

# The Constitutional Court in Lithuania Talks the Talk, and Now the Parliament Must Walk the Walk: Family Protection Means Balance



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**U**nder Article 38 of the Constitution of the Republic of Lithuania, the family is the basis of society and the State, and family, motherhood, fatherhood, and childhood shall be under the protection and care of the State. Even though the Constitution provides that families are the basis of society and what the concept of marriage is, there are still disagreements between legal scholars, lawyers, and politicians as to what ‘family’ actually means. The state’s obligation to protect families under the Constitution entails not only providing a regulatory framework for creating a family, but also the ability of the family members to make their own decisions in deciding what is best for them and their families.



THE CONCEPT  
IS NECESSARY  
BECAUSE  
THE FAMILY  
POLICY  
IN LITHUANIA  
HAS NOT BEEN  
CONSISTENT  
OVER THE YEARS  
OF ITS INDEPENDENCE

### **WHAT IS A FAMILY UNDER LITHUANIAN LAWS ACCORDING TO THE PARLIAMENT?**

Article 38 of the Constitution of the Republic of Lithuania (the Constitution)<sup>1</sup> states the following:

*“The family shall be the basis of society and the State.*

*Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.*

*Marriage shall be concluded upon the free mutual consent of man and woman.*

<...>

*In the family, the rights of spouses shall be equal.”*

During the years since its adoption, there have been various attempts in Lithuania to redefine what a family is considered to be under the Constitution, mainly trying to work out the relation between marriage and the Constitutional concept of family. The following chapters analyze the concept of the family under the Constitution and its development in the last few decades.

### **WHAT DID THE ‘CONSTITUTION’S FATHERS’ HAVE IN MIND AND IS IT RELEVANT?**

Member of the Parliament of the Republic of Lithuania (the parliament), lawyer, and previous judge of the Constitutional Court of Lithuania Dr Stasys Sedbaras notes that during the drafting of the Constitution “[t]he Fathers of the Constitution had no doubt

<sup>1</sup> The Parliament of the Republic of Lithuania (1992) *The Constitution of the Republic of Lithuania Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/079fcad0cf8711ecb69ea7b9ba9d787b?jfwid=-jeli79w55>

that the family is the union of a man and a woman, created by marriage”<sup>2</sup>. However, the Constitutional doctrine notes that albeit the Constitution is in a written form, it, as a legal reality, cannot be treated merely as its textual form and it is not a mere set of explicit provisions<sup>3</sup>.

According to the official interpretation provided by the Constitutional Court, the Constitution cannot be interpreted in a literal, linguistic (verbal) way alone – it requires the application of various methods of legal interpretation. Only by analyzing it in a comprehensive manner can the purpose of this social contract and supreme legal authority be realized, ensuring that the meaning of it is not departed from, that the spirit of the Constitution is not undermined, and that the values on which the Nation has based its own fundamental act are enshrined in life<sup>4</sup>. In the discussed case basing the Constitutional family concept only on the notions of the Constitution’s Fathers, as Dr Sedbaras is doing, is not in line with the means of interpreting the Constitution and its spirit.

Dr Sedbaras elaborates further stating that the authors of the current Civil Code, which entered into force on July 1, 2001, shared the same view<sup>5</sup>. Under Article 3.7 of the Civil Code of the Republic of Lithuania (The Civil Code; the CC), “[m]arriage is a voluntary agreement between a man and a woman to create legal family relations executed in the

procedure provided for by law”<sup>6</sup>. Article 3.12., titled ‘Prohibiting marriage of persons of the same gender’ states that “[m]arriage may be contracted only with a person of the opposite gender”<sup>7</sup>. Finally, in the chapter on the legal consequences of marriage since its original adoption, the CC states that “[b]y contracting a marriage the spouses create family relations as a basis for their life together”<sup>8</sup>.

Regarding this, the author notes that the Civil Code – despite being a law – cannot be applied to interpret the meaning of the Constitution, and thus to identify the meaning of the Constitutional concept of family. Legal scholars note that the Constitution is the only primary law adopted by the constituent power, which sets the framework for legal regulation<sup>9</sup>. Its norms and principles have the greatest normative potential, and thus a law must comply with the norms and principles of the Constitution. A law cannot be regarded as a primary legal act, but as an ordinarily binding act expressing the will of the legislator, which must not be contrary to the Constitution<sup>10</sup>. Thus, the Civil Code’s norms are preconditioned by the Constitution and the rulings of the Constitutional Court on interpreting it – and not the other way around.

<sup>2</sup> Sedbaras, S. (2014) *What the Family Is and Isn't in the Constitution and the Arguments*. Available [online]: <https://www.delfi.lt/news/ringas/politics/s-sedbaras-kas-yra-ir-kas-nera-seima-konstitucijoje-ir-argumentuose.d?id=65092419> [in Lithuanian]

<sup>3</sup> The Constitutional Court of the Republic of Lithuania (2004) *Ruling on the State Family Policy Concept*, the May 25. Available [online]: <https://lrkt.lt/en/court-acts/search/170/ta1112/content>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> The Parliament of the Republic of Lithuania (2000) *Civil Code*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Jarašiūnas, E (2002) “Konstitucine Teise – Nacionalines Teises Sistemos Branduolys ir Teises Sistema Integruojanti Teises Sriti”, [in]: T. Birmontiene, et al., *Lietuvos Konstitucine teise*, Lietuvos teises universitetas. Available [online]: [https://repository.mruni.eu/bitstream/handle/007/15418/konstitucine\\_teise.pdf?sequence=1&isAllowed=y](https://repository.mruni.eu/bitstream/handle/007/15418/konstitucine_teise.pdf?sequence=1&isAllowed=y) [in Lithuanian].

<sup>10</sup> Jarašiūnas, E. (2002) “Konstitucija ir įstatymas: kelios interpretavimo problemos”, [in]: *Konstitucijos aiškinimas ir tiesioginis taikymas: Baltijos ir Skandinavijos šalių konferencijos medžiaga, 2002 m. kovo 15-16 d., Vilnius*. Available [online]: <https://www.lituanistika.lt/content/38158> [in Lithuanian]



## FOLLOWING THE ADOPTION OF THE CONCEPT, THE CONSTITUTION- AL COURT ADOPTED TWO LANDMARK RULINGS

It must be noted that in his article, Dr Sedbaras admits to favoring a traditional (catholic-values-based) family concept, and it is exclusively based on marriage. Therefore, the arguments presented before must be taken with caution. The norms of the Civil Code quoted by the lawyer primarily focus on the legal institution of marriage, and not family. What Dr Sedbaras neglects to mention is that various other laws define family and go beyond marriage.

Namely, certain Lithuanian laws define 'family' as not only spouses, or spouses with children, but also as:

- a single parent with their children and parents of a spouse or a single person residing together may also be considered a family<sup>11</sup>;

- persons living together, one of the parents of a minor regardless of marital status<sup>12</sup>;
- a man and a woman of full legal age living together without having registered their union as a marriage<sup>13</sup>;
- persons between the ages of 18 and 24 who are unemployed and unmarried and not living together with another person (schoolchildren or students)<sup>14</sup>;
- the parents (adoptive parents), children (adopted children), brothers, sisters, the spouse or the person living with a person in common law (partnership) and their parents<sup>15</sup>;
- cohabitant, the person's, cohabitant's or both of their minor children and their adult children with their spouses or cohabitant, parents of the person or both of the couple, if they are residing together<sup>16</sup>;
- spouses, the persons who have registered partnership and their children (or those of one of them) until they reach a certain age, as well as the dependents who are related by kinship ties<sup>17</sup>;

<sup>11</sup> The Parliament of the Republic of Lithuania (2008) *Law on State Support to Acquire or Rent a Dwelling and Renovate (Modernise) Multi-Apartment Houses*, Article 2.8. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b585f210580311e78869ae36ddd5784f> [in Lithuanian]

<sup>12</sup> The Parliament of the Republic of Lithuania (2008) *Law on Benefits to Children*, Article 2.6. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.419820>

<sup>13</sup> The Parliament of the Republic of Lithuania (2011) *Piniginės socialinės paramos nepasiturinčioms šeimoms ir vieniems gyvenantiems asmenims įstatymas*, Article 12. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.413828> [in Lithuanian]

<sup>14</sup> Ibid.

<sup>15</sup> The Parliament of the Republic of Lithuania (2017) *Criminal Code*, Paragraph 2 of Article 248 "Interpretation of Concepts". Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c>

<sup>16</sup> The Parliament of the Republic of Lithuania (2000) *Civil Code*, 12.2. Paragraphs 1 and 2 of Article 6.588. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495>

<sup>17</sup> The Parliament of the Republic of Lithuania (2015) *Law on the Legal Status of Aliens*, Paragraph 26 of Article 2 "Main Notions of This Law". Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d7890bc0fa2e11e4877aa4fe9d0c24b0?jfwid=q86m1vvgq>

Summarizing, the provisions of the laws regulating certain areas of the relations connected with the family the essential criteria involve the living together of family members, also one's age and studies, which are related to a person's limited possibility of earning income and his need to receive maintenance. In other laws, such criteria as one's age, studies, etc. are not significant – the crucial criterion therein, under which persons are attributed to members of the family, is consanguinity, affinity, and other close ties.

***A FAMILY POLICY CONCEPT  
TO REGULATE NOT A SINGLE,  
BUT 8 TYPES OF FAMILIES***

In 2008, the Lithuanian parliament adopted a resolution 'On the Approval of the State Family Policy Concept' (the Concept)<sup>18</sup>. The authors noted that the Concept is necessary because the family policy in Lithuania has not been consistent over the years of its independence. Some of the policies are aimed at preserving the traditional family and gender roles, whilst there have also been attempts to create favorable conditions for gender equality and balancing personal life with professional activities.

The explanatory note of the Concept<sup>19</sup> finds that the crisis of the family institution is reflected in the country's worsening demographic situation, with a low number of marriages and a rather high number of divorces, a low birth rate, and an aging population. Thus, the Concept's purpose is to substantiate the necessity of the general family policy when implementing the Constitutional

<sup>18</sup> The Parliament of the Republic of Lithuania (2008) *Resolution "On the Approval of the State Family Policy Concept"*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.323058?jfwid=-jeli7a7xx>.

<sup>19</sup> The Parliament of the Republic of Lithuania (2008) *Resolution "On the Approval of the State Family Policy Concept"*, an explanatory note. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.301355?jfwid=-jeli7a7xx> [in Lithuanian]



EVEN THOUGH  
MARRIAGE  
IS A HISTORICALLY  
ESTABLISHED  
FAMILY MODEL  
IN LITHUANIA,  
THIS DOES NOT  
MEAN THAT  
THE CONSTITUTION  
DOES NOT PROTECT  
AND DEFEND  
FAMILIES  
OTHER THAN  
THOSE FOUNDED  
ON THE BASIS  
OF MARRIAGE

provision of the Republic of Lithuania. According to it, family is the basis of society and the State, that the principal ethnic and culturally valuable objects are fostered in the family, ensuring every person's welfare and historical survival of the Lithuanian State and the nation. This can be achieved by defining the functions performed by the family in meeting the demands of the person and society, defining the state family objectives and principles and projecting trends

of state family policy development.<sup>20</sup> Article 1.3. stated that the *“concept is based on historically formed family values and on the ideas defining family welfare, corresponding to the Constitution and other legal acts”* meaning that the Concept was favoring the traditional catholic-value-based concept of family, even though the Constitution provides that *“There shall not be a State religion in Lithuania”*<sup>21</sup>.

In its definitions, the Concept did not provide any basic principles to describe a family, yet it provided an exhaustive list of several types of families there may be under the law for the policymakers and society to mix and match. For example, the parents, their children, grandparents, and siblings are an ‘immediate family’ (Art. 1.6.1.), but parents with more than three children are defined as a large family (Art. 1.6.3.).

A family, regardless of its size, is considered to be a ‘harmonious family’ if it performs *“the characteristic family functions ensuring the physical, psychic and spiritual well-being of all its members”* (Art. 1.6.2). Whereas the opposite of it is a ‘family living through a crisis’ – any complicated period of life, for example, divorcing or a family facing other problems (Art. 1.6.5.). It may seem that following a divorce a ‘family living through a crisis’ may never level up to be a ‘harmonious family’ under the Concept. This is because as a single parent who was granted primary custody of a child following a divorce will be always seen as an ‘incomplete family’ whereupon

termination of marriage, the children have been deprived of one parent (Art. 1.6.6.).

The Concept distinguished a ‘harmonious family’ based on marriage to be the ultimate goal of the society in family policy matters and the superior type of family the State should promote. Under Art. 1.8.1. *“a ‘harmonious family’ is the good in itself, as it meets the person’s natural needs and sociability and allows to fully satisfy them”*. Whereas a family based on a marriage *“is a historically and scientifically confirmed most trustworthy institute, providing best conditions<sup>22</sup> for all-round and full-fledged development of natural talents and social skills of all its members”* (Art. 1.8.2). Accordingly, the effect of this would be that the state would grant preferential treatment to ‘harmonious’-marriage-based families whilst providing aid to those families which are not and cannot be ‘harmonious’. To achieve this the State should encourage the mass media *“to propagate the importance of family values, to activate the public to strengthen the family institution.”* (Art. 5.7) and should have also followed the Concept when planning and allocating financial resources (Art. 5.6), planning education programs (Art. 5.4.) and for monitoring and implementations matters the State would have had to establish ‘A Ministry for the Affairs of Family and the Child’ (Art. 5.1).

It must be noted that the Concept – and thus the State’s protection of families – would not cover single parents and their children if the parent was not married before. Further on, the Concept outlines that a family may only be created through marriage as *“marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law”* (Art. 1.6.7). The Concept finishes by stating

<sup>20</sup> The Parliament of the Republic of Lithuania (2008) *Resolution “On the Approval of the State Family Policy Concept”*, Articles 1.1. and 1.3. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.323058?jfwid=-jeli7a7xx>

<sup>21</sup> The Parliament of the Republic of Lithuania (1992) *The Constitution of the Republic of Lithuania Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/079fcad0cf8711ecb69ea7b9ba9d787b?jfwid=-jeli79w55>. Article 43.

<sup>22</sup> Highlighted by the authors of the Concept in the original translation.

that a family is considered to be spouses and their children (including adopted) if any (Art. 1.6.9). The family may also be incomplete (a divorced parent with a child) or extended – for example, spouses with children and their grandparents, if they are living together (Art. 1.6.4.). Lastly, there is a special category of a family named ‘social risk family’, which is raising children under 18 where at least one of the parents abuses alcohol, narcotic, psychotropic or toxic substances, is a gambling addict, is unable or cannot take proper care of the children due to lack of social skills, etc.

Summarizing, under the Concept, an unmarried couple who may be raising children (including adopted children) is not regarded as a family. Similarly, single unmarried persons with their children are not regarded as an ‘incomplete family’. A man and a woman who fulfill all the criteria of the ‘harmonious family’, ‘large family’, ‘family living through a crisis’, or ‘family at social risk’, although who are not married to each other and who may well be raising children (adopted children), are not regarded as a belonging to these categories.

During public consultations, there were numerous suggestions to improve the Concept and ensure its protection for unmarried couples as well<sup>23</sup>. However, the primary Committee of the Concept rejected them stating that a family may be established only by entering a marriage<sup>24</sup>. Sometime after its adoption, the Concept’s compatibility with the Constitution was subjected before the Constitutional Court. With its decision, the Constitutional Court provided a definition of a family under the Constitution.

<sup>23</sup> The Parliament of the Republic of Lithuania (2008) *Resolution “On the Approval of the State Family Policy Concept”*, an extract from the minutes of the Parliamentary Committee meeting. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.321276?jfwid=-jeli7a7xx> [in Lithuanian]

<sup>24</sup> *Ibid.*



THE CONCEPT OF MARRIAGE AND FAMILY MUST BE INTERPRETED IN CONJUNCTION WITH THE PRINCIPLE OF EQUALITY OF PERSONS AND THE PROHIBITION OF DISCRIMINATION ENSHRINED IN THE CONSTITUTION

#### THE STATE’S OFFICIAL INTERPRETATION OF THE CONSTITUTIONAL FAMILY CONCEPT

The Constitutional Court (the Court) decides whether the laws and other acts of the parliament are in conflict with the Constitution and adopts a decision regarding it<sup>25</sup>. Upon the decision, in order to deem a law

<sup>25</sup> The Parliament of the Republic of Lithuania (1992) *The Constitution of the Republic of Lithuania Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992*, Articles 102 and 105. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/079fcad0cf8711ecb69ea7b9ba9d787b?jfwid=-jeli79w55>

(or part of it) anti-constitutional, the law cannot be applied<sup>26</sup>.

Following the adoption of the Concept, the Constitutional Court adopted two landmark rulings in cases dealing with national family policy.

### **THE 2004 RULING OF THE CONSTITUTIONAL COURT ON THE CONCEPT OF FAMILY**

In its analysis of the Concept, the Court found that indeed the state's family policy Concept would not offer protection to unmarried couples. Under the provisions of the Concept, a man and a woman living together, though not married to each other, who may also be raising children (adopted children), are not regarded as a 'family' or an 'incomplete family'. A man and a woman who fulfill all the criteria of the 'harmonious family', 'large family', 'family living through a crisis', or 'family at social risk', but who are not married to each other, also a man or a woman raising children (adopted children), but who has not been married, with their child (children) or adopted child (adopted children), are not correspondingly regarded as part of these categories<sup>27</sup>.

The Court found that the Concept establishes provisions for certain social and financial welfare of a family – for example, regarding the promotion of employment of family members (Article 4.2), the creation of a favorable residential environment for a family,

and the provision of families with residential dwellings, etc., which may be granted to a family founded exclusively on the basis of marriage. Thus the application of the Concept in practice would result in thus creating more favorable conditions for them in comparison to unmarried couples raising children<sup>28</sup>.

The Court noted that the Constitutional concept of family may not be derived solely from the institute of marriage as it is the only means of creating a family, and both the concepts of family and marriage are inseparable, and their ties are unquestionable. The Constitutional Court found that even though marriage is a historically established family model in Lithuania, this does not mean that the Constitution does not protect and defend families other than those founded on the basis of marriage. Thus, the constitutional concept of family is based on mutual responsibility between family members. A social unit is described as a family based on their mutual understanding, emotional affection, assistance, and similar relations, as well as on the voluntary determination to take on certain rights and responsibilities, i.e., the content of relationships, whereas the form of expression of these relationships has no essential significance for the constitutional concept of family<sup>29</sup>. This concept is in line with the Constitutional principles of those of equality of rights, human dignity, and respect for private life<sup>30</sup>. Thus, the Concept was declared anti-constitutional.

The decision of the Court was one of those cases that attracted a lot of attention and heated debate. The adoption of the Concept in the Parliament was hotly debated by politicians and contested by different groups in society.

<sup>26</sup> The Parliament of the Republic of Lithuania (1993) *The Law on the Constitutional Court*, Article 72. Available [online]: <https://lrkt.lt/en/about-the-court/legal-information/the-law-on-the-constitutional-court/193>

<sup>27</sup> The Constitutional Court of the Republic of Lithuania (2011) *Ruling on the Compliance of the Provisions of the State Family Policy Concept as Approved by Resolution of the Seimas of the Republic of Lithuania No. X-1569 "On the Approval of the State Family Policy Concept" of 3 June 2008 with the Constitution of the Republic of Lithuania*, Paragraph 6. Available [online]: <https://lrkt.lt/en/court-acts/search/170/ta1112/content>

<sup>28</sup> *Ibid.*, Paragraph 7.

<sup>29</sup> *Ibid.*, Paragraph 15.1.

<sup>30</sup> *Ibid.*, Paragraph 16.

Reacting to the decision of the Court, law professor and current Judge of the Constitutional Court Dr Vytautas Mizaras, noted that no law could define the concept of a family at all – it only determines the legal relations of an already established family, because society itself decides at the appropriate time how it understands what family is<sup>31</sup>. It is not for the state to say that one relationship will be a family, and another will not<sup>32</sup>. Sociologists note that over one fifth of children are born to unmarried couples, and increased emigration has also led to an increase in the family pattern of children being raised by grandparents or close relatives (45% of households were composed of families of this type). 60-70% of people (depending on the generation) consider parents and their children who live together, but are not married, to be family<sup>33</sup>. The factual majority of families in Lithuania cannot be considered as ‘harmonious’ under the Concept, which unjustly denies them Constitutional protection.

Following the decision, members of the Parliament (MPs) at their sessions accused each other of exceeding their authority and of dividing people “into those who live in decent and acceptable families and those who live in some other forms of life”. A significant part of the MPs proclaimed their disapproval of the Concept and claimed that “the authors of the Family Concept are marginalizing single mothers or single fathers”. The parliamentary discussions also included a provocative question: “who is the holy man who will say that this family is harmonious?” and that the Parliament wants

to “control the moral and value attitudes of citizens” with the Concept<sup>34</sup>.

Those in favor of the Concept shouted: “where did all these different sexual minorities come from? And don’t you point me to Europe”, and they thought that “to promote this we need healthy structures that produce good products, good children who do not cause us problems, and these families”<sup>35</sup>. The public, whether rejoicing in the victory of Catholic values or resenting discrimination and the division of people into good and bad, i.e., second-class, was equally passionate<sup>36</sup>.

Nevertheless, politicians did not lose heart. The MPs who did not give up their plans to narrow the concept of family decided to initiate an amendment to Article 38 of the Constitution<sup>37</sup>, which was intended to establish that “[a] family is created through marriage”; they registered several drafts, even voting for one, and talked about holding a referendum, but all of these initiatives were defeated<sup>38</sup>.

### **THE 2019 RULING OF THE CONSTITUTIONAL COURT ON WHETHER FAMILIES CAN BE OF PARTNERS OF THE SAME SEX**

On January 11, 2019, the Constitutional Court of Lithuania adopted a Resolution ‘On Compliance of Article 43(1)(5) of the Law of the Republic of Lithuania on the Legal Status of

<sup>34</sup> 15min (2018) *Šeimos sampratos išaiškinimas: kaip nuo diskriminacijos buvo apgintos Lietuvos šeimos*. Available [online]: <https://www.15min.lt/media-pasakojimai/bylos-pakeitusiai-lietuva-seima-338> [in Lithuanian]

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> The Parliament of the Republic of Lithuania (2016) *Konstitucijos 38 straipsnio pakeitimo įstatymo projektas*. Available [online]: <https://e-seimas.lrs.lt/portal/legai/Act/lt/TAP/Obe20cb0348411e6a222b0cd86c2adfc> [in Lithuanian]

<sup>38</sup> 15min (2018) *Šeimos sampratos išaiškinimas: kaip nuo diskriminacijos buvo apgintos Lietuvos šeimos*. Available [online]: <https://www.15min.lt/media-pasakojimai/bylos-pakeitusiai-lietuva-seima-338> [in Lithuanian]

<sup>31</sup> Urbaitė, I. (2016) *Kas yra šeima turi spręsti ne politikai, o visuomenė*. Available [online]: <https://klaipeda.diena.lt/naujienos/lietuva/salies-pulsas/kas-yra-seima-spres-ti-turi-ne-politikai-o-visuomene-750548> [in Lithuanian]

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.



THE STATE PROTECTION AND CARE GUARANTEED FOR FAMILIES UNDER THE CONSTITUTION IS IMPLEMENTED IN VARIOUS WAYS BY CREATING A FAVORABLE ENVIRONMENT FOR FAMILY, MOTHERHOOD, FATHERHOOD, AND CHILDHOOD AS CONSTITUTIONAL VALUES

Aliens with the Constitution of the Republic of Lithuania<sup>39</sup>. The Court emphasized that – unlike the Constitutional concept of marriage – the concept of family is gender neutral. Thus, according to the Court, the concept of marriage and family must be interpreted in conjunction with the principle of equality of persons and the prohibition of discrimination

<sup>39</sup> The Constitutional Court Of The Republic Of Lithuania (2019) *Ruling On The Compliance Of Item 5 Of Paragraph 1 Of Article 43 Of The Republic Of Lithuania's Law On The Legal Status Of Aliens With The Constitution Of The Republic Of Lithuania*. Available [online]: [https://lrkt.lt/data/public/uploads/2019/03/2019-01-11\\_kt3-n1\\_ruling.pdf](https://lrkt.lt/data/public/uploads/2019/03/2019-01-11_kt3-n1_ruling.pdf).

enshrined in the Constitution<sup>40</sup>. All families that comply with the constitutional concept of the family, based on the content of the relationship between family members of a permanent or lasting nature, that is to say, based on the family members' mutual responsibility, understanding, emotional affection, assistance, and similar ties, and their voluntary decision to take on certain rights and duties, are protected and defended<sup>41</sup>.

On the other hand, the Constitutional Court has noted that taking into account objective and constitutionally justified criteria, differentiated legal regulation of state care and support for the family may be established. Therefore, the legal doctrine established by the Constitutional Court of the Republic of Lithuania presupposes that the property and non-property legal relations of cohabitants must be legally regulated and protected, without violating the principle of equality and the principle of non-discrimination.

**RECOGNITION OF SAME-SEX FAMILIES ON THE POLITICAL AND SOCIETAL LEVEL**

Since its adoption, the Civil Code had a chapter 'Living Together of Persons not Legally Married (Cohabitation)'. However, it made links to additional laws on the registration of partnership, which were never enacted<sup>42</sup>. Therefore, such a situation, according to the author's opinion, contradicts, among others, the persons' Constitutional right to the protection of their legal interests since the state has promised a legal institution of cohabitation, but never delivered on the promise<sup>43</sup>.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> The Parliament of the Republic of Lithuania (2000) *Civil Code*. Chapter XV. Available [online]: <https://e-sei-mas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495>

<sup>43</sup> The Constitutional Court of the Republic of Lithuania (2002) *Ruling of 25 November 2002*

Aiming to solve this injustice, on May 21, 2021, a group of MPs put forward a draft law on Civil Partnership<sup>44</sup>. They noted that despite the fact that there is currently no legal regulation of partnership, actual partnership relations exist and therefore, they must be regulated in law<sup>45</sup>. The draft law provided that a partnership is a legally registered fact of cohabitation of two persons regardless of their sex or gender, for the reason of establishing and/or developing a relationship between the partners based on stable ties of emotional affection, mutual understanding, responsibility, and assistance<sup>46</sup>. This definition meets the requirement for a family as a social unit set out in the previous rulings of the Constitutional Court regarding family policy.

However, after many disputes in parliament, the law has not yet been adopted. The gender-neutral partnership draft law did not even pass the initial approval stage in the spring of 2021 as it fell just three votes short. Lacking the political support needed to move forward with the bill, almost a year after drafting the Partnership bill, the ruling majority of the parliament registered another draft law on gender-neutral partnership called the Law of Civil Union<sup>47</sup>.

Similarly, as the Partnership act the Civil Union draft law aimed at establishing that *"[a] civil union is a voluntary agreement between two persons (partners), registered in accordance with the procedure laid down by law, whereby they seek to establish and/*

<sup>44</sup> The Parliament of the Republic of Lithuania (2021) *Partnerystės įstatymo projektas*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/ca7c38b-0ba0a11eb91e294a1358e77e9> [in Lithuanian]

<sup>45</sup> Ibid.

<sup>46</sup> Ibid. Art. 3.

<sup>47</sup> The Parliament of the Republic of Lithuania (2022) *Civilinės Sąjungos įstatymo projektas*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/847793c0d52811ecb1b39d276e924a5d> [in Lithuanian]



LITHUANIA'S  
WORSENING DEMO-  
GRAPHIC SITUATION,  
AND THE MEANS  
TO REMEDY IT,  
HAVE ALWAYS BEEN  
AT THE TOP  
OF ALL POLITICIANS'  
AGENDAS

*or develop, or protect, a personal relationship between them*<sup>48</sup>. The less emotionally loaded titled draft law gained support from parliament and passed its submission stage soon after it was registered. Its further adoption in parliament has been stalled by the opposition, with discussions among those in the ruling majority to postpone the issue to the spring session of 2023<sup>49</sup>.

In short, the issue of the concept of family and protection of same-sex partnerships in Lithuania is a legal matter and not a political one. However, exactly the lack of political will and political opposition from the 'traditional' catholic-values driven opposition of parliament keeps the couples who decided

<sup>48</sup> Ibid.

<sup>49</sup> LRT.lt (2022) *Armonaitė: man yra gėda prieš žmones, kurie turi išvažiuoti iš Lietuvos, nes jaučiasi antrarūšiai*. Available [online]: <https://www.lrt.lt/naujienos/lietu-voje/2/1846628/armonaite-man-yra-geda-pries-zmo-nes-kurie-turi-ismaziuoti-is-lietuvos-nes-jauciasi-an-trarusiai> [in Lithuanian]. The Parliament's agenda for the spring session of 2023 has not yet been registered.

not to enter marriage and families of the same-sex from achieving the due protection of the state as provided by the Constitution.

Nevertheless, such a legal vacuum does not limit the possibilities of private enterprises supporting their same-sex and unmarried families. Recently, a telecommunications company Bite Lietuva reached the press headlines saying that *“it will legalize partnerships”*<sup>50</sup>. Bite Lietuva is the first company in Lithuania to ‘legalize’ partnerships between unmarried heterosexual and homosexual couples within the company – since February 13, 2023, all the families of the company’s employees will receive benefits that were previously available only to married partners<sup>51</sup>.

### **WHAT DOES IT MEAN THAT UNDER THE CONSTITUTION THE STATE PROTECTS THE FAMILY?**

As mentioned before, the Lithuanian Constitution is a *living organism* in the sense that it must be interpreted to meet the relevant needs of society, and the Constitutional Court has the sole authority to interpret what the notions of the Constitution entail. It is, therefore, crucial to better understand what the duty of the state does to ensure the protection of family, motherhood, fatherhood, and childhood.

The Constitutional Court has held that the provisions of Paragraphs 1 and 2 of Article 38 of the Constitution express the obligation of the state to establish, by means of laws and other legal acts, such a legal regulation that would ensure that family, as well as motherhood, fatherhood, and childhood, as constitutional values, would be fostered and

protected in all ways possible (rulings of June 13, 2000, and March 5, 2004) and that Paragraphs 1 and 2 of Article 38 of the Constitution consolidate the constitutional principles of the most general nature (ruling of March 5, 2004).

The state’s constitutional duty to establish a regulatory framework that would ensure the protection of the family as a constitutional value is not limited to creating the preconditions for the proper functioning of a family. It should also strengthen family relationships and defends the rights and legitimate interests of family members. However, under the Constitutional Doctrine, the state has the obligation to regulate family relationships in such a way that no preconditions would be created for discrimination against certain participants in family relationships<sup>52</sup>.

The state protection and care guaranteed for families under the Constitution is implemented in various ways by creating a favorable environment for family, motherhood, fatherhood, and childhood as constitutional values. The imperative consolidated in the Constitution, whereby these categories are under the protection and care of the state, various forms of support thereof may be developed, inter alia:

*“the conditions are ensured for parents to combine work (professional) activities and the duties related to raising and bringing up children; <...> while taking account of the needs of families and the capabilities of society and the state, a certain level of support is also guaranteed to non-working mothers, as well as support for families raising underage children of various ages, and not exclusively children of early age, at home. In this area, the legislature, taking account*

<sup>50</sup> Bite Lietuva (2023) *“Bitė” “įteisina” partnerystę: suteiks vienodas naudas visoms šeimoms*. Available [online]: <https://www.delfi.lt/login/technologijos/naujienos/bite-iteisina-partneryste-suteiks-vienodas-naudas-visoms-seimoms.d?id=92540945#/> [in Lithuanian].

<sup>51</sup> Ibid.

<sup>52</sup> The Constitutional Court of the Republic of Lithuania (2011) *Ruling of 28 September 2011*.

*of various social, demographic, and economic factors, such as the material and financial possibilities of the state, has broad discretion to choose concrete instruments of protection and support*<sup>53</sup>.

This means that the state's role in protecting families is not limited to child protection services or payouts. The state has the constitutional obligation to ensure that, among other issues, the parents have the possibility to combine work (professional) activities and the duties related to raising and bringing up children whilst providing relevant infrastructure and other means of support.

### **MEASURES APPLIED AND THEIR EFFECTIVENESS**

Lithuania's worsening demographic situation, and the means to remedy it, have always been at the top of all politicians' agendas<sup>54</sup>. It was at the beginning of independence that Lithuania's population peaked at 3.7 million. After that, it began to steadily decline. In 2012, it reached 3 million, and in 2023 – 2.86 million. Encouragingly, since 2016, there has been a slight increase in the population<sup>55</sup>. Although Lithuania's population has been growing for the past four years, economic models suggest that by 2045 there will be only 2 million people left<sup>56</sup>.

<sup>53</sup> The Constitutional Court of the Republic of Lithuania (2012) *Ruling of 27 February 2012*.

<sup>54</sup> See., e.g. The Parliament of the Republic of Lithuania (2008) Resolution "On the Approval of the State Family Policy Concept", an extract from the minutes of the Parliamentary Committee meeting. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.321276?jfwid=-jeli7a7xx> [in Lithuanian]

<sup>55</sup> Deveikis, J. (2023) *Nykstanti Lietuva: verslas siūlo atsivežti vietnamiečių, visuomenė nori, kad moterys daugiau gimdytų*. Available [online]: <https://www.lrt.lt/naujienos/verslas/4/1895945/nykstanti-lietuva-verslas-siulo-atsivezti-vietnamieciu-visuomene-nori-kad-moterys-daugiau-gimdytu> [in Lithuanian].

<sup>56</sup> Ibid.



THE DECLINE IN THE BIRTH RATE IS QUITE A COMMON ISSUE AMONG DEVELOPED COUNTRIES, AND LITHUANIA'S NUMBERS ARE CLOSE TO THE EU AVERAGE

Daumantas Stumbrys, a researcher at the Demographic Research Centre of Vytautas Magnus University, explains that the most important factor that has led to a decline in the population is emigration<sup>57</sup>. After the restoration of independence, an average of 25,000 people left Lithuania every year, while in 2010, as many as 83,000 people left Lithuania, which was crippled by the economic crisis. Sociologists note that the decline in the birth rate is quite a common issue among developed countries, and Lithuania's numbers are close to the EU average<sup>58</sup>. However, society and politicians would like to see demographic problems solved primarily by a rising birth rate<sup>59</sup>.

### **INCREASING BIRTH RATES REQUIRES MORE THAN WISHFUL THINKING**

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

In 2018, the Parliament adopted the law on 'the Financial Incentive for Young Families Acquiring a First Home'<sup>60</sup>. According to the law, for young families (up to 36 years old) purchasing their first home in the region, the state subsidizes housing in areas where the normative value per square meter is at least 65% lower than the maximum normative value per square meter in Lithuania (i.e., in the regions)<sup>61</sup>. However, in the fall of 2022, there was far less money available for the incentive than what would cover the demand. Hundreds of families are waiting months, making financial support a drain on savings and housing for some<sup>62</sup>. This results in an erroneous practice of *first come first served*, even though the state has given out this promise to all families.

With the plan, parliament was aiming to shoot two birds with one stone – to increase the birth rate (because the more children you have – the larger the subsidy<sup>63</sup>) and to revive the regions of Lithuania<sup>64</sup>. The Minister of Social Security and Labour Monika Navickiene says that the idea of increasing the intensity of this support for regions far

from the main cities may be considered, but this will not solve the problem of emptying regions: *"we should not be under the illusion that simply by providing housing support to regions where there are no educational institutions or jobs, young people will flock to them"*<sup>65</sup>.

However, the lack of jobs and infrastructure in the regions is not the only problem that families face. Under the constitutional obligation of the state to protect families, it also has the obligation to provide the necessary infrastructure. As of May 2022, some of Lithuania's district hospitals located in the regions are no longer accepting women in labor. The Ministry of Health decided that only hospitals with at least 300 admissions in at least one of the last two years, or with a distance of more than 50 kilometers to the next nearest hospital providing such services, will be able to provide birth delivery services<sup>66</sup>. In addition to the insufficient funds for reallocation to the regions, this new regulation also plays a key role in the decision of the family to move out of the city. Therefore, the plan to *shoot two birds with one stone* may prove to be fruitless.

As mentioned before, society and politicians in Lithuania would like to see demographic problems solved, primarily by a rising birth rate. A recently held representative survey showed that 46% of society relies on increasing the birth rate to solve Lithuania's demographic issues, whereas 42% believe that the demographic situation should be improved by encouraging the return of emigrated

<sup>60</sup> The Parliament of the Republic of Lithuania (2018) *Law on the Financial Incentive for Young Families Acquiring a First Home*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/33b60f82ac5411e8aa33fe8f0fea665f?jfwid=-g0Zrzi9g>

<sup>61</sup> Ibid.

<sup>62</sup> Skridailaitė, G., Gaizauskaitė, J. (2022) *Šimtai šeimų mėnesiais laukia paramos pirmajam būstui įsigyti: kai kuriems tai virsta santaupų ir pastogės praradimu*. Available [online]: <https://www.lrt.lt/naujienos/verslas/4/1785218/simtai-seimu-menesiais-laukia-paramos-pirmajam-bustui-įsigyti-kai-kuriems-tai-virsta-santaupu-ir-pastoges-praradimu> [in Lithuanian]

<sup>63</sup> Under the Law, young families without children can benefit from a 15% subsidy, 20% for families with one child, 25% for families with two children and 30% for families with three or more children.

<sup>64</sup> Bielinskas, R. (2022) *Navickienė: didesnė parama už pirmą būstą tuštinančių regionų problemos neišspręs*. Available [online]: <https://www.lrt.lt/naujienos/verslas/4/1783293/navickiene-didesne-parama-uz-pirma-busta-tustinanciu-regionu-problemos-neisspres> [in Lithuanian]

<sup>65</sup> Ibid

<sup>66</sup> Rumsienė, R. (2022) *Naujagimių verksmas čia nebeskamba: rajonuose uždarami gimdymo skyriai, atleidžiami darbuotojai, o merai rėžia – šeimos čia nesikels*. Available [online]: <https://www.lrt.lt/naujienos/sveikata/682/1691693/naujagimiu-verksmas-cia-nebeskamba-rajonuose-uzdaromi-gimdymo-skyriai-atleidziami-darbuotojai-o-merai-rezia-seimos-cia-nesikels> [in Lithuanian]

Lithuanians to Lithuania<sup>67</sup>. Only 1% of the surveyed persons would rely on boosting economic growth<sup>68</sup>. The author argues that economic growth goes hand in hand with the state's possibility to ensure family protection. For example, in the case of subsidizing the costs of a new home in the region, the state has not been able to fulfill its promises due to the lack of public finances<sup>69</sup>, which primarily is gathered through increased economic growth.

### **A WORK-LIFE BALANCE IS A CONSTITUTIONAL RIGHT**

As analyzed before, the state's obligation to protect families also covers the possibility of family members balancing their personal and work duties. Let us, therefore, explore the measures that are already applied and what could be done to better meet the needs of the families in Lithuania.

#### ***MORE FLEXIBLE LABOR REGULATIONS WOULD BENEFIT THE FAMILIES***

Among the current government's priorities is the task of reviewing labor legislation to ensure that it does not hamper economic development<sup>70</sup>. A systematic and integrated approach to the labor market is a welcome change in comparison to the actions of other governments as reducing disincentives to

economic development is not only relevant in the economic recovery term, but also in normal economic conditions.

Flexibility for both employees and employers to make timely decisions, a balance between the parties to the employment relationship, and legislation that doesn't hinder entrepreneurship, would not only help meet the challenges of a pandemic, but also boost economic development in the long term. A labor market that is responsive and flexible attracts more foreign investment, which, in turn, creates new and better jobs – both in the big cities and regions of Lithuania<sup>71</sup>.

A more flexible labor market regulation could serve as a means of ensuring the state's obligation to protect the family, and ensuring its obligation to ensure an environment where the family members would be allowed the possibility to balance their family and professional interests. As mentioned before, the constitutional obligation for the state to protect families also includes its obligation to provide the necessary conditions for the families to negate their own needs of reconciling professional and personal interests.

#### ***MOM- AND DAD- DAYS***

On August 1, 2022, amendments to the Labor Code came into force, providing additional employer-paid maternity and paternity days<sup>72</sup>. Before that date, paid day offs were granted for children up to the age of twelve, but it is proposed that days off should also be granted to children up to the age of sixteen.

<sup>67</sup> Deveikis, J. (2023) Nykstanti Lietuva: verslas siūlo atsivežti vietnamiečių, visuomenė nori, kad moterys daugiau gimdytų. Available [online]: <https://www.lrt.lt/naujienos/verslas/4/1895945/nykstanti-lietuva-verslas-siulo-atsivezti-vietnamieciu-visuomene-nori-kad-moterys-daugiau-gimdytu> [in Lithuanian]

<sup>68</sup> Ibid.

<sup>69</sup> Bielinskas, R. (2022) Navickienė: didesnė parama už pirmą būstą tuštinančių regionų problemas neišspręs. Available [online]: <https://www.lrt.lt/naujienos/verslas/4/1783293/navickiene-didesne-parama-uz-pirma-busta-tustinanciu-regionu-problemos-neisspres> [in Lithuanian]

<sup>70</sup> The Parliament of the Republic of Lithuania (2020) *Dėl Aštuonioliktosios Lietuvos Respublikos Vyriausybės programos*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/973c87403bc311eb8c97e01ffe050e1c> [in Lithuanian]

<sup>71</sup> The Lithuanian Free Market Institute (2021) *LLRI pasiūlymai dėl priemonių, siekiant gerinti darbo rinkos ir užimtumo reguliavimą*. Available [online]: <https://www.llri.lt/kitos/llri-pasiulymai-del-priemoniu-siekiant-gerinti-darbo-rinkos-ir-uzimtumo-reguliavima/lrinka> [in Lithuanian]

<sup>72</sup> The Parliament of the Republic of Lithuania (2016) *Law on the Approval, Entry into Force and Implementation of the Labor Code* (the Labor Code). Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/676587f2cf1911e9a56df936f065a619?jfwid=-asr76tfpw>.



## UNDER THE CONSTITUTIONAL OBLIGATION OF THE STATE TO PROTECT FAMILIES, IT ALSO HAS THE OBLIGATION TO PROVIDE THE NECESSARY INFRASTRUCTURE

Workers with one child under twelve years of age will have one extra day off per three months or eight hours less work per three months. The aim is to facilitate the reconciliation of family and work commitments, but neither the impact of this proposal nor the alternatives have been considered.

Balancing work and personal commitments are a challenge for parents with children. The needs are manifold, and it would be short-sighted to expect them to be solved through state interventions without consultation between the employer and the employee themselves. Today, companies are increasingly valuing workers and offering a wide range of benefits, including more flexible working hours. Extending the list of paid day offs will increase the cost to the employer, which will have a negative impact not only on the company, but also on its employees, consumers, and the economy itself. The increased costs for the company must be covered by the increased prices of goods and services. In addition, workers who take time

off usually have to be replaced by other colleagues, which increases their workload. The increased number of days off will force active staff to work harder to keep the company running.

In order to help individuals reconcile their personal and professional interests, it is appropriate to allow them to combine these interests. For example, by making part-time work, which is currently limited by the 'Social insurance floor', more flexible.

### ***THE SOCIAL INSURANCE FLOOR IS LAVA!***

Under the 'Social insurance floor', where an employee's salary is less than the minimum monthly wage (the MMW), social security contributions are paid based on the MMW<sup>73</sup>. This requirement worsens the situation of the lowest income earners and part-time workers. The difficult economic situation and the rising cost of a job, therefore, lead to the dismissal of some part-time workers who earn less than the MMW.

The demand for part-time work increases sharply in times of economic crisis when the volume of work decreases. The high taxation of these contracts only makes the situation worse for companies in a poor financial situation<sup>74</sup>. In addition, part-time work could function as a means for parents coming back into the labor market and reintegrating into it, and learning social skills. However, due to the 'Social insurance floor,' they would be the first ones to be laid off in critical financial situations. This requirement worsens the situation of the lowest income earners and

<sup>73</sup> State Social Insurance Fund Board under the Ministry of Social Security and Labour (SoDra) (2018) *10 klausimų apie "Sodros" įmokų "grindis"*. Available [online]: <https://www.sodra.lt/lt/naujienos/10-klausimu-apie-sodros-įmoku-grindis> [in Lithuanian].

<sup>74</sup> 1.6% for indefinite employment contracts and double the amount – 3.2% – for fixed term contracts. Available [online]: <https://www.sodra.lt/informacija-asmenims-turintiems-apdraustuju-darbuotoju> [in Lithuanian]

part-time workers, as the cost of their jobs is the most expensive compared to fulltime workers, since their social insurance taxes are paid not based on their created value. As a result, in times of economic hardship and rising job costs, the part-timers who actually earn less than the MMW are made redundant, as their taxes are higher than the value added they generate.

**TEMPORARY AND PART-TIME WORK IS DISCOURAGED BY THE STATE**

Temporary employment constitutes a large share of the labor market suggesting that the issues of both market flexibility enhancement and temporary work are as relevant as ever. Fixed-term contracts could act as a means for parents to reenter the labor market and regain the necessary professional and social skills<sup>75</sup>. However, the state artificially discourages persons from entering such employment. The unemployment insurance contribution rate is increased by 55% for fixed-term employment contracts<sup>76</sup>. The increased rate is not in line with its objectives in cases where the employer is forced to look for an employee to replace an employee who is unable to work or is on leave. Moreover, suppose the financial situation of the company is difficult. In that case, even an increase in the rate of unemployment social security contribution can have a decisive impact on the continuity of the business and the preservation of other jobs.

In addition, according to the Labor Code, the number of fixed-term employment contracts for permanent work can be at most 20% of the total number of employment

<sup>75</sup> The Lithuanian Free Market Institute (2018) *Fixed-term employment for long term competitiveness*. Available [online]: <https://en.llri.lt/wp-content/uploads/2018/09/Fixed-term-employment-for-long-term-competitiveness.pdf>

<sup>76</sup> The Parliament of the Republic of Lithuania (2014) *Law on State Social Insurance*. Article 8(2). Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f85b-15f062c011e5b316b7e07d98304b>



A LABOR MARKET THAT IS RESPONSIVE AND FLEXIBLE ATTRACTS MORE FOREIGN INVESTMENT, WHICH, IN TURN, CREATES NEW AND BETTER JOBS – BOTH IN THE BIG CITIES AND REGIONS OF LITHUANIA

contracts concluded by the employer<sup>77</sup>. This means that establishments with at most five employees cannot conclude fixed-term contracts for permanent work. Nevertheless, such agreements are helpful for employers with temporary replacements, as well as for workers whose children need to be educated remotely from home when telework is not available.

According to the original draft of the Labor Code, an open-ended contract is one in which the duration of the work function

<sup>77</sup> The Parliament of the Republic of Lithuania (2016) *Law on the Approval, Entry into Force and Implementation of the Labor Code (the Labor Code)*. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/676587f2cf1911e9a56df936f065a619?jfwid=-asr76tfpw>

is not fixed in advance. Still, the employee undertakes to carry out the work function at the employer's invitation, and the employer undertakes to pay the employee for the work performed<sup>78</sup>. The minimum duration of work that a worker is expected to complete per day is eight hours per calendar month. Therefore, workers – especially parents trying to re-enter the labor market and regain their professional and social skills – could benefit from the possibility of having at least a minimum monthly income. In addition, working on open-ended contracts would allow a more flexible combination of working time and personal commitments when teleworking is unavailable.

Scholars and politicians from Lithuania have been discussing the possibility of introducing a four-day working week. Regardless that it would help young parents re-entering the labor market, a shortened work week is not possible in Lithuania if the legitimate interest of the employee and the employer are to be protected. The restrictions imposed by the current regulation of the Labor Code and the other rules it imposes are harmful to both workers and employers, because legal redundancy reduces workers' social security, and the arrangement of reduced working hours allowed by the Labor Code is not in line with the reality of modern employment relations – today, work is focused on the creation of a specific product or the achievement of a specific result.

The only way to ensure a 4-day week is to reduce the number of working days for employees (of course, salaries would have to be recalculated accordingly). However, this could be detrimental to the workers

themselves, as the amount of pension they receive in the future depends on their length of service – working less will reduce it, and so will their future pension. At present, there is no realistic possibility to introduce a 4-day week in a way that does not undermine workers' social security and does not impose an unjustified overburden on employers.

### ***THE TAXATION SYSTEM THAT DOES NOT ENCOURAGE ENTREPRENEURSHIP***

Another regulation that reduces parents' chances of re-entering the labor market in Lithuania is the tax treatment of self-employment. Specifically, the calculation of Compulsory Health Insurance contributions on the basis of the MMW and regardless of the income generated by the activity. This unfavorable taxation of activities, which can be even higher than the income received, either leads to people choosing not to declare their activities, or discourages them from carrying them out at all.

More flexible opportunities for self-employment would be useful not only when returning from childcare leave, but also to avoid losing skills during time off work. For example, making and selling handmade accessories or treats. However, it may not be worthwhile to engage in such activities only in a piecemeal way, without setting up a workshop and a detailed marketing plan. Just to be able to sell a few cupcakes or pins a month to friends legally, you will have to pay the state.

If some of the services a person provides (such as writing articles or reviews) are non-periodic, the person depends on current affairs or other factors. Such an individual will, therefore, spend as much time editing an article as they would searching on government's websites to find out how to suspend your certificate of individual activity so that you do not have to pay the fees. This is only worth doing if the person wished to be triple

<sup>78</sup> The Parliament of the Republic of Lithuania (2016) Law on the Approval, Entry into Force and Implementation of the Labor Code (the Labor Code). Draft Law. Available [online]: <https://e-seimas.lrs.lt/portal/legalAct/lit/TAP/7db9968042b411e69f7afa4bbf73635e?jfwid=-jeli78rmq> [in Lithuanian]

insured, even if it means nothing in reality. For example, a student that is insured by the state and works full time, still has to pay the Compulsory Health Insurance contributions. And triple insurance is just a token of hope for a bigger pension in the future.

## CONCLUSIONS

Regardless of the attempts of the Lithuanian parliament, the constitutional concept of family officially covers both opposite and same-sex relationships of persons who share mutual responsibility, understanding, emotional affection, assistance, and similar relations, as well as on the voluntary determination to take on certain rights and responsibilities. However, heterosexual and homosexual couples and their family members have been denied their Constitutional rights in Lithuania for almost 20 years.

Furthermore, the constitutional obligation of the state to protect and care for families also includes creating preconditions for the family members to balance their professional and family interests. This may be best achieved by promoting employment and entrepreneurship through employment flexibility, which is currently lacking. The constitutional obligation would be better achieved by allowing to enter alternative employment contracts of definite duration. In addition, the current regulatory framework in Lithuania discourages entrepreneurship, so it would benefit families most if social benefits would not be taken away when the family starts minor economic activities for their own benefit.

Current measures in place to protect families and care for them may prove to be inefficient because they relate to public funds, which are diminishing due to ever-changing economic conditions. Therefore, it would be prudent to promote economic growth and enable the parents to reenter the labor market as soon as they feel ready and by all the possible forms of employment.

Finally, the research shows that the state's constitutional obligation to protect and care for the families should be fulfilled not by providing strict and exhaustive rules, rights, and obligations to families and their members, but rather by creating the preconditions for society, its members, and families to decide on what their need are. This could be best achieved by allowing more leeway for the parents and family members themselves to decide on the proper work-life balance. Fixed-term contracts and part-time work could benefit parents exiting parental leave and better integrating into the labor market. The constitutional obligation to care for families implies the state's obligation to provide possibilities for the family members to best reconcile their personal and professional interest.



\*

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