

Lithuania

Targeted questions for the Rule of Law Country Visit, 2024

Ministry of Justice – Pillar I and Pillar IV

1. With relation to the follow-up ensured to the 2023 recommendation – “Continue efforts to improve the transparency of the system of appointments to judicial positions, notably to the Supreme Court, taking into account European standards on judicial appointments.”:
 - In addition to the updates provided in your written input, could you clarify how it is considered that the changes introduced contribute to ensure the transparency of the appointments?

As it was mentioned last year, latest amendments to the Law on Courts improved the efficiency, openness, and transparency of the judicial system. It also speeded up the appointment procedure of judges as well as transparency of the appointment procedure, including the appointment of judges to the Supreme Court.

The public lists of candidates for judges are drawn up and regularly updated, which allows to speed up the appointment of judges to vacant seats and ensure continuity of judicial activities. The selection of candidates for district, regional administrative and regional court judges is organized continuously. Also, the selection of candidates for the vacant or vacating positions of judges of the Court of Appeal, the Supreme Administrative Court and the Supreme Court **shall be announced at least 3 months before the expected vacancy of a judge’s position or when unforeseeable circumstances give rise to a vacant judge’s position**. The Law on Courts also states that the selection of candidates for the positions of court presidents, deputy presidents and department presidents shall be announced at least 3 months before the expected vacancy of a judge’s position or when unforeseeable circumstances give rise to a vacant judge’s position. **All conclusions of the Selection Commission of Candidates to Judicial Office are public.**

Thus, in principle, the transparency of the procedure is ensured by public lists of candidates for judicial office and public access to conclusions of the Selection Commission of Candidates to Judicial Office. Moreover, transparency is also facilitated in accordance with an Article 55²(2) on the Law on Courts, which stipulates that President of the Republic appoints 4 members of the public to Selection Commission of Candidates to Judicial Office.

However, according to Article 55¹(6) of the Law on Courts of the Republic of Lithuania, the selection of candidates for judges is organized by the National Courts Administration. Therefore, for information on the organization of specific selection procedures regarding the appointment of specific candidates to judges or court presidents, the National Courts Administration should be consulted.

It is additionally noted that in its ruling of 21 December 1999, the Constitutional Court held that taking into account the procedure of formation of courts established in the Constitution, as well as the constitutional regulation of the relations of the President of the Republic with the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution, this special institution of judges must advise the President of the Republic concerning all the questions of appointment of judges, those of their professional career, as well as those of their release from office.

The recommendation of this institution gives rise to legal effects: in case there is no recommendation of this institution, the President of the Republic may not adopt decisions on appointment, promotion, transference of judges or those on their dismissal from office. **Thus, by the Constitution, the special institution of judges not only helps the President of the Republic to form courts, but it also serves as a counterbalance to the President of the Republic, who is a subject of the executive, in the sphere of the formation of the corps of judges.** On the other hand, the special institution of judges provided for in Paragraph 5 of Article 112 of the Constitution should be interpreted as an important element of self-government of the Judiciary which is an independent branch of state power.

As it has been mentioned, the special institution of judges provided for by law specified in Paragraph 5 of Article 112 of the Constitution is the balance to the President of the Republic – a political institution of state power – in the area of the formation of the corps of judges. **This implies that the activity of this special institution of judges must be transparent, so that neither the President of the Republic, nor the society would have reasoned doubts regarding the formed corps of judges, as then people’s trust in law and the legal system of the state would in general decrease;** thus, the advice of the said special institution of judges to the President of the Republic must be rationally argued and the reasons due to which it is advised to appoint a certain person as a judge, promote, transfer a judge or release him from office or not to appoint a person as a judge, not to promote, not to transfer a judge and not to release a judge from office (and if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, transferred or released from office—to advise to submit his candidature for the Seimas or not to submit) must be set forth clearly (the Constitutional Court’s ruling of 9 May 2006).

2. According to the written input submitted by the Lithuanian authorities, there are 63 vacancies in district courts, 8 vacancies in regional courts and 2 vacancies in regional administrative courts; the written input also point to vacancies for up to 90 judicial assistants and more than 60 court hearing clerks. Are there initiatives planned to address this shortage of resources?

Last year The Ministry of the Interior of Republic of Lithuania had prepared draft laws to improve the civil service system. These changes came into force on 1 January 2024. The Law on the Civil Service allows the heads of institutions to approve the salary system, which allows more flexible determination of competitive wages. Also, the head of the institution is authorized to foresee and apply various promotion measures (incentives). As in the case of judges' salaries, changes also linked civil servants' salaries directly to the

average statistical salary in the country. We hope that this will ensure more competitive salaries and that the courts will be able to attract the most qualified staff.

According to calculations made by the Judicial Council and the National Courts Administration, the implementation of the judicial map reform (detailed information was provided in written input on question 17) would save about 4.351 thousand euros during the three phases of implementation of the reform (until 2026) which could be used for the promotion of judicial staff and the development of innovation in courts.

We hope that these changes will contribute to the remuneration of court staff, which will encourage the attraction of legal professionals to work in courts. However, given that courts are independent, and each court is responsible for the well-being of court staff, information on specific initiatives regarding the recruitment of staff in the courts should be provided by the National Courts Administration or the Judicial Council.

3. The Commission is aware of concerns regarding possible actions by third countries which may attempt to interfere with the independence of Lithuanian judges and prosecutors. Could you please inform us if:
 - There have been any recent actions of such kind?
 - Any efforts/initiatives have been taken in order to protect Lithuanian judges and prosecutors from these pressures?

In response to Lithuania's concerns regarding the legal proceedings involving the prosecutors and judges associated with the January 13 case, the European Commission, through its communication dated June 8, 2023 (2022/C 223/01), formally promulgated the Guidelines on Extradition to third countries (referred to as the 'Guidelines'). These guidelines encompass diverse provisions, notably the establishment of a consultation mechanism. This mechanism entails the designation of focal points within each Member State of the European Union, as well as in Iceland and Norway, to facilitate the exchange of information concerning potentially unfounded, politically motivated, or otherwise questionable extradition requests from third States. Additionally, it addresses requests from Interpol national bureaux for the publication of a search for a person for extradition purposes.

To facilitate the smooth implementation of the consultations outlined in the Guidelines on such potentially abusive requests in the Republic of Lithuania, the Ministry of Justice has prepared a draft amendment to the resolution of the Government of the Republic of Lithuania titled "On resolution No. 348-2 of the Government of the Republic of Lithuania of 26 March 2012 on interinstitutional cooperation and exchange of information for the approval of the description of the procedure." Following the assessment of conclusions received from the relevant institutions, the Ministry of Justice intends to expeditiously submit this project to the Government of the Republic of Lithuania in the near future.

4. Could you provide additional information on the rules for coordination of projects of normative legal acts of ministers, Government institutions, and other subjects of public administration subordinate to and accountable to the Government, which are mentioned in the written input as being in preparation by the Ministry of Justice?

On purpose to unify the legislation procedures of normative legal acts in governmental level and in subordinate institutions level and improve legislative transparency and quality of the legislative process in subordinate institutions level Rules for coordination of projects of normative legal acts of ministers, Government institutions, and other subjects of public administration subordinate to and accountable to the Government (subordinate institutions) are also in preparation. The equal standard for legislation of normative legal acts in every level will be set up.

These rules will uniform legislative and public consultation rules for all ministers, Government institutions, and other subjects of public administration subordinate to and accountable to the Government. The Rules will ensure the quality of adopted normative legal acts of subordinate institutions, ensure the publicity, openness, transparency, and inclusiveness of the legislation being implemented, and unify the legislative practices applied by subordinate institutions. The rules will determine the procedure for consultation with the public, preparation of projects, and their coordination with interested institutions and interested persons, which will be the same as for preparing normative legal acts in ministries. We will have unified requirements for the legislation of normative legal acts in governmental level and in subordinate institutions level.

5. Could you provide a state of play regarding the execution of the ECtHR judgment in case *Macatė* (61435/19)?

The Grand Chamber of the European Court of Human Rights (hereinafter – the Court or the ECtHR) in the case of *Macatė v. Lithuania* found that the measures imposed in respect of the book of the applicant had intended to limit minors’ access to information depicting same-sex relationships and such measures had not pursued any aims that could be accepted as legitimate (a violation of Article 10 (freedom of expression) of the European Convention on Human Rights).

The ECtHR held that the measures imposed resulted from Article 4 § 2 (16) of the Law on the Protection of Minors against Negative Effects of Public Information (hereinafter – the Law), that had been applied in discriminatory manner in the case. Article 4 § 2 of the Law provides which public information is considered to be harmful to minors. According to Article 4 § 2 (16) of the Law (the legal provision in issue), public information, which expresses contempt for family values, encourages a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code, is considered to be harmful to minors.

It should be noted that, first, taking into account the positive developments in the attitudes of the domestic authorities, second, the fact that the ECHR has direct effect in Lithuania and prevails over the domestic laws (except for the Constitution), and, third, the constitutional concept of the family, which may not be derived solely from the institution of marriage and which is neutral in terms of gender, there is not a slightest theoretical or practical possibility of further application of the legal provision in issue (Article 4 § 2 (16) of the Law) in the same discriminatory manner as it was in case of *Macatė*.

However, the Government presented a draft law amending Article 4 § 2 (16) of the Law. The mentioned legislative initiative was rejected in the Parliament. The Ministry of Justice has prepared a new legislative initiative, seeking to submit a petition to Constitutional Court of Republic of Lithuania. In the petition the Government is asking the Constitutional Court, whether Article 4 § 2 (16) of the Law is in compliance with the Constitution. The draft of the petition was submitted for discussion to the competent State authorities, non-governmental organizations and the society and is currently processed in the Office of the Government.

The Special Investigation Service (STT) – Pillar II

1. Regarding the implementation of the anti-corruption agenda 2022-2033, specifically on the first implementation plan 2023-2025, could you please:
 - a. Elaborate on the role of STT;
 - b. Elaborate on the activities of the working group that is meant to coordinate the implementation of the first implementation plan? **[Jolanta B., Ilona T., Samanta. S.]**

1. b): The Working Group, convening as needed, conducts discussions on the Plan's (the first implementation plan's) progress and addresses any issues that may arise during its implementation, aiming for efficient resolutions. The Working Group may be called at the initiative of any participating institution.

It is worth noting that the Working Group comprises representatives of essentially the same institutions that were involved in the Working Group for preparing the Draft Plan. The institutions of the Working Group are responsible for implementing the measures assigned to them in the Plan and must inform the STT of the results of the implementation within 30 calendar days after the end of the year. Thus, the Working Group is a valuable tool to foster effective cooperation among implementing institutions and to address horizontal issues that may arise between them, ensuring timely resolution of challenges in the implementation process.

Ministry of Culture – Pillar III

1. How would you describe the current situation related to SLAPPs? Have the legislative amendments had an impact?

The Lithuanian Courts Information System (hereinafter referred to as LITEKO) is currently collecting data on the application of Article 95 of the Code of Civil Procedure of the Republic of Lithuania (hereinafter referred to as the Code), which generally provides for measures against abuse of court proceedings. In 2023, a total of 56 civil cases were received by the courts of first instance in which the courts applied all or at least one of the principles of the prohibition of abuse of process or the institute of compensation for damages in their procedural judgments (of these cases, 55 have been resolved); in 2022, there were 73 such cases. It should be noted that, tentatively, LITEKO will be able to collect specific data on manifestly unfounded or abusive court proceedings against public participation (hereinafter referred to as SLAPP) initiated in national courts around the second half of 2024. The more concrete impact of the regulation of SLAPP in the Code cannot

be evaluated yet, but it should be noted that there have already been several attempts in Lithuania to use the early dismissal procedure for unfounded claims provided for in Article 95¹ of the Code. Detailed information on Lithuania's initiatives in the field of prevention of SLAPP will be provided in the report on the implementation of the European Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), which is currently being finalised.