "Soldiers Rights Defence Center" believes that servicemen should not be prosecuted and should not be required to pay for their qualification upgrade during their in-service training and courses which are funded from the budget of national defence, because the serviceman cannot disobey the commander's order to go to training and courses, otherwise he would violate the statute. Moreover, during the discharge to reserve the serviceman's

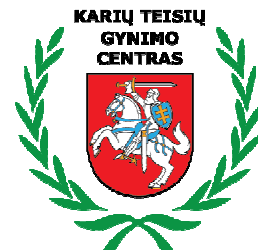


training during active service is also utilized while he is in reserve, because the serviceman is required by law to go to the regional military conscription center and perform the duties of serviceman in the active military reserve until he is 55 (60) years of age. It follows that servicemen have no right to opt to refuse any courses and training for which, in case of their discharge, they have to pay to the MND, because otherwise they will be prosecuted in the courts as debtors. In this case, it follows that if the serviceman complies with the statute requirements during his service, and requirements of p. 10 and 24 for going to training courses, he is forced to refund the money upon discharge. Bearing in mind that the average sergeant's salary is merely 600 euro and the officer's salary is 1 000 euro, amounts such as 5 000 or 13 000 euro significantly undermine the welfare and morale of servicemen often forcing them to choose to emigrate from Lithuania in order to repay debts to the MND and the Lithuanian military commandment, and to support their family. Moreover, discharged servicemen are forced to continue their duty in active reserve, and be ready to use their knowledge acquired during the service for the defence of the country at any time, however, the Lithuanian Army (LA) does not compensate its recovered costs to the serviceman in the reserve of the MND. The question arises – if the MND and the LA withdraw all investments incurred in training a skilled serviceman, do they have the right to demand the reserve servicemen to use their knowledge for national defence service in the future? It remains an open question.

RE: PERMITS NOT GRANTED TO SERVICEMEN FOR WORK WITH CLASSIFIED INFORMATION BECAUSE OF THEIR ETHNIC AND SOCIAL STATUS

The Second Investigation Department (SID) of the Ministry of National Defence responsible for intelligence and counter-intelligence initiates the termination of the military inspection to servicemen who after such actions are dismissed from service, because all officers are required to have a permit for work and access to classified information. Today, we have discrimination in several cases of officers where, because of their ethnicity or social status (relatives), the permit granting procedures were suspended for them, and their removal from service was initiated. The main motivation for dismissal of an officer who promoted the Lithuanian Army in pentathlon sports achievements, served for 11 years in the position of the 1st security level, has never disclosed classified information, and is positively characterized by line commanders, is: his grandfather is a retired captain who receives a pension from the Russian Federation, the father and brother are Ukrainians, the wife's relatives are descendants from the NGO states; and legal gambling.

Art. 29 of the Constitution of the RL prohibits the granting of privileges or restricting human rights because of one's ethnic or social status. The SID officials believe that the serviceman's rights are not violated, because the permit granting is a privilege. The MND supports the actions of the SID.



RE: DISCRIMINATION OF LITHUANIAN SERVICEMEN AGAINST THE SERVICEMEN OF OTHER STATES

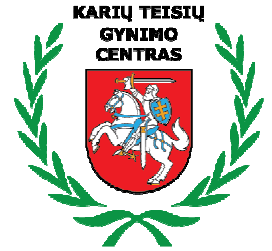
Today, the Lithuanian serviceman, just like the US or Danish serviceman, performs similar functions, serves the same duty in the NATO forces, but nevertheless, the provision of a Lithuanian serviceman, not to mention the arms, differs very significantly. Every time when Lithuania hosts foreign troops, it signs an international cooperation agreement (ICA) under the standard NATO form. The agreement provides the Lithuania's obligations in terms of the provision of foreign troops: logistics, catering, accommodation, etc.

Association "Soldiers Rights Defence Center" enquired how much funds are provided in the aforementioned ICA for meals of the US troops. It turned out that the daily amount for meals to the US serviceman is EUR 8.20 ex. VAT, while the maximum daily amount for meals for a Lithuanian serviceman is EUR 5.40 ex. VAT. The difference is very significant – 34.15 per cent. Nearly 35 per cent more funds are provided for meals of foreign servicemen who are eating in the same canteen, waiting in the same queue, and then are being instructed what the Lithuanians and what the Americans are allowed to eat. From the viewpoint of the PI Servicemen Rights Protection Centre, it is discrimination. It should be noted that the same situation is with the troops of the Kingdom of Denmark.

RE: UNPAID OVERTIME AND FILLING IN THE SERVICE TIME SHEETS

The Military Service Statute (MSS) establishes that the military service time of the serviceman is unlimited, however, it defines two conditions, namely, that the normal service time is 8 hours per day or 40 hours per week (p. 51) and, if necessary, if the serviceman serves longer hours, he must be granted days off within 30 days (p. 54). P. 53 of the MSS provides that a serviceman assigned to perform tasks during his 11 rest hours of the day, on holidays and on weekends, according to the procedure specified in p. 52 of the Statute, is compensated by granting an hour free from service for each hour of service.

In fact, the serviceman is given 8 hours for a daily guard duty, and one day off, i.e. the same eight hours, for the weekend duty. Although actually 24 hours on duty correspond to three usual days of service, but the MND and the LA attempt to deprive servicemen from their days off at any cost. To date, one serviceman serves 22 work days on average per month, 8 hours each, and has additional 4-8 days (24 h duration) of guard duty. Some services, where, depending on their office, officers and sergeants are only on-call duty for 24 hours, are assigned to them every fourth day, but servicemen who have daily service duties have only 1 day after the duty, i.e. 8 free hours of the usual service (since other time is the free time of the serviceman, not under subordination of the service officers).



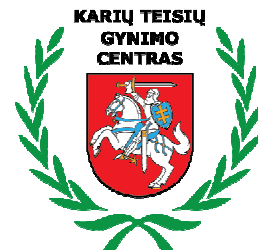
Examples: Lithuanian servicemen serve 13 hours a day but do not get free hours or free days, and are not paid for overtime. In the meantime, under the Labour Code of the RL, employees, even those working in the Army, are entitled to a double pay for 1 hour of overtime work or may choose to take a day off. Therefore, such regulation is obvious discrimination against other service personnel or all of the working Lithuania who have a different organization of the service/work and leisure time. Because of such extensive service, many servicemen attempt to get out of army at any cost, because they no longer have personal life, their marriages are broken, health is deteriorated, they don't have enough money, they don't see their growing children, their spouses have to raise children alone.

The Ministry of Defence has an ignorant attitude to it, and publicly, in the press, claim that the situation is not really that bad, and that servicemen are duly compensated for their hours. In this case, as compared with employees working according to the Labour Code, the situation of servicemen is significantly worse, as they are often not only not compensated with days off for overtime but also the number of days out of work is three times lesser; there is no monetary compensation in addition to salary. In this case, because of such workload servicemen often refuse from military service and those who service for longer time, losing their families through the suffering, disabling health, without seeing their children, try to stay for the required length of service until they are entitled to a pension or can retire because of age.

RE: LACK OF OBJECTIVITY OF ANNUAL SERVICE PERFORMANCE ASSESSMENT CERTIFICATES

Over the past year, the situation on the assessment of the annual service performance of servicemen which determines military career prospects, has significantly worsened. The Law on Organization of the Defence System and Military Service provides that the certification is carried out for servicemen once a year. The procedure approved by the Minister implementing this law does not provide for a mechanism according to which the servicemen having objective proof are unable to stop this assessment in cases where it is manifestly unfair. For example, if a serviceman who has acknowledgments, and has never been penalized, but only has lost favour of the commander, will be evaluated "satisfactory" instead of "good".

In this case, a serviceman cannot even defend himself in Lithuania by filing a complaint because higher commandment in assessing the complaint virtually always leave the assessment of his direct commanders unchanged, and ignore objective indicators such as the absence of penalties, the presence of incentives and acknowledgements, and good training results. Serviceman's assessment is not based on objective evidence, but on the commander's discretion. The Ministry of Defence has promised to address the flawed assessment practices, but practically nothing has changed under the amended new procedure. According to the PI Servicemen Rights Protection Centre, the assessment of servicemen should be detailed according to specific criteria, and an appeal filed against such assessment should



suspend the validity of assessment, until the end of investigation or dispute in court or out of court. Currently, in case of negative certification, after the second year with the negative certification the serviceman is dismissed from service. Unfortunately, in this regard, even the courts are building a vicious practice, i.e. assuming the position that once it is told by the commander, the absence of objective evidence no longer matter, and still means that the serviceman is unfit for service. This results in excellent conditions for commanders to get rid of the serviceman during the certification.

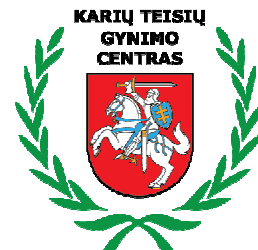
One such case was in 2014, so far, the court of the first instance has dismissed the serviceman's complaint in which we have accumulated evidence of discrimination. Namely, in case No. EI-2748-142/2016 of Vilnius Regional Administrative Court, the commander of the serviceman has stated “at the level of rumours” (testified by two witnesses about hearing it from someone) that “<...> *the Poles will not serve* <...>”. After checking the certificates of the servicemen of Polish nationality you can notice a trend in that the certificate assessments of the Lithuanian citizens of Polish ethnicity were negative or satisfactory (reasons: commander’s subjective judgement), while those of the Lithuanian ethnicity were good or very good. Unfortunately, the MND did not investigate the rumours and did not attempt to refute them.

In addition, many servicemen suffer from unfair certification which is successfully validated by the MND in the courts because the court’s attitude is very close to the position of the MND; servicemen are concerned that their commanders might persecute them and disrupt their career. Often, in order to disparage the serviceman, commanders line out the unit and criticize specific servicemen publicly, even though the serviceman has no in-service penalties. Public humiliation of subordinates, their beatings and the lawlessness of commanders is very common during service, but such commanders are not only patronized by the MND but also the General Inspectorate of the MND, which ought to refrain from doing so.

RE: POOR SUPPLY OF VOLUNTEERS AND ACCOUNTING OF THEIR OFFICIAL SALARIES

A big share of the Lithuanian armed forces consists of voluntary forces (VFND), with nearly 8 000 troops. During the 2015-2016 year the following fundamental problems of such service personnel were identified:

- (1) the VFND today are using their private cars because there are no buses or trucks to deliver them to exercise;
- (2) troops were promised new automatic weapons G-36, but thus far, VFND are using AK-4 in training and firing although the tactics of the year 2015-2016 is based on the principles of city battle, requiring weapons for mobile tactics;
- (3) incomplete warrior’s outfit and uniform – during exercises, the VFND troops do not have essential items such as helmets, knee pads, tactical gloves;



(4) the official salary actually received by the VFND troops is not treated as an official salary because the MND does not pay tax on it. As a result, if the VFND serviceman (female) serves as a VFND volunteer for 4 months a year, or is in an international mission and then becomes pregnant, and later after the childbirth, even in that case her official salary will not be attributed to income, for which she might be entitled to maternity allowance. In that regard, the unified case law is being formed especially in respect of the income during the international mission in Afghanistan's Ghor province, but the problem with the accounting of income for the daily service of the VFND volunteer serviceman as a service salary, and calculation of the service length, still remains unsolved.

RE: LESSER SOCIAL GUARANTEES AND SALARY INCREASE

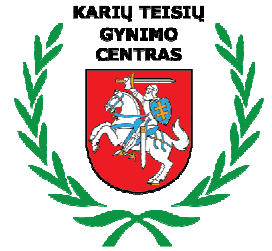
On 31-12-2015 the Minister of National Defence J.Olekas signed decree No. V-1392 instructing all unit commanders and managers to reject all applications of servicemen asking for reimbursement of travel expenses. Back in 2015 J.Olekas has publicly promised to pay the expenses, but in the very beginning of 2016 the social guarantees were cut. Although the budget has doubled, the salaries of servicemen of the same rank in Lithuania are lower than in the neighbouring countries such as Estonia, Poland, or Latvia.

The reserve troops trained in Lithuania consists of all reserve servicemen who have served in the professional military service, up until the age of 55 (60) years. In case of mobilization these reserve servicemen may be conscripted. However, there are a few things still not resolved by the commandment of the Lithuanian Armed Forces. Firstly, the reserve servicemen trained today are “ripped off” because their pensions are not repaid, militaries are thrown into the street because of changes in the political will concerning official flats; after discharge to reserve, each trained PKT serviceman is forced to pay for the courses to which he was sent by the commandment.

Salaries of professional servicemen of the Lithuanian army have not changed since 2006, but the MND with almost the double budget fails to increase salaries. In this case, they are planning to increase the salaries of militaries by 140 euro before tax, but really, servicemen will receive just 40 euro more after tax, as the MND management, while raising salaries, plans to eliminate some of the extras, such as money for travel and rent.

RE: RIGHT TO WORK IN THE SECOND JOB

The serviceman represented by Association “Soldiers Rights Defence Center” was charged in a criminal case No. 5-8-00001-15 in Panevėžys District Court. The Defence Minister and the Commander of the Lithuanian Army did nothing for the MND management to close the unjustified case against the serviceman, who officially got a second employment during his time free of service, and for this reason, the serviceman was dismissed from service and, additionally, prosecuted under criminal law. This criminal case had absolutely no evidence other than the prosecutor's opinion that the



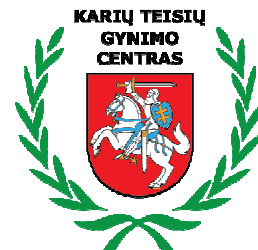
serviceman's acts contained the signs of criminal offence, provided for in Art. 316(1) of the Criminal Code of the RL. The serviceman has been indicted in committing a criminal offense under Art. 316(1) of the Criminal Code of the RL, namely, evasion of fulfilling the military service, and the evasion occurred in that, as a professional military serviceman, he worked in another job during his time free of service, which is prohibited by Art. 36(7) of the KASOKTĮ.

Association "Soldiers Rights Defence Center" was always in the opinion that serviceman's employment during his time free from service is a constitutional right of the serviceman guaranteed in the Constitution of the RL and cannot be criminally prosecuted. Many countries of the EU and NATO member states allow servicemen to have additional jobs in their extra time free from service; it has also been allowed in Lithuania from 2012, but when J.Olekas became a minister of defence, the Seimas of the RL, satisfying the personal request of J.Olekas, again prohibited the servicemen to work additionally in 2013. Most servicemen hoped for the just decision of the Constitutional Court (No. KT29-N18/2015 of 4 November 2015, case No. 2/2014), but in this case the Constitutional Court did not hear their voice, ignored the provisions of the Constitution of the RL, and did not understand what the expectations were. And it was expected just one thing – to recognize that the prohibition of the serviceman to work is unconstitutional. The Constitutional Court divided the servicemen into two categories – some servicemen can work according to the law, namely, to engage in pedagogical or medical practice, while others are banned, for instance, from repairing computers, cars. The Constitutional Court did not realize that when some serviceman, mainly officers, are allowed to have extra employment while other serviceman, mainly lower ranking, are forbidden, this violates the principle of equality of all persons against the law, enshrined in Art. 29(1) of the Constitution.

In a similar case at Jurbarkas District Court, another serviceman was convicted for this offense, for taking a second job, in which he worked during the time free of service, because we learned about his case too late, therefore, the lawyers of the army convicted and persecuted him, penalising him twice: dismissing from service, and sentenced in the court for the same acts, in our opinion, with the facilitation of the biased and prejudicial court.

RE: MEDICAL CARE OF SERVICEMEN

The Ministry of Defence has drafted the amendments to the Law of the Organization of the National Defence System and Military Service, providing more social guarantees to injured servicemen, however, it turned out that the amendments by the Government and the Seimas of the RL only apply to those who will be injured after the entry into force of these amendments. 25 servicemen with injuries received in international missions will have to settle with only what the state can currently offer them. The MND rushed to draft the amendments to the Law of the Organization of the National Defence



System and Military Service last year, after the publications initiated by the Association “Soldiers Rights Defence Center” in press about the shortcomings of legal framework on social guarantees of servicemen injured on international missions. The story of a serviceman seriously injured three years ago was told. A man’s leg was amputated; after treatment abroad and in Lithuania he has only 25 per cent of working capacity left. Foreign doctors adjusted an electronic leg prosthesis which cost almost 29 thousand euro, enabling him to live a full life. Now, the man is anxiously waiting for the day when the prosthesis will have to be replaced, as it should be done every five years. Lithuanian doctors can only offer him a mechanical leg prosthesis. This would further reduce his working capacity, increase the threat to health, but only this type of prosthesis is compensated by the state. If the serviceman wants an advanced prosthesis, he will have to pay extra out of his own pocket. It turns out that even servicemen injured during military acts have the same social guarantees as injured or self-injured civilians. The country still has no special procedure to take care of servicemen injured during the service.

From the viewpoint of the PI Servicemen Rights Protection Centre, the situation where injured servicemen are divided into two categories – those wounded till the entry into force of the amendments, and wounded after the entry into force of the amendments, is socially unjust and unfair. The attempt to divide the wounded servicemen does not make the service in the Lithuanian Army attractive. In our opinion, seeing how older men, sacrificing their health for service, and losing the working capacity, are forced to go to public institutions and become social support-seekers, young people will avoid to serve for Lithuania. In addition, the current version of amendments contains a lot of uncertainty and ambiguity. I think, this way, the MND and the Government is offered the room for various interpretations, because they still have to determine the procedure and conditions for compensation of costs, which can be changed, depending on the will of politicians – but this is not acceptable. The servicemen going to serve in the army should be confident that the state will take care of them in case of disaster. Therefore, the Association “Soldiers Rights Defence Center” considers that the amendments submitted to the Lithuanian Seimas and adopted, are inappropriate.

THE STATE SECURITY DEPARTMENT (SSD) AND THE SECOND INVESTIGATION DEPARTMENT

In 2016 the SSD and the SID under the Ministry of Defence presented a report of threats to the Lithuanian public stating that pupils of three schools, who have founded the *Airsoft* club and are playing this game, are potentially related to the power structures of the Russian Federation. This casts a shadow of doubt on the schools enrolling 1,000 students. As mentioned above, the servicemen are also persecuted by the SID merely because they have relatives in Russia, Belarus or Ukraine.

The SSD and the SID seeks to legitimize the amendments to the Criminal Code in the Seimas, providing for criminal liability for disclosure of materials of non-public court hearings (Seimas of the



RL has adopted such a law, but we hope that the President of the RL will veto it). They also seek to criminalize the criticism of authorities. In this case, the SSD and the SID are managed by former officers who seek to ban the Lithuanian citizens from criticizing the government and those in power, which might distort the democratic state system.

Currently, we have a number of cases where servicemen expressing their opinion on *Facebook* about the actions of the government are prosecuted through official investigations, or by revoking their permit to access to classified information. In the opinion of the PI Servicemen Rights Protection Centre, servicemen are silenced in this way, and in such actions the SSD and the SID are apparently seeking to mute the entire nation.

Association “Soldiers Rights Defence Centre”
President Laimonas Jakas