

# NATIONAL LEGAL INNOVATION STRATEGY Lithuania

INNOVATING EUROPEAN LAWYERS TO ADVANCE THE  
RIGHTS OF CHILDREN WITH DISABILITIES



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## **National Legal Innovation Strategy for Lithuania: The Right of Every Child to Inclusive Education**

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## Introduction

According to official statistics, the number of children with disabilities in Lithuania was 17,700 at the beginning of 2016. As far as the legislation goes, Lithuania is considered to have a comprehensive legal framework in which fundamental rights of children with disabilities are enshrined. The United Nations (UN) Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD) were ratified in 1995 and 2010 respectively and thus form an integral part of the country's legal system. Despite that, the CRPD Committee emphasised in 2016 that Lithuania's national laws and regulations neglect the social and relational dimensions of disability and include derogatory language; thus, a re-definition of disability moving away from the bio-medical model towards the social model is urgently needed. Equally important is reduction of the widespread stigma and negative portrayal of children with disabilities in the media. Additionally, major problems arise when considering the practical implementation of existing laws and regulations.

With regards to the right to live in the community in Lithuania, violations of rights are caused by the lack of accessibility to the physical environment, as well as to other aspects of life, which leave many children with disabilities at least partially segregated from the community. To make matters worse, a large number of children in general are still living in residential social care institutions. Amongst them, there are almost 700 children with disabilities. The CRPD Committee recently criticised Lithuania for continuing to place children with disabilities who are under 3 years of age into residential care institutions; these are called "Homes for Infants with Disturbed Development" (Sutrikusio vystymosi vaikų namai). Reportedly, most of the children placed into these homes do not in fact have any disabilities upon their arrival, nevertheless, they are assigned a diagnosis anyway. Sadly, this becomes a self-fulfilling prophecy: according to research, even a short period of time spent in an institution negatively affects the development of the brain. Even though the programme of deinstitutionalisation was introduced by the Ministry of Social Security and Labour in 2014, implementation is still at its very initial stages of preparation. Non-governmental organisations (NGOs) frequently express concerns about the effectiveness and quality of implementation, and repeatedly ask for greater transparency and information to be made publicly available by the responsible authorities. The CRPD Committee backs-up NGOs' concerns, especially with regards to questionable distribution of European Union (EU) funds intended for these reforms.

The implementation of the right of children to health is partially denied as a result of the lack of holistic community-based support, including alternative services for families and carers of children with disabilities, especially in rural areas. Access to psychosocial rehabilitation is often untimely and the quality is far from satisfactory: there are long queues, underdeveloped infrastructure, lack of specialists, as well as of diagnostic tools and standards for treatment. NGOs have consistently urged the Ministry of Health to take action towards changing the existing situation, especially to address the lack of quality, timely and holistic support for children with intellectual and/or psychosocial disabilities.

There is also a lack of comprehensive access to justice for children with disabilities. Children are not fully involved in decision making processes. Furthermore, there is also a lack of individual assessment, which is needed in order to ensure every child's best interests in courts; these interests are often considered at the very basic level of physical needs only. The juvenile justice system is based on short-term punishment measures and not on resocialisation or empowerment. There is a lack of independent monitoring mechanisms and statistical information in general, which

would permit more effective evaluation of the situation of children with disabilities in judicial proceedings.

A major challenge to ensuring freedom from ill-treatment is the Fundamental Law of Protections of the Rights of a Child in which, up until February 2017, parents had a right to discipline their child, excepting only through use of physical and mental torture or other cruel acts, and humiliation of the child’s honour and dignity. Despite the CRC Committee’s recommendations, corporal punishment has not been banned and different forms of violence, including psychological or emotional violence, were not defined by law in Lithuania until early 2017. Children in institutions are believed to be at an even higher risk of experiencing all types of violence. The CRPD Committee has urged Lithuania to implement a plan of action to eliminate all forms of sexual abuse and violence against children with disabilities, in and outside of residential care institutions.

The exercise of the right to inclusive education in Lithuania is hindered by a number of problems, some of which were mentioned above: access to the physical environment, societal stigma and lack of specialist tools for educators and individual assistance, amongst others. All of these problems are reflected in the fact that the proportion of children with disabilities attending fully or partially integrated classes is continuously shrinking. These specific issues related to the right of children to inclusive education will be discussed in more detail further in this strategy. This specific right has been singled out for addressing in the strategy due to the current political climate in Lithuania which is, for the first time, rather favourable for efforts in this specific field.

### Key Stakeholders

		Level of interest	
		Low	High
<i>Mendelow power-interest matrix</i>			
<b>Level of power</b>	Low	A) Minimal effort: <i>Special Schools; Mainstream Schools</i>	B) Keep informed: <i>Ombudsperson for Children’s Rights; Ombudsperson for Equal Opportunities; Academia</i>
	High	C) Keep satisfied: <i>Municipalities</i>	D) Key players: <i>NGOs, children and families; Ministry of Education and Science</i>



All key stakeholders outlined in the table above have been in regular contact and cooperation for several years whilst working towards more effective implementation of the right of every child to inclusive education in Lithuania. Multi-sectoral working groups at the Ministry of Education and Science have been established on numerous occasions, consultations were held and meetings organised. Unfortunately, most of these measures ended up being ineffective with no real changes following on the ground. However, with the new Government formed in the country, 2017 started with enhanced political will on the part of the new Minister of Education and Science. Additionally, during the Strategy Day-Discussion titled "Safeguarding Children's Right to Inclusive Education in Lithuania" on 30 November 2016, representatives of the Ministry of Education and Science proclaimed that reducing the number of children with disabilities attending special schools and implementation of and ensuring inclusive education in Lithuania is now the official position and goal of the Ministry. They also raised their concerns that the current Law on Education needs reviewing in order to bring it into line with the CRC and CRPD, and the global evidence base and best practice examples from around the world. The Ministry organised a meeting with representatives of NGOs on 20 February 2017 and confirmed that they are working on developing a concept and Action Plan to ensure access to inclusive education for children.

However, there is a different situation with regards to Municipalities, where there is no systematic approach, a lack of specific knowledge on the topic and no specific direction towards ensuring inclusive education for all children. This is a significant issue as the Municipalities play an important and semi-independent role in making related choices and decisions, allocating funding and organising education and services for children with disabilities at the local level. Additionally, there are major problems with regards to collection of clear, reliable and consistent statistical data, as well as a lack of records in individual cases. The main positive potential for change is the fact that, as of 1 September 2017, a new specialist position will be introduced in Municipalities: a Coordinator of Inter-sectoral Collaboration, who will be responsible for coordination of education, social and health services for children with disabilities and their families up until the child reaches the age of 18.

# The Right to Inclusive Education

## 1. Legal Obligations

Lithuania ratified the CRC in 1995 and the CRPD in 2010. Article 24 of the CRPD provides that States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, State Parties must ensure an inclusive education system at all levels, as well as life-long learning. As indicated by the CRPD Committee in its General Comment No. 4, State Parties must ensure the realisation of the right of persons with disabilities to education through an inclusive education system at all levels, including pre-school, primary, secondary and tertiary education, vocational training and life-long learning, and extra-curricular and social activities.

The Lithuanian Law on Integration of People with Disabilities establishes that persons with disabilities have the same rights as other members of society; thus, they have the same opportunities as other members of society regarding education (Article 3). The Law on Education provides for the right to study, and to acquire education and qualifications. The State is obliged to take measures to ensure that every child has an opportunity to study in pre-school, elementary, primary and secondary education programmes, according to Article 24 of this Law.

## 2. Factual Background

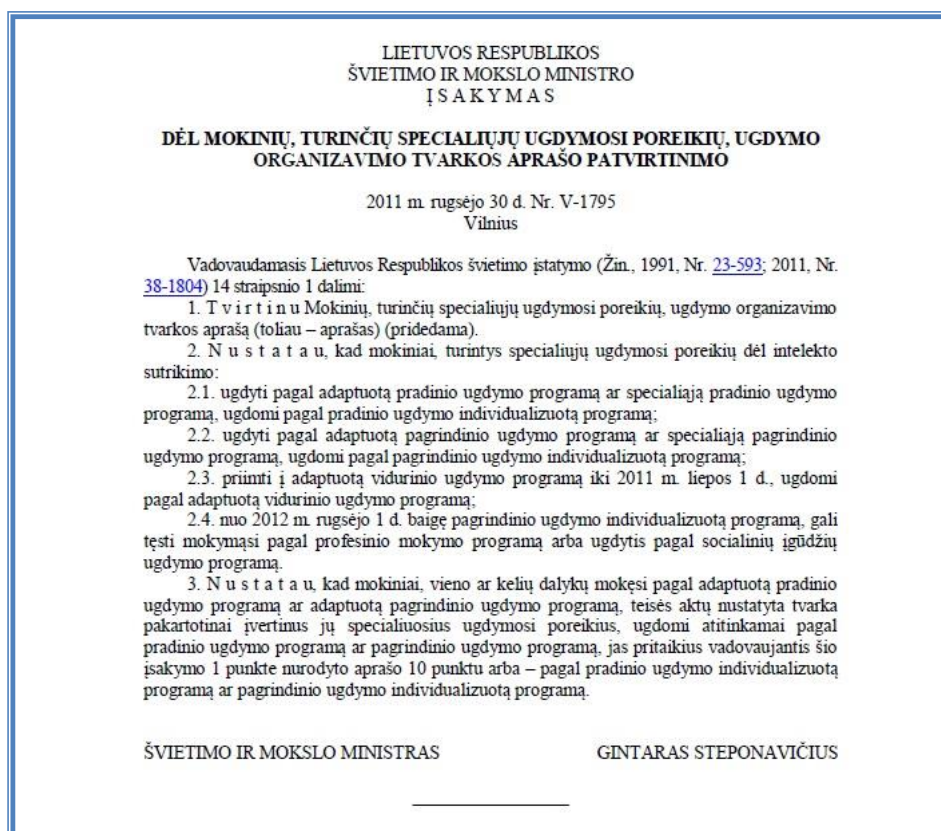
There is an alarming tendency for children with disabilities not to attend mainstream schools in Lithuania. The numbers have actually reduced from 6,142 children in mainstream schools in the year 2013 to 5,673 children in the year 2016. This is slightly more than 60% of the total number of children with disabilities in educational programmes (9,123 children in total). The remaining children either attend schools dedicated to special education or are home-schooled. Unfortunately, the future prospects are grim even for those children who do attend inclusive or integrated classes: only 1% of people going into higher education have a disability.

There are numerous reasons for the low number of children with disabilities in mainstream education. Most commonly, schools are simply not prepared to accept children with disabilities. This includes because there is a lack of appropriate support and means that are necessary for children with disabilities to participate; schools are physically inaccessible; there is a lack of qualified staff; there is a lack of resources; or schools are merely unwilling. In 2016, the National Audit Office reported a lack of physical accessibility (half of evaluated schools were inaccessible; in one of the districts only 26% of schools were accessible), a lack of specialists qualified to work with children with disabilities, and a lack of necessary tools (half of evaluated schools were short of specialists and/or tools). Also, there are no related awareness raising programmes on disability and education at either the municipal or the national level, and only one third of professionals who work in the education system develop their skills with regards to working with children with disabilities through trainings. Another cross-cutting issue reported by the National Audit Office was that pre-school education for children growing up in families on the 'Families at Risk' register is not ensured and this is not supervised at all by the Municipalities.

## 3. The Specific Goal of the Strategy

Lithuania was criticised by the CRC Committee for failing to implement the non-discrimination principle with regards to access to education for all children back in 2006; however, the situation has not changed much since. In addition to the negative practices, Lithuania has discriminatory legislation in place. For example, in 2011, the Minister of Education and Science adopted an Order on the Organizing of Education for Children with Special Educational Needs No. V-1795 which prevents children with intellectual disabilities from graduating from schools and thus obtaining mainstream secondary education.

The Order provides that, as of 1 September 2012, children who have special educational needs due to an intellectual disability may only continue onto a vocational training programme or a social skills development programme following completion of their individualised programme of basic education. In practice, this means that children with intellectual disabilities, as well as autism spectrum conditions, are denied access to mainstream secondary education (i.e. the final 11th and 12th grades, following the first 10 grades of basic education). As long as this Order is in force, schools use it as a justification for preventing children with intellectual disabilities from entering 11th and 12th grades and consequently obtaining and completing secondary education. The 'alternatives' of vocational training and/or social skills development programmes presented to these children not only are inadequate solutions for the children and their families, but they also violate Lithuania's legal obligation to ensure the right to education to all children. Furthermore, it should be noted that as practice has revealed, the vocational training and social skills development programmes are not in fact available anywhere in the country. Also, the types of vocation available for study are very few and are impractical, and the chances for employment following the completion of these programmes are extremely slim.



Back in 2014, the Institution of the Ombudsperson for Children's Rights (IOCR) investigated a complaint by the Lithuanian Welfare Society for People with Intellectual Disabilities, Viltis, and concluded that the Order is discriminatory in its nature and has to be reviewed. The Order must



be amended in such a way as to ensure equal access to education for all children as well as to guarantee inclusive education. During the Strategy Day-Discussion in November 2016, representatives of the Ministry of Education and Science agreed that the Order was outdated and did not meet the international obligations of Lithuania. As this Strategy seeks to ensure inclusive education for all children with disabilities in Lithuania, the above outlined provisions of the Order must be revoked, thus ensuring that each child has a full right to (secondary) education. Additionally, it is necessary to review the Law on Education and put in place the overall system and measures that would ensure that each child has access to adequate support and reasonable accommodations whenever these are needed.

#### 4. Overview of the Legal Remedies

In order to address the issues described above, i.e. to ensure access to secondary education (11th and 12th grade) for children with intellectual disabilities, several legal remedies are available. Choosing one specific remedy is highly dependent on (1) the preferences of the complainant (e.g. the majority of parents are often not willing to get into litigation processes against the school that their children attend or are supposed to attend; they would rather litigate against the Municipal or State institutions); (2) time available to the complainant (i.e. how long is it before the new academic year starts); (3) objectives and impact which are to be achieved; (4) resources available for the litigation, among other circumstances.

- ❖ If a child is refused access to a public school, the decision of the school may be challenged as an individual administrative act before the administrative court.
- ❖ If a child is refused access to a private school, the decision of the school may be challenged as a discriminatory act/omission before the civil court.
- ❖ If the schools are acting upon an order or decision by a particular Municipality, the decision of the Municipality may be challenged before the administrative court.
- ❖ There is also an option to challenge the Order of the Minister of Education and Science by bringing a discrimination case before the civil court; or to claim compensation for damages based on discrimination before the civil court.

For the purposes of strategic litigation, the best way to proceed would be initiating a discrimination case. It should be noted, however, that a discrimination case can only be initiated by the victim herself/himself (or his/her legal representatives) rather than any interested person (e.g. an NGO) arguing discrimination *per se*.

However, if the lawfulness of the legal acts is to be challenged, national legislation provides other possibilities. To be exact, Article 112 of the Law on Administrative Proceedings provides for an abstract application to examine lawfulness of a normative administrative act. It states that Members of Parliament, Parliamentary Ombudspersons, the Child Rights Ombudsperson, the Equal Opportunities Ombudsperson, State Audit officers, courts, prosecutors, and vocational associations established to carry out public functions have the right to address the administrative court with an application to examine if the normative administrative act is in contradiction with the law. This litigation option could be considered if no victim herself/himself is willing to initiate and pursue the case.

## Case Selection

### 5. Relevance

Implementation of the right to inclusive education is of significant importance and urgency in Lithuania. The segregation of children with disabilities is widespread and discriminatory practices persist in the country, despite ratification of the CRC in 1995 and CRPD in 2010. Lithuania had its first review at the CRPD Committee in 2016 and one of the Concluding Observations clearly urged Lithuania to “adopt and implement a coherent strategy on inclusive education in the mainstream educational system in accordance with article 24 of the Convention”. Litigating this issue would therefore tackle one of the fundamental principles of the CRPD which affects a large number of children in Lithuania.

### 6. Strength

A strong case presents many advantages for litigation. The following qualities, when met in a case, make it stronger and safer, and hence, ensure that litigation is beneficial for the wider target group and the individual client:

- ❖ The client is motivated, i.e. the client is not only seeking a primary solution to his/her particular problem but also wishes to seek systemic changes and advance the rights of children with disabilities;
- ❖ The client is not currently facing any substantial risks or potentially problematic situations regarding their personal, work or family life, which could potentially be further negatively affected by litigation;
- ❖ The client has a good circle of support, be it a network of other parents of children with disabilities or support from NGOs and/or other service providers; and
- ❖ It is feasible to collect quality evidence related to the case which is convincing to the court.

### 7. Ethical Considerations

The risks are considered and addressed with regards to whether the child and their family are going to end up in an unfavourable situation when the child has to continue attending his/her current school whilst the litigation is ongoing.

- ❖ Can the pressure of long-term litigation be handled by the family?
- ❖ Are all other potential and available supports accessible to the family whilst litigation is ongoing?
- ❖ Is the child provided with all necessary support when required to integrate into a mainstream school where they may be subjected to bullying?

## Litigation plan

### 8. Litigation Route to Follow

Since the Order of the Minister of Education and Science not only violates the right to education of children with disabilities but is also discriminatory in its nature, the litigation should focus on establishing a case of discrimination. For this purpose, involvement of the Equal Opportunities

Ombudsperson would be a very valuable asset and would likely give some extra weight to the case once it reaches court.

- ❖ If the victim of discrimination (or his/her legal representative) is willing to initiate the litigation process, and time is not an issue, one way to proceed would be to address the Equal Opportunities Ombudsperson with a request to establish a case of discrimination under the relevant legislation. Though the decision of the Equal Opportunities Ombudsperson is not binding and only of a recommendatory nature, it will nevertheless serve as a strong piece of evidence once the case is brought before the court.
- ❖ The case should then be brought before the civil court arguing both discrimination and violation of the right to education. In addition, if the victim so chooses and necessary evidence is available, a request for compensation for damages might be included.
- ❖ If there is no victim identified, who is willing to pursue the litigation herself/himself, Article 112 of the Law on Administrative Proceedings should be invoked.
- ❖ Since this is a discrimination issue, the Equal Opportunities Ombudsperson is best placed to address the court to solve this matter. In addition, since the Institution of the Ombudsperson for Children’s Rights has already looked at this matter in the past (the investigation into the complaint by the Lithuanian Welfare Society for People with Intellectual Disabilities, Viltis), the application to the court by the Equal Opportunities Ombudsperson’s Office would be the next logical step to follow.

<u>Potential Risks</u>	<u>Mitigation of Risks</u>
<ul style="list-style-type: none"> <li>❖ Difficulties identifying a client;</li> <li>❖ The potential cases being time-barred;</li> <li>❖ The pressure of the litigation being too great for the client to handle;</li> <li>❖ The litigation negatively affecting children and their families, their access to education and other services; children them being subjected to bullying, stigma and discriminatory practices, as a result of pursuing the litigation;</li> <li>❖ Litigation being ended prematurely due to external or internal factors;</li> </ul>	<ul style="list-style-type: none"> <li>❖ Close cooperation with other NGOs, schools, Municipalities, the Ombudsperson for Children’s Rights and/or the Ombudsperson for Equal Opportunities will help identify a client.</li> <li>❖ Adequate support will be ensured for the client by partner and other organisations, also services such as psychological support will be sought, as and when necessary to support the child and their family through the high-pressure activities.</li> <li>❖ Clients will be sought whose motivation is to reach an important systemic decision with potential impact for all children with disabilities. If possible, two cases will be litigated to</li> </ul>

<ul style="list-style-type: none"> <li>❖ Evidence being insufficient for the court;</li> <li>❖ Negative and stigmatising media coverage;</li> <li>❖ Lack of financial and human resources to pursue litigation until the end;</li> <li>❖ Positive decision not being implemented in practice due to a lack of resources.</li> </ul>	<p>mitigate the risk of early drop-out or premature end to litigation.</p> <ul style="list-style-type: none"> <li>❖ Child/family protection policy will be developed and implemented with various relevant partners and support services as well as appropriate partners in the media, if necessary.</li> <li>❖ The chosen case will have strong background evidence. If possible, two cases will be litigated with different requirements as to the evidence to mitigate the risk of lack of quality evidence.</li> <li>❖ A media strategy will be developed and implemented in order to cover the case from a human rights-based, positive, confidential, and anonymous perspective, if needed.</li> <li>❖ A decision-implementation monitoring strategy will be developed and adopted in order to make sure that a positive decision contributes to the desired outcome in practice.</li> </ul>
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## Follow-up Activities

### 9. Advocacy

- ❖ Target the Ministry of Education and Science, in close consultation with children, their families, NGOs, and other experts in the field, to develop and adopt a Strategy for Transition from Segregated to Inclusive Education in Lithuania as well as a more specific Action Plan with adequate allocated financial and human resources, and guidelines for practical implementation; and
- ❖ Target Municipalities to follow the lead by the Ministry and adhere to the new policies when implementing the Action Plan, organising the new systems and services on the ground.

### 10. Media/ Public Relations

- ❖ Continuous work with media representatives with the aim of helping to spread awareness and appropriate information about the rights of children with disabilities and their families, their lives, inclusive education, and support needed, available and accessible; and
- ❖ Coverage of litigation processes, outcomes, implementation of decisions and longer-term impact.

## 11. Education/ Awareness Raising

- ❖ Continuous work and project implementation in the areas of societal education and awareness raising about children with disabilities and their rights, negative effects of segregation, best practices and alternative models and approaches, existing available and accessible services as well as a vision for the future.

## Resources

### 12. Human Resources

- a. Local non-governmental organisations, associations of families of children with disabilities, and Ombudspersons' Offices.
  - i. Providing information on the lives of children with disabilities and families, challenges they face and the existing segregation in the education system.
  - ii. Searching for and identifying clients.
  - iii. Supporting clients, cooperating with the lawyers and families of children with disabilities.
  - iv. Supporting and organising education, communications and media-related activities.
  - v. Organising advocacy activities.
- b. Municipalities and related services.
  - i. Providing information on the type of services and known good practices in cooperation between schools, social services and families.
  - ii. Providing specific information, such as statistics or evidence on the more specific details of the case.
- c. Local lawyers
  - i. Accepting clients in cooperation with the NGOs.
  - ii. Conducting domestic litigation.
  - iii. Cooperating on advocacy and other follow-up activities.
- d. International NGOs.
  - i. Supporting advocacy and communications activities.
  - ii. Supporting litigation at the domestic level.
  - iii. Supporting litigation at the international level.
  - iv. Help to more widely disseminate the outcomes of the research, litigation and advocacy efforts.

## Financial Resources

- a. **Court fees**
  - ❖ These activities will be carried out according to the capacity of NGOs.
- b. **Related costs of litigation**

- ❖ Funds can be raised by a public campaign or on a project basis;
- ❖ Funds can be raised by targeted fundraising, e.g. targeting concrete entrepreneurs, private companies, charities; and
- ❖ Pro-bono lawyers can and will be involved in litigation as well as volunteers and law-faculty students.