

## Lithuania

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*Seimas Ombudsmen's Office*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

The Lithuanian NHRI was [accredited](#) with A status in March 2017. The SCA acknowledged the cooperation of the NHRI with other Ombuds institutions in Lithuania, and encouraged the NHRI to continue, develop and formalise similar working relations with national bodies.

#### Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Since 23 March 2017, when the Seimas Ombudsmen's Office has become an accredited NHRI (Status "A"), the Seimas (Parliament) of the Republic of Lithuania adopted the Law (entered into force on 1 January 2018) amending Articles 3, 19 and 19(1) of the Law on the Seimas Ombudsmen no. VIII-950 and adding Article 19(2). These defined new areas of competence of the Seimas Ombudsmen in the exercise of the functions attributable to the National Human Rights Institution:

- In promoting the respect for human rights and freedoms and in cooperation with state and municipal institutions, agencies, civil society, social partners, international organisations on the issues of human rights and freedoms, the Seimas Ombudsmen's Office shall perform the following functions:
  - to carry out human rights monitoring in Lithuania and to prepare reports on the human rights situation;
- to perform dissemination of information on human rights and public education on human rights;
- to present assessment of the human rights situation in Lithuania to international organisations and to provide them with information in accordance with the obligations established in the international treaties of the Republic of Lithuania;
- to make proposals to state and municipal institutions and bodies on human rights issues;

- to seek harmonization of national legislation with the international obligations of the Republic of Lithuania in the field of human rights;
- initiate investigations into fundamental human rights issues.

### *References*

- <https://eseimas.lrs.lt/portal/legalAct/lt/TAD/6a7995b249ed11e89197e1115e5dbece?jfwid=bnp209hfy>
- <https://eseimas.lrs.lt/portal/legalActPrint/lt?jfwid=bnp209hfy&documentId=6a7995b249ed11e89197e1115e5dbece&category=TAD>

## **Human rights defenders and civil society space**

The Seimas Ombudsmen's Office observes the situation regarding the civil society space and the protection of human rights defenders. In this regard, the SOO maintains a close relation with NGOs and CSOs, which includes both bilateral and multilateral meetings as well as consultations and joint initiatives.

For example in 2019 Seimas Ombudsmen on a regular basis met with public groups, representatives of international rights defenders organisations, members of Lithuanian Trade Union "Solidarity", representatives of other Ombudsmen institutions operating in Lithuania, various non-governmental organisations, representatives of the UN Refugee Agency (UNHCR), the National LGBT rights organisation, etc.

No particular violation of rights and freedoms of human rights defenders or civil society organisations, that could negatively affect their activities, were observed.

It also should be mentioned that in the report on the fulfilment of Lithuania's obligations in implementing the International Covenant on Civil and Political Rights, the Seimas Ombudsman has expressed his opinion on the protection of minors from the negative effects of public information in the field of LGBT rights.

The Shadow Report provided by the Seimas Ombudsman to the UN Human Rights Committee encompassed a number of parts, one of them - Provisions of the law constituting preconditions for discrimination, where the Seimas Ombudsman observed that legal acts of the Republic of Lithuania still contain valid questionable provisions that are

potentially incompatible with the protection of human rights, which in some way restrict the rights of minorities:

Constitution of the Republic of Lithuania provides that marriage is concluded by free agreement between man and woman, and Article 4(2)(16) on the Law on the protection of minors against adverse effects of public information provides that Information that promotes the concept of the formation of a marriage and a family different from that established in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania, is considered as information having the negative impact on minors. According to the data of the country's non-governmental organisations, this particular provision of the law often becomes the basis for the restriction of the freedom of expression of sexual minorities. In May 2015 the LGAA (National Association for the Protection of Lesbians, Gay, Bisexual, Transgender and Intersex persons (LGBT)) LGL addressed the National Broadcaster (LRT) on the possibility to broadcasting promotional videos of the Baltic Pride 2013 festival. On 4 July 2013 the LRT replied that these video clips could only be broadcast on a limited time basis and include age indices ("S" adult content) and "N-14" (inappropriate for persons under the age of 14). According to the LRT, these restrictions were necessary because of the aforementioned provision of the law protecting minors from the information that encourages the conception of the formation of marriage differ and from that enshrined in the Constitution of the Republic of Lithuania.

In this context it is worth noting that on 14 December 2017 the Draft law on the amendment of Articles 4 and 6 of the Law on the Protection of Minors against the Detrimental Effect of Public Information No. IX-1067 was registered by the Seimas Member D.Sakaliene, proposing to amend Article 4 (2)(16) by deleting the said discriminatory provision. However, there were no further actions taken.

### *References*

- [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/LTU/4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/LTU/4&Lang=en)
- <http://www.lrski.lt/en/news/682-the-problematic-issues-of-reorganisation-of-imprisonment-system-were-discussed.html>
- <http://www.lrski.lt/images/dokumentai/Civil-and-political-rights.pdf>

## Checks and balances

In accordance with the Article 19(8) of the Law on the Seimas Ombudsmen, the Seimas Ombudsmen can recommend to the Seimas, state or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms, thus exercising a **role in the system of checks and balances**. Below are a number of examples that illustrate the work of the Seimas Ombudsmen in this regard:

In February 2020, the Seimas Ombudsman acknowledged that the gaps left in the **regulation of intelligence** pose a particularly high risk of negatively affecting human rights, and therefore it is important to strengthen control over officials. As a consequence, the Seimas Ombudsman recommended the Prime Minister to initiate the amendment of the current Law on Intelligence by setting maximum terms for the application of intelligence methods, conditions for the deletion of information collected, and the possibility for individuals to effectively defend their rights in court.

In February 2020, the Seimas Ombudsman submitted an opinion to the Committee on Human Rights regarding **effective procedure for the application of mediation in family disputes**. In his observations on the changed procedure for the out-of-court settlement of disputes, the Seimas Ombudsman acknowledged the need to improve the provisions of the Law on Mediation, as the current procedural framework is not fully clear and the space in the regulatory procedure left for interpretation can have a particularly negative impact on victims of violence.

The Seimas Ombudsman repeatedly drew the attention of state institutions to the fact that the Compulsory Health Insurance Fund should cover all and not part of convicts, that **access to health care for prisoners** is a national responsibility and that detainees and convicts should be afforded the same quality of health care as the rest of the society. Finally, in January 2020, the Seimas Ombudsmen welcomed the interinstitutional agreement on Compulsory Health Insurance for convicted persons, which was approved by the Seimas. The President has signed Amendments to the Law on Health Insurance that extends the list of persons covered by the Compulsory Health Insurance.

In May 2019, the United Nations (UN) Committee on the Elimination of Racial Discrimination has issued recommendations to Lithuania on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which encouraged Lithuania to intensify its efforts in the integration and education of Roma, the strengthening of civil dialogue, the fight against hate speech, the adoption of the Law on

National Minorities, the inclusion of refugees and migrants. The Seimas Ombudsmen's Office has submitted an alternative report which drew attention to the problems of **Roma integration** in the country, urged Lithuania to take adequate measures to combat the **hate speech** and advocated the adoption of the **Law on National Minorities**.

In April 2019, upon the initiative of the Seimas Ombudsman, representatives of state institutions and non-governmental organisations listened to activity results of the monitoring report of 2018 on implementation of **Social Integration of the Disabled and the UN Convention on the Rights of Persons with Disabilities**. Following the report, the Department for the Affairs of the Disabled highlighted the main weaknesses in the implementation of the UN Convention on the Rights of Persons with Disabilities in the country.

### *References*

- <http://www.lrski.lt/en/news/710-the-committee-on-the-elimination-of-racial-discrimination-recommends-ensuring-adequate-funding-for-the-national-human-rights-institution.html>
- <http://www.lrski.lt/images/Alternatyvi-ataskaita-CEDAW.pdf>

## Functioning of justice systems

One issue of concern in the area of justice which the Seimas Ombudsmen would like to report on concerns the **inadequate implementation of the review procedure on declaration of incapacity**.

A recent study by the Seimas Ombudsmen revealed that after the ongoing review of the incapacity of individuals, there are still more than 1,600 incapacitated individuals in the country, whose rights have so far been unduly restricted. These particularly puzzling findings and other loopholes in the legal review procedure were presented by the Seimas Ombudsmen's Office in a report in which the Seimas Ombudsman commented on a particularly inefficient implementation of the incapacity review procedure.

While visiting incapacitated persons in places of deprivation of liberty, doubts arose over quality of implementation of the law, which stipulates that court judgments issued until 1 January 2016 regarding the declaration of persons to be incapacitated must be reviewed within two years. After noticing that the rights of the majority of persons in places of deprivation of liberty are still unreasonably restricted, the Seimas Ombudsman decided to

find out what were the reasons for the inefficient implementation of the incapacity review procedure.

The investigation revealed that, in fact, only less than half of cases of incapacitated persons were reviewed within the set two-year deadline. The report also notes that caregivers of incapacitated persons were not adequately informed about the ongoing process and objectives of the incapacity review and that municipalities were not prepared to provide the information and assistance they needed at the time. Moreover, the municipalities themselves did not initiate the legal action procedure in the absence of the guardians' duty to apply to the court for review of incapacity. The investigation also revealed that data on incapacitated persons is still processed differently in different municipalities, and the municipalities themselves explained that they had difficulties in obtaining data from the Center of Registers on incapacitated persons throughout the review period. The difficult access to data and the unclear procedure for review of incapacity, which remained for a year, were often cited as one of the main reasons for impeding the proper and timely implementation of the envisaged procedure.

Unfortunately, there is no uniform practise in the country for collecting, pooling and systematizing data on incapacitated individuals, and some municipalities do not collect such data at all. It also should be noted that the State, which delegated additional functions to municipalities during the period of incapacity review, did not foresee or allocate required additional funds, which had a particularly negative impact on the quality of the ongoing review procedure. The investigation also revealed that state-appointed attorneys often did not even visit incapacitated persons, did not meet with them, and the persons had to wait up to a year and a half for designated forensic psychiatrists.

The Seimas Ombudsman drew the attention of the Government and the Ministry of Social Security and Labour to the urgent need for a qualitative review of all court decisions declaring incapacitated persons up to now. It was noticed that during the procedure, the effective protection of the rights and freedoms of incapacitated persons was not ensured, but at the same time it resulted in excessive restrictions on their rights and freedoms.

### *References*

- <http://www.lrski.lt/images/Ataskaita-del-socialinio-draudimo.pdf>

## Media pluralism

The Seimas Ombudsmen's Office drafted and on 30 November 2018 expressed its position on "Freedom of expression by ensuring the **independence of the public broadcaster**". Without considering the particular proposals of the Ad-Hoc Investigation Commission of the Seimas, the Seimas Ombudsman spoke of the need to protect freedom of speech and expression guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms by ensuring the independence of the national broadcaster. In his position, the Seimas Ombudsman noted that Article 10 of the European Convention on Human Rights, which guarantees freedom of expression, includes, inter alia, freedom of the press, radio and television, as there is no democratic society without free and abundant press. The Seimas Ombudsman also noted that the ECHR case *Manole and Others v. Moldova* stressed the importance of the independence of the statutory public service broadcasters from political and economic impact.

It should be noted that the role of the public broadcaster in democratic societies is exclusive, therefore the European Parliamentary Assembly, the EC Committee of Ministers not once has invited the Member States to establish the functions of the management and supervisory authorities over the public service broadcaster by law, defining the principles of accountability, appointment and dismissal of its members, thus not creating any preconditions to make political and/or economic impact on public service broadcaster. EC Member States should build on the measures and implement all the standards and principles set out in the various Recommendations of the Committee of Ministers on the independence of public service broadcasters, including, legal measures to ensure the editorial independence and institutionalization of the public service broadcaster's autonomy and avoiding its politization.

Summarising, the Seimas Ombudsman emphasised that one should avoid such initiatives that would allow to exert political and/or economic influence on the public service broadcaster, thus breaching Provisions of Article 10 of the ECHR.

### *References*

- <http://www.lrski.lt/en/news/670-the-seimas-ombudsman-has-called-the-parliament-to-avoid-any-initiatives-limiting-independence-of-the-national-broadcaster.html>
- <https://en.delfi.lt/politics/seimas-ombudsman-calls-parliament-to-avoid-initiatives-limiting-independence-of-national-broadcaster.d?id=79874323>
- <http://www.lrski.lt/images/dokumentai/Concerning-National-Broadcasterpdf.pdf>

## Corruption

The Seimas (Parliament) of the Republic of Lithuania has adopted a **Law on Whistleblowers**, which lays down the rights and duties of the persons reporting about the infringements in institutions, the grounds and forms of their legal protection as well as the measures of protection, provision of incentives and assistance to such persons for the purposes of creating favourable conditions for reporting about the infringements of the law which pose a threat to or violate the public interest, or for the purposes of prevention and detection of such infringements. The Seimas Ombudsmen's Office contributed to the development of this Law.

### *References*

- <https://www.prokuraturos.lt/data/public/uploads/2020/02/1.9-225-praneseju-apsaugos-istatymas-eng.pdf>

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Government of the Republic of Lithuania has proclaimed the emergency state on 13 March 2020, and it has been extended several times. In respect to the COVID-19 pandemic, the Government of the Republic of Lithuania also adopted a number of restrictive measures. While majority of them are fully acceptable from the human rights perspective, there are also measures that are extremely concerning.

The Seimas Ombudsmen uphold that the severe restrictions enforced by the Government and the measures taken to prevent the spread of the disease **affect the most vulnerable group of people deprived of their liberty**. For this reason the Seimas Ombudsman drew the attention of the Government of the Republic of Lithuania that any restrictions on human rights, even in an emergency, should be carried out imperatively in accordance with the rule of law, the Constitution, the laws applicable in Lithuania and following international obligations in the sphere of human rights. He also called for state and municipal agencies and institutions to follow the recommendations of the World Health Organisation, the SPT, specialists' epidemiologists, as well as the CPT principles for action to be taken in places of detention during the coronavirus (COVID-19) pandemic.

The Seimas Ombudsman also called for compliance with the requirements of legal acts regulating measures for the prevention and control of communicable diseases, according to which it is necessary to update emergency plans, constantly inform employees about the changing situation, reminding them what actions they should take to prevent the spread of the virus. It is also particularly important to comply with general hygiene requirements in order to avoid overcrowding of the residents', provide and prepare isolation rooms as well as to guarantee provision of the necessary hygiene and protection measures to the residents and the staff as well. Moreover, in guaranteeing preventive and control measures against the virus, the dignity of the residents must be respected and their rights secured.

### Most important challenges due to COVID-19 for the NHRI's functioning

Following the decisions of the Government of the Republic of Lithuania to prevent the spread of coronavirus (COVID-19), starting from 13 March 2020 until a separate notice, citizens are served at the Seimas Ombudsmen's Office only remotely. Currently the citizens can launch a complaint or apply for information by regular post, electronic means or by telephone. The Seimas Ombudsmen's Office, as a National Human Rights Institution, continues investigation of complaints, launching of investigations on the Seimas Ombudsmen's own initiative, writing reports, filling questionnaires and in spite of the fact that monitoring of places of detention became challenging to implement, the Seimas Ombudsmen's Office, as an NPM, makes every effort to fulfil its preventive mandate. The Seimas Ombudsmen are determined to continue visits to places of detention during the pandemic to ensure that restrictive measures applied by the authorities do not result in human right violations.

However, all planned seminars, conferences and trainings are postponed due to the closure of all schools and “home office” arrangements in most companies and public authorities as well as social distance requirements.

## **Other relevant developments or issues having an impact on the national rule of law environment**

The Seimas Ombudsman conducted an investigation on the alleged **excessive display of power by officers through the use of physical force** against non-opposing persons and the public display of special measures used against them as this issue has raised considerable public concern.

The Seimas Ombudsman identified the emerging practice of denying the **presumption of innocence** when suspects or accused persons are presented as guilty in court or in public, disproportionately using means of **physical restraint**. In his report, the Seimas Ombudsman notes that the Constitutional Court has emphasized that the presumption of innocence is one of the most important guarantees of implementation of justice in a democratic state under the rule of law. Moreover, it is an integral guarantee of human rights and freedoms. The Seimas Ombudsman drew the attention of the Minister of Justice to the exceptional need to ensure proper implementation of the presumption of innocence in order to prevent suspects and accused persons from being shown at court or in public as guilty by publicly using means of physical restraint against them.

The report also pointed out that international human rights standards recommend that officers record and report on the use of coercion in their activities; however, the findings show that there is still a problem of non-use, misuse, and non-availability of technical video recorders at a time when officers are using violence against individuals. According to the Seimas Ombudsman, such practice of law enforcement officers creates preconditions for the risk of human rights violations.

In his report, the Seimas Ombudsman also paid great attention to the provisions of the Convoy Rules that were interpreted differently during the practice of officers, when conveying detainees the officers used handcuffs, physical and psychological violence even in those cases where the detainee did not oppose or raise danger and complied with lawful instructions or demands of the officer. It was highlighted in the report, that physical force can only be applied after warning of the intention to use it and allowing a person to fulfil the legitimate requirements of an officer. The Seimas Ombudsman drew the attention of the Minister of Justice and the Minister of the Interior Affairs to the need to change the

Convoy Rules so as to ensure that the officers, in exercising their right to use special measures, do not exceed their powers and act in accordance with the rule of law.

### *References*

- <http://lrski.lt/en/news/780-seimas-ombudsperson-physical-abuse-may-only-be-used-by-an-officer-when-the-person-does-not-comply-with-the-lawful-instructions-or-requirements-of-the-officer-or-otherwise-opposes-the-officer.html>

