

Answers to the Questionnaire of Study Commission IV — 2022
Judicial Workplace and Judicial Independence

Lithuania

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision-making, governance, assignments, fund and other resources)? Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

Constitution of the Republic of Lithuania Chapter IX “The Court” enshrines directly the independence of the judges: „While administering justice, the judge and courts shall be independent“ (Article 109). In this Chapter the general aspects of the independence of the judge and courts are laid down:

- justice shall be administered only by courts;
- when considering cases, judges shall obey only the law;
- a judge may not hold any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises, he may not receive any remuneration other than the remuneration established for the judge and payment for educational or creative activities;
- a judge may not participate in the activities of political parties and other political organisations;
- interference by institutions of State power and governance, Members of the Seimas and other officials, political parties, political and public organisations, or citizens with the activities of a judge or the court shall be prohibited and shall incur liability provided for by law;
- a judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Seimas, or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

The Law on Courts of the Republic of Lithuania is the main legal act, which defines the general rules concerning the independence of judges. It regulates such questions as appointment and dismissal from the judicial office, financial and material guarantees for the functioning of courts and others.

Barriers and practices that impede or negatively impact judicial independence in Lithuania:

1. **Inadequacy of judges` salaries.** Firstly, Lithuanian judges have become the most 2008-2012 crisis-targeted group among highly ranked public officials. The salaries of judges were reduced in 2009 as part of general austerity measures. They have been raised only by 5 % (netto) since then (with an exception of district courts` judges which salaries have been raised by 10,4 %) and hasn`t reached the 2008 level yet (still -3,2 % decline in comparison with 2008) notwithstanding 34 % inflation and general rise of average monthly wages by 150%. During the same period salary coefficients of other high ranked public officials have been raised by 13 % average. Such “freezing” of judges` salaries does not correspond with

the criteria established by the ECJ in the case C-64/16 *Associação Sindical dos Juizes Portugueses*¹. Secondly, the lack of consistent approach and understanding of the role of the judiciary at the political level leads to the situation where the other high ranked public officials' official salaries coefficients has become bigger than official salaries of judges. Several examples might be provided: (i) the salary coefficient of the Chairman of the Supreme Court is 21,7 in comparison to the Prosecutor General – 22,9, the chairman of the division of the Supreme Court is 20,2 in comparison deputy of the Prosecutor General – 21,2; (ii) salary coefficient of the chancellor of the court established in the law is equal or mostly higher to the salary coefficient of judge². The Bureau of the consultative Council of European Judges provided in the Report on judicial independence and impartiality in the Council of Europe Member States of 30 March 2020, provided that “Remuneration of judges in Lithuania is not commensurate with their profession and responsibilities and that as a result they may not be sufficiently protected in terms of their independence and vulnerability to external pressure”. However, the problem remains and the situation is getting worse.

2. **Appointments to judicial positions** remain subject to delays. The appointment of the President of the Lithuanian Supreme Court is still pending since September 2019. It is a constant delay for appointments of judges of the Court of Appeal of Lithuania, Lithuanian Supreme Court and other courts.
3. **The role of the presidents of courts in the evaluation of the activity of judges and in the promotion of judges.** The president of the court submits written opinion about judge's judicial performance and professional and personal qualities of a judge both to Permanent Commission for the Assessment of Activities of Judges and Selection Commission³. There is a risk that the opinion will be tendentious and subjective since there are no criteria in the legal acts how the opinion should be structured and formulated. During the selection procedure the Selection Commission also invites the president of the court to which the judge is applying to provide the opinion of the judges of that court about the candidate.
4. **Almost absolute discretion of the President of the Republic in the procedure of the selection of judges without obligation to motivate the decision.** The candidates to all judicial posts are selected by the special Selection Commission, consisting of 7 members (3 appointed by the Council of Judges, 4 – by the President of the Republic). The Commission examines all the candidates and provides a ranked list of candidates and a list of best-suited candidates. The President of the Republic still has discretion in selecting any of candidates from the list before submitting the particular candidacy to the Council of Judges for the approval. However, there is a lack of legally established obligation of the President to provide any arguments in case the selection does not correspond to the Commission's proposed ranking of the candidates.

1

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=FF54734898F3CF70186D3D41A31367BA?text=&docid=199682&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1043828>

² To be precise, the function of the chancellor of the court is rather of administrative nature and is not related to the justice function.

³ According to the *Criteria for assessing judges seeking a career, being transferred or appointed to another court*, when assessing the personal and cognitive characteristics of the applicant the Commission takes into account, *inter alia*: 1) reasoned opinions or characteristics received from a person's workplaces, entities performing control or supervision of his / her work; 2) reasoned opinion of the judges of the court to which the candidate is applying.