



Lithuania

Rule of Law Overview

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This report on the rule of law in Lithuania, written by an expert in cooperation with Democracy Reporting International, is part of a series that will cover all 27 EU member states.

Summary

As Lithuanians prepare to elect a new parliament in October 2020, the country has been deeply affected by the covid-19 pandemic and so has its rule of law. As the European Commission and others report, Lithuania has made significant progress in some areas of the rule of law, but it continues to face important challenges.¹

Apart from the direct impact of the coronavirus, there are ongoing investigations into judicial corruption, Russian pressure on magistrates examining the historically and politically sensitive '13 January' case, and delays in appointing new judges to top courts. In addition, there is a need for improvement in the fields of human rights, non-discrimination and equality for the rule of law to function meaningfully.

Lithuania's legal and political landscape

Lithuania regained its independence from the Soviet Union in 1990. The 1992 Constitution defines Lithuania as a parliamentary republic with features of semi-presidential rule. State powers are executed by the Seimas (legislature), the president and government (executive), and the courts (judiciary).

Lithuania's one-chamber parliament, the Seimas, consists of 141 members elected for four years. The

major parties are the Farmers and Greens Union, the Social Democratic Party, the Homeland Union, the Labour Party, the Liberal Movement and the new Freedom Party. Usually, the government rules through parliamentary coalition. However, often the formation of a coalition is driven by politicians' personal ambitions instead of following professional public policy motives. In July 2019, a coalition was formed by four parties: the Farmers and Greens Union, which leads the coalition, the Order and Justice Party, the Social Democratic Labour Party and the Electoral Action of Poles in Lithuania.

Formally, the president is the Lithuanian head of state and commander-in-chief, although this position is not seen as important as that of the prime minister, who is typically chosen from the majority party or coalition, represents the government and decides most domestic policy matters. The president, in addition to having the main powers regarding foreign relations, can also veto legislation, although this can be overturned by a simple majority in the Seimas, appoints the prime minister and appoints and dismisses judges with the approval of the Seimas. The president is elected directly by the people for five years and can be re-elected for a second term once.

The Lithuanian court system consists of the Constitutional Court, general jurisdiction courts (the Supreme Court, the Court of Appeal, regional courts and district courts) and specialised administrative courts. The Constitutional Court is composed of nine judges appointed for a nine-year non-renewable term by Parliament, which selects from among candidates presented by the president, the Speaker of the Seimas, and the President of the Supreme

¹ European Commission, "[2020 Rule of Law Report: Country Chapter on the rule of law situation in Lithuania](#)," September 2020.

Court. Supreme Court judges are appointed by the Seimas on nomination by the president, following the advice of the Judicial Council. The Judicial Council is the self-governing executive body that ensures the independence of courts and judges.

Recent developments on the rule of law and domestic and international reactions

There are several challenges to the rule of law in Lithuania. Some of these challenges, as well as positive developments, have been highlighted in the recent European Commission rule of law report.² Notably, the Commission commends the significant reforms on the appointment of judges, modifications of the judicial map and the structure of the Supreme Court, which have improved the independence of the judiciary. The report praises the justice system for its efficiency, its use of digital tools and the fact that some of the court activities have been maintained during the covid-19 pandemic. The areas for improvement include anti-corruption work and greater transparency for media ownership (including indirect political ownership).

The rule of law challenges discussed below are either touched upon briefly in the Commission's report or not mentioned at all and hence require greater attention.

Discrimination and other human rights problems

Several discrimination and human rights issues need to be addressed to ensure that the rule of law functions meaningfully in Lithuania. These include protecting women's reproductive rights, the right to family life, and combatting discrimination against, among others, Roma, the LGBT+ community, Muslims, people with disabilities, refugees and migrants.³ The United Nations Committee on the Elimination of Racial Discrimination (CERD) has noted the need for Lithuania to improve the rights

of these vulnerable groups, as well as to tackle hate speech.⁴ Some concerns have also been expressed about the separation of powers, the enforcement of penalties, and the restrictions on human rights in the context of the covid-19 pandemic.⁵ Finally, a lack of sufficient state financing remains the key obstacle to the effective and continuous functioning of state institutions that ensure human rights compliance.

Judicial integrity: Judges in the anti-corruption crackdown

An independent and impartial judiciary is a necessary component of the rule of law. At the beginning of 2019, twelve Lithuanian judges, including from the top courts, became suspects in an investigation into large-scale bribery, trading in influence, illegal facilitation and abuse of power within the judicial system.⁶ By October 2019, six judges had been dismissed from their posts and in May 2020 it emerged that judges against whom there was not enough evidence to proceed with a criminal investigation were still in office. In June 2020, the Seimas questioned why the criminal investigation was taking so long and asked to make the names of the judges under investigation public. As of 19 October 2020, ten judges have been dismissed but none have been taken to court yet.

The ongoing investigation highlights how the systematic issue of corruption in the judicial system and the legal profession threaten the rule of law in Lithuania. Transparency International's Corruption Perception Index shows that the perception of corruption between 2012 and 2019 improved only slightly.⁷ The World Economic Forum also highlighted the courts' lack of independence from political, business and other pressures.⁸

The anti-corruption investigation prompted calls to make Lithuanian courts more independent and transparent, which led to the creation of several working groups. These led to positive reforms of the case allocation and appeal rejection process-

2 European Commission, "[2020 Rule of Law Report: Country Chapter on the rule of law situation in Lithuania](#)," September 2020.

3 European Commission, "[Country Report, Non-discrimination: Lithuania 2019](#)," December 2019. The Seimas Ombudsmen's Office of The Republic of Lithuania, "[Annual Report of 2019](#)," March 2020. Equal Opportunities Ombudsperson, "[2019 metų veiklos ataskaita](#)," March 2020.

4 Committee on the Elimination of Racial Discrimination, "[Concluding observations on the combined ninth and tenth periodic reports of Lithuania](#)," May 2019.

5 Eglė Dagilytė, Aušra Padskočimaitė, Aušra Vainorienė, "[Lithuania's Response to COVID-19: Quarantine Through the Prism of Human Rights and the Rule of Law](#)," Verfassungsblog, 14 May 2020.

6 Special Investigation Service of The Republic of Lithuania, "[Annual report 2019](#)," 2020.

7 Transparency International, "[Corruption Perceptions Index: Lithuania](#)," 2019.

8 It measured an 'incidence of corruption' score of 59.0 (= 2018) and a 'judicial independence score' of 53.4 (up from 2018). World Economic Forum, "[The Global Competitiveness Report 2019](#)," p. 351, 2019.

es in the Supreme Court and the anti-corruption framework has been strengthened since. A new central anti-corruption whistleblowing process was set up in courts, the role of the Judicial Selection Commission and the Judicial Council in the selection and appointment of judges was increased, and more training for prosecutorial staff on corruption offences was introduced.

However, recently the President of the Lithuanian Bar Association questioned whether the ongoing judicial anti-corruption investigation was more of a publicity stunt, rather than an actual problem, given that only a few cases against judges have been brought before the courts so far.⁹

Unfilled vacancies in top courts

Since April 2020, the Constitutional Court has had a third of its seats unfilled (three judges) and is still awaiting new appointments due to covid-19 induced delays and lack of a majority for the proposed candidates in parliament. While the current situation is unprecedented, it remains problematic that there is no law that specifies the need for transparency in Constitutional Court judge appointment procedures, e.g. how many candidates should be proposed or according to which criteria they are shortlisted.¹⁰ Therefore, appointments to these posts are often politically motivated and not always based on candidates' professionalism, legal work experience or scientific record.

Furthermore, the post of President of the Supreme Court is currently vacant. In addition to the judges removed due to the anti-corruption scandal, these developments raise concerns as to whether the judicial system is functioning efficiently without endangering the rule of law. However, this issue is the result of specific circumstances and does not appear to be a systemic problem.

Russian pressure on judges

Judicial independence and the rule of law can also be undermined when a foreign state threatens another country's judges, trying to influence judicial

decisions. Since 2018, Lithuanian judges, prosecutors and investigators handling the '13 January' case have been under pressure by Russia, which instituted criminal proceedings against them.¹¹

On the night of 13 January 1991, 14 people were killed when Soviet troops stormed the Vilnius TV tower and the building of the Radio and Television Committee. This was part of an effort by the Soviet government to overthrow the legitimate Lithuanian government, which had unilaterally declared independence from the Soviet Union on 11 March 1990. On 27 March 2019, the former Soviet defence minister and more than 60 other Red Army officers – now citizens of Russia, Belarus and Ukraine – were found guilty by the Vilnius County Court of crimes against humanity and war crimes, based on international and Lithuanian law. Most were convicted *in absentia*, as Russia and Belarus refused to extradite the accused to Lithuania.

Russian pressure was exerted before the final judicial decisions were made. Lithuania's State Security Department found that the Russian state was now applying tactics common in Russia – threatening criminal action to control or blackmail people – internationally.¹² There are fears that Russia might misuse the Interpol system and bilateral cooperation agreements to seek the extradition and detention of Lithuanian judges. This means it would be dangerous for Lithuanian judges to travel to Russia-friendly countries, or even within the EU.¹³ The Lithuanian Permanent Representative at the United Nations Human Rights Council condemned Russia's actions, calling them 'an act of open pressure on, and direct interference with, Lithuania's judicial system.'¹⁴ In November 2019, the European Parliament adopted a resolution drafted by the Lithuanian Ministry of Justice condemning Russian interference in the '13 January' case.¹⁵

Upcoming developments

It remains to be seen whether the anti-corruption reforms will go as far as constitutional accountability would require. Some constitutional law experts have raised concerns about the president's involve-

9 Gytis Pankūnas, "[Vėgėlė: šiuo metu visa teisinė sistema yra „giliame nokdaune“](#)" LRT.lt, 28 August 2020.

10 Liudvika Meškauskaitė, Rasa Ragulskytė-Markovienė, "[Konstitucinio Teismo teisėjų skyrimo džiunglės](#)," Delfi.lt, 27 April 2020.

11 The Ministry of Foreign Affairs of Lithuania, "[Statement on Russian Investigative Committee's actions against Lithuanian judges and prosecutors](#)," 23 July 2018.

12 Lithuania State Security Department, "[Grėsmių nacionaliniam saugumui vertinimas 2020](#)," p. 42, 2020.

13 BNS/TBT, "[Lithuanian justmin to raise issue of EU citizens' extradition to third countries](#)," The Baltic Times, 24 February 2020.

14 Permanent Mission of the Republic of Lithuania in Geneva, "[At the Human Rights Council Lithuania condemns Russia's actions against Lithuanian justice officials in January 13 case](#)," 13 July 2020.

15 European Parliament, "[Resolution on recent actions by the Russian Federation against Lithuanian judges, prosecutors and investigators involved in investigating the tragic events of 13 January 1991 in Vilnius](#)," 28 November 2019.

ment in dismissing the suspected judges in the Supreme Court and Court of Appeal, arguing that they should be impeached and removed by the Seimas instead, which would allow for broader public debate and meaningful change of the judicial culture, as well as barring dismissed judges from holding a state office in the future. However, because the Constitutional Court refused to decide which procedure should be used on jurisdictional grounds, the judges were dismissed by the president instead. As a result, two of the dismissed judges are currently challenging their removal in court. As of today, none of the suspected judges have been put on trial, although there have been seven other court cases, with six people found guilty.

In the '13 January' case, there are now 61 pending appeals of the first instance court decision from those convicted and their lawyers, as well as prosecutors, victims, and civil litigants. The trial continues despite Russian coercion, with hearings scheduled to take place until mid-December 2020. Time will show whether pressure from the international community will stop Russian interference.

It is difficult to say whether or how the Seimas election result could influence what happens next with the rule of law, as it is not featuring heavily in the election campaign. Some political parties include aspects of the rule of law in their election manifestos. For example, the Homeland Union stresses the need to improve national security against Russian influence (fake news, 'information wars', cybersecurity) and to work on improving efficiency and transparency in public administration and policymaking. The Social Democratic Party's manifesto is explicit about creating a stronger civic state based on the rule of law where the judicial system is more transparent and equality rights and the rights of other minorities are protected. They also state that the rule of law (the EU's position) is a priority in foreign relations with Poland.

However, the current prime minister, who belongs to the Farmers and Greens Union and whose manifesto is silent on rule of law matters, recently expressed approval on how the rule of law is managed in Poland, which was noted as alarming by the Lithuanian Judicial Council. The Liberal Movement includes anti-corruption and transparency goals and the Labour Party also sets out to fight corruption. Whoever wins the election will need to take these problems seriously and implement systemic solutions to stop any further deterioration of the rule of law in Lithuania.

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