JUSTICE FOR ALL

# Enhancing the Rights of Defendants and Detainees with Intellectual and/or Psychosocial Disabilities:

## EU Cross-Border Transfers, Detention, and Alternatives

National Research Report: Lithuania

Vilnius
2023

MENTAL HEALTH PERSPECTIVES

BOLTZMANN INSTITUTE
Fundamental and Human Righ

This publication was funded by the European Union's Justice Programme (2014-2020).

The report was produced in the framework of the project titled "JUSTICE FOR ALL – Enhancing the Rights of Defendants and Detainees with Intellectual and/or Psychosocial Disabilities: EU Cross-Border Transfers, Detention, and Alternatives" (JUSTICE FOR ALL-101007497).

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## ACKNOWLEDGEMENTS

We are sincerely grateful to all the research participants, who shared their valuable knowledge and experiences, including the personal stories of persons with intellectual and/or psychosocial disabilities, who had themselves the experience of navigating the criminal justice system in Lithuania.

# TABLE OF CONTENT

# 1. INTRODUCTION

## 1.1. LOCAL CONTEXT AND RELEVANCE

Lithuania is a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which provides a framework for protecting and promoting the rights of persons with disabilities, including those with intellectual and psychosocial disabilities. It also has several laws and policies in place, which aim to improve the protection of the rights and interests of persons with disabilities, including their right to access justice.

For example, Law on the Social Integration of Persons with Disabilities[1] aims to ensure equal rights and opportunities for persons with disabilities in society, to define the principles of social integration of persons with disabilities, to define the system of social integration and its prerequisites and conditions, the institutions implementing the social integration of persons with disabilities, the determination of the level of disability, the level of incapacity for work, the level of special needs and the level of special needs and the provision of services for professional rehabilitation. Law on Mental Health[2] regulates the provision of mental health services

1 Law on the Social Integration of Persons with Disabilities, 2004, No. 83-2983, available in Lithuanian at: https://bit.ly/45UnhbI.
2 Law on Mental Health, 1995, No. I-924. Available at: https://bit.ly/499BuV7.

in Lithuania and ensures the protection of the rights of persons with mental health disabilities. The law also establishes procedures for the involuntary hospitalization of persons with mental health disabilities and sets out the criteria for such hospitalization. Fundamental rights and guarantees in criminal proceedings are defined and guaranteed by the Criminal Code of the Republic of Lithuania[3] and the Code of Criminal Procedure.[4]

Despite these legal frameworks, the situation of defendants and detainees with intellectual and/or psychosocial disabilities in Lithuania is a matter of concern, as they often face significant challenges in accessing justice and receiving appropriate care and support. One of the main issues is the lack of access to legal assistance and support. Many defendants and detainees with intellectual and/or psychosocial disabilities are unable to understand legal proceedings or communicate effectively with their lawyers or other participants in the proceedings. There are also concerns about the treatment of detainees with disabilities in detention facilities. Reports suggest that persons with disabilities are often subjected to violence and abuse in detention facilities, and may not receive appropriate medical care or support. In addition, there is a lack of community-based services and support for persons with intellectual and/or psychosocial disabilities who come into contact with the criminal justice system. This can lead to a cycle of reoffending and institutionalization, as

3 The Criminal Code of the Republic of Lithuania, 2000, No. VIII-1968. Available at: https://bit.ly/40gCcvw.
4 The Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

persons with disabilities are unable to access the support they need to reintegrate into society.

There is also limited data available on the numbers of defendants and detainees with intellectual disabilities in Lithuania. Existing reports and studies suggest that this is a significant issue that requires attention and action from the government and relevant stakeholders.

Overall, there is a need for increased awareness and action to address the challenges faced by defendants and detainees with intellectual and/or psychosocial disabilities in Lithuania. To address these challenges, it is important that the Lithuanian government takes steps to ensure that defendants and detainees with intellectual and/or psychosocial disabilities have access to legal assistance, appropriate accommodations, and necessary support and services. This may include providing training for lawyers and court personnel on how to support persons with disabilities, investing in accessible infrastructure and accommodations for persons with disabilities in the criminal justice system, and developing community-based services and support for persons with disabilities who come into contact with the criminal justice system.

## 1.2. PROJECT AND METHODOLOGY

The findings presented in this report are a product of research that was conducted as part of a project co-funded by the European Commission, with the **Ludwig Boltzmann Institute of Fundamental and Human Rights** (Austria) leading the project in cooperation with the **Bulgarian Helsinki Committee** (Bulgaria), **Dortmund University of Applied Sciences and Arts** (Germany), **Antigone** (Italy), **Mental Health Perspectives** (Lithuania) and **Peace Institute** (Slovenia).

Within the EU, the need for better coordinated judicial cooperation between the Member States grew significantly during the past two decades. In order to facilitate and simplify judicial cooperation in criminal proceedings, the European Commission (EC) has adopted a series of procedural rights instruments (2009 Procedural Roadmap), including the **2002/584/JHA on the European Arrest Warrant**; **2008/909/JHA on the Transfer of Prisoners**; **2008/947/JHA on Probation and Alternative Sanctions**; **2009/829/JHA on the European Supervision Order**.

The Court of Justice of the European Union clarified in various judgments that the application of mutual recognition instruments must not lead to a violation of fundamental rights.[5] Equally, reference to fundamental

5 Judgment of the Court (Grand Chamber) of 5 April 2016, Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen, joined Cases C-404/15 and C-659/15 PPU.

rights may be found in all Framework Decisions. Respect for fundamental rights is vital to build mutual trust between the Member States and ensure the good functioning of cross border cooperation. Thus, in order to fully analyse cross-border proceedings, it is necessary to have a look at national systems and identify challenges that arise at the national level related to international, regional and national standards (including EU standards, UNCRPD, UNCAT, ECHR and Council of Europe), which may hinder cross-border cooperation.

The project analyses the implementation of the abovementioned EU Framework Decisions into national law with respect to the rights of defendants and detainees with intellectual and/or psychosocial disabilities. So far, little to no attention has been given in research to the specific challenges that these defendants and detainees may face when being subjected to cross-border proceedings. At the same time, the research includes an assessment of the situation of defendants and detainees with intellectual and/or psychosocial disabilities within the national systems in law and practice and the compliance with international, regional, and national standards.

## 1.2.1. MAIN OBJECTIVE

The objective of this research study is two-fold, as follows:

1. **To analyse national standards applicable to defendants and detainees with intellectual and/or psychosocial disabilities in Lithuania;**

2. **To assess the implementation and practical application of the Framework Decision on the European Arrest Warrants in relation to persons with intellectual and/or psychosocial disabilities, with a focus on systemic issues that may hinder EU cross-border cooperation.**

This research study was exploratory in nature, since very little had been known about the topic in question, and this was the very first ever study on this topic in Lithuania. Desk-based research and analysis of legislation, policy, regulations, other resources, and case-law was complemented by semi-structured interviews, official Freedom of Information requests to relevant institutions, and a national roundtable discussion.

## 1.2.2. RESEARCH TEAM AND NATIONAL ADVISORY BOARD

The composition of the research team was varied and included researchers, volunteers-research assistants, and experts in law, disability rights, public health, mental health, social work, and psychology. Additionally, the research team also had support and input from the National Advisory Board of the project, which was composed of five experts, as follows:

- **Renata Dubauskė, Head of the Caritas Convicts Integration Programme at Kaunas Archdiocese;**
- **Kristina Dūdonytė, Chair of the Monitoring Committee on the Rights of Persons with Disabilities;**
- **Aidas Gudavičius, lawyer and member of the Monitoring Committee on the Rights of Persons with Disabilities;**
- **Virginija Raslanienė, Chief Specialist of the Resocialisation and Supervision Division at the National Probation Service;**
- **Milita Žičkutė-Lindžienė, Deputy Director at Kaunas Archdiocese Caritas.**

## 1.2.3. DESK-BASED RESEARCH

Desk-based research reviewed national legislation, policy and guidance documents, statistics, and grey literature, reports by the courts, government bodies, NGOs, and

others, as well as relevant case-law. Desk-based research started at the beginning of the year 2022.

### 1.2.4. FREEDOM OF INFORMATION REQUESTS

Eleven official Freedom of Information requests were sent to the Police, Prisons Department, National Probation Service, Prosecutor General's Office, Ministry of Justice, Ministry of Health, Rokiškis Forensic Psychiatric Hospital, National Courts Administration, National Court Psychiatric Service, Migration Department, and National Border Control Service.

### 1.2.5. SEMI-STRUCTURED INTERVIEWS

Ten semi-structured interviews were carried out either in-person or online between 17th June and 21st October 2022 with former defendants and detainees with intellectual and/or psychosocial disabilities, professionals in the criminal justice and health systems, as well as other relevant people in contact with persons with disabilities. Research participants came from five different areas in Lithuania: Vilnius, Kaunas, Panevėžys, Visaginas, and Rokiškis. Interviews were conducted with three former defendants and detainees with intellectual and/or psychosocial disabilities, also with representatives of the Ministry of Health, Prison's Department, Deprivation of Liberty Hospital (prison), Rokiškis Forensic Psychiatric Hospital, National Probation Service, a prosecutor, and an independent practicing attorney.

Convenience sampling and snowball sampling methods were applied, since the topic of the study is sensitive and involves adults that are more vulnerable. Open calls to participate in the study were announced and distributed via local and national NGOs and associations, various groups on social media such as Facebook, the Monitoring Committee on the Rights of Persons with Disabilities, social care and independent living homes, direct emails to individual prosecutors, lawyers, and judges due to previously established contact, Prison's Department, Probation Service (by an official letter by the lead partner of the project), Psychosocial Rehabilitation Centre, and Lithuanian Sign Language Translation Centre. Additionally, a call to participate in semi-structured interviews was included in the 11 Freedom of Information requests sent to relevant institutions, as described in the sub-section above.

Confidentiality Agreements were signed by all members of the research team. Informed Consent Forms were signed and consent to voluntarily participate in the research study was obtained from all research participants. Audio recordings were made of all interviews, and subsequently verbatim transcribed and anonymised. Analysis of the collected data took place following the completion of fieldwork at the end of 2022, using reflexive Thematic Analysis.

## 1.2.6. NATIONAL ROUNDTABLE

A national roundtable discussion about the rights of defendants and detainees with intellectual and/or psychosocial disabilities was organised by the

research team, and took place on 11th July 2022 at the Parliamentary (Seimas) Ombudsperson's Institution of the Republic of Lithuania. It was attended by 26 participants from various fields of expertise: representatives of the Ministry of Justice, Ministry of Social Protection and Labour, Department of Disability Affairs, Parliamentary (Seimas) Ombudsperson's Institution, Equal Opportunities Ombudsperson's Office, Prosecutor General's Office, National Probation Service, Monitoring Committee on the Rights of Persons with Disabilities, Lithuanian Disability Forum, Lithuanian Association of Care for People with Intellectual Disabilities 'Viltis', an independent living home, Kaunas Archdiocese Caritas, and a law professor, who specialises in researching the legal protection of persons with disabilities.

# 2. NATIONAL LEGAL FRAMEWORK CONCERNING THE APPLICATION OF CROSS-BORDER INSTRUMENTS TO PERSONS WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES IN LAW AND PRACTICE

In 2014, the Law of the Republic of Lithuania on mutual recognition and enforcement of decisions of EU member states in criminal cases was adopted[6], the purpose of which is to ensure the implementation of certain legal acts of the European Union regulating criminal proceedings, which apply the principle of mutual recognition of decisions in criminal cases. This law implements and determines, among others, the procedure for applying the European Arrest Warrant, the procedures for taking over/handover of convicted persons, the European Judicial Supervision Warrant and probation and alternative sanctions.

6 Law of the Republic of Lithuania on Mutual Recognition and Enforcement of Judgments in Criminal Matters between Member States of the European Union, No. XII-1322, 13 November 2014. Available in Lithuanian at: https://bit.ly/3Qhvjpg.

## 2.1. EUROPEAN ARREST WARRANT

The European Arrest Warrant (EAW) Framework Decision[7] was transposed into Lithuanian national law by supplementing the Criminal Code and the Code of Criminal Procedure with relevant provisions, as well as by adopting the rules for issuing a European warrant and taking over a person (a sub-statutory law). The EAW, its application procedure and conditions are described in Article 91 of the Criminal Code.[8]

The rules for issuing a EAW and taking a person under an EAW were first approved in 2004, after Lithuania's accession to the European Union. Until 2013, the EAW had been issued by the Ministry of Justice for a suspect or defendant who absconded from pre-trial investigation or trial. Since 2013, this process has been taken over by the Prosecutor General's Office of the Republic of Lithuania. In this case, the EAW is issued under the following conditions:

– Criminal proceedings have been initiated for an offence provided for in Article 2(2) of Council Framework Decision 2002/584/JHA of 13th June 2002 on the EAW and surrender procedures between Member States or for another offence

7 Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), as amended.

8 Criminal Code of the Republic of Lithuania, No. VIII-1968, 26 September 2000. Available at: https://bit.ly/40gCcvw.

punishable by at least one year of imprisonment, except for a minor crime that did not cause significant property damage;

- There is a reason to believe that the suspect or the accused may be in a member state of the European Union or another state that applies the procedure of extradition of persons under the EAW;
- A pre-trial investigation judge or court order has been received regarding the imposition of a pre-trial detention measure;
- Other possibilities have been exhausted to ensure the participation of the suspect or the accused in the process or to examine the case in the absence of the accused;
- The transfer of a person pursuant to a EAW complies with the principles of proportionality and process economy, taking into account the nature and extent of the seriousness of the committed crime, the personality of the suspect or the accused.

The EAW for a person sentenced to imprisonment and absconding from the execution of this sentence is issued by the district court in accordance with a judgement or order to cancel the suspension of the execution of the sentence, an order to cancel the conditional release from the prison sentence before the term or the replacement of the unserved part of the prison sentence with a lighter sentence or an order on probation sending a person released from a correctional institution to a correctional institution to serve the remainder of the prison sentence within the jurisdiction of the court that accepted the

sentence. In this case, the EAW is issued under the following conditions:

- The remaining term of imprisonment is four months or more;
- There is reason to believe that the convicted person may be in a member state of the European Union or another state that applies the procedure for the transfer of persons under the EAW;
- The transfer of a person pursuant to a EAW complies with the principles of proportionality and cost-effectiveness of the process, taking into account the nature and extent of the seriousness of the committed crime, the personality of the convicted person.

In order to implement Article 23 of the Framework Decision, Article 76(3) of the Code of Criminal Procedure provides that in exceptional cases, where it is reasonably believed that the surrender of a person would endanger the person's life or health, or where there are other important humanitarian reasons, the surrender of a person under a EAW to another state may be postponed. When such reasons cease to exist, the General Prosecutor's Office of the Republic of Lithuania and the relevant authority of the foreign State shall immediately fix another date for the surrender of the person. In such a case, the person shall be surrendered not later than ten days from that date.

According to LITEKO, Article 76(3) of the Code of Criminal Procedure is mentioned in seven rulings

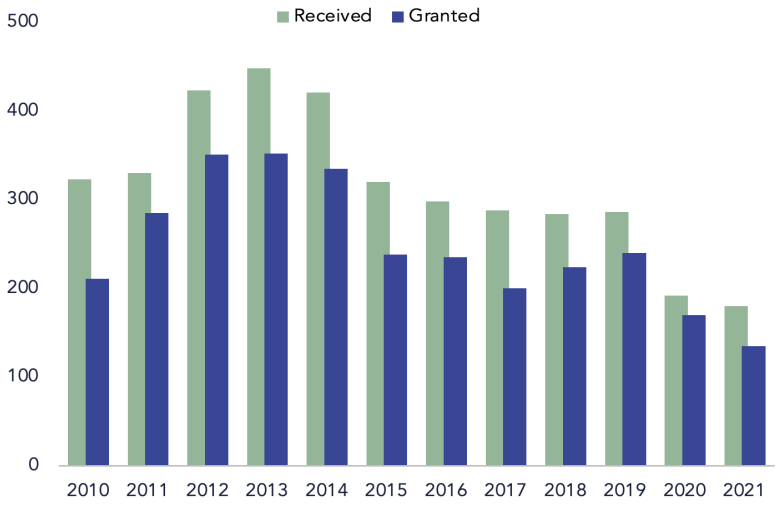
(between 2007 and 2023), but has never been applied to date.

It should be noted that the Code of Criminal Procedure does not specify that applicants may apply directly to the court for a postponement of surrender. The decision on postponement of surrender pursuant to the EAW is the exclusive competence of the General Prosecutor's Office of the Republic of Lithuania, which decides whether, in the circumstances referred to in Article 76(3) of the Code of Criminal Procedure, it is appropriate to postpone the surrender of the person to the requesting State.[9]

No disaggregated statistical data is available on specific cases of persons with intellectual and/or psychosocial disabilities. Generally, out of the 180 requests that Prosecutor General's Office received in 2021 for the issuance of the EAW or an arrest warrant (in order to seize a person from Iceland, Norway or the United Kingdom), 135 requests were granted and 45 were refused. The most common reason for refusal is that after assessing the seriousness of the crime, the scale, the personality of the suspect or the accused and other criteria, it was determined that the issuance of the EAW or an arrest warrant would not comply with the principles of proportionality and economy of the process. In such cases, the initiators are suggested to use other instruments of legal cooperation, ensuring that the goals set for the criminal process are achieved.[10]

9 Resolution of the Court of Appeal of Lithuania of 10 April 2019 in criminal case No 1S-77-396/2019.

10 General Prosecutor's Office of the Republic of Lithuania (2022) *Activity Report 2021*. Available in Lithuanian at: https://bit.ly/45qn3sC.




European Arrest Warrants in Lithuania (2010 – 2021)

According to the data of the National Courts Administration, from 2014 (the beginning of the registration of EAW cases in LITEKO) until the end of 2021, a total of 1,062 EAWs have been issued in Lithuanian district courts.

When comparing the procedural documents used in criminal proceedings, experts point out that the EAW's letter of rights is better drafted than the documents used in national proceedings, although this could also be improved:

**„As far as the EAW is concerned, when a person is arrested in Lithuania and surrendered to another country on the basis of a EAW, there is a slightly better document on the explanation of rights, it is already written in the second person, and it tells you what you have to do, and what you can do, and it is a bit better, but we still really need to do more work on it and give it more attention, to make sure that it is comprehensible. And the situation is so that it is still difficult to understand, and it is not really accessible."**[11]

As for the European Arrest Warrants issued by Lithuania, there are cases where the extradition of suspects under the EAW had been refused due to the potential risk of violations related to the conditions of detention.[12] Šiauliai Remand Prison is criticised for its poor living conditions and overcrowded cells. In a 2014 report, the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that all premises of the Šiauliai Remand Prison were 'old and run down', and the detention centre itself faced a

11 Quote from one of the semi-structured interviews.

12 For example, in August 2014, Denmark refused to execute an EAW against a Danish national wanted in Lithuania for rape. In July 2017, the Constitutional Court of Malta ruled that the extradition of a Maltese man to Lithuania, where he is suspected of fraud, would violate his fundamental rights.

major overcrowding problem.[13] Refusals to surrender persons under the EAW were confirmed by a legal expert interviewed:

> **„The situation is so that according to the case law of the European Court of Human Rights, which in its turn is based on the findings of the European Committee on the Prevention of Torture, Lukiskes[14] used to be a prison, where it was presumed that if a person was admitted to prison, they would be subjected to conditions that violate human rights. Now, Šiauliai Remand Prison essentially is in the same situation. Because whenever we talk about detention in the Šiauliai Remand Prison, the European Court of Human Rights immediately talks about remuneration with Lithuania."**[15]

Regarding the identification of intellectual and/or psychosocial disabilities in EAW cases, experts point out that currently there is no formalised procedure or guidelines for this:

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13 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2014), *Report to the Lithuanian Government on the visit to Lithuania*. Available in English: https://rm.coe.int/1680697367.

14 Lukiškės Prison was closed in 2019 and the prisoners were dispersed to other detention facilities.

15 Quote from one of the semi-structured interviews.

**„As far as I know, there is not some sort of formalised procedure on how to assess and ascertain it. <…> In Lithuania, there is a system where an official who is in direct contact with the person assesses the needs and decides whether or not an interpreter is needed, and this also includes other special needs. <...> That system has flexibility, but at the same time it has a huge fundamental disadvantage because it depends entirely on the discretion and just common sense and humanity of the officer who is in contact with the suspect or the accused."**[16]

The right to a lawyer is expressly enshrined in Lithuanian law. First, the person is informed of the EAW, and informed of the right to a lawyer. If the person so requests, the Lithuanian authorities (the General Prosecutor's Office or the Vilnius District Court) contact relevant authorities in the other country. In this way, the person is given specific contacts that they can use. However, the situation in Lithuania, as the requesting state, is a little more complicated:

**„In Lithuania, such a right is provided for 'on paper' but it is a complicated situation, because in the document of the General**

16 Quote from one of the semi-structured interviews.

**Prosecutor's Office that I have mentioned, i.e. the rules on the issuance of the European Union arrest warrant provide for this right, however, the regulation is poor. Because in such a case, if a person who is detained in another country requests to have a lawyer in Lithuania, the information about the State Guaranteed Legal Aid Service and the right to have a lawyer in Lithuania is forwarded to them in accordance with these rules. What this actually means, I really have no idea. Because the Code of Criminal Procedure does not contain any such grounds for the mandatory appointment of a lawyer."**[17]

It should be noted here that, in cases where it is not mandatory under the Code of Criminal Procedure, the legal aid guaranteed in Lithuania is granted on the basis of an assessment of a person's income level. Consequently, in this case, the State Guaranteed Legal Aid Service would assess the level of income of the national from the other country who is the subject of the EAW on the basis of the request before deciding whether state guaranteed legal aid is available. Mandatory presence of a representative is foreseen in cases where Lithuania is the executing state but not the issuing state.

17 Quote from one of the semi-structured interviews.

The consent of the person is also important in the execution of EAW. Article 13 of the Framework Decision provides that each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

Consent may be of two types: consent to extradition for the offences covered by the EAW and consent to prosecution for other offences.

**„A person can agree to be extradited on the basis of EAW, which simply speeds up and simplifies the procedure, let's say, because if the person accepts, then, of course, there is a reduction in the length of time that they spend in custody in the other country before they are extradited. Sometimes a person may, either in advance, at the request of the issuing State, or after surrender, agree to be prosecuted not only for the offences for which the EAW was issued, but also for offences other than those for which the warrant was issued, such as offences committed previously."**[18]

18 Quote from one of the semi-structured interviews.

However, it is important to note that not all offences are eligible for EAW, and there are safeguards in place, as a person may be put at a great disadvantage in accepting any responsibility. For this reason, the Lithuanian Code of Criminal Procedure provides that, if such a consent is sought, a hearing must be held in order to check that the person understands what they are agreeing to and to verify that the consent is genuine.

A general lack of information is cited as one of the key challenges to the application of surrender under the EAW. Experts distinguish between two situations: transfer for prosecution and transfer for serving a sentence. In the first instance, the person goes to the district court of the district where the EAW was issued, and after the arrest is ordered, the person goes to a detention centre. In such cases, the territorial principle applies and individuals can anticipate where they will end up. A different system applies to the execution of EAWs for the purpose of serving a sentence:

**„When we talk about people who have surrendered to serve a sentence, it gets complicated, because then there is <...> an EAW issued by any district, that person is transported to Lithuania and then under the Code of Criminal Procedure, that person is placed for up to ten days in a detention centre. There is no good answer as to which detention centre they are placed in. The Prisons' Department has rules that specify where**

**people are placed in remand centres, but it does not specifically cover this situation. But there is no other basis for assigning them to any other detention centre, because the territorial principle does not apply, they are not in custody. If they are simply to be, well, placed in custody, in a detention centre under the Criminal Code, under the Penal Code, and then the situation arises that they have to be temporarily held somewhere until it is decided which place is to be found, which penitentiary is to be assigned to them. But that situation is very undefined."**[19]

In the case of persons with intellectual and/or psychosocial disabilities, there is no formal procedure to ensure that the person gives their consent freely and with an understanding of the consequences, which is why a court hearing is held:

**„There is a hearing, where the judge in charge has to see if the person really understands. So, let's say, one of the main safeguards would be precisely for people who have some kind of perception problem, to check that the**

19 Quote from one of the semi-structured interviews.

**person really understands what they are getting into. Because the reality of the situation is that, even leaving aside people who have some kind of a disability, a large proportion of detainees, when they are interviewed, when things are explained to them, they do not understand their situation very well. They do not understand what awaits them, they do not understand the seriousness of the consequences of their signatures or consent given to certain procedures."**[20]

### 2.1.1. IMPLEMENTATION OF THE RECOMMENDATION (2013/C 378/02)

On 27th November 2013, the European Commission (EC) adopted a recommendation on procedural guarantees for vulnerable persons suspected or accused in criminal cases. The purpose of the recommendations is to encourage member states to strengthen the procedural rights of all suspects or accused persons who, due to their age, mental or physical health condition or other disability, cannot fully understand the criminal process or participate effectively in it.[21]

20 Quote from one of the semi-structured interviews.

21 European Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02). Available at: https://bit.ly/48JeiN9.

Thus far, Lithuania has not implemented the guarantees provided in the recommendations for vulnerable persons in criminal proceedings. In 2017, Ms. Dovilė Juodkaitė, who is a lawyer and President of the Lithuanian Disability Forum, thoroughly analysed the situation regarding the implementation of the EC recommendations in Lithuania. After analysing the documents and conducting interviews, it was discovered that the main principles outlined in the aforementioned recommendations regarding procedural guarantees for vulnerable persons, suspected or accused in criminal cases, were neither transferred to the Lithuanian legal base nor applied in the practice of Lithuanian courts as they should be.[22]

First of all, the term 'vulnerable person' does not exist in Lithuanian criminal law, so the guarantees set out in the recommendation are not guaranteed to persons with intellectual and/or psychosocial disabilities. In addition, although the restriction and deprivation of liberty should be applied to more vulnerable persons only in exceptional cases, in the absence of a procedure to recognise a person as being 'vulnerable' in the first place, it may be concluded that the deprivation of liberty may also be applied to those persons to whom it should not be applied in their specific individual circumstances.

22 Juodkaitė D. (2017) *Persons with Intellectual and/or Psychosocial Disabilities. Strengthening Procedural Rights in Criminal Law. Analysis of the Situation in Lithuania.* Available in Lithuanian at: https://bit.ly/3FbN6cj.

## 2.2. TRANSFER OF PRISONERS

The implementation of the legal acts of the European Union, which apply the principle of mutual recognition of decisions in criminal cases, is ensured by the Law of the Republic of Lithuania on the Mutual Recognition and Enforcement of Decisions of the Member States of the European Union in Criminal Cases.[23] The procedure for transfer of prisoners is established by the order of the Minister of Internal Affairs of the Republic of Lithuania 'Regarding the procedure for the organisation and execution of the transfer of prisoners in the execution of the decisions of the courts of the member states of the European Union on the recognition of a prison sentence' No. 1V-289, April 8, 2021.[24] Transfer of prisoners is organised and carried out by the Public Security Service under the Ministry of Internal Affairs and the International Relations Board of the Lithuanian Criminal Police Bureau.

The prisoner transfer procedure does not provide for exceptions or special application requirements for persons with intellectual and/or psychosocial disabilities. An interview with a practising lawyer in this field revealed that in order to verify the legality of the consent of the

23 Law of the Republic of Lithuania on Mutual Recognition and Enforcement of Judgments in Criminal Matters between Member States of the European Union, No. XII-1322, 13 November 2014. Available at: https://bit.ly/3Qhvjpg.

24 Order of the Minister of the Interior of the Republic of Lithuania "On the Organisation and Execution of the Surrender or Transfer of Sentenced Persons in Connection With the Execution of Judgments of the Courts of the Member States of the European Union on the Recognition of Custodial Sentences", No. 7395, 1V-289, 8 April 2021. Available in Lithuanian at: https://bit.ly/3SlC1Nz.

convicted person, court hearings are held. It is a type of a safeguard for persons with mental health conditions, intellectual and/or psychosocial disabilities.

Article 9 (1) (k) and Article 9 (3) of the Transfer of Prisoner framework decision have been transferred to the Lithuanian legal base (without any deterrence from the FD wording), but during this study it was not possible to obtain any specific data on the application of these articles in practice.

## 2.3. EUROPEAN SUPERVISION ORDER

European Supervision Order (ESO) is applied very rarely (if ever) in Lithuania and there is little to no information available about its implementation. The framework decision 2009/829/JHA (ESO) has been transposed into Lithuanian law in full (i.e. the Law of the Republic of Lithuania On The Mutual Recognition and Enforcement of Decisions of the Member States of the European Union in Criminal Cases). The sixth and seventh chapters of the law deal with the recognition and enforcement of pre-trial detention measures in Lithuania and the transfer of pre-trial detention measures to another European Union member state.

As regards to the types of precautionary measures, Lithuania has indicated that it is prepared to execute supervision measures other than those referred to in Article 8(1). Lithuania may impose one or more of the following obligations or prohibitions:

1. An obligation for the person to inform the competent authority in the executing State of any change of residence;
2. A prohibition to enter certain localities, places or defined areas in the issuing or executing State;
3. An obligation to remain at a specified place, where applicable during specified times;
4. An obligation containing limitations on leaving the territory of the executing State;
5. An obligation to report at specified times to a specific authority;
6. An obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;
7. A prohibition to engage in certain activities related to the suspected offence;
8. A prohibition to drive a vehicle;
9. An obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once.

Although the obligation to undergo therapeutic treatment or treatment for addiction is included in the list of non-custodial penalties in Article 8(2) of the framework decision, there is no such obligation in the list of supervision measures in the Lithuanian law.

Article 43 of the Law of the Republic of Lithuania on The Mutual Recognition and Enforcement of Decisions of the Member States of the European Union in Criminal Cases notes that supervision measure may be transferred to the Member State of the European Union in which the suspected, accused or convicted person is lawfully and ordinarily resident, if he or she agrees to return to that Member State.

In the cases referred to in Article 9(2) of the Framework Decision, i.e. where a pre-trial detention order has been imposed on a person who is not permanently resident in the Republic of Lithuania, the public prosecutor of the Prosecutor General's Office of the Republic of Lithuania will normally agree to take over the execution of the pre-trial detention order, if the suspect, accused person or convicted person is studying in the Republic of Lithuania, is working or has concluded a contract of employment in the Republic of Lithuania, has a family member residing here, or has any other important reasons for which it is reasonable to take over the execution of the pre-trial detention order.[25]

Concerning the adaptation of precautionary measures (Art. 13 FD), Article 40(1) of the Law states that when recognizing a decision on a pre-trial detention measure, the public prosecutor shall select and impose one or more of the pre-trial detention measures referred to in the Code of Criminal Procedure of the Republic of

25 Notification of the transposition of Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA by Lithuania. February 2015. https://bit.ly/3PPoBGH.

Lithuania (with the exception of arrest, house arrest and the obligation to be separated from the injured party), which shall be in the closest correspondence to, but not be more severe than, the obligations and/or prohibitions referred to in the decision on the pre-trial detention measure issued by a competent authority in another European Union Member State.

The grounds for refusing to recognise a decision of a competent authority of another Member State of the European Union on a supervision measure do not include a reference to a violation of fundamental human rights.

There are no publicly available statistics on the use of the European Supervision Order in Lithuania.

During the research interviews with practicing legal experts, it was noted that the ESO is a "languishing" norm, which is applied extremely rarely, and no practical examples could be provided.

**„While there are hundreds of EAWs issued and executed, there are only a handful of European Supervision Orders issued and executed. It is almost an inapplicable document in practice. Although it should be the alternative that ensures that people do not spend time in detention unnecessarily."**[26]

26 Quote from one of the semi-structured interviews.

In relation with a non-discrimination provision in Recital ESO, Lithuanian Criminal Code Article 6(2) of the Criminal Code generally notes criminal justice is based on the principle that all persons are equal before the law and the courts, irrespective of their origin, social or property status, nationality, race, sex, education, language, religious or political beliefs, type or nature of activity, place of residence or any other factor. According to the official documents, Lithuania does not have any other agreements and arrangements in place (Art 26 ESO).

## 2.4. PROBATION, AND ALTERNATIVE SANCTIONS

The framework decision 2008/947/JHA (probation and alternative sanctions – PAS) has been transposed into Lithuanian law in full (i.e. the Law of the Republic of Lithuania On The Mutual Recognition and Enforcement of Decisions of the Member States of the European Union in Criminal Cases).

There are no publicly available statistics on the use of the PAS in Lithuania.

In case the Republic of Lithuania is an executing State, the district courts are its competent authorities to recognise judgments imposing a penalty not involving deprivation of liberty, and probation decisions transmitted by the competent authorities of other EU Member States, under Article 3(1) of the Framework Decision. District courts are competent to directly receive judgments imposing a penalty not involving deprivation

of liberty, and probation decisions transmitted by other EU Member States. When the Republic of Lithuania is an executing State, the Probation Services are its competent authorities to enforce judgments imposing a penalty not involving deprivation of liberty, or probation decisions transmitted by the competent authorities of other EU Member States.

When the Republic of Lithuania is an issuing State, the district courts are its competent authorities to transmit judgments imposing a penalty not involving deprivation of liberty, or probation decisions to other EU Member States. It should be noted that the question of transmission to another EU Member State of a judgment imposing a penalty not involving deprivation of liberty, or of a probation decision is dealt with and decided on by the district court of the place in which the probation service is located.[27]

In relation with a non-discrimination provision in Recital 16 PAS, Lithuanian Criminal Code Article 6(2) of the Criminal Code generally notes that criminal justice is based on the principle that all persons are equal before the law and the courts, irrespective of their origin, social or property status, nationality, race, sex, education, language, religious or political beliefs, type or nature of activity, place of residence or any other factor.

Lithuania decided to recognize and execute the probation measures and alternative sanctions referred to in Article 4(1) only.

27 5798/2/15 REV 2.

In accordance with Article 5(3) and (4) of the Framework Decision in the cases referred to in Article 5(2) of the Framework Decision, i.e. where an alternative sanction or probation measure has been imposed on a person not resident in the Republic of Lithuania, the court of the Republic of Lithuania will generally agree to take over the execution of this measure if the sentenced person is studying, working or has been granted an employment contract in the Republic of Lithuania or if a family member of the sentenced person is resident in the Republic of Lithuania or if there are other compelling reasons for taking over the execution of the alternative sanction or probation measure.[28]

According to the Article 28 of the Criminal Code, if the court decides to recognise a decision on a non-custodial sentence or a decision on probation, it shall, by the same decision, reconcile the alternative sentence or probation measure imposed by another Member State of the European Union with the sentences or other measures provided for in the laws of the Republic of Lithuania. The duration, nature and legal consequences of the alternative sentence or probation measure agreed upon shall correspond as closely as possible to the duration, nature and legal consequences of the alternative sentence or probation measure imposed by another Member State of the European Union. It is forbidden to substitute one measure for another and to substitute one measure for another. Hence, when supervision

28 5798/2/15 REV 2.

and application of probation measures and alternative sanctions are executed in Lithuania, it is governed by the Lithuanian law.

The grounds for refusing to recognise a decision of a competent authority of another Member State of the European Union on a penalty not involving deprivation of liberty, and probation does include a reference to a violation of fundamental human rights.

According to the official documents, Lithuania does not have any other agreements and arrangements in place.

Briefly summarizing, FD provisions have been transposed into Lithuanian legal base, however, they are used extremely rarely in practice, not to mention cases of persons with psychosocial and/or intellectual disabilities.

# 3. NATIONAL LEGAL AND POLICY FRAMEWORK CONCERNING DEFENDANTS AND PERSONS DEPRIVED OF LIBERTY WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES IN LAW AND PRACTICE

## 3.1. NATIONAL DEFINITIONS AND STATISTICS

Currently, there are not many definitions related to disability in the Lithuanian legal framework. The only available formal legal definition of disability in Lithuania is provided in the Law on the Social Integration of Persons with Disabilities:

**Disability is a long-term worsening reduction of the state of health, diminution of participation in public life and possibilities for activity, resulting from a disorder of the person's bodily functions and detrimental environmental factors.**[29]

29 Law on the Social Integration of Persons with Disabilities, 2004, No. 83-2983, available in Lithuanian at: https://bit.ly/45UnhbI.

**Such a definition established in Lithuanian law is not in line with the concept established by the UN Convention on the Rights of Persons with Disabilities (CRPD)[30] nor with the definition given by the Court of Justice of the European Union.**[31, 32] In its concluding observations in 2016, the UN Committee on the Rights of Persons with Disabilities expressed its concern 'that the definition and understanding of disability in State party laws and regulations focuses on the individual impairment, thereby neglecting the social and relational dimension of disability, including, in particular, the barriers faced by persons with disabilities', and urged Lithuania to change that.[33]

It is important to note that at the end of 2022, the Lithuanian Parliament adopted amendments to the Law on Social Integration of Persons with Disabilities,

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30 United Nations. *Convention on the Rights of Persons with Disabilities*, 2006. Available at: https://bit.ly/3RQYYb6.

31 The Court defines disability as a limitation which results in particular from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. The Court has also stressed that an illness cannot simply amount to a disability (Court of Justice of the European Union. Judgment of 11 April, 2013 in the cases Ring and Skouboe Werge C-335/11 and C-337/11).

32 Andriukaitis G., Guliakaitė M. (2021) *Country report on non-discrimination (Lithuania). Transposition and implementation at national level of Council Directives 2000/43 and 2000/78.* Available in English at: https://bit.ly/46JoUtG.

33 UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, available in English at: https://bit.ly/46qyXE4.

implementing the disability reform. The reform will change the current model of disability assessment and evaluation, which is contrary to the UN Convention on the Rights of Persons with Disabilities. The amendments de-emphasise medical criteria, focusing more on the scope of the individual's needs and environmental barriers, and will assess a wide range of other areas such as mobility, self-service, communication, daily activities, living environment, etc., in order to clarify the individual's need for assistance and support.At the moment, the Law on the Social Integration of Persons with Disabilities gives a definition of a 'disabled person', stating that it is 'a person, who according to this law has been assessed to have a set level of disability or a level of 55 % (or less) of working efficiency'. Therefore, in order for a person to be considered 'disabled' for the purpose of getting certain benefits, this must be officially recognised by a competent institution.

The Law on Mental Health Care of the Republic of Lithuania[34] defines 'mental illness' as a disease diagnosed by a medical doctor and certified by a psychiatrist, which pursuant to the effective classification of diseases, is assigned to 'mental disorders'. A 'mental disorder' may not be diagnosed on political, religious, racial grounds. Lithuanian law does not define psychosocial or intellectual disability.
In addition, it should be noted that the criminal law of the Republic of Lithuania does not transpose the concept of a 'vulnerable suspect' or a 'vulnerable person' provided

34 Law on Mental Health, 1995, No. I-924. Available at: https://bit.ly/499BuV7.

in the EC Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.[35] The term 'vulnerable persons' used in the law is primarily intended for victims of crime.[36] Interviews with professionals revealed that in practice pre-trial investigation authorities often do not apply the guidelines set out in the EU Recommendation for the participation of persons with intellectual and / or psychosocial disabilities in pre-trial investigations.

### 3.1.1. RELEVANT DEFINITIONS IN CRIMINAL PROCEEDINGS

An outdated and derogatory term of 'mental deficiencies' (Lt. 'psichiniai trūkumai') is still used in Lithuanian law in relation to persons with intellectual and/or psychosocial disabilities. For example, Article 51 (1) (2) of the Code of Criminal Procedure provides that the participation of a defender is mandatory 'in the proceedings of the blind, deaf, mute, and other persons who, due to physical or mental deficiencies, are unable to exercise their rights of defence'. The legal doctrine explains that persons having 'mental deficiencies who are unable to exercise their rights of defence are those who suffer from a serious illness that clearly impairs communication, perception or expression, as well as those whose capacity is restricted

35 European Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02). Available at: https://bit.ly/48JeiN9.
36 Ludwig Boltzmann Institute of Human Rights, et al. *Dignity in Court: Strengthening the Procedural Rights of Persons with Intellectual and/or Psychosocial Disabilities in Criminal Proceedings.* 2018, p. 78. Available in Lithuanian at: https://bit.ly/3LUGMJZ.

due to the abuse of alcoholic beverages, drugs or toxic substances'. Suspects and accused persons who have a diagnosed mental health condition (although, not declared incapacitated by the court) shall also be deemed to be unable to exercise their rights of defence to the full. Thus, the term 'mental deficiencies' has a special procedural legal meaning and is used to refer to such conditions, due to which the suspect or accused person supposedly cannot exercise their rights of defence independently.[37]

The concept of legal incapacity (declared full or partial incapability to be found criminally responsible) is used in criminal proceedings in relation to persons with intellectual and/or psychosocial disabilities. According to the Criminal Code of the Republic of Lithuania, a person shall be considered legally incapacitated (or not criminally responsible) when, at the time of commission of an act forbidden under this Code, they were unable to appreciate the dangerous nature of the act or to control their behaviour as a result of a mental health condition. The Criminal Code also provides for the concept of diminished capacity (diminished criminal legal capacity) which is an inability to appreciate the dangerous nature of a crime or to control one's behaviour as a result of a mental health condition that is not a sufficient ground for declaring legal incapacity.

A person may be found not criminally responsible (or partly responsible) only in a particular case after

37 Kanapeckaitė J. (2003) *Įtariamųjų (kaltinamųjų) fiziniai arba psichiniai trūkumai bei jų reikšmė įgyvendinant teisę į gynybą.*

committing a crime or offence, not in general.[38] Criminal legal capacity is not always assessed, but only when there is a doubt about a person's ability to appreciate the danger of the crime or a mental health condition is suspected. This means that everyone is considered criminally responsible (i.e., to have criminal legal capacity) unless proven otherwise. Where there is sufficient evidence to suggest that the offence may have been committed by a person who is not criminally responsible (i.e., has diminished criminal legal capacity), the pre-trial judge or court must order that person to undergo a forensic psychiatric examination.[39] Ultimately, only the court decides whether a person may be considered as being criminally responsible or not.

A person who is found to not be criminally responsible cannot take part in any proceedings the outcome of which depends on the psycho-intellectual characteristics of the person (i.e., fitness to stand trial). That is, the person may not be questioned, may not be shown persons, objects or photographs for identification, and so on. This person may only be subjected to such procedural steps in which their role would be passive, for example, such a person may be shown to a victim to be identified.[40]

The criminal incapacity is associated with a mental health condition of a person who has committed acts dangerous to society. However, not every mental health condition or psychiatric diagnosis may be the basis to

38 Abramavičius A., et al. (2004) *Commentary on the Criminal Code,* p. 115 .
39 See cassation rulings in criminal cases No. 2K-376/2011, 2K-5-976/2021.
40 Goda, G., et al. (2003) *Commentary on Code of Criminal Procedure.*

find someone not criminally responsible. According to the legal doctrine, only a person who is unable to perceive and control their actions due to a serious mental health condition might be found not criminally responsible. In other cases, where the mental health condition does not impair the person's ability to comprehend the dangerous nature of the act, they shall be held criminally responsible.[41]

As abovementioned, the criminal legal incapacity or reduced capacity is assessed at the time of the commission of the offence. However, the issue of the fitness to stand trial , i.e., the exercise of individual rights and legitimate interests in the course of the legal proceedings, such as the exercise of the right to participate in the criminal proceeding, the rights of a defence. In contrast to the assessment of criminal legal incapacity, where experts must assess the specifics of a person's mental health state at the moment of the criminal offence, in determining fitness to stand trial, a person's mental state is assessed not only in the present moment but also in the past and is foreseen in a certain future perspective.[42]

The right to a defence is not exercised independently by persons found to have limited criminal capacity or found to be not criminally responsible, as well as by persons deemed to have 'mental disabilities' (Lt. 'psichinė negalia' – in Lithuania, this outdated term still refers to both intellectual and psychosocial disabilities),

41 Abramavičius A., et al. (2011) *Criminal Law. General Part*, p. 186.
42 Radavičius L.E. Teisės psichiatrija: istorija ir dabartis. Vilnius: Mykolo Romerio universitetas, 2004. 67-68 p.

which are deemed to impede the exercise of the right of defence. The right of defence may be exercised only when the suspect or accused person is able to exercise all the rights conferred on them and to fulfil their legal obligations.[43] The basis of a suspect's or accused person's legal capacity is the ability to consciously choose the appropriate course of action, to anticipate the consequences of a particular conduct, and to assess which remedies are best suited to the defence.[44] Thus, in case of doubt as to the fitness to stand trial of suspects or accused persons, it is necessary to assess the following: 1) the ability to understand and testify to the circumstances relevant to the case (comparing existing 'mental disabilities' with an 'intellectual' criterion (for more details see the sub-section on Temporary Apprehension); 2) ability to defend the rights and legitimate interests independently (comparing 'mental disabilities' with three criteria: 'wilfulness' (absence of 'mental deficiencies' allowing to actively exercise the rights and responsibilities); 'intellectual'; and 'memory' (for more details see the sub-section on Temporary Apprehension).[45]

The mental health diagnoses that are grounds for declaring a person to be not criminally responsible or of limited criminal capacity are only a small proportion of

43 Kanapeckaitė J. (2003). *Įtariamųjų (kaltinamųjų) fiziniai arba psichiniai trūkumai bei jų reikšmė įgyvendinant teisę į gynybą.*

44 Kanapeckaitė J. *Baudžiamasis procesas dėl nusikalstamų veikų, kuriomis įtariami (kaltinami) asmenys su fiziniais ar psichikos trūkumais (sutrikimais)*: daktaro dis. soc. mokslai: teisė (01S) / LTU. - V., 2004. P.22.

45 Kanapeckaitė J. *Baudžiamasis procesas dėl nusikalstamų veikų, kuriomis įtariami (kaltinami) asmenys su fiziniais ar psichikos trūkumais (sutrikimais)*: daktaro dis. soc. mokslai: teisė (01S)/ LTU.- V., 2004. P.23.

the possible mental health diagnoses that are of criminal procedural significance. Therefore, criminal procedural law theory defines the term criminal procedural incapacity or diminished capacity (fitness to stand trial) to include not only those diagnoses which render a person not criminally responsible, but also those which do not result in a state of incompetence or diminished capacity, but which impede the ability of persons to exercise their procedural rights and legitimate interests.[46]

A person can only be declared incapacitated in a particular area by court in accordance with civil procedure, and this does not affect the person's lack of criminal responsibility, and vice versa, a person declared not criminally responsible does not automatically become incapacitated (not fit to stand trial).[47]

In the criminal case No. 2K-569/200531, the Supreme Court of Lithuania clarified that mental health conditions are important both in the criminal legal sense, in resolving the problems of criminal legal capacity, and in the procedural legal sense, considering the different procedures of investigation and examination of criminal cases. In cases of dangerous acts committed by persons who were found to be not criminally responsible, the process of imposing compulsory medical measures is applied (Articles 392-406 of the Code of Criminal Procedure), and the general rules of the Code of Criminal Procedure apply to criminal offences committed by

46 Ivanovas A. *Įtariamojo, kaltinamojo su psichikos sutrikimais teisių ir teisėtų interesų užtikrinimas*. Magistro baigiamasis darbas. Vilnius, 2006.
47 Kaunas Regional Court ruling of 22 September 2016 in criminal case No. ATP-785-478/2016.

persons who are unable to exercise their rights of defence due to mental health conditions, providing additional procedural guarantees to suspects and accused persons: a mandatory participation of the defender (Article 51 (1) (2) of the CCP), and optional waiver of a defence counsel (Article 52 (2) of the CCP).

The right of a suspect or accused person to a defence is a constitutional principle which the suspect or accused person exercises himself or through a defence counsel of his choice. Since mental disorders (intellectual and/or psychosocial disabilities) in criminal proceedings limit the ability of suspects and accused persons to perceive and reproduce circumstances relevant to their defence, to exercise independently all procedural rights and guarantees, to fulfil all procedural obligations and to be held responsible for their non-fulfilment, this must be compensated for by legal measures (mandatory presence of a defence counsel in criminal proceedings).[48]

Article 51 of the Code of Criminal Procedure of the Republic of Lithuania establishes a mandatory provision that "the presence of a defence counsel is necessary in the trial of persons who are mentally incapable (not fit to stand trial) of exercising their right to defence". In such a case, the defence counsel becomes the principal defender and guarantor of rights and legitimate interests. The experts point out that the legislator, in Article 51 (Necessary presence of a defence counsel), when outlining the cases in which the presence of a

48 Ivanovas A. *Įtariamojo, kaltinamojo su psichikos sutrikimais teisių ir teisėtų interesų užtikrinimas*. Magistro baigiamasis darbas. Vilnius, 2006.

defence counsel is necessary, specifies in Article 51(1) that the presence of a defence counsel is only necessary in the context of the examination of a criminal case (not including the "investigating", i.e., the pre-trial examination).[49]

Article 52(2) of the Code of Criminal Procedure of the Republic of Lithuania stipulates that the pre-trial investigation officer, the prosecutor and the court shall not be obliged to accept the waiver of a defence counsel from a person who, due to a mental deficiency, is not capable of exercising his/her own right to a defence. The aim of this rule is to protect a person who, due to his/her intellectual and/or psychosocial disability, is not able to accurately understand the seriousness of his/her offence, the particularities of the proceedings and the arguments of the defence.

A pre-trial investigation involving a person with intellectual and/or psychosocial disability may be carried out in accordance with the general procedure, or it may be converted into a compulsory measures procedure. The procedure for compulsory medical measures (Article 393 of the Code of Criminal Procedure) is initiated when the pre-trial investigation establishes that a person is not criminally responsible, has limited capacity, or has suffered a mental disorder as a result of the commission of the offence, and is unable to comprehend the substance of his/her actions or to control them (is not fit to stand trial). Article 396(3) of the Code of Criminal

49 Ivanovas A. *Įtariamojo, kaltinamojo su psichikos sutrikimais teisių ir teisėtų interesų užtikrinimas*. Magistro baigiamasis darbas. Vilnius, 2006.

Procedure states that in proceedings for compulsory medical measures, the presence of a defence counsel is necessary from the moment of the adoption of the order for a psychiatric examination, if the defence counsel has not previously participated in the proceedings on general grounds.

According to the Article 53(1) of the Code of Criminal Procedure, in addition to lawyers, suspects and accused persons have the right to have a legal representative (e.g., a parent or guardian) who can participate in the proceedings and defend the interests of the person represented. According to the law, a suspected or accused person may have a legal representative in criminal proceedings only in two cases: if the person is a minor or has been declared incapacitated (not fit to stand trial) in accordance with the established procedure. A family member or close relative of a person who has not been declared incapacitated in accordance with the established procedure, but who, due to old age, disability, illness or other important reasons, is unable to properly exercise the rights conferred by law, may be allowed to take part in the proceedings in the capacity of a representative in accordance with the law on the basis of the prosecutor's decision or the court's order, upon a written or oral requests.[50]

Moreover, it is important to note that in practice, suspects and accused persons with mental disorders are usually assigned a defense counsel in accordance with the

50 Article 53(4) of the Code of Criminal Procedure of the Republic of Lithuania.

procedure for the provision of state-guaranteed legal aid. The latter has been criticised for being ineffective and of low quality.

## 3.1.2. NATIONAL STATISTICS

Statistics is one of the most problematic aspects in examining the situation of defendants and detainees with intellectual and/or psychosocial disabilities in the criminal process in Lithuania. In general, Lithuania is infamous for the number of prisoners. Currently, Lithuania is in the sixth place among all European countries in terms of the number of prisoners – 190.3 prisoners per 100,000 inhabitants (Russia is in the first place with 328.1).[51] In Lithuania, imprisonment, as the most commonly applied form of criminal sanction, accounts for approximately 30 percent of all applied sanctions.[52]

51 Incarceration rate in European Countries in 2021, available in English at: https://bit.ly/3ZQZasQ.

52 Lithuanian Institute of Law: collective of authors (2015) *Alternative Penalties In The European Union*. Available in Lithuanian at: https://bit.ly/3Mi9vsz.

| | NUMBER OF PRISONERS IN CUSTODY AT THE END OF EACH YEAR, ALL GENDERS | | |
|---|---|---|---|
| | PRISONERS, TOTAL | DETAINED (AWAITING TRIAL) | CONVICTED |
| 2015 | 7 355 | 712 | 6 643 |
| 2016 | 6 815 | 602 | 6 213 |
| 2017 | 6 599 | 611 | 5 988 |
| 2018 | 6 485 | 606 | 5 879 |
| 2019 | 6 138 | 726 | 5 412 |
| 2020 | 5 320 | 581 | 4 739 |
| 2021 | 5 086 | 574 | 4 512 |

Prisoners in detention facilities[53]

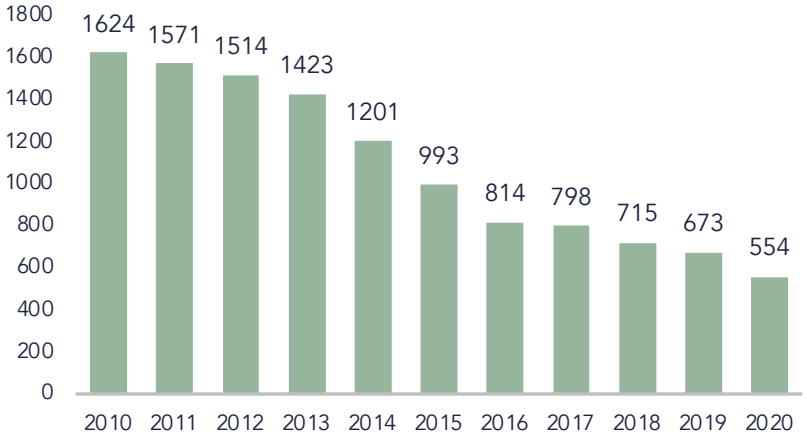
However, it is extremely difficult, if not impossible, to say how many of the imprisoned persons have intellectual and/or psychosocial disabilities. According to the data of the Department of Prisons of 25 May 2022, a 'mental disability' (Lt. 'psichikos negalia') had been identified for 12 persons held in prisons at the time (out of around 5300 held in prisons in total).[54] THowever, the official status of disability in Lithuania is much narrower and based on the medical model, and the related system does not follow the same concept of 'disability' as it is defined in international human rights law, e.g., in the UN CRPD.

Additionally, psychiatric diagnoses in prisons are only determined during the first medical examination when

53 Data from the Prison Department under the Ministry of Justice, available in Lithuanian at: https://bit.ly/46oTPvl.

54 Reply from the Department of Prisons under the Ministry of Justice, Registration No: 1S-2038, 27 May 2022.

a person informs about a mental health condition diagnosed before their detention or later comes to a family doctor or a psychiatrist with health complaints. Therefore, the statistics do not include persons who have never reported their mental health difficulties and/or have not applied to the hospital unit due to any health conditions, difficulties, intellectual or psychosocial disabilities.




General number of registered mental health conditions in prisons in Lithuania (31 December of each year)[55]

It is important to note that within the national system and especially in the context of cross-border procedures, general statistics is monitored, but disaggregated data on persons with intellectual and/or psychosocial disabilities is not collected at all.

55 Reply from the Department of Prisons under the Ministry of Justice, Registration No: 1S-2038, 27 May 2022.

## 3.2. NATIONAL FRAMEWORK CONCERNING DEPRIVATION OF LIBERTY

National legislation provides for several cases where the person may be deprived of liberty. This might be done both during a pre-trial investigation and as a punishment. The most frequently applied and the most restrictive measures of human rights are temporary apprehension and pre-trial detention.

Additionally, a person's liberty may also be restricted in order to determine the person's mental state. During a pre-trial investigation or trial, a person may be sent to an expert examination institution in order to assess the person's mental health state, in which case the time spent in the institution is included in the time of their arrest. It is important to note that both the Law on Mental Health Care and the Civil Code of the Republic of Lithuania imposes liability on persons, who have unlawfully restricted the freedom of a natural person, and they in such a case must compensate the material and non-material damage caused to the person.[56]
Related details are even outlined in the Constitution of the Republic of Lithuania.

56 Juodkaitė D. (2017) *Persons with Intellectual and/or Psychosocial Disabilities. Strengthening Procedural Rights in Criminal Law. Analysis of the Situation in Lithuania.* Available in Lithuanian at: https://bit.ly/3FbN6cj.

**Article 20 of the Constitution of the Republic of Lithuania**

Human liberty shall be inviolable.
No one may be arbitrarily apprehended or detained. No one may be deprived of their liberty otherwise than on the grounds and according to the procedures established by law. A person apprehended in flagrante delicto must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately.

## 3.2.1. TEMPORARY APPREHENSION

Temporary apprehension in the legal system of the Republic of Lithuania is understood as a procedural coercive measure limiting the freedom of a person[57] and can be applied in two cases: 1) a prosecutor or a pre-trial investigation officer can apprehend a person when they are caught committing a criminal act or immediately after they have committed it, (in order to determine the identity of the person and ensure that the person does not escape); or 2) by the decision of the pre-trial

57 Goda, G., Kazlauskas M. and Kuconis, P. (2011) *Baudžiamojo proceso teisė*.

investigation officer or prosecutor, in cases where there are grounds and conditions for detention of the person.[58] The Code of Criminal Procedure sets a maximum apprehension period of forty-eight hours.

Temporary apprehension cannot last longer than it is necessary to determine the identity of the person and to carry out the necessary steps of the process. A temporarily detained person must be interrogated as a suspect no later than twenty-four hours after their delivery to the pre-trial investigation institution or prosecutor's office. According to the CCP, an apprehended person must be released immediately if the suspicion that they have committed a criminal offence has not been confirmed, it has been determined that the grounds and conditions for the apprehension are not necessary; the apprehension period stipulated by law has expired; or the court makes a decision to refuse to order apprehension.

Experts have repeatedly pointed out that temporary apprehension is used too often and pre-trial investigation officers tend to abuse it.[59] According to the Ministry of Justice, officers arrest about 19,000 persons suspected of committing crimes on average per year, of which up to 2,000 persons are apprehended outside of the crime scene.[60]

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58 The Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

59 Liutkevičius K. (2012) *Sulaikymo ir suėmimo reglamentavimas ir taikymas Lietuvoje*. Available in Lithuanian at: https://bit.ly/3ZPxYLf.

60 Information from the Ministry of Justice of the Republic of Lithuania, 2021. Available in Lithuanian at: https://bit.ly/3rKsLaV.

Currently, there is no established fast and effective appeal mechanism for the application of temporary apprehension, there is no clear procedure for inviting the defence counsel to the actions performed with the suspect or the accused, and for the defence counsel's participation in the interrogation. In addition, research participants drew attention to the quality of legal aid provided by the state:

**„People with disabilities, both mental and physical, generally under the Code of Criminal Procedure will mandatorily have a lawyer representing them, a defence counsel. But the problem is that the vast majority of them will have a lawyer appointed by the state-run, state-guaranteed legal service and, unfortunately, the situation is that many of them perform their duties quite poorly. Not all of them, of course, but <...> often the quality is poor, the communication with the client by that lawyer is minimal, and relatively little time is spent on explaining their rights."**[61]

**„They are, after all, like the main lifeline, the lifeline that should work the most to ensure the rights of all persons, including those with disabilities."**[62]

61 Quote from one of the semi-structured interviews.
62 Quote from one of the semi-structured interviews.

It should also be noted that the clarification of rights is often seen by law enforcement officials as a mere formality, and is carried out by the same official who conducts the interviews, which can complicate the clarification process itself. Experts recommend separating the two processes, as is done, for example, in Ireland:

**„This is where the problem is pre-programmed. The fact that rights are usually explained by the same officer who interviews the person. They explain the procedure, what rights they have, serves the documents, but at the same time they have to get information out of the person, to question them. Naturally this is a conflict of interests, since one of the fundamental rights during an interview is to refuse to say anything. Hence, maybe one possible solution would be to have separate officers who are trained, prepared, they may well be police officers, but specifically trained to inform the suspect of those rights. Ones to come in, introduce everything to them, explain all rights, especially to people with significant needs, talk to them and inform them, and then it would be up to the next officer to carry out the questioning."**[63]

63 Quote from one of the semi-structured interviews.

Moreover, there is currently no obligation for the prosecutor to perform an assessment of the legality or reasonableness of temporary apprehension, when this measure of procedural coercion is appointed by the pre-trial investigation officer. In addition, there is no requirement to determine the person's identity and perform procedural steps immediately after arresting a person caught at the scene of a crime.[64] For this reason, the Ministry of Justice, together with representatives of the Prosecutor General's Office, the Lithuanian Bar Association, the Police Department, the Council of Judges and other institutions, prepared a law[65] on the amendment of the Code of Criminal Procedure, which proposes to more clearly regulate the procedure of temporary apprehension. The law was successfully passed in the Parliament, and the new procedure entered into force on 1st October 2022.

According to the amendment, temporary apprehension without catching a person at the scene of or immediately after the commission of a criminal offence can be ordered by a prosecutor or a pre-trial investigation officer only in exceptional cases and only if all the following conditions are met:

64 Liutkevičius K. (2012) *Sulaikymo ir suėmimo reglamentavimas ir taikymas Lietuvoje*. Available in Lithuanian at: https://bit.ly/3ZPxYLf.

65 Draft law amending Article 140 of the Code of Criminal Procedure, No. XIVP-109(2), 2020. Available in Lithuanian at: https://bit.ly/3PLfF5j.

1. **At least one of the grounds for detention provided for in the Code of Criminal Procedure and all the conditions for detention are established;**
2. **It is immediately necessary to restrain the person's liberty in order to achieve the objectives set out in Article 119 of the Code of Criminal Procedure (to ensure participation in the proceedings, to ensure the smooth conduct of the pre-trial investigation, the trial and the execution of the sentence, and to prevent new criminal offences);**
3. **There is no possibility to apply to the court for remand in custody as a matter of extreme urgency.**

Any person apprehended by a pre-trial investigation officer or other person must be notified to the prosecutor as soon as possible and provided with the documents on which the person was apprehended or a copy of those documents. The public prosecutor, having consulted the documents relating to the person's temporary apprehension, shall immediately assess the lawfulness and justification of the temporary apprehension. After assessing the lawfulness and validity of the person's temporary apprehension, the public prosecutor shall confirm or revoke the temporary apprehension (Article 140 of the Code of Criminal Procedure). The amendment also introduced the right to appeal against temporary apprehension, and if the judge upholds the appeal, the person must be released immediately, unless the person is remanded in custody.

## 3.2.2. PRE-TRIAL DETENTION

Another measure applied during criminal proceedings that restricts a person's freedom is pre-trial detention. It is one of the pre-trial measures (procedural coercive measures) provided for in the Code of Criminal Procedure to ensure the participation of the suspect, accused or convicted person in the process, unhindered pre-trial investigation, trial and execution of the sentence, as well as to prevent new criminal acts. In this case, arrest, intensive care, house arrest and other measures not related to deprivation of liberty are prescribed.[66]

Pre-trial detention of a suspect can only be ordered by a pre-trial investigation judge or a court and only if one of the four grounds established by the Code of Criminal Procedure exists: there must be a reasonable belief that the suspect will flee or hide, obstruct the process, commit new crimes, or a request to extradite the suspect to a foreign state must be received.[67] ŠTwo conditions are also necessary for the application of this pre-trial measure: the goals set for the arrest cannot be achieved by less severe, non-custodial measures, and the criminal offence of which the person is suspected must be punishable by more than one year of imprisonment.[68]

66 Liutkevičius K. (2012) *Sulaikymo ir suėmimo reglamentavimas ir taikymas Lietuvoje.* Available in Lithuanian at: https://bit.ly/3ZPxYLf.
67 Article 122(1) and (5) of the Code of Criminal Procedure of the Republic of Lithuania, No. IX-785, 14 March 2002. Available at: https://bit.ly/3tMjRdy.
68 Article 122(7) and (8) of the Code of Criminal Procedure of the Republic of Lithuania, No. IX-785, 14 March 2002. Available at: https://bit.ly/3tMjRdy.

The order of arrest established by the Code of Criminal Procedure creates conditions for the frequent use of arrest.[69] However, for the duration of the criminal proceedings, detention may not exceed two-thirds of the maximum penalty of deprivation of liberty laid down in the criminal law for the most serious offence for which the case is being investigated and tried.

The European Commission's Recommendation of 27th November 2013 on procedural guarantees for vulnerable persons suspected or accused in criminal proceedings[70], notes that Member States' legislation should emphasise that deprivation of liberty of persons with intellectual and/or psychosocial disabilities should only be applied as the last resort. However, the Code of Criminal Procedure does not provide for exceptions to the grounds for temporary detention or arrest for persons with intellectual and/or psychosocial disabilities. In addition, pre-trial detention facilities lack adequate accommodations, adaptation of conditions, and forensic psychiatry units do not have sufficient capacity to receive all suspects with mental health conditions, intellectual and/or psychosocial disabilities, so detention is often implemented in regular detention facilities, where individuals are not provided with accessible or appropriate support or medical care.[71]

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69 Liutkevičius K. (2012) *Sulaikymo ir suėmimo reglamentavimas ir taikymas Lietuvoje*. Available in Lithuanian at: https://bit.ly/3ZPxYLf.

70 European Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02). Available at: https://bit.ly/48JeiN9.

71 Ludwig Boltzmann Institute of Human Rights, et al. (2018) *Dignity in Court: Strengthening the Procedural Rights of Persons with Intellectual and/or Psychosocial Disabilities in Criminal Proceedings*, p. 61. Available in Lithuanian at: https://bit.ly/3LUGMJZ.

## 3.2.3. ASSESSMENT OF INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES

**Liuiza v. Lithuania, No. 13472/06, judgment of 31 July 2012**

The provisions of Article 141 of the Code of Criminal Procedure of the Republic of Lithuania provide that in the event that the suspect (accused) needs to undergo a forensic medical or forensic psychiatric examination during the investigation or trial of a criminal case, they may be transferred to an examination institution and held there until submission of the expertise report to the prosecutor or the court. According to part 2 of this article, if the psychiatric examination of the court determines that the suspect is dangerous to society due to their state of mental health, the time of their stay in the examination institution may be extended by the judge's order, or the suspect may be transferred to another special institution until the court decides on the imposition of compulsory medical measures. In order to ensure that the legal process for the involuntary placement of a person in a psychiatric institution complies with the requirements of Article 5(1)(e) of the European Convention of Human Rights,

> effective procedural guarantees against arbitrariness must be ensured. According to Article 5(1)(e) of the Convention, liberty may be deprived only if three minimum conditions are met, as follows: 1) it must be reliably proven that the person has a mental health condition; 2) the mental health condition must be of such a type or degree as to necessitate involuntary treatment; 3) the validity of continued imprisonment depends on whether the individual continues to have such a mental health condition.[72]

In accordance with the Code of Criminal Procedure of the Republic of Lithuania, if the investigation or prosecution of a criminal case requires the examination of a forensic or forensic psychiatric examination, the suspect may be transferred to an examination institution by an order of a pre-trial investigation judge or court and kept there until the examination report is submitted to a prosecutor or court. A forensic psychiatric examination of a person shall be permitted only if there is sufficient evidence to show that it is the person who has committed an act prohibited by criminal law which is the subject of the investigation. The time spent in the forensic institution shall be included in the time of detention. If the forensic psychiatric examination establishes that the suspect is dangerous to the public due to their mental health condition, the judge may extend their stay in the forensic institution or the

72 European Court of Human Rights 31 July 2012 Judgment in Liuiza v. Lithuania, Application No. 13472/06.

suspect may be transferred to another special institution until the court decides on the imposition of coercive medical measures. The time spent in another special institution is extended by a judge's order and is included in the time of detention.

A relevant problem referred to by research participants in interviews was the potentially long waiting time before the psychiatric forensic examination may be obtained:

> **„There are long queues and people just waiting for their examination, so this is a problem <…> there is especially a lack of adolescent psychiatrists, forensic experts, forensic psychologists. In essence, work positions are missing that is why queues exist, otherwise there would be more capacity; however, the situation is the way it is due to the lack of professionals."**[73]

During the proceedings concerning an act committed by a person with diminished criminal legal capacity or not criminally responsible, as well as a person whose mental health condition occurred after the commission of the offence and as a result, they are unable to comprehend the essence of their own actions or to control them, it must be proven that: a) the time, place, manner and other circumstances of the commission of an act are forbidden by criminal law; b) whether the act prohibited by criminal

73 Quote from one of the semi-structured interviews.

law was committed by that particular person; c) whether the person who committed the act prohibited by the criminal law has suffered from mental health conditions in the past, the severity and nature of those at the time when the offense was committed, during the pre-trial investigation, court proceedings or after the imposition of the sentence; d) what is the behaviour of the person who committed the act prohibited by the criminal law both before and after the commission of the act; d) the nature and extent of the damage caused by an act prohibited by criminal law.[74]

The court must determine two criteria in determining the criminal legal incapacity of a person in each individual case: legal (psychological) and medical (biological). The absence of at least one of these two criteria precludes a person from being considered not criminally responsible.[75] For example, a person may have a mental health condition (such as depression or bipolar diagnosis), but in the absence of a legal criterion – an inability to understand and control one's actions – there is no basis for declaring a person fully incapable to be found criminally responsible.

74 Article 395 of the Code of Criminal Procedure of the Republic of Lithuania.

75 Resolution of the Supreme Court of Lithuania of 10 October 2012 in criminal case No 2K-417.

## 3.2.4. MEDICAL CRITERION

The medical criterion is determined by forensic psychiatrists. Pursuant to the Law on Forensic Examination of the Republic of Lithuania, the tasks of forensic psychiatric examination are as follows:

**„1. To assess the mental state of suspects, accused persons as well as persons who have committed administrative offences and to determine their ability to understand the essence of their actions and to control them;**

**2. To assess the mental state of persons who have developed a mental health condition after the commission of a criminal offence or the imposition of a sentence;**

**3. To determine whether the suspected, accused, or other person involved in the case is dangerous to themselves or others due to a mental health condition;**

**4. To recommend the use of an appropriate type of compulsory medical treatment for persons found not criminally responsible;**

**5. To determine the dependence of suspects, defendants, convicts on psychoactive substances and the need for treatment;**

**6. To answer other questions where psychiatric knowledge is required."**[76]

A forensic expert shall carry out the task assigned to them solely based on their expertise in their field and the conclusions shall not exceed the expertise of their field. The findings of a forensic expert which go beyond the expert's expertise may not be of probative value, nor may forensic experts draw conclusions on legal matters.[77]

In accordance with the "Regulations on the Procedure for the Qualification of a Forensic Psychiatric Expert, a Forensic Psychological Expert and the Procedure for the Issuance of a Certificate of Qualification of a Forensic Psychiatric Expert, a Forensic Psychological Expert in the State Forensic Psychiatry Service of the Ministry of Health"[78], the professional qualifications of the State Forensic Psychiatry Service's forensic psychiatric experts, and forensic psychological experts shall be assessed every 5 years. The data of the qualification assessment shall be submitted to the Ministry of Justice of the

76 Law on Forensic Expertise of the Republic of Lithuania, 2002, No. IX-1161, available in Lithuanian at: https://bit.ly/3PHqBk8.
77 Law on Forensic Expertise of the Republic of Lithuania, 2002, No. IX-1161, available in Lithuanian at: https://bit.ly/3PHqBk8.
78 Approved by Order No. 12P-16 of the Director of the National Forensic Psychiatric Service, 15 October 2007.

Republic of Lithuania. The Annual Activity Plan of the National Forensic Psychiatric Service, which is approved by the Ministry of Health, foresees 4 in-service training events each year, i.e., 3 seminars and 1 international scientific practical conference.[79]

Paragraph 35 of the Regulations provides that, in order to ensure the rights of people with disabilities, experts shall carry out outpatient examinations not only at the experts' workplaces, but also in other places where the subject is present (e.g., in a healthcare institution, at the subject's home). Outpatient examinations at non-expert workplaces are usually carried out when the subject is not transportable, provided that there are suitable conditions for the examination at those places (if there are no such conditions, the expert informs the authority which appointed the examination).

The expert examination of each person with a mental or intellectual disability is carried out on an individual basis according to the complexity of the examined person's condition, the topic of their individual work, the number of psychometric instruments/tests required for the assessment, and the number of goals and objectives set for the assessment in the court's judgements. Each person ordered by the court to be examined is evaluated individually and takes part in the expert examination in person. The expert's report shall be evaluated by the court, and if the person concerned disagrees with the expert's report, they may apply to the court for a

79 Reply from the National Forensic Psychiatric Service No. 1S-259, 21 September 2022.

reasoned request for a further expert examination of his or her state of mind.[80]

However, qualitative research has shown that this may not always be effective in practice. Even though persons concerned may apply for a further examination, the documentation is very complicated and hard for them to understand:

> **„And even when these people get the documents themselves, they very often go to me – what is this? They do not understand the questions, they do not understand the procedure, they do not understand what it is for."**[81]

Between 2002 and 2021, forensic psychiatric and psychological experts carried out 23,950 examinations, including 20,520 on suspects, accused persons, defendants or convicted persons.[82]

80 Reply from the National Forensic Psychiatric Service No. 1S-259, 21 September 2022.
81 Quote from one of the semi-structured interviews.
82 Reply from the National Forensic Psychiatric Service No. 1S-259, 21 September 2022.

## 3.2.5. LEGAL CRITERION

The court decides whether the legal criterion is fulfilled, which is defined by two features – intellectual and volitional. The former means a person's inability to understand the essence of their actions or omissions, it is a mental state that deprives a person of the ability to fully perceive the essence and danger of their actions.[83] The latter criterion is about a person's ability to control their actions. This criterion is established when a person's will is violated due to a mental health condition or state of mind, i.e., a person is aware of the danger of their actions, but because of their mental state they cannot overcome the urge to commit a dangerous act. The most common mental health conditions of this type are kleptomania and pyromania.[84]

Legislation does not provide an exhaustive list of mental health conditions that may lead a person to misunderstand the essence of their actions and be found not criminally responsible. It is not enough to identify any mental health condition during the examination, it is necessary to assess its severity, impact, influence on a person's ability to understand or control their actions, and how their condition affects a person's thinking, behaviour, and awareness.[85]

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83 Soloveičikas, D. and Švedas, G. (2004) *Lietuvos Respublikos baudžiamojo kodekso komentaras. Bendroji dalis*, Vilnius: Justitia, p. 115.
84 Soloveičikas, D. and Švedas, G. (2004) *Lietuvos Respublikos baudžiamojo kodekso komentaras. Bendroji dalis*, Vilnius: Justitia, p. 115.
85 Ivanovas A. *Įtariamojo, kaltinamojo su psichikos sutrikimais teisių ir teisėtų interesų užtikrinimas.* Magistro baigiamasis darbas. Vilnius, 2006.

In practice, regardless, of the status of whether the person is deemed criminally responsible or not, they have the right to accessible information and effective communication[86]; however, in the Lithuanian justice system and processes, the simplified, accessible information, for example, in an easy-to-read format or Braille is significantly lacking. This was recently confirmed by previous research[87] and also during this study's interviews:

> **„In Lithuania, these issues are difficult, and if officers get any type of training at all – it is quite limited. From my experience of working with officers who interrogate suspects, they have the most experience with persons who are 'mute' or have a hearing disability, so they communicate through Sign language interpreters. But there are no such practices as how to present information in a simplified, comprehensible, easy to understand manner. Often it is done in a formal way, explained using legal terminology, or documents are simply provided in a written form: in English it is called the**

86 Article 44 of the Code of Criminal Proceedings of the Republic of Lithuania, No. IX-785, 14 March 2002. Available at: https://bit.ly/3tMjRdy.
87 Grigaitė, U. and Leonaitė, E. (2022) Voices for Justice: Victims of Crime with Disabilities in Lithuania. Research Report: https://bit.ly/45q2We5.

**Letter of Rights <...> It is super formal, a formal title but the content is also in its essence formal."**[88]

## 3.2.6. SPECIALISED TRAINING OF PROFESSIONALS

Given that intellectual and/or psychosocial disabilities can be detected or emerge at any stage of the criminal justice process, it is essential that law enforcement officials, prosecutors, judges and probation professionals are equipped to recognise and respond to the needs of persons with disabilities. However, the data provided by the institutions show that such competences are not universally addressed.

According to the Police Department, police officers and trainees of the Lithuanian Police School (LPS) participate in the following trainings:

- **„ Communication etiquette. People with disabilities" (The Lithuanian Association of People with Disabilities) - 278 officials and 26 LPS trainees completed the training in 2022.**
- **„Deaf Culture and the Ordering of Translation Services" (Lithuanian Sign Language Translation Centre) - 228 officers completed the training in 2022.**

88 Quote from one of the semi-structured interviews.

- **„Lithuanian Sign Language A1.1 Distance Learning Course" (Lithuanian Sign Language Translation Centre) - 20 officers completed the training.**[89]

According to the Prosecutor General's Office, training for prosecutors on various topics is ongoing. However, the qualitative research has revealed that many prosecutors do not have adequate skills or knowledge on how to communicate with persons with intellectual and/or psychosocial disabilities nor on the procedural safeguards recommended by the EC.

According to the Lithuanian National Courts Administration, in 2021, 33 judges and 6 assistant judges took part in the training organised by the Administration within the framework of the general skills training programme "Mental Health Literacy". During the training, participants were provided with information on topics such as "The concept of mental health and mental health disorder", "Mental health stigma, historical context, societal and legal implications", "Mood disorders and depression: signs, help options in Lithuania, communication peculiarities", "Psychosis and schizophrenia: Signs, help options in Lithuania, communication features", "Anxiety disorders: signs, help options in Lithuania, communication features" and "Psychological crises and suicide: signs, help options in Lithuania, communication features".

89 Reply from The Police Department under the Ministry of the Interior of the Republic of Lithuania No. 5-S-21981, 8 November, 2022.

In 2022, 25 judges took part in a seminar on "Vulnerable litigants: safeguarding interests in court proceedings and the peculiarities of communication". The seminar focused on the following topics: "Mental health, biopsychosocial paradigm of mental health. The provisions of the United Nations Convention on the Rights of Persons with Disabilities and their practical implementation", "Social and Human Rights Models of Disability. Person-centred approach, personal recovery paradigm", "Needs and support of persons with mental health problems and mental disorders experiencing different states", "Psychosocial disability and psychological distress. Crisis management and de-escalation techniques for acute psychological distress" and "Legal capacity and its realisation. The decision support model as a standard for human rights".[90]

Unlike judges, probation officers do not receive any special training or training on how to deal and communicate with persons with intellectual and/or psychosocial disabilities or diagnoses of mental health problems. However, as indicated by the institution itself, in some cases the Training Centre of the Prison Department of the Republic of Lithuania organises training events on similar topics, which may be attended by the officials of the Probation Service.[91]

90 Reply from Lithuanian National Courts Administration No. 4R-985-(1.13. Mr), 17 June 2022.
91 Reply from the Lithuanian Probation Service No. S-707, 30 May 2022.

According to the Migration Department, the staff dealing with asylum seekers undergo training by the European Union Asylum Agency before taking up their duties. The Migration Department organises training on specific topics related to the vulnerability of individuals, as well as internal training, as required by the staff.[92]

92 Reply from the Migration Department under the Ministry of the Interior of the Republic of Lithuania No. 10K-24047, 14 October 2022.

## 3.2.7. COMPULSORY MEDICAL TREATMENT

The application of criminal liability differs when a person is found to be 1) not criminally responsible and 2) partly criminally responsible. A person found to be not criminally responsible in a particular case shall not be prosecuted. In such cases, compulsory medical measures are imposed in accordance with Article 98 of the Criminal Code. A person declared partly incapable to be found criminally responsible shall be liable under criminal law; however, the sentence may be reduced, or a person may be released from criminal liability and may be subject to penal sanctions or compulsory medical measures.

The court imposes compulsory medical treatment prescribed in the Criminal Code of the Republic of Lithuania in three cases: 1) for persons found not criminally responsible (legally incapacitated), 2) for persons found partly criminally responsible (of diminished capacity)[93], and 3) for persons who, after committing a criminal act or having been imposed a penalty, develop a mental health condition rendering them incapable of understanding the nature of their actions or controlling them. After committing a serious or very serious crime and being found to be of diminished capacity, a person is

93 Compulsory medical treatment measures for people who were found partly criminally responsible can only be applied after pre-trial investigation has been completed and the case has been examined at a court hearing, as a mandatory condition is related to the resolution of the question of the guilt of such a person and the release from criminal liability. Bučiūnas, G., Gruodytė, E., Šalčius, M. (2017) Ikiteisminis tyrimas: procesiniai, kriminalistiniai ir praktiniai aspektai.

liable according to the criminal law, but the punishment may be reduced based on Article 59 of the Criminal Code. In this case, compulsory medical treatment is not imposed.

In the above cases, the court may apply one of the following compulsory medical treatment measures[94]:

1. **Out-patient observation under the conditions of primary mental health care;**
2. **In-patient observation under the conditions of a general observation at specialised mental health care establishments;**
3. **In-patient observation under the conditions of an enhanced observation at specialised mental health care establishments;**
4. **In-patient observation under the conditions of a strict observation at specialised mental health care establishments.**

94 Article 98 of the Criminal Code of the Republic of Lithuania,2000, No. VIII-1968. Available at: https://bit.ly/40gCcvw.

| COMPULSORY MEDICAL TREATMENT MEASURES | CONDITIONS OF APPLICATION |
|---|---|
| Out-patient observation under the conditions of primary mental health care | When it is not necessary to subject the person to observation and in-patient treatment due to the dangerousness of the committed act and their mental state or where this person may continue out-patient treatment after their mental state improves following in-patient treatment |
| In-patient observation under the conditions of a general observation at specialised mental health care establishments | When a person needs to be under observation and undergo treatment at a specialised in-patient treatment establishment due to their mental health condition |
| In-patient observation under the conditions of an enhanced observation at specialised mental health care establishments | When a person needs to be under observation and undergo treatment at a specialised in-patient treatment establishment due to the dangerousness of the committed act and their mental health condition |
| In-patient observation under the conditions of a strict observation at specialised mental health care establishments | When a person has committed an attempt against a person's life or health, is particularly dangerous to surrounding people due to their mental health condition and needs to be under observation and undergo treatment at a specialised in-patient treatment establishment |

As of May 2022, 352 persons were undergoing involuntary treatment in the Rokiškis Forensic Psychiatric Hospital. Of these, 281 have an established disability and 53 have established 'special needs'. However, the data do not reveal how many people are receiving treatment after being subjected to coercive medical measures by the court. Nevertheless, it has been established that between 2005 (the start of LITEKO[95]) and the end of 2021, 3,212 persons have been subjected to compulsory medical measures.[96]

| NO. | UNITS | 2021 | |
|---|---|---|---|
| | | NO. OF PATIENTS DISCHARGED | AVG. DURATION OF TREATMENT IN DAYS |
| 1. | Strict Observation Healthcare Unit | - | - |
| 2. | Enhanced Observation Healthcare Unit | 2 | 259,5 |
| 3. | General Observation Health Care Unit I | 46 | 702,7 |
| 4. | General Observation Health Care Unit II | 38 | 1114,1 |

95 In Lithuania all the information about each case heard in courts (procedural documents of parties to the proceedings, parties to the proceedings and other participants in the proceedings, the course of proceedings, procedural documents of court) is stored in the judicial information system called LITEKO. Since 2004 this system has been serviced and maintained by the Informatics Division of the National Courts Administration.

96 Reply from Lithuanian National Courts Administration No. 4R-985-(1.13. Mr), 17 June 2022.

| | | | |
|---|---|---|---|
| 5. | General Observation Health Care Unit III | 14 | 630,4 |
| 6. | General Observation Health Care Unit IV | 32 | 748,5 |
| 7. | Women and Children's Special Observation Care Unit. | 17 | 669 |
| **Total in specialised psychiatry:** | | **149** | **800,9** |
| 8. | Admissions and General Psychiatry Unit | 421 | 29,5 |
| **Total inpatient:** | | **570** | **231,2** |

Ministry of Health data, received 23 June 2022

Criminal proceedings become a process of applying compulsory medical treatment measures, if during the pre-trial investigation or during the hearing of the case in court, it is established that a person is not criminally responsible or is partly criminally responsible, or after the commission of the criminal act develop a mental health condition rendering them incapable of understanding the nature of their actions or controlling them.

It is important to note that sending a person for a forensic psychiatric examination is only allowed if there is sufficient evidence to show that the person in question has committed the very act prohibited by the criminal law under investigation.[97]

97 Article 396(1) of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

Article 394 of the CPC regulates the commencement of proceedings for compulsory medical measures. If it is established that the person is not criminally responsible, the prosecutor or the court shall take the following decisions:

1. **The pre-trial investigation officer transmits the investigation material to the prosecutor. Where there are grounds, the public prosecutor shall record a resolution to initiate proceedings for the application of compulsory medical measures and shall instruct the pre-trial investigation body to carry out the pre-trial investigation, or shall carry it out himself;**

2. **The judge or court makes an order in the course of the trial to initiate proceedings for compulsory medical measures.**

The judge shall refer the case to a trial after receiving it from the public prosecutor. The trial must include questioning of victims and witnesses, verification of other evidence that the person has committed an offence prohibited by criminal law, hearing an expert's opinion on the person's incapacity or diminished capacity (criminal responsibility), and verification of other circumstances that are essential for deciding whether to impose compulsory medical measures.[98]

98 Article 400(2)of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

The court decides on the compulsory medical measures by means of an order, which must resolve the following issues:

1. **Whether an act prohibited by criminal law has been committed;**
2. **Whether the act prohibited by criminal law was committed by the person whose case is being examined;**
3. **Whether the act prohibited by the criminal law was committed by the person concerned while he or she was incapacitated (not criminally responsible) or while his or her capacity was limited;**
4. **Whether, after the commission of the offence, the person has suffered a mental disorder which renders him or her incapable of understanding the substance of his or her acts or of controlling them, and whether this is not a temporary mental disorder which requires only an adjournment of the proceedings;**
5. **Whether a compulsory medical measure is to be imposed and which one.**[99]

It should be noted that a person can become not criminally responsible even after the imposition of a sentence. In such a case, the court shall make the following decisions:

99 Article 401 of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

1. **Before the judgment has become final and has been enforced, the court takes charge of the case and decides to start the process of applying compulsory medical measures;**

2. **Where the sentence has already been enforced, the court of the place of enforcement shall, on application by the executing authority, decide to initiate proceedings for the imposition of compulsory medical measures on the basis of the criminal record.**[100]

The basis for the transition from the pre-trial investigation in the general procedure to the process of application of compulsory medical treatment is the obtaining of the court psychiatric examination report[101], which states that: 1) at the time of committing a crime, a person was unable to appreciate the dangerous nature of the act or to control their behaviour; 2) a person develops a mental health condition after the commission of a criminal act before the case was brought to court; or 3) a person is 'mentally disturbed' at the time of the forensic psychiatric examination and there is no way to determine whether it occurred during the commission of the act or after it was committed.[102] It is notable that one of the research

100 Article 394 of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

101 Bučiūnas, G., Gruodytė, E., Šalčius, M. (2017) *Ikiteisminis tyrimas: procesiniai, kriminalistiniai ir praktiniai aspektai.*

102 Order of the Prosecutor General of the Republic of Lithuania "On the Recommendations on the Procedure for the Application of Compulsory Medical Measures in Pre-Trial Investigation", No I-125, 13 May 2013.

participants shared during the interview that they in fact rejected the proposal to have a forensic psychiatric examination in the past due to the negative reputation, which the Forensic Psychiatric Hospital had at the time related to over-medicalisation of patients (Interview No. 7).[103] Nevertheless, under the current legal framework, a person's consent is not required for an inpatient forensic psychiatric examination and the court decides whether it is appropriate to order one.

The person who is the subject of proceedings for compulsory medical measures acquires a new procedural status, different from that of a suspect or accused person. The Code of Criminal Procedure does not oblige the court or the public prosecutor to inform the person of the forensic psychiatric expert's report, nor to inform him/her of the referral of the case to trial: according to Article 399(1) of the Code of Criminal Procedure, the judge is obliged to inform the legal representatives of the person concerned or the members of his/her family or next-of-kin, as well as the defence and the public prosecutor of this fact, and to order the summoning of witnesses, the victims and the experts. It can be concluded that further pre-trial investigation and proceedings take place in the absence of such a person.[104] He or she may exercise the following rights in the proceedings:

103 Quote from one of the semi-structured interviews.

104 Stankūnaitė J. (2008) *Priverčiamųjų medicinos priemonių taikymo procesas: teorinės ir praktinės problemos.*

1. **Participate in the proceedings, if his/her state of health so permits (CCP 396(2);**
2. **To have a defence counsel from the moment of the adoption of the order for a psychiatric examination, if he/she has not previously participated in the proceedings on a general basis (CCP 396(3));**
3. **To appeal against a court order for the imposition of compulsory medical measures (but not a forensic psychiatric examination) (CCP 404);**
4. **To appeal against a court order to extend, modify or revoke a compulsory medical measure (CCP 405) attend a hearing on the application of compulsory medical measures or a hearing on the extension, modification or revocation of a measure (according to CCP 399(2) and 405(4), this depends not only on the person's state of health, but also on the judge's will).**

Compulsory medical treatment measures, although restricting freedom, are not considered a punishment. Compulsory medical treatment differs from punishment in terms of purpose, content and legal consequences: it is not intended to punish a person for committing a dangerous act; the act to which they apply is not considered criminal; the application of compulsory medical measures does not entail conviction and other consequences specified in the criminal law; they are assigned without specifying the term when their application must be terminated. The purpose of the

application of compulsory medical treatment is to treat a person who has committed an act prohibited by law, by supervising or isolating them from society during their treatment, in order to protect both society from possible dangerous acts of such a person, and the person who committed a prohibited act from the dangers that threaten themselves.[105]

The application of these measures belongs exclusively to the competence of the court, which, when choosing the type of a medical measure, takes into account the main criteria established by the criminal law, as well as the conclusion of the health care institution, which is of a recommendatory nature.[106] Article 98 of the Criminal Code establishes the possibility of applying ambulatory monitoring in the conditions of primary mental health care or inpatient monitoring in conditions of general or enhanced or strict monitoring in specialised mental health care institutions as needed. This article does not specify for which dangerous acts the court may impose any of the aforementioned compulsory medical measures.

According to the criminal law, the court has the discretion to decide on the need to apply compulsory medical measures to a person and to choose the type of such measures. On the other hand, the criminal law establishes the main criteria that the court takes into account when choosing the measures: 1) mental health condition and its severity, 2) the nature of the act committed, 3) danger

105 Decisions of the Supreme Court in criminal cases Nr. 2K-343-648/2015, 2K-328-648/2017.

106 Resolution of the Panevėžys Regional Court of 4 March 2022 in criminal case No 1S-20-366/2022.

that a person may pose to their own or others' life or health (the Supreme Court ruling in a criminal case No. 2K-343-648/2015) and two criteria that must be evaluated by the court when extending, changing or discontinuing the application of compulsory medical measures: 1) a person's mental health status, and 2) the social danger of the person related to it.[107]

What specific measures apply to an individual person who has committed an act prohibited by the Criminal Code, is decided by the court in accordance with the law, after assessing the degree of dangerousness of the act, the dangerousness of their personality and the conclusions of the psychiatric examination and the recommendations set out in those.

The outcome of a compulsory medical measures case depends on the person's condition and the outcome of the pre-trial investigation. According to Article 403 of the Code of Criminal Procedure, the court may issue one of the following orders:

1. **To impose a compulsory medical measure on a person - if it is proven that he or she has committed an act prohibited by criminal law while being not criminally responsible;**

2. **Exempting a person from criminal liability and imposing a compulsory medical measure on him or her - if it is proved that he or she has committed an**

107 Resolution of the Criminal Division of the Panevėžys Regional Court of 4 March 2022 in criminal case No 1S-20-366/2022.

act prohibited by criminal law while having limited capacity, in the case referred to in Article 18 of the Criminal Code of the Republic of Lithuania;

3. To suspend the proceedings or the execution of the sentence and to impose a compulsory medical measure, - where it is proved that, following the commission of the offence or the imposition of the sentence, the person's mental state has deteriorated and that he or she is unable to grasp the significance of the offence or to take control of the actions;

4. To discontinue the case and not impose a compulsory medical measure, - if it is proved that, in the light of the nature of the offence and the pathological state of the person, he or she is not a danger to society and does not require compulsory medical treatment;

5. Refer the case for a retrial - if the person is not found to be not criminally responsible or if the mental disorder is not such as to make it impossible to impose a sentence;

6. Dismiss the case - if it has not been proved that the person has committed an act prohibited by criminal law, or if there are circumstances which make the proceedings impossible (according to the Article 3 of the CCP).

The pre-trial investigation officer, in accordance with the provisions of Article 51 of the Code of Criminal Procedure, is obliged to ensure the right to defence of a person who, due to their mental state or mental 'deficiencies', or who has been declared 'incapacitated' (not criminally responsible), by adopting a decision declaring that the presence of a defence counsel in the defence of their rights and legitimate interests is necessary, and by contacting the State Guaranteed Legal Aid Office in order to have such a person's counsel appointed. In addition, in accordance with Article 53 of the Code of Criminal Procedure, the right of a suspect who has been declared incapacitated in accordance with the established procedure to have a legal representative[108] who can participate in the proceedings and defend their interests is guaranteed.

It is important to note that compulsory medical treatments (compulsory commitment regimes) do not have a fixed period of application. According to the law, a treatment shall be applied until the person recovers or their mental health condition improves and the person's danger to society disappears. However, the court must, at least once every six months, decide on the extension, change or revocation of the use of compulsory medical treatment. The court must inform the person whose case is pending, his or her legal representative, the

108 Pursuant to Article 53 of the Code of Criminal Procedure, the parents, adoptive parents, guardians, custodians, or persons authorised by the institution which has the custody or care of the suspect, accused, convicted person or victim may act as the legal representatives of a minor or of a suspected or accused person or of a person who lacks the necessary capacity.

defence counsel, the victim, his or her representative and the public prosecutor about the proceedings for the extension, modification or revocation of the compulsory medical measure, and the place and time of the hearing.[109] The burden of proof lies with the medical board that has to provide proof of the health state. The Code doesn't ensure a right to ask for a review, but a person can appeal the decision to continue the measures. The judge shall have the right to require the attendance at the hearing of a person whose compulsory medical measure is being extended, varied or revoked, provided that, according to the opinion of the medical board, the nature of his illness does not preclude it.

If the person is declared cured by a medical board, the court decides whether to revoke the coercive medical measure and whether to refer the case for pre-trial investigation or to refer the case to the courts for a general trial, or whether to send the person to continue serving the sentence.[110] The time spent in a healthcare facility shall be counted towards the period of detention and sentence. Since the court reviews the measures every six months, the Code of Criminal Procedure does not provide for the right of a person who has been subjected to compulsory medical measures to apply for a review of the decision or for the revocation of the compulsory medical measures.

109 Article 405(4) of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.
110 Article 406(1) of the Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

## 3.2.8. SERVING THE SENTENCE

A person with a psychosocial and/or intellectual disability may be found fully criminally responsible and, if found guilty of a crime, may be punished with imprisonment. In Lithuania, there is no separate imprisonment procedure for persons with disabilities, and there are no special places of deprivation of liberty adapted for this purpose. Pursuant to Article 76 of the Criminal Code, a person who is 'mentally disturbed' after committing a criminal act or being sentenced, and as a result of which they are incapable of understanding the nature of their actions or controlling them shall be released from serving the undischarged term of the sentence. In releasing this person from a penalty, the court shall decide whether to impose upon them compulsory medical treatment. In the event of convalescence of this person, they may be ordered to serve the undischarged term of the sentence. In such a case, the period during which the person was undergoing compulsory medical treatment shall be included in the term of a custodial sentence on a day-for-day basis.

If a person's mental health worsens while the sentence is already being served, the case regarding the exemption from the sentence and/or the application of compulsory medical treatment is considered by the court of the place of execution of the sentence. The court hearing must be attended by the prosecutor and defence counsel. Circumstances that are of fundamental importance in deciding on the application of compulsory medical measures are determined at the court hearing: an expert's opinion on the mental state of the convicted

person is heard, employees of the penal institution and other persons are questioned, as well as other data on the behaviour of the convicted person after the imposition of the sentence are checked. The court must resolve the following questions when issuing a ruling: 1) whether the convicted person has a mental health condition after the imposition of the sentence and, as a result, cannot understand the essence of their actions or control them; 2) whether and what compulsory medical measures are applicable to the convicted person.

Pursuant to the order of the Minister of Justice of the Republic of Lithuania 'Description of the procedure for checking the health status of convicts with serious incurable or mental illness', a convict serving a sentence of arrest or deprivation of liberty, for whom the doctor of the place of deprivation of liberty suspects a serious incurable physical illness or mental health condition, due to which they are unable to understand the essence of their actions and control them, is brought to the Central Prison Hospital for a medical check-up.[111] The doctor, who has checked the state of health of the convicted person and found that they have a mental health condition, due to which they cannot understand the essence of their actions and control them, notes this in the medical record of the convicted person's medical history and submits its extract to the head of the Central Prison Hospital. After receiving the specified documents, the head of the

111 Order of the Minister of Justice of the Republic of Lithuania and the Minister of Health of the Republic of Lithuania "On the Approval of the Procedures for the Examination of the Health Condition of Convicted Prisoners with Serious Incurable or Mental Illnesses, No 1R-308/V-1247, 27 December 2013. Available in Lithuanian at: https://bit.ly/3tm3Mel.

institution carrying out the sentence of public service or restriction of liberty and the head of the Central Prison Hospital shall, within 3 working days, submit the legal documents to the court regarding the initiation of the process of applying compulsory medical measures to the convict.

However, interviews with professionals have revealed that compulsory medical measures are used extremely rarely in such cases:

> **„I do not know what they should do to themselves in order to actually be exempt from their penalty."**[112]

Persons with intellectual and/or psychosocial disabilities who are not recognised as not criminally responsible and who are sentenced to imprisonment face difficulties in serving their sentence due to inadequate training on the part of the officials and inadequate detention conditions:

> **„One was a child, but with mild 'mental retardation', and they didn't declare him not criminally responsible, they left him to serve his sentence, but, well, his behaviour still stands out, and he needs to be supervised, and that's the training of the officers, and, well, no, the officers**

112 Quote from one of the semi-structured interviews.

**aren't fully trained to understand what a 'mental disorder' is."**[113]

**„Even while he is waiting for the trial and for the verdict, it is clear that the prison is a cell type, so there was still some negotiation, so that he cannot be with others, for example. Well, it is dangerous to keep him even with others, it is dangerous either for the others or for him. So, with a cell type prison, you can still have some sort of arrangement, but if they go out, and they go mostly to a shared correctional facilities somewhere, it's all sorts of things there."**[114]

As a result of the inadequate conditions of detention, persons suffer both physically and psychologically, and are also subjected to bullying by other inmates. Lack of specialised knowledge on the part of officers means that those prone to aggression are subdued by special measures such as isolation. The inability of inmates with intellectual and/or psychosocial disabilities to understand the prevailing order provokes the anger of the officers and their desire to desperately tame and enforce the prescribed behaviour (Interview No. 3).[115]

113 Quote from one of the semi-structured interviews.
114 Quote from one of the semi-structured interviews.
115 Quote from one of the semi-structured interviews.

Additionally, interviews with persons with intellectual and/or psychosocial disabilities, who formerly had served their prison sentences, revealed that a significant lack of needed supports exist for re-socialisation, and in general, at the end of serving prison sentences: one person shared that they ended up being homeless for several months following leaving the prison; and another person said that the only support they received as they were leaving the prison was a small amount of money to cover their public transport fee.

## 3.3. NATIONAL FRAMEWORK CONCERNING ALTERNATIVES AND PROBATION

The Lithuanian Criminal Law provides for the following alternative sanctions in regards to prison sentence:

- **Community Service** (Article 46 of the CC). It may be imposed for a period from one month up to one year and only with the consent of the convict. Where after a judgement becomes effective a person refuses to perform community service, a court shall, on the recommendation of the institution executing the penalty, replace community service with a fine or arrest.
- **Fine** (Article 47 of the CC). A fine shall be a pecuniary penalty imposed by a court in the cases provided for in the Criminal Code. Where a person does not possess sufficient funds to pay a fine imposed by a court, the court may, in compliance with the rules stipulated in Article 65 of this Code and subject to the convict's consent, replace this penalty with community service. Where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with an arrest.
- **Restriction of Liberty** (Article 48 of the CC). Restriction of liberty may be imposed for a period from three months up to two years. When imposing such a penalty, the court usually assigns the defendant intensive supervision - control of the location of the convicted person for a set period of time by means

of electronic monitoring. The place and time of the convicted person's stay is determined by the court.

– A court may also impose one or more prohibitive or mandatory injunctions in respect of a person upon whom the penalty of restriction of liberty has been imposed: 1) to refrain from visiting certain places; 2) to refrain from communicating with certain individuals or groups of individuals; 3) not to own, use, acquire, store on one's own or transfer for safekeeping to other persons certain items; 4) use psychoactive substances; 5) to compensate, fully or in part, for the property damage incurred by a criminal act or to eliminate such damage with his own work; 6) to take up employment or register at the Lithuanian Employment Service, or to study; 7) to undergo a treatment for alcohol addition, drug addiction, addiction to toxic substances or for a sexually transmitted disease, where the convicted person agrees to it; 8) to work for no remuneration for up to 200 hours within a period laid down by a court, but not exceeding the term of restriction of liberty at health care, social care and guardianship establishments or non-state organisations caring for persons with disabilities, older people or other persons in need of assistance; 9) participate in the correctional and motivational programs.

– **Probation** (Lt. probacija; lygtinis nuteisimas): the convicted person is supervised outside the prison. Such a supervision may vary greatly, depending on many specific circumstances and types of sentences. Generally, the probationer must regularly visit their probation officer, comply with the obligations

assigned to them, be regularly tested (for example, for drug use), and may be subject to certain restrictions (for example, freedom of movement and the right to engage in certain work or other activities). The National Probation Service in Lithuania is regulated by the Law on Probation.

– According to this law, the purpose of probation is to ensure effective resocialization of probationers and to reduce their recidivism. The grounds for probation are: 1) a final guilty verdict by which the convicted person was sentenced to arrest or imprisonment and its execution was postponed, and the judge's order to execute the sentence; 2) conditional release of the convicted person from the correctional institution.

During the interviews, research participants from the Probation Service shared that during their years of practice, they have not encountered or worked with many persons with intellectual and/or psychosocial disabilities, only a few. According to one interviewee, usually in such cases, they just slightly adapt or simplify the same general programmes, which they use with everyone else:

**„Since we have programmes related to behaviour, i.e., behavioural change programmes, so we simply adapted those programmes a little bit, we explained more, how to complete those tasks <…> we tried to do everything more through talking, through conversation, so that they had to write less <…>. But we somehow talked more,**

**explained more, we provided those same materials in a simplified way."**[116]

However, if the Probation Office finds reasons why the conditions imposed by the court cannot be fulfilled, it may apply to the court to modify the conditions imposed by the court in other ways.

It must be noted that the listed alternative sanctions and probation are applicable to everyone. The national legal regulation does not distinguish the sanctions applied to persons with disabilities nor does it establish special procedures for such persons. In addition, institutions in Lithuania do not collect data on individuals' intellectual and/or psychosocial disabilities, so currently there is no way to review related statistics.

## 3.3.1. NATIONAL POLICY FRAMEWORK

The Ministry of Justice carries out an analysis of legislation related to the right to execute sentences and the execution of pre-trial detention, as well as the activities of the Prisons' Department under the Ministry of Justice of the Republic of Lithuania, the state of legal norms and their effectiveness, as well as prospects for their development. The Ministry helps to organise and coordinate the execution of sentences and pre-trial detention, the integration of convicted persons into society; analyses the activities of the Prisons' Department and its subordinate institutions and state enterprises, as

116 Quote from one of the semi-structured interviews.

well as prepares drafts of legal acts in the areas of the law of execution of sentences and the execution of pre-trial detention. Also, it submits proposals for the amendment (improvement) or invalidation of legal acts, implements legislation related to the execution of sentences and pre-trial detention, analyses and provides conclusions.

The Prisons' Department is an institution under the Ministry of Justice, whose purpose is to methodically manage and control the activities of probation services and prisons. There are 11 penal institutions subordinate to the Prisons' Department enforcing pre-trial detention sanctions and custodial sentences imposed by the court; five county probation services that are responsible for the execution of sentences alternatives to imprisonment and supervision of persons released on parole. The Training Centre of the Prisons' Department organises the training of the newly hired staff of the institutions subordinate to the Department. From 2023, the Prisons' Department and its subordinate institutions will be reorganised and will make a single legal entity, i.e. the Prisons' Service of Lithuania.

Despite the fact that various trainings are organised for pre-trial investigators, prosecutors and court representatives in order to increase their competences and specialised knowledge, there is no data on regular special trainings for officers about mental health, intellectual and/or psychosocial disabilities nor disability rights. It is also important to note, that several participants in this research (professionals) during interviews used such terminology as 'mental retardation' (Lt. protinis atsilikimas), and the issue that specialised

knowledge is lacking in this field was also referred to by research participants in interviews:

> **„I think that possibly there should be specific specialists, who would be familiar with various types of impairments and would help those people integrate, for example, in Probation Services <…> so that they can provide accessible information to them. Not with some terminology, which they do not understand, just in a more accessible way."**[117]

> **„But in essence, they are not all the same. And so, then an individual approach [is needed] <…> the moment of identifying problems, identifying who this is, and to understand who you are working with <…>. And the only way out is education of officers, I do not see any other way <…>. But there is this 'tradition' that the Training Centre for Officers is oriented that, if there is a mention of the part of the word 'psycho-' then as if it is only for psychologists. In the best possible case scenario maybe for social workers, but definitely not for**

117 Quote from one of the semi-structured interviews.

**officers, not for those who in their daily work are responsible for security and similar. So, this is needed, definitely, yes."**[118]

In addition, no working group has been established or action plans prepared in Lithuania to improve the situation of defendants and detainees with intellectual and/or psychosocial disabilities in the criminal justice process up to current date.

118 Quote from one of the semi-structured interviews.

# 4. KEY RECOMMENDATIONS

- To start collecting systemised and disaggregated data in the criminal justice system on suspects, accused, detained and sentenced persons with any type of disability, and especially persons with mental health conditions, psychosocial and/or intellectual disabilities, due to their potentially higher levels of vulnerability. This is recommended both in the context of the general national collection of statistics, and also in the monitoring of the cross-border cases and procedures.

- To establish a comprehensive procedure for recognition, assessment and provision of necessary individual supports needed by more vulnerable persons, who are suspected or accused of committing a crime or detained or sentenced, including cases, where persons with mental health conditions, psychosocial and/or intellectual disabilities are involved.

- To implement the European Commission's recommendations on procedural guarantees for vulnerable persons suspected or accused in criminal cases in Lithuanian criminal justice system and procedures.

- **To ensure that correctional facilities, including prisons in Lithuania are accessible, have needed supports and reasonable accommodations (physical, informational, attitudinal, medical, and other) in place for persons with mental health conditions, psychosocial and/or intellectual disabilities.**

- **To ensure regular and consistent quality training and continuous professional development for professionals and officers in the criminal justice system about mental health and disability rights, as well as about communicating and working with suspects, accused persons, defendants, detainees, and convicted persons with mental health conditions, psychosocial and/or intellectual disabilities.**

# 5. BIBLIOGRAPHY

## 5.1. LEGISLATIVE INSTRUMENTS

The Criminal Code of the Republic of Lithuania, 2000, No. VIII-1968. Available at: https://bit.ly/40gCcvw.

Draft law amending Article 140 of the Code of Criminal Procedure, No. XIVP-109(2), 2020. Available in Lithuanian at: https://bit.ly/3PLfF5j.

Law on Forensic Expertise of the Republic of Lithuania, 2002, No. IX-1161, available in Lithuanian at: https://shorturl.at/FKQ68.

Law on the Social Integration of Persons with Disabilities, 2004, No. 83-2983, available at: https://bit.ly/45UnhbI.

European Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02). Available at: https://bit.ly/48JeiN9.

Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures between Member States (2002/584/JHA).

United Nations. Convention on the Rights of Persons with Disabilities, 2006. Available at: https://bit.ly/3RQYYb6.

The Code of Criminal Procedure of the Republic of Lithuania, 2002, No. IX-785. Available at: https://bit.ly/3tMjRdy.

Order of the Minister of Justice of the Republic of Lithuania and the Minister of Health of the Republic of Lithuania "On the Approval of the Procedures for the Examination of the Health Condition of Convicted Prisoners with Serious Incurable or Mental Illnesses, No 1R-308/V-1247, 27 December 2013. Available in Lithuanian at: https://shorturl.at/bkHJ8.

Order of the Minister of the Interior of the Republic of Lithuania "On the Organisation and Execution of the Surrender or Transfer of Sentenced Persons in Connection With the Execution of Judgments of the Courts of the Member States of the European Union on the Recognition of Custodial Sentences", No. 7395, 1V-289, 8 April 2021. Available in Lithuanian at: https://shorturl.at/jnsv2.

Order of the Prosecutor General of the Republic of Lithuania No I-125 of 13 May 2013 "On the Recommendations on the Procedure for the Application of Compulsory Medical Measures in Pre-Trial Investigation", 2013.

Law of the Republic of Lithuania on Mutual Recognition and Enforcement of Judgments in Criminal Matters between Member States of the European Union, No. XII-1322, 13 November 2014. Available at: https://bit.ly/3Qhvjpg.

## 5.2. CASE-LAW

Court of Justice of the European Union. Judgment of 11 April, 2013 in the cases Ring and Skouboe Werge C-335/11 and C-337/11.

Ruling of the Supreme Court of Lithuania of 19 September 2011 in Criminal case No. 2K-376/2011.

Ruling of the Supreme Court of Lithuania of 2 October 2012 in

Criminal case No. 2K-417/2012.

Ruling of the Supreme Court of Lithuania of 3 February 2021 in Criminal case No. 2K-5-976/2021.

Resolution of the Panevėžys Regional Court of 4 March 2022 in criminal case No 1S-20-366/2022.

Resolution of the Criminal Division of the Panevėžys Regional Court of 4 March 2022 in criminal case No 1S-20-366/2022.

Ruling of the Vilnius Regional Court of Lithuania of 26 January 2016 in Criminal Case No 1S137-1020/2016.

## 5.3. LITERATURE (INCLUDING UN REPORTS AND OTHER DOCUMENTS)

Abramavičius A., et al. (2011) *Baudžiamoji teisė*. General Part, p. 186.

Abramavičius A., et al. (2004) *Lietuvos Respublikos baudžiamojo kodekso komentaras*, p. 115.

Andriukaitis G., Guliakaitė M. (2021) *Country report on non-discrimination (Lithuania). Transposition and implementation at national level of Council Directives 2000/43 and 2000/78*. Available in English at: https://bit.ly/46JoUtG.

Bučiūnas, G., Gruodytė, E., Šalčius, M. (2017) *Ikiteisminis tyrimas: procesiniai, kriminalistiniai ir praktiniai aspektai*.

Soloveičikas, D. and Švedas, G. (2004) *Lietuvos Respublikos baudžiamojo kodekso komentaras. Bendroji dalis*, Vilnius: Justitia, p. 115.

Goda, G., et al. (2003) *Baudžiamojo proceso kodekso komentaras*.

Goda, G., Kazlauskas M. and Kuconis, P. (2011) *Baudžiamojo proceso teisė*.

Grigaitė, U. and Leonaitė, E. (2022) *Voices for Justice: Victims of Crime with Disabilities in Lithuania. Research Report*. Available in English at: https://bit.ly/45q2We5.

UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania, CRPD/C/LTU/CO/1*. Available in English at: https://bit.ly/46qyXE4.

Juodkaitė D. (2017) *Persons with Intellectual And/or Psychosocial Disabilities. Strengthening Procedural Rights in Criminal Law. Analysis of the Situation in Lithuania*. Available in Lithuanian at: https://bit.ly/3FbN6cj.

Lithuanian Institute of Law: collective of authors (2015) *Alternative Penalties In The European Union*. Available in Lithuanian at: https://bit.ly/3Mi9vsz.

Liutkevičius K. (2012) *Sulaikymo ir suėmimo reglamentavimas ir taikymas Lietuvoje*. Available in Lithuanian at: https://bit.ly/3ZPxYLf.

Ludwig Boltzmann Institute of Human Rights, et al. (2018) *Dignity in Court: Strengthening the Procedural Rights of Persons with Intellectual and/or Psychosocial Disabilities in Criminal Proceedings*, p. 78. Available in Lithuanian at: https://bit.ly/3LUGMJZ.

Kanapeckaitė J. (2003) *Įtariamųjų (kaltinamųjų) fiziniai arba psichiniai trūkumai bei jų reikšmė įgyvendinant teisę į gynybą.*

Kanapeckaitė J. *Baudžiamasis procesas dėl nusikalstamų veikų, kuriomis įtariami (kaltinami) asmenys su fiziniais ar psichikos trūkumais (sutrikimais)*: daktaro dis. soc. mokslai: teisė (01S) / LTU. - V., 2004

Radavičius L. E. (2004) *Teisės psichiatrija: istorija ir dabartis*. Vilnius: Mykolo Romerio universitetas, p. 67-68.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2014), Report to the Lithuanian Government on the visit to Lithuania. Available in English at: https://rm.coe.int/1680697367.

Lietuvos Respublikos generalinė prokuratūra (2022) *Activity Report 2021*. Available in Lithuanian at: https://bit.ly/45qn3sC.

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