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Protection of Vulnerable Groups in the Jurisprudence Constitutional Court of Lithuania

Keywords: Constitutional Court, human rights, vulnerable groups.

Słowa kluczowe: Sąd Konstytucyjny, prawa człowieka, grupy wrażliwe.

Abstract

The jurisprudence of the Constitutional Court of Lithuania has had major impact on strengthening democracy, the rule of law and the stability of the constitutional order in Lithuania. However, the foundation of every democratic state governed by the rule of law is respect for human rights. Moreover, it is often emphasised that the situation of the most vulnerable members of society reflects the actual level of progress and democracy in the state. Therefore, this article seeks to reveal how Constitutional Court in Lithuania have contributed to enhancing the protection of vulnerable groups.

Streszczenie

Ochrona grup wymagających szczególnego traktowania w orzecznictwie Sądu Konstytucyjnego Litwy

Orzecznictwo Litewskiego Sądu Konstytucyjnego miało istotny wpływ na wzmocnienie demokracji, praworządności i stabilności porządku konstytucyjnego na Litwie. Fundamentem każdego demokratycznego państwa, gdzie jest ważna praworządność, jest poszanowanie praw człowieka. Ponadto często podkreśla się, że sytuacja najsłabszych członków społeczeństwa

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odzwierciedla rzeczywisty poziom postępu i demokracji w danym państwie. Dlatego artykuł ten ma na celu ukazanie, w jaki sposób Sąd Konstytucyjny na Litwie przyczynił się do wzmocnienia ochrony osoby należącej do grupy osób wymagających szczególnego traktowania.

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I. Introduction

Following the restoration of the independence of Lithuania on March 11, 1990, the Constitution of the Republic of Lithuania² adopted by referendum on October 25, 1992, for the first time in the history of the state, provided for the constitutional justice institution – the Constitutional Court of the Republic of Lithuania³. Constitutional judicial review is the main instrument ensuring the effectiveness of the constitution, especially in countries with a newly established constitutional order. It can be confidently said that, established in 1993, the LCC has already for almost three decades successfully carried out this mission in Lithuania. The jurisprudence of the LCC significantly contributed to the successful transition to a new socio-political system, which is harmonised with European and international legal standards and had a major impact on strengthening democracy, the rule of law and the stability of the constitutional order in Lithuania.

However, the distinction between democratic and authoritarian constitutions can hardly be drawn by referring to anything other than human rights (especially rights of the most vulnerable groups) and their real protection in the state and society. Therefore, LCC has formulated a broad official constitutional doctrine on various issues concerning the protection of human rights and freedoms from the very beginning of its activity in 1993. Differently from other states of the region, Lithuania introduced the mechanism of constitutional complaint⁴ only in 2019, 26 years after the establishment of the LCC,

² The Constitution of the Republic of Lithuania (Official Gazette – Valstybės žinios (further: VŽ), 1992, no. 33–1014), hereinafter referred to as the Constitution.

³ Hereinafter also referred to as the LCC or the Court.

⁴ Like neighbouring countries Poland and Latvia, Lithuania opted for the so-called normative constitutional complaint model. A person may file an individual constitutional

and this mechanism is undoubtedly giving a new impetus to the protection of human rights at the LCC.

The constitutional doctrine of human rights is constantly evolving together with the state, responding to arising challenges, and in this way embodying the idea of a ‘living constitution’. However, it is possible to discern the following main principles of the doctrine formulated during the entire period of existence of the LCC as regards human rights: 1) it is prohibited to amend the Constitution in any way that would destroy the innate character of human rights; 2) the state has to ensure that human rights are not violated not only by state institutions and officials, but also by private individuals; 3) the state has not only negative but also positive responsibilities in the field of human rights protection; 4) human rights and freedoms enshrined in the Constitution form one coherent system, therefore no right may be interpreted in such a way as to deny another right; 5) the exercise of constitutional rights and freedoms may be restricted only by law, the restrictions should be necessary in a democratic society to protect the rights and freedoms of others or other constitutionally important objectives, the restrictions should not deny the nature and essence of rights and freedoms and the constitutional principle of proportionality is respected; 6) international and European Union law is considered to be the minimum necessary standard for the protection of human rights and fundamental freedoms, and cannot be violated by national legislation⁵.

complaint concerning laws and other acts adopted by the parliament and legal acts of the executive, i.e. legal acts passed exclusively by supreme state authorities. The scope of persons with the right to apply to the Constitutional Court with individual constitutional complaints cover not only natural persons, but also legal persons, citizens of the Republic of Lithuania and also citizens of other states, stateless persons, etc. The Lithuanian model of individual constitutional complaints also embraces three measures (filters), which helps to reduce the inflow of individual constitutional complaints and contributes to achieving other important objectives: the requirement that the rights and freedoms of the applicant have been violated by a legal act that is (possibly) in conflict with the Constitution; the requirement to have exhausted all other legal remedies; and the four-month time limit for filing a constitutional complaint from the adoption of the final decision at the last instance that decided the case. For more on Lithuanian model of constitutional complaints, see: D. Pūraitė-Andrikienė, *Advantages and Disadvantages of the Lithuanian Individual Constitutional Complaint Model*, “Teisė” 2020, no. 114, pp. 49–70.

⁵ D. Žalimas, *25 metai laisvės ir žmogaus teisių kelyje: pažanga ir lūkesčiai*, <https://www.lrkt.lt/lt/apie-teisma/pranesimai-ir-publikacijos/108> (8.12.2015).

These guiding ideas of the official constitutional doctrine are especially relevant in the context of protecting the rights of vulnerable groups. It is often emphasised that the situation of the most vulnerable members of society effectively reflects the level of progress and democracy of the state.

Different aspects and circumstances with regards to which vulnerability can arise makes the notion of vulnerability particularly difficult to define. Vulnerability can be considered as an attribute inherent to human nature: individuals are constantly exposed to potential harm (whether intentional or accidental), to the risk of fluctuating circumstances (due to rearrangements in society or merely because of changes that come with ageing) or to the perspective of being dependent (as a disease or disability)⁶. However, certain social groups become exposed to vulnerability more than others because of the risks of material deprivation, incarceration, violence, etc.

Vulnerability is a particularly dynamic concept that encompasses, but also transcends the notions of minority groups. Thus, the list of the situations, which may fall under this notion, cannot be exhaustive. Nevertheless, vulnerable groups can be classified according to the main root causes of vulnerability: 1) vulnerable groups, whose innate or physical characteristics make them socially perceived as inherently vulnerable (children, the elderly, women, persons with disabilities); 2) vulnerable groups, whose vulnerability is contingent upon circumstantial element that may be temporary and often imposed by state created or social conditions (victims of crime, prisoners/detainees, drug users); 3) vulnerable groups, whose vulnerability derives from their status as a minority by reference to the dominant cultural, ethnical, social, sexual orientation position of their society (national, religious, sexual minorities).

Therefore, this article seeks to reveal how LCC in Lithuania have contributed to enhancing the protection of vulnerable groups. It discusses the most significant decisions adopted by the LCC that have changed the legal situation of vulnerable groups in the country. It is, of course, only possible to speak in general terms about how, the LCC has contributed to the protection of vulnerable groups in Lithuania in almost three decades of existence and func-

⁶ *Protecting Vulnerable groups. The European Human Rights Framework*, eds. F. Ippolito, S. Iglesias Sanchez, Hart Publishing 2015, p. 1.

tioning. Therefore, only the most significant or the most recent jurisprudence of the LCC will be presented.

II. Constitutional jurisprudence on inherent vulnerability

In recent years the LCC has adopted several important decisions related to protection of vulnerable groups, whose innate or physical characteristics make them socially perceived as inherently vulnerable (children, women, persons with disabilities, the elderly). These decisions significantly contributed to the prevention of discrimination based on gender, disability and age, as well as to the protection of interests of children.

Children. In 2019, then deciding on the constitutionality of legal regulation related to payment of child maintenance benefits, the LCC highlighted the particular vulnerability of children, as part of society, and the priority of interests of a child. The Court emphasised that childhood is consolidated in the Constitution as a particularly protected and fostered constitutional value, in view that childhood is a special period in the life of an individual, during which the development of the personality, insofar as this development is linked to physical, mental, and social maturity, takes place, as well as in view that children constitute a socially sensitive and particularly vulnerable part of society due to the particularities of their developing personality (among others, their insufficient physical and social maturity).

The LCC also stated that the imperative of the priority of the interests of a child implies the duty of the state to ensure that account is, first of all, taken of the interests of a child and no preconditions are created for violating these interests in the course of adopting laws and other legal acts, as well as in the course of applying them and deciding on other issues related to a child. The LCC also held that, under the Constitution, the state has the duty to defend the interests of children in cases where their parents (one of their parents) fail(s) to fulfil their constitutionally consolidated duties, among others, the duty to support their children⁷.

⁷ The ruling of the Constitutional Court of November 8, 2019 (Register of Legal Acts 2019, no. 17963).

Gender-based vulnerability. A very important conclusion of the LCC was adopted in 2017. The case concerned the constitutionality of the actions of Seimas member against whom an impeachment case had been instituted. The Court examined and evaluated the actions of Seimas member Pūkas, by which he had degraded the dignity of the persons holding the positions of his secretaries and assistants and that of the persons applying for these positions, interfered with their private life, and discriminated against them.

In its conclusion, the LCC noted that sexual harassment amounted to a gross violation of the Constitution and breached the oath of a member of Parliament. It was held that the actions of Seimas member Pūkas could be regarded as harassment based on gender in general and sexual harassment in particular. The LCC noted that one of the forms of discrimination (including the degrading of human dignity), prohibited under Art. 29 of the Constitution is harassment based on gender and sexual harassment⁸. With this conclusion, the LCC expressed a clear ‘stop’ at the constitutional level to the degradation of women and their treatment as sexual objects. This conclusion encouraged the ‘Me Too’ movement in Lithuania, as women started speaking in public about the sexual harassment they had experienced⁹.

Persons with disabilities. The LCC also decided on certain issues related to discrimination against persons with disabilities, particularly in the context of ensuring equal opportunity to enter state service. In 2018, the LCC declared unconstitutional the provisions of the Law on State Service and of the Law on National Conscription, which provided that if several applicants taking part in a competition for a position of a state servant received the same assessment, the priority for appointment to the position should be given to the applicant who had fulfilled his or her military obligation¹⁰. The impugned legal regulation created less favourable conditions for being appointed to the position of a career state servant or the head of a state-service establishment for those cit-

⁸ The conclusion of the Constitutional Court of December 19, 2017 (Register of Legal Acts 2017, no. 20413).

⁹ D. Pūraitė-Andrikienė, *The legal force of conclusions by the Lithuanian Constitutional Court and the issue of their (non-)finality: has the time come to amend the Constitution?*, “Review of Central and East European Law” 2019, no. 44(2), p. 254.

¹⁰ The ruling of the Constitutional Court of June 6, 2018 (Register of Legal Acts 2018, no. 9478).

izens exempted from military obligation due to objective circumstances such as their state of health (among other things, disability). Thus Constitutional Court have therefore contributed to the rights of persons with disabilities and their inclusion in society by protecting their employment (civil service) rights.

Elderly. The question of protecting the elderly and preventing discrimination based on age has recently started to appear more often before the LCC. In 2020, discrimination based on age was found for the first time in the jurisprudence of Court. The Court declared unconstitutional certain provisions of the Provisional Law on the State Pensions of Scientists that regulate the conditions for granting and paying state pensions to scientists. The Court noted that one of the grounds for discrimination prohibited by Art. 29 of the Constitution is the restriction of human rights based on age. In this ruling, the LCC has held that, as regards persons who carry out scientific work in Lithuania's public institutions of science and studies, there are no differences between those working under the age of 65 and those working after they reach the age of 65 that objectively justify differential treatment when counting scientific working time in the length of service of a doctor of science or a habilitated doctor of science. The Court therefore judged this legal regulation to be a restriction of human rights based on age, which is prohibited under the Constitution¹¹.

In another recent case related to employment rights of elderly, the LCC recognised that a provision of the Statute of Vilnius University "Lecturers and researchers of over 65 years of age are entitled to work at the University if the Senate approves that a fixed-term employment contract for a period not exceeding three years is concluded. Upon a decision of the Senate, such a contract may be renewed once" was in conflict with the Constitution insofar as the provision creates the preconditions for the Senate to approve, at its discretion and in the absence of criteria known in advance, the conclusion of fixed-term employment contracts with lecturers and researchers over 65 years of age. The Court ruled that such a legal regulation created the preconditions for unequal treatment of scientists and lecturers of over 65 years of age¹².

¹¹ The ruling of the Constitutional Court of June 3, 2020 (Register of Legal Acts 2020, no. 12128).

¹² The ruling of the Constitutional Court of February 12, 2021 (Register of Legal Acts 2021, no. 2775).

In the context of protection for the elderly, we should also look at the constitutional jurisprudence in the area of social security. Since constitutional justice institutions protect not only civil and political rights but also economic and social rights aimed at diminishing inequality and poverty within society, the significant impact of these institutions on the protection of social security rights should be stressed. This impact extends to the protection of different vulnerable groups: not only the elderly, but also to financially disadvantaged and disabled persons. The LCC has formulated a broad official constitutional doctrine of pension rights and social security and has found that the social right to receive a pension is closely interrelated with other constitutional rights¹³. The role of the Constitutional Court in protecting social security rights was especially important during the economic crisis.

III. Constitutional jurisprudence on circumstantial vulnerability

Circumstantial vulnerability, is different from inherent vulnerability, so that is contingent upon circumstantial element that may be temporary and often imposed by state created or social conditions. This kind of vulnerability may arise out of intentional human conduct turning an individual into a victim of crime, as well as vulnerability caused by individual choice (commitment of crime, use of drugs)¹⁴. In the context of this type of vulnerability the LCC had decided several important cases on issues related to the rights of detained persons. These decisions contributed to the protection of detained persons, by ensuring their rights to inviolability of correspondence and even the right to life.

In 1998, the LCC adopted a ruling whose meaning is not limited to the protection of the rights of detained or convicted persons, but is also crucial in the context of the right to life. In this ruling, the Court interpreted the right to life enshrined in the Constitution as protecting the life of any person, even a person who has committed a serious crime. The Court held that the death penalty for murder with aggravated circumstances provided for by the Criminal Code

¹³ For more on this see: T. Birmontienė, *Social rights in the jurisprudence of the Constitutional Court of Lithuania*, "Jurisprudencija" 2008, no. 9(111), p. 18.

¹⁴ F. Ippolito, S. Iglesias Sanchez, *op.cit.*, p. 3.

contradicted Art. 18, 19 and Art. 21(3) of the Constitution¹⁵. This ruling had significant consequences – the death penalty was abolished at national level. The ruling was a major step towards humanising the penal system. The case began to develop the concept of natural human rights and freedoms as irrevocable, inseparable from the individual, and not linked to either territory or nation.

The LCC has also resolved several significant cases regarding the right to inviolability of the correspondence of this vulnerable group. In 2003, the Court recognised that the provision “the correspondence of convicts must be censored” of the Code of Correctional Labour was in conflict with the Constitution to the extent that it established obligatory censorship of the correspondence of persons serving a sentence of imprisonment without providing by law the grounds for such censorship¹⁶. In 2015, the Court ruled that certain provisions of the Code of the Enforcement of Punishments were in conflict with the Constitution insofar as they established a legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in cases where they were not related by marriage or close family ties. The Court noted that the right of convicts to inviolability of correspondence may be restricted only by means of a law specifying the grounds and procedure for this restriction. The said restriction must be such that it would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective¹⁷.

IV. Constitutional jurisprudence on the issues of minority rights

The LCC decided on some very important cases related to the status and protections of vulnerable groups, whose vulnerability derives from their status as a minority by reference to the dominant cultural, ethnical, social, sexual orientation position of their society. Of particular importance were the decisions of the Court on the issues of LGBTQI rights and the status of national minorities.

¹⁵ The ruling of the Constitutional Court of December 9, 1998 (VŽ 1998, no. 109–3004).

¹⁶ The ruling of the Constitutional Court of March 24, 2003 (VŽ, 2003, no. 29–1196).

¹⁷ The ruling of the Constitutional Court of February 26, 2015 (Register of Legal Acts 2015, no. 3023).

LGBTQI rights. The poll revealed that in Lithuania support for discrimination on the grounds of sexual orientation is highly prevalent, with 50% of participants indicating that LGBTQI people should not have the same rights as heterosexual people. It is the highest homophobia and transphobia ratings in the EU¹⁸. In this context, the LCC was faced with a hard task to protect the rights of this vulnerable group.

The Court indirectly contributed to the rights of LGTBQI persons by adopting a ruling on the State Family Policy Concept in 2011. The Court investigated the compliance with the Constitution of the Seimas (Parliament) Resolution “On the Approval of the State Family Policy Concept”. Under the Concept, the understanding of family was directly linked to the conclusion of a marriage. In this ruling, the LCC noted that having consolidated in the Concept this notion of a family under which only a man and a woman who are (were) married as well as their children (adopted children) were regarded as a family, the Seimas created preconditions for legal regulation that would not protect other family relations. The Court held that the constitutional concept of family may not be derived solely from the institution of marriage. The constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on a voluntary determination to take on certain rights and duties. It is therefore the content of the relations that is important, whereas the form in which these relations are expressed carries no essential significance for the constitutional concept of family. Therefore, having narrowed the content of the family, the Seimas did not observe the concept of the family as a constitutional value stemming from the Constitution¹⁹. While the ruling did not directly mention LGBTQI rights, recognising a broader concept of the family than that defined by marriage was a step towards recognising different family models.

Another step towards the protection of LGTBQI persons’ rights in the area of family life was taken in 2019. In this case, the LCC was asked to consider certain provisions of the Law on the Legal Status of Aliens, which restricted the right of residence to married or registered same-sex partners (national

¹⁸ *Homophobia in the Baltic States: The Eurobarometer*, “Human Rights First”, <https://www.humanrightsfirst.org/blog/homophobia-baltic-states-eurobarometer> (21.10.2015).

¹⁹ The ruling of the Constitutional Court of September 28, 2011 (VŽ 2011, no. 118–5564).

law explicitly forbids same-sex marriage and does not provide the possibility for a registered partnership)²⁰. The Court ruled that in a democratic state under the rule of law, the attitudes or stereotypes prevailing at a particular time among the majority of the members of society may not serve as constitutionally justifiable grounds for discriminating against persons based solely on their gender identity and/or sexual orientation, or, for instance, limiting the right to the protection of private and family life or the protection of relationships with other family members. The LCC noted that under the Constitution the legislature must adopt such a legal regulation related to the free movement of persons within the EU and migration that would provide for the right to reunification for a family founded by two same-sex persons in another state through a legally concluded marriage or registered partnership. This ruling laid the foundation for the recognition of the rights of same-sex couples in the field of migration and explicitly added the grounds of sexual orientation as an integral part of the constitutional equality clause.

In this way, the Constitutional Courts of Lithuania contributed to the protection of the rights of LGBTQI persons in the area of family life. The decisions discussed above show that stereotypes prevailing in a society at a given time may not serve as a constitutional justification to deny fundamental rights to a person or a group of persons in a democracy governed by the rule of law.

National minorities. The LCC, when deciding on issues related to the legal status of national minorities, is dealing with the challenge of ensuring a balance in society by creating a favourable environment for preserving the languages, ethnic and cultural singularities of ethnic minorities while, at the same time, ensuring due respect for the other constitutional values.

In 1999, the Court investigated the constitutionality of certain provisions of the Resolution of the Supreme Council “On Writing Names and Family Names in the Passports of Citizens of the Republic of Lithuania”, which established that in the passport of a Lithuanian citizen, the person’s name and surname had to be written in Lithuanian characters and according to pronunciation. The Court noted that these provisions applied to all citizens without exception, regardless of their nationality and other characteristics. The LCC

²⁰ The ruling of the Constitutional Court of January 11, 2019 (Register of Legal Acts 2019, no. 439).

has ruled that the disputed legal regulation was in line with the Constitution. The Court observed that writing entries in the passport of the citizen in the state language does not deny the right of citizens regarding themselves as belonging to various national groups to write their names and family names in any language as long as it is not linked with the sphere of use of the state language pointed out in the law²¹.

However, this strict position of the Court has gradually eased. The issue of the proper writing of names and surnames came up again in 2009, with the LCC explaining further that names could be spelled in non-Lithuanian characters (letters q, w, or x) in 'other entries in passports', but that such entries did not affect the 'official' entry in the official language on the main page²². In 2014, the LCC again clarified and somewhat softened its previous position by interpreting provisions of its ruling of 1999 related to the writing of personal names in the state language. The Court held that the State Commission of the Lithuanian Language must render the official conclusion on whether rules other than those set out in the above-mentioned resolution of the Supreme Council may be established for writing names and family names in the passports of citizens (where the names and family names are written in Lithuanian characters and according to pronunciation)²³.

V. Conclusions

The LCC have formulated a broad official constitutional doctrine on various issues concerning the protection of human rights and freedoms in general and the protection of the rights of vulnerable groups in particular. The constitutional jurisprudence of this Court reveals that stereotypes prevailing in a society may not serve as a constitutional justification for denying fundamental rights to a person or a group of persons in a democratic state governed by the rule of law.

²¹ The ruling of the Constitutional Court of October 21, 1999 (VŽ 1999, no. 90–2662).

²² The decision of of the Constitutional Court of November 6, 2009 (VŽ 2009, no. 134–5859).

²³ The decision of the Constitutional Court of February 27, 2014 (Register of Legal Acts 2014, no. 2336).

In the context of protection of groups with inherent vulnerability the Court significantly contributed to the prevention of discrimination based on gender, disability and age, as well as to the protection of children. The constitutional jurisprudence of the LCC has also enhanced the protection of groups with circumstantial vulnerability by ensuring the rights of detained persons. When deciding on issues related to minority rights, the Court is dealing with the challenge to ensure balance in society by creating a favourable environment for vulnerable groups and, at the same time, ensuring due respect for constitutional values.

The recently introduced constitutional complaint procedure will undoubtedly give new impetus to the protection of vulnerable groups at the LCC. As in the context of all the powers exercised by the constitutional courts, the individual constitutional complaint procedure has the major direct effect for a person whose rights have allegedly been violated. This procedure also has a wider impact. It includes consequences that go beyond the specific case, as decisions in individual constitutional complaint cases usually have an *erga omnes* effect, and in resolving this type of case, official constitutional doctrine in the area of human rights is also formed.

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