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Mandate of the Special Rapporteur on the independence of judges and lawyers

QUESTIONNAIRE

1. Please provide detailed information on the constitutional, legislative and regulatory provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors. Do these provisions expressly cover the exercise of these rights online, for instance through digital technologies such as the Internet and social media?

1.1. Article 44 paragraph 1 on the Law on Courts indicates that a judge shall enjoy the rights and freedoms of a citizen of the Republic of Lithuania enshrined in the Constitution and laws of the Republic of Lithuania.

Article 25 of the Constitution of the Republic of Lithuania (adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992) declares that:

Everyone shall have the right to have his own convictions and freely express them. No one must be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

The Constitutional Court of the Republic of Lithuania on 10 march 1998 declared that today's conception of the human rights attaches much importance to the freedom of convictions and information among other fundamental human rights and freedoms. The human right to convictions and information is one of the fundamentals of a democratic order, as well as a pre-condition for the implementation of other human rights and freedoms. For instance, citizens' right to freely form societies, political parties and associations, their right to assemble in peaceful meetings, their right to manifest their religion or faith in practice, their electoral right, their right to criticise the work of state institutions and officials could not be implemented unless the human right to have one's convictions and freely express them, and that to seek, obtain or disseminate information or ideas unhindered which are at the source of the aforesaid rights and freedoms were guaranteed.

In a democratic state a human being is ensured the right to freely form his opinion concerning public affairs, as well as to freely discuss them. The commonest purpose of



public discussions on public life issues should seek the truth which the public is concerned about. People's political will which is formed through discussions on the basis of various information ensures the functioning of a representative democracy.

The fact that the Constitution consolidates the freedom of convictions and information means that the state is commissioned to guarantee and protect people's right to have convictions and freely express them, as well as the right to seek, obtain and disseminate information unhindered. Along with this, the guarantees for an open society and pluralistic democracy are consolidated.

Paragraph 2 of Article 33 of the Constitution establishes that each citizen shall be guaranteed the right to criticise the work of State institutions and their officials, and to appeal against their decisions. It shall be prohibited to persecute people for criticism.

Between these norms and the aforementioned norms of Article 25 of the Constitution there is a connection as regards the fact that Article 25 ensures the freedom of peoples' convictions, while the freedom of information acquires a concrete particularisation in Paragraph 2 of Article 33, i.e., the right to express critical opinions or views, to disseminate critical information in respect to the work of state institutions or officials is guaranteed for citizens. The constitutionally established prohibition against the persecution of people for criticism is a solid guarantee for the implementation of this constitutional right.

The freedom to express convictions as well as the freedom of information is not absolute. Respectively, Paragraph 3 of Article 25 of the Constitution provides that freedom to express convictions, as well as to obtain and disseminate information, may not be limited in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.

Thus, it is established in this constitutional norm that any limitation on the expression of convictions and that of the freedom of information must always be conceived as a measure of exceptional nature. The exclusiveness of the limitation means that one may not interpret the constitutionally established possible fundamentals of the limitation by expanding them. The necessity criterion as consolidated therein presupposes the fact that in every instance the nature and extent of the limitation must be in conformity to the objective sought (thus termed requirement for a balance).

Under Paragraph 4 of Article 25 of the Constitution, freedom to express convictions or impart information shall be incompatible with criminal actions—the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation.

The discussed constitutional norms are in line with the provisions of the international legal acts concerning the protection of expression of people's convictions and freedom of information. For instance, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which was ratified by the Seimas.

1.2. Article 44 paragraph 3 on the Law on Courts indicates that judges shall have the right to freely form professional judicial associations and other non-political organisations protecting the rights of judges, representing their interests and meeting their professional needs. There are two associations representing judges' interests and meeting their professional needs: the Association of Judges of the Republic of Lithuania (a public organization connecting professional judges of the Republic of Lithuania on a



professional basis and on a voluntary basis) and the Union of Judges of District Courts (a public organization connecting professional judges of district courts of the Republic of Lithuania on a professional basis and on a voluntary basis).

It is worth to mention, that judges' participation in the statutory relationship-based organization (in the case an oath is given, among other things, person commits to follow commanders' orders, and carry out the functions assigned, using the particular granted rights) may be considered to have a direct impact on the imperative of judges' independence and impartiality arising from the constitutional doctrine, as well as raise questions on compatibility with the status and oath of a judge and its main mission – to guarantee the fundamental rights and freedoms of the individual and the citizen.

1.3. The Code of Ethics of the Judges of the Republic of Lithuania (adopted by the ruling No. 12 P-8 of the Judicial Council on 28 June 2006) which determines the basic principles of conduct of judges of the Republic of Lithuania should be also taken into account. The Code of Ethics of the Judges of the Republic of Lithuania regulates the conduct of judges during the fulfilment of direct as well as indirect duties. The objective of the Code of Ethics of the Judges of the Republic of Lithuania is to determine the principles of activities and conduct, which are to be followed by a judge during the fulfilment of duties which are laid down by the law and leisure time from the exercise of the direct duties; to fix that justice and other universal human values in the activities of the courts takes priority; to enhance the trust of public in the courts and judges, to increase their authority.

Article 8 paragraph 10 of the Code of Ethics of the Judges of the Republic of Lithuania declares in the communication with public and media the judge shall not express personal view on concrete cases. In addition to this, it is important to mention, that the obligation for judge to be impartial is arises from the Constitution and procedural legal acts.

1.4. The matter whether these mentioned provisions expressly cover the exercise of the mentioned rights online, for instance through digital technologies such as the internet and social media, should be considered taking into account that the law sets basic principles of the rules. If the implementation of those basic principles is not detailed with particular exceptions, then the rights and the freedoms of the judges are more significant than the channel of the implementation of mentioned freedoms is.

2. Please provide information on cases where judges and prosecutors in your country were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online. Please also provide information on cases where judges or prosecutors have been subject to threats, pressure, interference or reprisal in connection with, or as a result to, the exercise of their fundamental freedoms.

The Judicial Court of Honour (an autonomic authority of courts to hear judicial disciplinary cases and petitions of judges for defence of honour of the judge) on 12 May 2014 provided the decision on a case when the judge published an article on the website in which he criticized proposed amendments to Criminal Code of the Republic of Lithuania and the petitioner requested an appraisal of the conduct of the judge in ethical terms.



The Judicial Court of Honour in the case noted that significant attention is taken to the Articles 25 and 33 of the Constitution. Article 25 of the Constitution enshrines the right of a person to have his own convictions and to express them freely. Article 33 of the Constitution guarantees the right of citizens to criticize the work of state institutions or officials, to appeal against their decisions, as well as to prohibit persecution for criticism.

The Judicial Court of Honour in the same decision also pointed out that the constitutional right to criticize state institutions or officials work is guaranteed to every citizen. Therefore, the judges' criticism of the draft law cannot be regarded as a violation of the principle of separation of powers or a restriction of the rights of a member of the Seimas to initiate draft legal acts (his powers).

3. Please provide information on whether, and to what extent, the exercise of the fundamental freedoms referred to above has been regulated in codes of judicial ethics or professional conduct developed by professional associations of judges and prosecutors in your country. Do these codes expressly include provisions concerning the exercise of these rights through the use of digital technologies?

The Code of Ethics of the Judges of the Republic of Lithuania determines the basic principles of conduct of judges of the Republic of Lithuania. The Code of Ethics of the Judges of the Republic of Lithuania regulates the conduct of judges during the fulfilment of direct as well as indirect duties.

In 2017 the practical guide to The Code of Ethics of the Judges of the Republic of Lithuania was established.

In 2018 the practical guide to the Commentary of the Code of Ethics of the Judges of the Republic of Lithuania was established.

The use of The Bangalore Principles of Judicial Conduct and Commentary on the Bangalore Principles of Judicial Conduct should be taken into account as well.

Article 21 of the Regulations of the Commission on Judicial Ethics and Discipline establishes that judges might apply (in writing or electronically) to the Judicial Ethics and Discipline Commission in order to receive consultation. The judge shall set out the circumstances which give rise to doubts in the context of ethics of the judge.

Therefore, the ground principles are set in previously mentioned legal acts and publications and shall be applied while exercising fundamental freedoms referred to above through the use of digital technologies.

4. What kind of restrictions (constitutional, legal or regulatory) can be found in your legal system to the exercise of these freedoms? What is the rationale for these restrictions? Do these restrictions apply both offline and online? And if not, are there particular restrictions on the exercise of these rights through the use of digital technologies?

Article 48 of the Law on Courts establishes that the judge may not hold any other elective or appointed posts, work in business or any other private offices or enterprises, the only exception being teaching or creative activities. The judge may not receive any other remuneration except the judge's salary and remuneration for teaching or creative activities. The judge may not participate in the activities of political parties and any other political organisations. Article 43 of the Law on Courts establishes that a judge must abide by the Constitution and other laws of the Republic of Lithuania and comply with the requirements of the Code of Ethics of the Judges of the Republic of Lithuania.



The Code of Ethics of the Judges of the Republic of Lithuania regulates the conduct of judges during the fulfilment of direct as well as indirect duties.

As mentioned in the part 1 of the questionnaire, the objective of the Code of Ethics of the Judges of the Republic of Lithuania – to determine the principles of activities and conduct, which are to be followed by a judge during the fulfilment of duties which are laid down by the law and leisure time from the exercise of the direct duties; to fix that justice and other universal human values in the activities of the courts takes priority; to enhance the trust of public in the courts and judges, to increase their authority.

The Code of Ethics of the Judges of the Republic of Lithuania does not directly establish particular restrictions for judges to the exercise particular freedoms, but establishes regulation that determines the principles of judges' status that judges shall comply to.

Judges undertake to obey the requirements of the Code of Ethics of the Judges of the Republic of Lithuania voluntarily admit the requirements of the peculiarities of their social status.

It is important to mention, that the Code of Ethics of the Judges of the Republic of Lithuania is applicable to all judges without reservation. Therefore, judges shall comply to the principles of conduct of judges of the Republic of Lithuania during the fulfilment of direct as well as indirect duties judges' as well as acting offline and online.

Additional information is provided in answer to the question no. 1, section 1.1 and 1.4.

5. Please elaborate on the nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors. In particular:

- Are these restrictions dependent on the position and matters over which the particular judge/prosecutor has jurisdiction?

No

- Should the venue or capacity in which these opinions are given be taken into account (for instance, whether or not they were exercising or could be understood to be exercising their official duties)?

The Code of Ethics of the Judges of the Republic of Lithuania regulates the conduct of judges during the fulfilment of direct as well as indirect duties. In addition to this, the Code of Ethics of the Judges of the Republic of Lithuania also sets the basic principles of conduct of judges and judges shall comply to the principles of conduct of judges of the Republic of Lithuania.

- Should the purpose of such opinions or demonstrations be taken into account?

The question could be answered by addressing particular cases that occur in practice. However, the Judicial Court of Honour has not provided practice or explanation relevant to answering this question and it would be inexpedient to draw generalized conclusions.

- To what extent, if at all, is the context – such as democratic crisis, a breakdown of constitutional order or a reform of the judicial system – relevant when evaluating the applicability of these restrictions?



The Constitution defines the legal foundation in the Republic of Lithuania as well as basic human rights and freedoms. Therefore, in this context the stability of the Constitution is crucial and measures to make it happen is set in the Constitution.

6. Please provide information on the scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and, where applicable, prosecutors. Please provide specific examples of these instances.

The question could be answered by addressing to particular cases that occur in practice and the Judicial Ethics and Discipline Commission (an institution of autonomy of courts deciding the issues of instituting disciplinary actions against judges) and the Judicial Court of Honour (an autonomic authority of courts to hear judicial disciplinary cases and petitions of judges for defence of honour of the judge) can be considered as the most relevant institutions to the matter. However, then mentioned institutions have not provided particular practice relevant to answering this question.

7. Please provide information on initiatives undertaken by professional associations of judges and, where relevant, prosecutors, to raise their awareness of the risks associated with the exercise of their rights online, particularly on social media.

The National Courts Administration in 2015 initiated methodological publication on communication with the media and society for representatives of the Lithuanian judicial system – Court communication manual. The publication was the first and comprehensive methodological publication in Lithuanian about how employees of the judicial system should communicate with the media and the public. The publication could be considered as a practical assistant for helping to feel more confident when communicating with representatives of the media. The Court Communication Manual discusses not only the general principles, but also provides practical advice, schemes and templates, which may be used when hosting press conferences, drawing up information releases, or answering questions of journalists, as well as communication on social media.

The publication was prepared by efforts of the National Courts Administration implementing the Norwegian Financial Mechanism programme, and in close cooperation with legal and communication experts in Lithuania and in Norway. The publication is available for all courts in the Judicial intranet.

Moreover, additional activities connected to the communication of judicial system were carried out on 2014 and 2015 while implementing the Norwegian Financial Mechanism programme, e. g. trainings, conferences etc.

The National Courts Administration in recent years (2017 and 2018) organized specialized trainings for judges who are working/dealing with media as well as trainings for courts' representatives to media was organized as well. Therefore, courts' representatives to media have capacity to consult and discuss matters related to media with judges if needed. The trainings include topics on communication with media, communication on social media (e.g. on Facebook), creative writing (topic mostly addressed to courts' representatives to media). Activities to the mentioned



target groups are planned further while taking into account that knowledge has to be revived and skills shall be improved.

In addition to this, on 28th of March, 2014 the Judicial Council issued the ruling No. 13P-51-(7.1.2) on Rules on the providing information on judicial activities and cases to public information providers (available online in Lithuanian: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/45d2e6c0b93d11e3bda4be6f16c2da2b/bywGkseTjL>). The aim of this legal act is to help ensure publicity, transparency and openness of the judiciary and to facilitate access to objective information on judicial activities and cases to public information producers.