

RESILIO

Country Report

Lithuania



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1. Introduction

This report aims to provide a concise but comprehensive overview of some of the main challenges facing rule of law standards in Lithuania, as well as the various responses to these challenges from Lithuanian civil society, the judiciary, and opposition. The current challenges include an unprecedented rise in the politicisation of judicial appointments to the highest courts, and general political interference in judicial independence. Moreover, in the past decade, there have been attempts by the government to push through legislation that would limit media freedom and freedom of speech, as well as a proposal to politicise the national broadcaster, LRT. These attempts were stifled by an organised civil society, opposition, and the Constitutional Court. In addition, the standards of institutional respect for minority rights, particularly LGBTQ+ rights, have been lacking in Lithuania. However, civil society has remained resilient and continues to fight for LGBTQ+ rights through petitioning and litigation. This report further notes the influence of international and geopolitical factors on Lithuania's relatively high rule of law standard, notwithstanding the issues for concern. The last section of this report notes the experiences of Poland and Hungary in the ongoing rule of law crisis, Lithuania's proximity to Russia, and the ongoing war in Ukraine. It is argued that these factors contribute to Lithuania's stable respect for the rule of law as an EU value.

2. Analysis of the country case along the RESILIO model

2.1 Most important systemic factor: judicial resilience

The Lithuanian judicial system continues to face many challenges including low public trust in national courts, low remuneration for judges, corruption within the judiciary, and backlogs of cases. However, this report will focus on the increasing levels of political influence on the highest courts, due to the immediate and direct impact on domestic rule of law. Despite the increasing pressure on Lithuanian judges, the work of the highest courts has continued as usual due to the resilience of the courts' personnel. Yet even with this effort, the backlog of cases has increased, as noted by the chairwoman of the Lithuanian Judicial Council.¹ Judges remained in office past their tenure until their replacements were finally confirmed, as the Constitutional Court and the Supreme Court were led by interim presidents.

The politicisation of judicial appointments to the highest courts has, for the past four years, been a recurring concern. In 2020, the terms of two ordinary Constitutional Court judges and the Constitutional Court President ended on 19 March but, for the first time in Lithuanian constitutional history, their replacement was disrupted by a political deadlock which forced the judges whose terms had expired to continue their duties indefinitely. This has stifled the Constitutional Court's work and greatly damaged the institution's public reputation as an independent court.

In early April 2020 the Lithuanian parliament, the Seimas, dominated by the then ruling Lithuanian Farmers and Greens Union (LFGU), rejected all three nominated candidates for the vacant Constitutional Court positions on politically motivated grounds. This is contrary to established constitutional norms whereby candidates to judicial positions should only be rejected on the grounds of unprofessionalism or lack of suitable qualification rather than their perceived political ideology.² Constitutional Court Judges are not political actors but legal professionals and should be treated accordingly. Furthermore, in this case, the LFGU-led government were criticised for using their responsibility to vote on judicial nominees as an opportunity to retaliate against the Lithuanian President, who is charged with presenting judicial candidates for the Seimas to consider. As observed by notable Lithuanian constitutional experts, the deliberate stalling and manipulation of appointments to the Constitutional Court points in the direction of attempts to politicise it.³

In addition, the LFGU-led government was also accused of attacking the Court's independence and launching a baseless smear campaign against its President, Dainius Žaliūnas, in retaliation against the Court's decisions in politically sensitive cases.⁴ From this attempt to influence the Court's future decisions and discredit its previous judgement, it is evident that the government was attempting to harass and threaten the integrity of the Constitutional Court, as a warning against issuing any more unfavourable decisions in the future.⁵ This stands as a gross violation of judicial independence and the rule of law.⁶

The politicisation of judicial appointments also extends beyond the Constitutional Court as the Supreme Court has also been on the receiving end of a political tug of war over the nominations to its judicial panel. The Supreme Court did not have a properly appointed President for nearly four years: the vacancy lasted from July 2019 to March 2023.⁷ Beyond the obvious issues this raises for the efficiency and independence of the Supreme Court, it also impacts the independence of the Constitutional Court. As previously noted, nominations of candidates to the Constitutional Court are made by the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court. The prolonged absence of a Supreme Court president raises important questions about the constitutionality of appointment procedures for the Constitutional Court while interim Presidents were in place, as well as the of constitutionality of having interim Supreme Court Presidents for nearly four years.⁸

Although the Constitutional Court vacancies have now been filled, the political manipulation of the Constitutional Court's composition has serious consequences for the rule of law and judicial independence in Lithuania. The political deadlock over the rotation of the Constitutional Court has revealed to the public that politicians can easily influence the work of the Constitutional Court, which undermines the principle of judicial independence and sets a dangerous precedent for future politicisation of court appointments.⁹ Ultimately, the Seimas's disregard for the Constitution damages the reputation not only of the judiciary but also of the Seimas and democracy itself. Such uncertainty around the timeline of rotation of Constitutional Court judges threatens to cause serious disruption to the efficiency of the Court and has created a precedent of unconstitutionality in Lithuania's judicial appointment system.

The current Lithuanian judicial appointment system goes against the Venice Commission's recommendations on judicial appointments, which state that in semi-presidential systems such as Lithuania's, the majority of judicial appointment power should rest with an independent judicial council.¹⁰ Furthermore, the Venice Commission notes that extra care is needed to prevent abuse of judicial appointments by the executive in young democracies as they lack constitutional traditions that prevent exploitation.¹¹ Nevertheless, Lithuanian constitutional law scholars have pointed out that nothing on this scale has happened to disrupt judicial appointments before,¹² meaning that the excessive politicisation of courts is a growing issue in Lithuania and can be linked to a general Central and Eastern European trend of threats to the independence of the courts from political branches of the state. Therefore, Lithuanian political elites have noted this problem and suggested amending the current system of judicial appointments precisely to remedy the now frequent political deadlocks over the selection of judges.¹³

2.2. Most important subsidiary factors: media resilience and political resilience

Lithuanian media underwent rapid liberalisation following the country's EU accession 2004.¹⁴ However, after the economic crisis of 2008, media freedom and independence have been significantly restricted both financially and by regulatory policies.¹⁵ Lithuania's public broadcaster, LRT, is the most poorly funded broadcaster in the EU. Its management has to regularly request further funding from the minister of finance.¹⁶ In particular, the LFGU-led

coalition government from 2016 to 2020 led a sustained assault on media freedom. In just four years, this coalition's numerous attempts to politicise the national broadcaster and restrict media freedom resulted in public condemnation from civil society organisations, opposition members, and the Lithuanian President.¹⁷

The first significant attack on media freedom came in early 2018 when the LFGU-led parliament set up a special investigatory commission tasked with looking into the financial and managerial functioning of LRT. On the back of this special commission's findings, in October 2018, the LFGU-led parliament sought to change LRT's management structure to exert political control over the national broadcaster.¹⁸ The temporary special commission proposed to establish a new politicised supervisory authority for the LRT, reduce the LRT Council's powers and functions, shorten Council members' term of office from six to five years, and revise their appointment procedure.¹⁹ Liudvikas Gadeikis, chairman of the LRT Council, issued a statement to the Seimas warning that the proposed amendments were a clear attempt to politicise the LRT.²⁰ Similarly, the European Broadcasting Union (EBU) also expressed their concerns over the amendments.²¹ The proposed amendments also faced a constitutional challenge before the Constitutional Court. However, before the Court had the opportunity to issue their ruling, the LFGU-led parliament rushed the law through the legislative process.²² Monika Garbačiauskaitė-Budrienė, the then LRT director general, issued a statement condemning the actions of the Seimas saying that the attempts of the LFGU-led government to rush through the adoption of their draft law prior to a Constitutional Court ruling was evidence of the government attempting to exert political power over the national broadcaster.²³

In May 2019, the Constitutional Court ruled that the formation of the special investigatory commission into LRT management and finances, initiated by the LFGU-led government, was in conflict with the Lithuanian Constitution.²⁴ While amendments to the law on LRT were passed in May 2020, these amendments were heavily edited by the various parliamentary committees and outside experts who opposed the special investigative commission's findings.²⁵ Essentially, the resulting law was a toothless version of the original draft as the elements that would have heavily politicised the LRT were removed.²⁶

The next significant attempt to censor free media came in 2019 with a controversial bill²⁷ aimed at combating disin-

formation under the EU's audio-visual media services directive.²⁸ Although the need to fight against disinformation was cited as the main reason for the introduction of this draft law, it was clear that this was just a pretext to allow the government to censor public and media criticism of government. This draft law was proposed to supplement Article 19 of the Law on Public Information by providing a restrictive understanding of unpublishable information. The draft proposed a broad formulation of sensitive or unpublishable information whereby excessively broad discretion is afforded to state institutions in deciding what an expression of 'mistrust' or 'dissatisfaction' with the Lithuanian state and its institutions could be.²⁹ The proposed legislation was contrary to Article 10(2) of the European Convention on Human Rights which prohibits overly broad restrictions on freedom of expression.³⁰ It could also make way for censorship of historical facts that shed a negative light on Lithuanian history, much like what has been implemented in Poland by the PiS government.³¹ After strong criticisms of the proposal from journalists, the president, and Prime Minister the bill was withdrawn. If this law had been passed, even objective criticism of the state's politics or government institutions could be deemed unpublishable information.³² Clearly, this law was designed to act as a 'muzzle' on media to control their unwanted criticism of politicians. The attacks on media freedom detailed in this report have ultimately been stifled by an organised and determined opposition and civil society, demonstrating the resilience of Lithuanian media, politics, and civil society in the face of internal threats.

2.3. Most important contextual factor: social resilience

The legal and policy frameworks designed to recognise and protect the Lithuanian LGBTQ+ community lags far behind what is expected of a liberal constitutional democracy. In general, most democratic institutions have failed to recognise the importance of LGBTQ+ rights, with the Seimas in particular stalling or plainly refusing to implement laws that would bring Lithuania in line with EU standards on the protection of sexual minority rights. In 2014, the European Union Fundamental Rights Agency published its 'European Union survey of discrimination and victimisation of lesbian, gay, bisexual and transgender persons.'³³ This study revealed that 61% of Lithuanian LGBTQ+ respondents had felt discriminated against or harassed on the grounds of their sexual orientation within the previous year, the highest percentage in the EU, where the overall average was 47%.³⁴ The lack of initiative on the

part of the legislature to establish a legal framework for same-sex civil partnerships, adoption rights for same-sex couples, and gender reassignment laws has received growing pushback from civil society in recent years. The Constitutional Court in particular has been a beacon of hope for sexual minorities in the context of Lithuania's institutional protections of LGBTQ+ rights.

In a pivotal 2019 decision, the Constitutional Court affirmed the constitutionality of same-sex relationships and the right to a private family life for all families, not just those based on marriage between a man and a woman.³⁵ Furthermore, the recent decision of the European Court of Human Rights (ECtHR) in *Beizaras & Levickas v. Lithuania* further pointed out the shortcomings of the Lithuanian authorities for their lack of initiative on LGBTQ+ rights.³⁶ These recent decisions are examples of the mounting pressure on the Lithuanian authorities to bring their laws around LGBTQ+ rights in line with EU and European Convention on Human Rights (ECHR) standards. However, these decisions have so far fallen on deaf ears as the Seimas has still not established a system for same-sex couples to have their relationship legally recognised, there has not been any development of gender reassignment laws, and in some cases, the law still permits discrimination against the LGBTQ+ community.

Currently, the Lithuanian Constitution establishes that marriage is between a man and a woman.³⁷ Article 3.7 of the Civil Code also defines marriage as a voluntary agreement between a man and a woman to establish a legal family relationship in accordance with the procedure established by law.³⁸ Furthermore, Article 3.12 of the Civil Code establishes an explicit ban on same-sex marriage.³⁹ Given that the ECtHR allows states to decide for themselves on such unions, it can be argued that Lithuania's national legislation is not in conflict with the standards set by the ECtHR.⁴⁰ Therefore, there is still no suitable legal framework to recognise same-sex relationships in Lithuania. Although section XV of the Civil Code provides for a system of cohabitation of non-married couples, Guliakaitė argues that this system is not only unsuitable for opposite-sex couples as it only regulates financial aspects of a union, it also outright excludes same-sex couples from its remit in article 3.229.⁴¹ This makes the law contrary to the ECtHR decision in *Vallianatos and Others v. Greece*, which established that the legislature cannot exclude same-sex couples when introducing a legal alternative to marriage.⁴² It can be concluded that Lithuania's legal regulation does not meet the standards set by the ECtHR. LGBTQ+

couples do not have adequate legal protection, as there is no alternative to marriage to protect the property and non-property rights of LGBTQ+ families.⁴³

Recently the Lithuanian President, Gitanas Nausėda, showed his hesitation in supporting the same-sex civil partnership bill, as he acknowledged the importance of recognizing LGBTQ+ rights but also emphasised that he regards the rights of families and the elderly as more important.⁴⁴ Despite LGBTQ+ rights and recognition remaining a polarising and controversial issue in Lithuanian society and politics, civil society has remained mobile and determined to establish equality for LGBTQ+ rights through litigation at national and international level.⁴⁵ This has led to the emergence of the Lithuanian Constitutional Court and the ECtHR as protectors of the rights of sexual minorities. Their decisions serve a legal function in sanctioning violations of minority rights by the state, but their judgments are also declaratory in nature and have the power to push for change within society.

3. Impact of crises on the rule of law: the War in Ukraine

Recent geopolitical events have had a significant knock-on effect on the rule of law in Lithuania. The push and pull factors that have influenced Lithuania's rule of law standards include the ongoing crisis of the rule of law in the EU and the recent war in Ukraine. Pull factors persuade political leaders to remain loyal to the EU and constitutional norms, while push factors might entice political leaders to veer away from respecting the rule of law status quo, such as the ease and speed of political decision making follows the abolition of democratic and constitutional checks and balances. After all, PiS and Fidesz have been very successful in maintaining their support amongst voters and have thus (at least in the Hungarian case) remained in power for multiple terms. One further push factor is the drive to tap into certain powerful majoritarian forces that are present in the electorate, such as ethnonationalism, for political gain.

On the other hand, pull factors that keep political leaders in Lithuania loyal to the value of the rule of law are country's proximity to Russia and the lessons that have been learned from Poland and Hungary's fight over the rule of law with the EU. Fear of Russian interference or even invasion has never loomed over Lithuania more than since the annexation of Crimea in 2014 or the full-scale invasion of

Ukraine in February 2022. Tensions are high because of Russia's proximity (Lithuania borders Kaliningrad) and the country has suffered various threats in the form of cyber-attacks or the migration crisis orchestrated by Belarus, a puppet state of Putin's for all intents and purposes.⁴⁶ Therefore, good relations with the EU are now more imperative than ever. Similarly, the experience of Poland and Hungary over the last decade might also serve as a warning sign for Lithuanian political leaders. The bureaucracy and bad publicity that Poland and Hungary have attracted since they began their dispute with the EU over rule of law breaches has been palpable and even led to financial consequences as EU recovery funds were withheld from Poland and Hungary for their rule of law breaches.⁴⁷ This is even more important considering the enactment of the Conditionality Regulation in 2021, its confirmation by the CJEU in 2022, and subsequent use against Hungary.⁴⁸ Lithuania is a member state that greatly benefits from EU funds as it is a net recipient of the EU budget.⁴⁹ Jeopardising this could be perceived as politically risky as it is unlikely to be popular with voters, and this keeps Lithuanian leaders aligned with EU values.

4. Conclusion

In the face of turbulent times within the EU, Lithuania has demonstrated its resilience in maintaining rule of law stability at a national level. Despite its neighbouring Poland and adjacent Hungary continuing to battle with the EU over breaches of the rule of law and democracy, Lithuania has so far not fallen victim to the wave of Euroscepticism and anti-establishment politics sweeping across the rest of Central and Eastern Europe. However, as noted in this report, there are significant areas of concern in Lithuania that require continuous monitoring in the areas of judicial independence, media freedom, and minority rights. Fidelity by Lithuanian political elites to the rule of law is paramount in going forward in order to ensure that populist and anti-establishment forces – that have been stifled in their attempts to weaken the rule of law – do not succeed in future.

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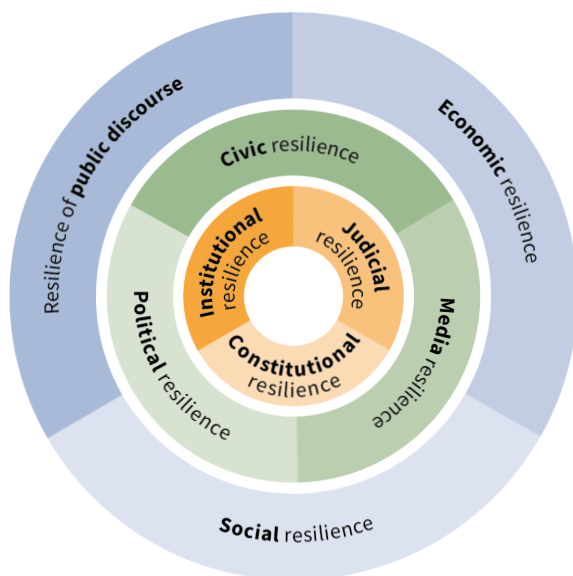
About the project

RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical

RESILIENCE FACTORS



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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For more information, visit the project website: www.iep-berlin.de/en/projects/future-of-european-integration/resilio/

