

# Human rights analysis from the constitutional perspective in Lithuanian national law context

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## Annotation

In every legal state, the main focus is on guaranteeing human rights. One of the main goals of civil society is to protect and guarantee human rights. It is not uncommon for members of society to pursue collective goals - real national security, national welfare, growth of the gross national product. In certain cases, priority should not be given to the collective, but rather to the personal interest - the right of the individual. Regardless of the collective dimension of all human rights and the fact that individuals are part of a certain group, human rights must be understood as a counterbalance to the state and the group. The social dimension always marks human rights. Human rights require a certain basis - a legal system. Human theses are widely held opinions, functioning norms and international order. All rights arise in certain historical circumstances. Rights are people's demands that have the characteristics of historical and social formation. They are personally approved by the will of men, or accepted and recognized by certain traditions, institutions, and means, or by historically determined theories of human needs and human aspirations, or by human conceptions of divine plan and purposes.

**Keywords:** *human rights, legal system, institutions protecting human rights.*

## Introduction

Relevance of the topic. The relevance is determined by the fact that, today, the activities of various organizations or state institutions are evaluated taking into account human rights. There is no doubt that a democratic social order necessarily unconditionally respects human rights and helps to implement them. Humanistic theories of recent times are generally based on the fact that a person has basic and immutable rights and freedoms that are inseparable from his person from birth. Human nature is the primary source of natural rights and freedoms. This means that human rights and freedoms do not arise by the will of the state, but a person acquires them at birth. These rights are not separated from the individual; they are not connected to the territory or the nation. A person has natural rights regardless of whether they are enshrined in state legislation or not (Anciuvienė, 2002).

A democratic state must not only declare universally recognized and cherished human rights, but must also create conditions and guarantees to implement and ensure them. In this way, the state gives every member of society the opportunity to realize their natural rights, while also creating a legal apparatus that protects these rights. The state becomes a mechanism of means and institutions, which is intended to act in the interests of individuals.

**The object of the research** - human rights from the constitutional perspective.

**The aim of the work** - is to analyze human rights from the constitutional perspective in Lithuanian national law.

**Research methods.** Systematic, analytical, logical, teleological, summarizing and document analysis.

## Analysis of scientific literature

Concept and development of human rights History had a decisive influence on the development of the

Lithuanian doctrine of human rights. Only after regaining its independence after the occupation of the Russian Empire, Lithuania was again able to create law independently. The works of M. Romeris, who tried to bring Lithuania back to the fold of the constitutional tradition of European states, had a great impact on the influence of constitutional law (Jarašiūnas, 2011). As Lithuania was unable to participate in the process of human rights development for many decades, immediately after regaining its independence, it had to integrate many provisions of international law into various areas of constitutional law. In 1992, the Constitution of the Republic of Lithuania created based on the documents of the United Nations Organization and the Council of Europe (Birmontienė, et. al. 2001; Björgvinsson, 2016).

The International Catalog of Human Rights, which includes civil, political and social, economic, cultural rights, was first published in the Society's Declaration of Human Rights. This declaration defines the fundamental rights of every human being: the right to life, the right to the protection of personal liberty and personal integrity, protection from torture, equality before the law, protection from discrimination, judicial protection of rights, public and fair trial, protection of personal and family life, correspondence confidentiality, the right to choose a place of residence, the right to freedom of thought, conscience and religion, etc. (Boyle, 2018). A person has not only rights, but also responsibilities in society: exercising his rights. and in the exercise of his liberties, every person shall not be subject to any other restrictions than those prescribed by law, designed only to secure due recognition and respect for the rights and liberties of others, in order to meet the just needs of morality, public order, and the general welfare. in a democratic society. One of the main features of rights is their commonality, universality, indivisibility, they condition each other. Human rights can be understood in various ways as individual freedoms in society and opportunities to realize them. These rights are regulated by laws and other social norms. As already mentioned, one of the main features of human rights is their universality, indivisibility, they are mutually conditioning for everyone, regardless of their individual characteristics (race, nationality, gender, age, etc.). Human rights can also be defined. as social values, moral norms, the purpose of which is to protect human dignity. Human rights can be defined as societal values - the freedoms and privileges that a person can claim "as their right" in every society in which they live. The concept of human rights is closely related to the concept of human dignity. The doctrine of human rights is based on the assumption that the dignity of all people is equal, the purpose of human rights is to protect human dignity. In court practice, there are discussions about the difference between the concepts of law and freedom. From the point of view of law, there is no big difference between human rights and freedom, because freedom is also a right, only in another sphere of human activity, in which the state cannot interfere. The current system of human rights reflects the philosophical and legal ideas of several centuries (Anciuvienė, 2002). Throughout the development of human rights, the three most important aspects of human rights have been developed - human integrity, freedom and equality, and respect for the dignity of every human being. During this process, idealistic aspirations became not only a part of some legal acts, a component of individual state legal systems, but turned into an international human rights protection system.

Human rights are very diverse, in order to get to know them, to analyze their features, they are usually divided into certain groups according to various criteria. Human rights can be divided according to the nature of the establishment of rights, according to their content, according to the groups of subjects for whom they are intended, according to the possibilities of limiting rights, according to the historical conditions of their formation and other criteria.

1. According to the nature of the legal establishment of human rights, they can be divided into basic, constitutional, established in constitutions, and formed in other legal acts. Special attention is paid to the protection of constitutional rights; their protection is also guaranteed by constitutional supervision institutions (Kūris, 2006).
2. According to the possibilities of limiting rights, they can be classified as absolute, i.e. i.e. unrestricted and rights that may be restricted under certain conditions, such as freedom, property, right to information, etc.
3. Rights can also be divided according to the special entities for which they are intended, for example: children, disabled persons, etc. (Kūris, 2006).

4. Generally, human rights are intended for individuals, but in some cases collective rights can also be discussed, for example: the rights of national minorities, etc. i.e. However, human rights remain individual, only sometimes they can be used together with others (Social state in constitutional law..., 2006).

In constitutional Europe, the prevailing opinion was that the state should not interfere in the implementation of basic human rights, and that the state should give guarantees to the individual and implement certain measures to enable the individual to use the rights.

More than twenty years after the restoration of Lithuania's independence is enough time to evaluate the reform process, its trends and results in the state of Lithuania. The Seimas of the Republic of Lithuania adopted the most important laws and other legal acts that ensure the implementation of individual rights and freedoms, laid the foundations for the training of new specialists, the activities of reformed and newly established legal institutions, etc. Human rights are enshrined in the Constitution in accordance with the provisions of international law in force. Paradoxically, the application of the same laws and even the provisions of the Constitution guaranteeing human rights and freedoms determined by the attitude towards the place of individuals in society (property status, education, positions in the government hierarchy). Therefore, it is understandable that the further, the more important the profession becomes, the profession of a lawyer, which helps a person in the confusing labyrinth of laws, to guarantee the protection or defense of his rights.

The principle of the rule of law enshrined in the basic laws of modern democratic countries states that the actions of government and people are defined by the law and all subjects of legal relations must obey it. It is asserted that the mission of the modern rule of law is not only to serve by ensuring the rule of law, but also, based on the law, to take active actions that ensure long-term social progress: to solidarize society, to organize the assistance of its members to each other. It is known that each member of society has certain characteristics and performs certain functions. Therefore, it is not surprising that certain characteristics of a person determine his status in the social system, and certain activities determine his role.

It is asserted that the mission of the modern legal state is not only to serve to ensure the rule of law, but also, based on the law, to take active actions that ensure long-term social progress: to solidarize society, to organize the assistance of its members to each other. It is known that each member of society has certain characteristics and performs certain functions. Therefore, it is not surprising that certain characteristics of a person determine his status in the social system, and certain activities determine his role. A person's place in society is defined only by his status and role. It is also obvious that every member of society operates in a certain social and economic context of society, which consists of the main social institutions - the constitution, the economic regime, the legal order and its definition, the nature of property, etc.

The protection of human rights and their implementation is the most fundamental and permanent problem of human existence, which encompasses all others. Therefore, everything that man has done in history and continues to do is just the same, never-ending effort to guarantee the protection and development of his rights in ever-new historical conditions. Today, the state of human rights in Lithuania is discussed as a legal issue, i.e. i.e. what laws and what legal mechanism protects and defends human rights. It can be asserted that the real problems do not start when human rights were enshrined in the Constitution, but when they are tried to be implemented and defended in the event of a violation. Even now, the state of human rights in Lithuania today is determined not so much by the legal protection mechanism, but rather by the increasing economic disability of the majority of the nation, unemployment, crime, arbitrariness of officials, corruption and the known powerlessness of the government in fighting these factors (Human rights in Lithuania..., 2018).

### **Institutions protecting human rights**

The main guarantor of human rights in the legal system of the Republic of Lithuania is the regulation of human rights in the Constitution of the Republic of Lithuania. It provides an extensive catalog of

civil and political, social, economic and cultural rights and freedoms (Constitution of the Republic of Lithuania..., 1992). It is the duty of every democratic state to respect human rights and ensure their protection. Both the constitutions of democratic states and international treaties establish that human rights and freedoms are natural. Therefore, when regulating them, determining the circumstances of their limitation, and providing for the procedure for their implementation, it is necessary to maintain respect for human rights and in no way establish such regulation that would deny the natural nature of human rights or make their implementation dependent on the legal decisions of state institutions, officials or others. It should be noted that all human rights and freedoms enshrined in the Constitution form a common, harmonious system. This principle states that all human rights and freedoms are equally important. Therefore, it cannot be said that political rights are more important or should be protected more than social rights. States and their institutions must ensure the protection of all human rights (Spruogis, 2004).

Human rights are quite widely regulated by the Constitution of the Republic of Lithuania, laws and international treaties, although the system of their implementation is particularly important - a real opportunity to use human rights and defend them. The Constitutional Court of the Republic of Lithuania stated that "in the Constitution, the state obliges to respect human rights and freedoms, to ensure their protection against illegal encroachment or limitation with rights, material and organizational means." The state is constitutionally obliged to ensure the protection of human rights and freedoms from illegal encroachment or restriction by means of rights, material and organizational means, and to establish sufficient measures for the protection and defense of human rights and freedoms. Thus, respect for human rights, their recognition, as a public value and the state's commitment to them are one of the most important features of modern democratic states (Widhaber, 2004).

There are many state institutions operating in the Republic of Lithuania, whose activities must contribute to ensuring the human rights enshrined in the Constitution. The functions performed by some of them contribute to the protection of most constitutional human rights and freedoms, while the activities of others are only related to the protection of some rights. However, it is necessary to emphasize that the abundance of institutions and the establishment of new institutions do not yet indicate that various human rights are less violated in Lithuania, and their protection has become more effective. Thus, it is necessary to create such a human rights protection system that would be effective and ensure the protection of human rights and freedoms enshrined in the Constitution. Institutions protecting human rights can be divided into national and international (). It can be concluded that those institutions differ from each other in their competence and legal decision-making. Thus, if it is believed that the fundamental rights have been violated, it is possible to seek help from various institutions or bodies of the member states, or, in certain cases, from the EU institutions. This section provides information on the authorities to contact in the event of a violation of fundamental rights (Jočienė, 2010).

The following are named: 1. National human rights institution - occupies a special place in the system of human rights protection institutions. The status, competence, formation procedures and term of authority of the members of the institution should be established in the highest legal act, thus not violating the principle of independence of this institution. Consolidation of human rights monitoring as the main function of national human rights institutions ensures the effectiveness of these institutions in the protection of human rights (Alston, et. al., 2013). 2. Ombudsman institution - is an institution provided for in the Constitution or the law, led by an independent, highly qualified official accountable to the parliament, who investigates citizens' complaints about inappropriate actions of officials of state institutions or initiates an investigation on his own initiative, and has the authority to conduct an investigation, to make recommendations indicating how to restore citizens' rights have been violated or to prevent their violation, and prepare reports. 3. Institution of Seimas inspectors - Seimas inspectors investigate complaints of applicants regarding abuse of officials, bureaucracy or other violations of human rights and freedoms in the field of public administration. Auditors of the Seimas do not investigate the activities of the President of the Republic, members of the Seimas, the Prime Minister, the Government, the state auditor and judges of the Constitutional Court and other courts and municipal councils. Seimas inspectors do not investigate complaints about labor legal relations, nor do they check the validity and legality of decisions, judgments and rulings made by courts. 4. Office of the

Equal Opportunities Controller in Lithuania - investigates complaints about direct or indirect discrimination, harassment and sexual harassment and provides related objective and impartial consultations.<sup>5</sup> The institution of the child rights protection controller in Lithuania - one of the main rights and duties and functions of the child rights protection controller is to monitor the implementation of children's rights in accordance with the UN Convention on the Protection of Children's Rights, as well as to submit proposals to the President, the Government, the Seimas regarding valid legal acts related to the protection of children's rights protection, amendment and preparation or adoption of new legislation. <sup>6</sup> Controller institutions in Lithuania - investigate complaints of applicants regarding abuse of officials, bureaucracy or otherwise violating human rights and freedoms in the field of public administration. The applicant is a natural or legal person who applies to the Seimas controller with complaints about abuse of officials or bureaucracy. <sup>7</sup> Equal Opportunities Controller - investigates complaints and conducts investigations on his own initiative and provides advice on enquiries, conducts independent investigations related to cases of discrimination and independent reviews of the state of discrimination, publishes independent reports, provides conclusions and recommendations on any issues related to discrimination in relation to this Act implementation, as well as proposals to the state and municipal institutions and institutions of the Republic of Lithuania regarding the improvement of legal acts and policy priorities for the implementation of equal rights, carries out preventive activities and educational dissemination of equal opportunities. <sup>8</sup> The court is an institutional guarantee of human rights - state power in Lithuania is exercised by the Seimas, the President of the Republic and the Government, and the courts. The judiciary is one of the powers enshrined in the Constitution, which is entrusted with the administration of justice. "The execution of justice is the exclusive function of the court, which determines the place of this authority in the system of state authorities, its relationship with other authorities".

## Research result and their discussion

In order to properly implement and protect human rights, both the legal framework of the state and practical measures to ensure the protection of rights are important. However, the responsibility of the citizen and every member of society and respect for human rights is no less important (Diver, et. al., 2016).

Equal opportunities are human rights. Implementation without discrimination based on gender, age, sexual orientation, disability, race or ethnicity, religion, beliefs, social status, origin, language and other grounds provided for in the treaties or laws of the Republic of Lithuania.

Thus, legal perspectives of human rights are usually researched in Lithuania, more concentrated on their realization, and much less, attention is paid to political research of human rights aspects, which leads to the assumption that there is a scientific research vacuum in this field. Lithuania cannot boast of a long-standing practice of independent human rights monitoring. There is no established and functioning National Human Rights Institution in Lithuania that would monitor the overall human rights situation. Lithuania is interested in strengthening the United Nations as a center of collective security and international law, capable of responding more flexibly to the changing threats of the modern world (Cassel, 2001).

The protection of human rights is one of the main objectives of the Council of Europe. The Council of Europe develops and improves European standards for the protection of human rights, as well as analyzes threats to human rights and seeks ways to avoid or prevent them. Lithuania supports the application of the highest standards of human rights and freedoms in EU law, the activities of institutions and the policy of external relations. It is carried out by the Controller of the Seimas of the Republic of Lithuania

## Conclusions

1. Human rights theory recognizes the fact that how respect for human rights is observed is influenced by an ever-changing, dynamic social environment. Therefore, it is necessary to constantly

monitor the implementation of human rights in society, in order to create effective mechanisms for human rights monitoring and prevention of violations.

2. New international human rights conventions and other international documents are adopted, which increasingly strengthen the protection of persons from vulnerable groups. There are various mechanisms applied both nationally and internationally, thanks to which the general situation of the implementation of human rights and the situation of the rights of individual social groups are monitored.
3. Analyzing the jurisprudence of the ECtHR, it can be observed that it develops dual negative and positive obligations of states in guaranteeing the rights enshrined in the Convention. In the most general sense, negative obligations are understood as the state's obligation to refrain from arbitrary actions that violate the rights protected by the Convention, while positive obligations provide for the obligation to take active actions aimed at protecting the rights of the Convention.

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