

Lithuania / Lituanie

MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;

Judgement of Grand Chamber of the CJEU of 27 May 2019 in case C-509/18 (PF).

b) of the judiciary or the justice system as a whole;

c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies? Article 138 of the Constitution of the Republic of Lithuania stipulates that international treaties ratified by the Parliament are automatically part of the legal system of Lithuania. The Law on Treaties (Art. 13) prescribes that the provisions of a treaty shall prevail in cases where a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws. Judgments issued by the European Court of Human Rights are binding and *res judicata inter partes*.

Having accessed the EU on 1 May 2004, the EU law, including the judgements and the case law of the Court of Justice of the European Union (CJEU), has become a part of the national legislation of the Republic of Lithuania. The doctrine of primacy of EU law has been included in the constitutional order of the Republic of Lithuania (Decision of the Constitutional Court of the Republic of Lithuania No. 30 -1050 of 13/03/2006 - which sets the primacy of the application of European Union law in cases, where European Union law provisions stemming from the Treaties, on which the European Union is founded, are in competition with the legal framework established by Lithuanian national law).

The adaptation of the measures ruled out by the afore-said European Courts against the Republic of Lithuania for the purpose of ceasing the violation they have ascertained can require actions by all branches of government: the legislative, the executive, and the judiciary, depending on their nature and scope.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples? In the view of the competence of the Prosecution Office of the Republic

of Lithuania, the finding of the Grand Chamber of the CJEU concluded in its judgement of 27 May 2019 in case C-509/18 (PF) should be taken into account. The CJEU highlighted that the following characteristics of the Lithuanian Prosecutor General: 1) it is institutionally independent from the judiciary; 1) it has responsibility for conducting criminal prosecutions; 3) it is independent from the executive. It also found that Prosecution Office of the Republic of Lithuania has sufficient power to protect the individual's procedural and fundamental rights in the criminal proceedings and its decision-making powers are not subject to external directions/instructions, in particular from the executive.

From the point of view of the Lithuanian national legislation - the independence of prosecutors is enshrined in Constitution of the Republic of Lithuania, which provides that, when performing their functions, prosecutors shall be independent and shall obey only the law. The Code of Criminal Procedure requires that prosecutor be independent of other state institutions, officers, political parties, political and non-governmental organisations and other persons in performing their functions. Any political, economic, psychological or social pressure or any other unlawful influence that might affect prosecutors' decisions is prohibited and any attempt to induce a prosecutor to take an unlawful decision is treated by the CPP as an unlawful interference with the prosecutor's activities.

The Constitutional Court has consistently interpreted the principle of prosecutors' independence to include not only the abstinence of the legislative or executive powers and their officials from the performance of the functions of prosecutors but also the provision of sufficient guarantees of independence that allow prosecutors to discharge their functions properly. Violation of the Code of Criminal Procedure provisions on prosecutorial independence may qualify as "interference with the activities of a civil servant or a person performing the functions of public administration" under Criminal Code art. 288.

As another step of strengthening prosecutor's independence could be named the introduction of the legal provision on the prosecutors in charge of top-level corruption cases to be supervised by the Prosecutor General or a Deputy Prosecutor General and be exempt from dismissal or any other disciplinary sanction.

Although there were attempts from the Lithuanian Parliament to increase its control over the Prosecution Service, by requiring annual reports from agencies and granting the Seimas (the Parliament) power to dismiss unilaterally the Directors whose appointment is subject to the Seimas approval (including the Prosecutor general), if the Seimas did not approve the agency's annual activity report, however the Constitutional Court (decision NO. KT34-N22/2015 of 30 December 2015, found these provisions to be unconstitutional

The Law of the Seimas Anti-corruption Commission vests the Commission with the power to investigate the phenomenon of corruption and cases related to it, and control how the agencies are implementing the Commission's decisions.

While exercising its power of control the Commission can call the Prosecutor General to report to it, however, reporting does not impact the independence of the Prosecutor General, as Art. 2(3) of the same Law prohibits the Commission from interfering with the activities of law enforcement authorities, where such activities are linked to their direct functions.

3. Are these measures reflected in the law or in the prosecution policy or debate? The provisions of the prosecutor with the special status responsible for the investigation of op-level corruption cases has been added to the Law on Prosecution Office on 28/11/2017 and became valid since 01/07/2018.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures? Yes. The status of the special prosecutor has been already granted, thus it proves that this legal provision works in practice.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors? The Constitutional Court of the Republic of Lithuania has repeatedly examined in its resolutions the constitutional status and functions of prosecutors, the independence of prosecutors, the appointment and dismissal of prosecutors and Prosecutor General, and the accountability of Prosecutor's Office to the authorities. The Constitutional Court has ruled in its resolutions the following:

- the Prosecutor's Office of the Republic of Lithuania is a centralised public authority with specific managerial powers and is not a part of authorities exercising executive power, and doesn't belong to the judiciary.

- the legislative or executive branches of state power do not have the right to interfere with the prosecuting activities of prosecutors, nor to give any binding instructions regarding the exercise of their functions or to control their work in the exercise of their functions. Prosecutors may not be subject to any political, economic, psychological, social pressure or other illegal influence that could influence their decisions.

- the Law on Prosecutor's Office provides that Prosecutor General shall report to the President of the Republic and the Parliament about the activities of the Prosecutor's Office. However, the Constitutional Court of Lithuania has pointed out that this reporting cannot be understood as providing specific information on the organisation and conduct of the pre-trial investigation in specific criminal cases, or maintenance of prosecution in specific criminal cases, but only as providing general statistical information on the activities of the Prosecutor's Office. The Constitutional Court also noted that the Parliament cannot request clarifications from the Prosecutor's Office or any prosecutor regarding an ongoing or completed pre-trial investigation, or the case that is being or was examined by court.

- according to the Constitution, the Prosecutor General is appointed and dismissed by the President of the Republic with the consent of the Parliament. The Constitutional Court held that the grounds for dismissal of the Prosecutor General can only be laid down by law and Prosecutor General cannot be subjected to dismissal on the basis of declared distrust; also, the legislative power is prohibited from setting regulations regarding the Prosecutor General's accountability (inter alia annual reports on the activities of Prosecutor's Office) that would allow the Parliament to propose the dismissal of the Prosecutor General on the basis of the fact that the Parliament has not approved the annual activity report on the Prosecutor's Office.

6. Does the prosecution system in your country belong to the judiciary? No, Prosecutor's Office of the Republic of Lithuania does not belong to the judiciary.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all? Both the judges and prosecutors are independent in their official duties - they are free to exercise their powers without interference from anybody or anything. Although they share similarities in the content of their independence, it is regulated by separate laws of the Republic of Lithuania.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power? Yes. See also answer to question No. 5.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and

how? According to the Law on Prosecution Office, a prosecutor may conduct the investigation himself/herself or control the activities of the pre-trial investigation institutions (including the police). Where the prosecutors coordinate or run an investigation carried out by the police, they have the power to control its course. The prosecutor has an overall supervisory role over the investigations of the police. No police superior may take any step that will affect the investigation directly or indirectly without the prosecutor's authority. Only the prosecutor can make a final decision in terms of the investigation – either to suspend or terminate it or to pass it to the court with the bill of indictment. The Prosecutor General's instructions/ recommendations passed to the prosecutors are also mandatory to the pre-trial investigation institutions.

A legal status, competencies and procedural role of the prosecutor do not raise any uncertainties on the independence and impartiality of judges. Public prosecutors strictly respect the independence and the impartiality of judges - they neither impact their judicial decisions nor hinder their execution.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate? Yes. Prosecutor General's Office has an advisory body namely, the Collegium of Prosecutor's Office of the Republic of Lithuania. The Collegium advises the Prosecutor General on key issues related to the activities of the Prosecutor's Office, including the independence of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors? The members of Collegium are not elected. The Law on Prosecutor's Office provides that Deputies Prosecutor General and Chief Prosecutors of regional prosecutor's offices are the mandatory members of the Collegium, while the inclusion of other prosecutors in the Collegium is decided by the Prosecutor General. The Collegium currently comprises, in addition to the mandatory members, the Chief Prosecutors of the Departments (Divisions) of the Prosecutor General's Office and their deputies, the Chief Prosecutors of the largest district prosecutor's offices, one prosecutor of the Prosecutor General's Office, one prosecutor of the Regional Prosecutor's Office, one prosecutor of District Prosecutor's Office, and one prosecutor nominated by the Prosecutors' Trade Union upon joint agreement.

10. Who has the initiative of disciplinary proceedings? Disciplinary proceedings against public prosecutors can be initiated by the Prosecutor General on the grounds of information, which can be submitted by any person. The disciplinary power over public prosecutors is exercised solely by the Prosecutor General.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years? In Lithuania, prosecutors are appointed for life, but the compulsory retirement age is 65. There is a mandate of 5 years (with a possibility to renew the position once for additional 5 years) only for managing positions.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges? The rules regarding appointment, transfer, promotion and discipline of prosecutors are in general the same or very similar to those of judges, although they are regulated by separate laws of the Republic of Lithuania. There are only slight differences in details of separate procedures.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them? No, see answer to question No. 5.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused? The prosecutor has the right to request the superior prosecutor to give instructions in writing on the procedural acts and decisions if the instructions are not documented. A superior prosecutor cannot instruct the prosecutor what decision should be taken in the proceedings. The prosecutor must notify the (Deputy) Prosecutor General of a procedural decision taken by a superior prosecutor which is contrary to the law.

14bis. What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors? The cases are assigned to prosecutors by Chief Prosecutors based on the following criteria approved by the Prosecutor General:

- the place where the crime was committed;
- the qualification of a crime;
- the prosecutor's work place and territory of activity;
- pre-trial investigation authorities under the control of units of regional prosecution offices or prosecutors;
- specializations assigned to prosecutors.

In order to balance the workload of prosecutors or for other important reasons, the cases may be assigned to prosecutors by reasoned resolution of the Chief Prosecutor (Deputy Chief Prosecutor) regardless of these criteria.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence? So far, no separate training on this topic has taken place, but it is being integrated into other training organised by the Prosecutor's Office. Prosecutors are also encouraged to take part in the trainings on this topic organised abroad.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available. The code of ethics of prosecutors exists in Lithuania. The Law on Prosecution Service obligates prosecutors to comply with this Code and the principles described therein. Serious breach of professional ethics may be subject to strictest disciplinary sanction – dismissal. The Code of Ethics of prosecutors describes the principle of independence. According to this principle, the prosecutor must:

✓ implement the provision enshrined in the Constitution and the Law on the Prosecution Service - to be independent and having the status of immunity to act independently in the territory of the Republic of Lithuania, in compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms;

✓ respect the principle of political neutrality – do not belong to any political party or political organization and do not associate with it or its members in official activities, do not express their political opinions in the prosecutor's office;

✓ disobey the instructions and requests of a state politicians, state or law enforcement officials, if in their form and content they clearly contravene the laws, this Code, other legal acts.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors? The media are free and operate

independently of the state. The Prosecutor's Office does not conduct media monitoring, so we cannot objectively answer this question.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors? The Prosecutor's Office regularly provides the public with comprehensive, objective and accurate information about its activities. It is aimed that this kind of information is presented in a comprehensible, clear, attractive, convenient way.