

LITHUANIA

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Executive summary

Definitions

- [1]. According to the current Lithuanian legislation, concerning the definition of “disability”, different terms of general nature are used in different legal acts. Within the present system of disability classification, the large group of “people with mental disabilities” is separated in Lithuania, which includes both people with intellectual disabilities and people with mental health problems and behavioural problems.

Anti-discrimination

- [2]. Article 29 of the Constitution of the Republic of Lithuania declares that all people shall be equal before the law, the court, and other State institutions and officers. In line with the Council Directive 2000/78/EC and Council Directive 2000/43/EC the legislative framework for anti-discrimination has been significantly strengthened with the adoption of the new Law on Equal Opportunities of the Republic of Lithuania in 2003. The non-discrimination principle on the grounds of disability is set explicitly in the Law of Equal Opportunities.

Specific fundamental rights

- [3]. Lithuania has ratified most major international human rights instruments, including those with provisions relating specifically to the rights of people with disabilities.
- [4]. The Constitution of the Republic of Lithuania, The Civil Code of the Republic of Lithuania, The Criminal Code of the Republic of Lithuania, The Law on Social Integration of People with Disabilities of the Republic of Lithuania and the Mental Health Care of the Republic of Lithuania establish all political, economic, social and cultural rights to persons with mental disorders and intellectual disability.

Involuntary placement and involuntary treatment

- [5]. A number of legal acts regulate the involuntary placement and involuntary treatment of mental health care system's patients. Among the most important of them are the Civil Code of the Republic of Lithuania and the Law on Mental Health Care of the Republic of Lithuania. The Law on Mental Health Care indicates very concrete criteria for an involuntary hospitalisation which restricts person's freedom to be legitimate. However, in practice there are still gaps in both the regulation and implementation of involuntary hospitalisation and treatment procedures.

Competence, capacity and guardianship

- [6]. In Lithuania protection regime is provided for adults, who are no longer able to care for their personal interests or their property and affairs. Issues of capacity, incapacity and guardianship in Lithuania are regulated under the Civil Code of the Republic of Lithuania. The Code of Civil Procedure of the Republic of Lithuania regulates the process by which the courts can declare person as being incapable and place him under the guardianship.
- [7]. Mental disorder and intellectual disability are regarded as indications when starting the procedure of establishing full incapacity.

Miscellaneous

- [8]. Following the European policy regarding mental health, Lithuanian Parliament (Seimas) adopted Lithuanian Mental Health Strategy and later on the Plan for Implementation of State Mental Health Strategy for 2008-2010.
- [9]. Support and monitoring of human rights protection is one of the most urgent priorities. In supporting of human rights of persons with mental disorders an innovative service of Patient's person of trust is being introduced and developed in Vilnius city.

1. Definitions

[10]. According to the current Lithuanian legislation, concerning the definition of “disability” (neįgalumas)¹, different terms of general nature are used in different legal acts: “invalidity” (invalidumas), which refers to the loss of the capability to work; “person with disabilities” (neįgalusis)², “person with mental disabilities” (asmuo su psichikos negalia)³; and, for educational purposes, “person with special education needs” (specialiųjų ugdymosi poreikių asmuo)⁴. The term “intellectual disability” (proto negalia) is not precisely defined in the laws of the Republic of Lithuania. However, the offensive term “imbecility” (silpnaprotystė) is still used in the Civil Code of the Republic of Lithuania⁵. Government regulations describe intellectual disability as a separate type of “disorder” (sutrikimas) and establish three levels of disability, including intellectual disability, for children: slight, moderate and severe. The new Law on Social Integration of People with Disabilities of the Republic of Lithuania⁶ changed the concept of and attitude towards people with disabilities in Lithuania. Outdated terminology, such as “invalidity” (invalidumas) or “handicap” (atsilikimas), has been changed to internationally accepted terms such as “people with disabilities” (neįgalusis) or “people with special needs” (specialiųjų poreikių asmuo). The Law also leads to significant changes in disability assessment procedures for employment purposes and access to social benefits. According to the Law on Social Integration instead of disability group individual’s working capacity (graded in percentage) is established, when the person is considered as having no working capacity (0-25 percent of working capacity), having partial working capacity (30-55 percent)

¹ Disability is defined as long term health impairment that emerged due to the body structure or functional disorder in connection with an unfavourable environmental factors..

² Person with disabilities – a person with an established disability level or with less than 55 percent of working capacity and /or with established special needs.

³ No precise definition of the term “person with mental disabilities” is presented in the legislature. This term covers both persons with intellectual disability and persons with mental health disorders. Psychiatric patients are defined as persons having mental illness.

⁴ Person with special education needs – persons with limited capacities to participate in educational process and society due to their inborn or acquired long term health disorders (disability or working capacity).

⁵ The Civil Code of the Republic of Lithuania (Lietuvos Respublikos civilinis kodeksas), No. VIII-1864//State news, 2000, No. 74-2262. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350494&p_query=&p_tr2=

⁶ The Law on the Social Integration of People with Disabilities of the Republic of Lithuania (Lietuvos Respublikos neįgaliųjų socialinės integracijos įstatymas), No.IX-2228//State News, 2004.No.83-2983.Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987

and full working capacity (60-100 percent). The working capacity is established for people from age 18 until old-age⁷.

- [11]. It should be mentioned that before 1 July, 2005, the old version of the Law on Social Integration of People with Disabilities regulated the establishment of disability, medical, vocational and social rehabilitation for disabled persons, and the adjustment of conditions for the disabled, as well as the development and education of the disabled. For adults the assigning of one of the three disability groups was used: I, II or III, where group III was the least severe degree of disability.
- [12]. The Law on Mental Health Care of the Republic of Lithuania⁸ specifically focuses on the area of mental health and mental patients. It uses such terms as: “mental (psychiatric) patient (patient)” (psichikos pacientas)⁹ which is perceived as the person, who has a psychiatric illness; and the “patient” (pacientas) who is understood as the psychiatric patient or any other person, who makes use of mental health care.
- [13]. Besides the special needs may be established and provided for persons who due to the inborn or acquired long term health conditions (disability or loss of working capacity) and unfavourable environment factors are in the urge of such special support. Special needs, established and provided for persons, disregard their age, level of disability or working capacity, may be the following: the special need of constant nursing, the special need of constant care (support), etc.

1.1. Subsection level 1

- [14]. Within the present system of disability classification, the large group of “people with mental disabilities” is separated in Lithuania, which includes both people with intellectual disabilities and people with mental health problems and behavioural problems. In the daily practice there is an identification problem of these two groups of people, and it may constitute an important barrier in tackling the problem of establishing and meeting needs for social services, since it

⁷ According to the previous disability assessment procedures for people age 18 and over (including old age persons) disability group was indicated. The new procedure provides that for old-age people, who due to the long term health changes or their consequences totally or partially lost their independency and are not able to care for their personal and social life, special needs are established.

⁸ The Law on Mental Health Care of the Republic of Lithuania (Lietuvos Respublikos psichikos sveikatos priežiūros įstatymas), No. I-924//State news, 1995, No. Nr. 53-1290. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=259559

⁹ Psychiatric patient is defined as a person having mental illness.

is not a homogenous group and support provided for them should not be unified.

2. Anti-discrimination

2.1. Incorporation of United Nations standards

- [15]. International human rights law is built on the fundamental principle that all people should be protected equally under the law. Article 1 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, provides that “all people are free and equal in rights and dignity”. Although not legally binding, the UDHR has inspired numerous and wide-ranging international instruments of human rights, including two legally binding UN treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Yet the rights of people with disabilities have long been overlooked by the international community. Both the ICCPR and the ICESCR protect all people against discrimination on the basis of "race, colour, sex, language religion [...] or other status," but the language of neither convention specifies that discrimination on the basis of disability is unlawful. It was many years before the international community recognised that people with disabilities were affirmatively included in the anti-discrimination provisions of both covenants¹⁰.
- [16]. One of the essential achievement in the field of protection of rights of individuals with disabilities internationally is United Nations Convention on the Rights of Persons with Disabilities (The Convention)¹¹ adopted on December 13, 2006. On 30 March, 2007, during the opening day there were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. Lithuania was among other countries that signed both the Convention and Optional Protocol on its first day. It is the first comprehensive human rights treaty of the 21st century which for the first time in human history affirmed the legal

¹⁰ Eric Rosenthal and Arlene Kanter. People with Disabilities in Institutions and the Emerging Right to community Integration: Protections Under International and U.S. Law.

¹¹ The Convention on the Rights of Persons with Disabilities and its Optional Protocol. Access at <http://www.un.org/disabilities/default.asp?navid=12&pid=150>

status of persons with disabilities as subject to human rights and equal to other persons' protection of their rights. The Convention entered into force on 3 May, 2008. Lithuania has no legal obligations under the Convention until it is ratified according to the Lithuanian laws.

- [17]. In Lithuania, given that the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol are international agreements that need to be ratified, the Order No. A1-176 of the Minister of Social Security and Labour as of 27 June, 2007 has initiated an interinstitutional taskforce to deliver the analysis of relevance and feasibility for ratification of these international documents. The taskforce was formed from representatives from the Ministry of Culture, Ministry of Health, Ministry of Education and Science, Ministry of Transport and Communication, Ministry of Social Security and Labour, Ministry of Foreign Affairs, Ministry of National Defence, Ministry of Environment, the Office of Equal Opportunities Ombudsperson, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, and representatives of NGOs. The draft analysis of relevance and feasibility of the United Nations Convention on the Rights of Persons with Disabilities was introduced that investigated conformity of the Lithuanian legal system to provisions of the Convention, looked into possibilities to ratify all articles of the Convention and the Protocol, as well as assessed the real situation of persons with disability in Lithuania¹². Round tables were organised in order to discuss separate topical areas of the Convention, evaluate everything that has to be done yet, i.e. what law-making, administrative, informational, and other measures have to be undertaken in order to implement the rights of persons with disability acknowledged by the Convention. It should be mentioned that there were no real participation of disability NGOs in preparing of draft analysis, including their remarks given during the public consultation period, or organising of round tables and presenting their views and expertise on specific issues. The Department for the Affairs of the Disabled at the Ministry of Social Security and Labour (Neįgaliųjų reikalų departamentas prie Socialinės apsaugos ir darbo ministerijos) took the leading role during all this preparatory period.
- [18]. Upon revision of the aforementioned country analysis following the procedure set out in legislation a draft Law on Convention Ratification was drafted and supplied to the Parliament of the Republic of Lithuania in the spring session of Parliament working planning (June, 2009). By the initiative of Lithuanian Disability Forum (Lietuvos neįgaliųjų forumas) there was a meeting organised with Parliament

¹² First EU Disability High level group report on UN Convention. Access at <http://ec.europa.eu/social/main.jsp?catId=431&langId=en>

Committee on Social Affairs and Labour to discuss the need for rapid ratification of the Convention and Optional Protocol. During the meeting disability NGOs requested to change the Lithuanian translation of the Convention and its Optional Protocol for its inadequacy. As the result there was a new translation of the text of the Convention and Optional Protocol prepared and a new draft Law on Convention Ratification should be supplied to the Parliament for its consideration at the autumn session of Parliament working planning (September-October 2009).

- [19]. Guardianship is the main question specifically related to the rights of persons with mental disorders or persons with intellectual disabilities with regards to ratification of the Convention. In Lithuania system of full guardianship still exists and is applied specifically to persons with mental disabilities (see section VI). Yet in 2008 there were attempts to prepare a new draft of the Civil Code provisions related to declaring person's incapacity and placing under guardianship. Still this draft law has very formal amendments to the existing rules of assessing and declaring persons as legally incapable, and just establish possibility for persons with mental disabilities upon assessment of their capacities to exercise their rights or perform their duties to be declared as having limited capacity and be placed under the partial guardianship. The system of full guardianship is contradictory to the provisions of the Convention. After the ratification of the Convention amendments to existing guardianship legislation will be necessary.

2.2. The anti-discrimination national framework

- [20]. Article 29 of the Constitution of the Republic of Lithuania¹³ declares that all people shall be equal before the law, the court and other State institutions and officers. A person may not have his or her rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions. Restriction of rights and non-discrimination on the grounds of disability are not directly mentioned in the Constitution. Nevertheless in its Ruling of 11th November 1998 "in compliance with Part 4 of Article 38 of the Republic of Lithuania Law on Elections to the Seimas and with Part 4 of Article 36 of the Republic of Lithuania Law on Elections to Local Government

¹³ The Constitution of the Republic of Lithuania (Lietuvos Respublikos Konstitucija), approved in the Referendum on 25 October 1992, Parliamentary record on 1 November, 1992, No. 11.

Councils with the Constitution of the Republic of Lithuania¹⁴”, the Constitutional Court proclaimed:

“The general principle of equality of persons is laid down in Article 29 of the Constitution: “all persons shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions. The principle of equality of persons is defined as non-discrimination. [...] Discrimination is, as a rule, understood as changing the situation of a person or a group of persons with respect to other persons without any valid reason. [...] The principle of equality of persons, which is established by Article 29 of the Constitution means, in essence, a prohibition of discrimination. Discrimination is most often understood as a restriction on the rights of an individual or granting certain privileges according to his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions”.

- [21]. General non-discrimination provisions are mentioned both in the Constitution and integrated into numerous separate legislative pieces. Equality principle is specified both in the Labour Code of the Republic of Lithuania¹⁵, that came into force from 1 January, 2003, and the Civil Code of the Republic of Lithuania, that came into force from 1 July, 2001, providing that employment relations and all civil relations are regulated with the equality principle and prohibition to discriminate due to the sex, age or other ground.
- [22]. The Law on Equal Opportunities for Women and Men of the Republic of Lithuania¹⁶ was the first special law on non-discrimination issued on 1 December, 1998. This law is devoted to the gender discrimination and serves as basic procedural rules for the investigation of discrimination cases.
- [23]. In line with the Council Directive 2000/78/EC of 27 November, 2000, establishing a general framework for equal treatment in employment and occupation (hereafter the “Employment Directive”) and Council Directive 2000/43/EC of 29 June, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereafter the “Race Directive”), the legislative framework for anti-

¹⁴ Official Publication “State News”, 1998, No. 100-2791.

¹⁵ The Labour Code of the Republic of Lithuania (Lietuvos Respublikos darbo kodeksas), No. IX-926//State News, 2002, No. 64-2569. Approved on 4 June 2002 and entered into force on 1 January 2003. Access at

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350635&p_query=&p_tr2=

¹⁶ The Law on Equal Opportunities for Women and Men of the Republic of Lithuania (Lietuvos Respublikos vyrų ir moterų lygių galimybių įstatymas), No. VIII-947//State News, 1998, No. 112-3100. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349804

discrimination has been significantly strengthened with the adoption of the new Law on Equal Opportunities of the Republic of Lithuania¹⁷, which entered into force on 1 January, 2005. This law was formulated as the general multi ground non-discrimination law that prohibits discrimination on various grounds including disability. The non-discrimination principle on the grounds of disability is set explicitly in the Law of Equal Opportunities which states that it strives to ensure the realisation of equal rights established by the Constitution of the Republic of Lithuania, as well as prohibit any direct or indirect discrimination on the grounds of age, sexual orientation, disability, racial or ethnic origin, religion or convictions. Provisions of this law do not cover the spheres of family and private life, and explicitly regulates the implementation of equal opportunities and prohibition to discriminate in such areas as: 1) state and municipal institutions' and offices' activity in guaranteeing equal opportunities; 2) education; 3) employment; 4) access to goods and services; 5) membership and participation in organisations. On 17 June, 2008, there was a new version of the Law on Equal Opportunities adopted which entered into force on 5 July 2008¹⁸, which expanded the grounds of discrimination leaving the same non-discrimination guarantees in mentioned areas.

- [24]. The Office of Equal Opportunities Ombudsman¹⁹ supervises the implementation of the Law on Equal Opportunities. The Office is responsible for investigating complaints concerning direct and indirect discrimination and sexual harassment at work or in other aspects of life and to implement the Law on Equal Opportunities for Women and Men. After the Law on Equal Opportunities 2003 entered into force, the function of this Office were broadened to also investigate complaints concerning direct and indirect discrimination on the grounds set out in the Law on Equal Opportunities, including disability²⁰. Referring to the Annual Report 2008, the Equal

¹⁷ The Law on Equal Opportunities of the Republic on Lithuania (Lietuvos Respublikos lygių galimybių įstatymas), No. IX-1826//State News, 2003, No. 114-5115. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=324132&p_query=&p_tr2=

¹⁸ The Law on Equal Opportunities of the Republic of Lithuania (Lietuvos Respublikos lygių galimybių įstatymas), No. IX-1826//State News 2008, No. 76-2998. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=324132&p_query=&p_tr2=

¹⁹ At first the Office of the Ombudsman for Equal Opportunities for Women and Men was established and the first Ombudsman was appointed in 1999 by a decision of the Parliament. In 2003 the Ombudsman was reappointed for a second four-year period. According to the Parliament Decision of November 18, 2003//State News,2003, No. 111-4930 the name of the Office of the Ombudsman for Equal Opportunities for Women and Men was changed to the Office of the Equal Opportunities Ombudsman.

²⁰ The Office is an independent public institution accountable to the Parliament (Seimas). Men and women who think that discriminatory acts in the fields of employment, education and service provision have been directed against them or that he/she has become the subject of sexual harassment have a right to appeal to the Equal Opportunities Ombudsman. The Ombudsman investigates both direct and indirect discrimination. Under the Law on Equal Opportunities state government and administration institutions are obliged to draw up and

Opportunities Ombudsman received 19 complaints on the grounds of disability, but only very few were related to mental disability.

- [25]. The Law on the Social Integration of People with Disabilities²¹ is one of the most important laws relevant to people with disabilities. Article 2 states that “disabled people, regardless of the cause, character and degree of the manifestation of their disability, shall be entitled to the same rights as other residents of the Republic of Lithuania [...] People with disabilities shall be protected from all types of exploitation, discrimination and abusive or scornful behaviour”. The law applies to all people with disabilities of any level or type (including mental disabilities).
- [26]. An amended version of the Law on Social Integration of People with Disabilities was adopted by the Parliament on 11 May, 2004, and entered into force on 1 July, 2005²². The latest amendments were aimed at changing the concept of (and attitude towards) people with disabilities in Lithuania. It directly establishes the principles of equal rights and equal opportunities for people with disabilities, as well as their protection from discrimination and exploitation.
- [27]. The Government of Lithuania adopted the Resolution on confirmation of the National program of social integration of individuals with disabilities for years of 2003-2012 (Nacionalinė žmonių su negalia socialinės integracijos 2003-2012 metų programa)²³. The main purpose of the program is seeking of equal opportunities for individuals having disabilities in planning activities of their social integration and foreseeing the strategy of execution of all those activities. The program is allotted for all the disabled people, having various kinds of physical or psychiatric disabilities.
- [28]. The Law on Mental Health Care in Article 3 prohibits discrimination against patients due to their past or existing mental disabilities. It also

implement programs aimed at assuring equal opportunities for women and men and in that way changing public attitudes towards the superiority of one sex against the other.

²¹ The Law on the Social Integration of People with Disabilities of the Republic of Lithuania (Lietuvos Respublikos neįgaliųjų socialinės integracijos įstatymas), was adopted in 1991 and revised in 1998. The Law on the Social Integration of the Disabled 1991 established that people with disabilities have the same rights as other residents of the Republic of Lithuania, regardless of the reason, type, or level of their disabilities. The Law on Social Integration of People With disabilities of the Republic of Lithuania, No. I-2044//State News, 1991, No. 36-969.

Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=330987

²² The Law on the Social Integration of People with Disabilities (Lietuvos Respublikos neįgaliųjų socialinės integracijos įstatymas), No. IX-2228//State News, 2004, No. 83-2983.

Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=330987

²³ Government decision No. 850 on approval of National program of Social Integration of Individuals with Disabilities for years of 2003-2012//State News, 2002, Nr. 57-2335.

guarantees all political, economic, social, and cultural rights to patients with mental disabilities.

- [29]. With regards to Directive's imposed obligation to provide "reasonable accommodation" to meet the needs of the persons with disabilities, the Law on Equal Opportunities provides in the Article 5(9), that whilst implementing equal opportunities, an employer is obliged to take an appropriate measures to enable persons with disabilities to get the job, to work, to advance in employment or undergo training, unless such measures would impose a disproportionate burden on the employer. However, in the Law on Equal Opportunities there are no such provisions, specifying and determining what is meant by disproportionate burden, etc.
- [30]. Following the Report on Measures to Combat Discrimination in Accessing and Candidate Countries, published by the European Commission Employment and Social Affairs Department "Lithuanian law does not contain a duty to make reasonable accommodations, but it does entitle disabled workers to be exempt from overtime and night work, as well as guaranteeing them 35 days holiday each year"²⁴, and for up to 30 calendar days per year of unpaid leave. The Labour Code of the Republic of Lithuania gives the right of priority to retain the job in the case of redundancy to persons having severe or medium level of disability or less than 55 percent of workability established.
- [31]. The Law on the Social Integration of People with Disabilities specifies that support schemes for employment of persons with disabilities may be established by various legal acts.
- [32]. The Law on Support for Occupation of the Republic of Lithuania²⁵ establishes that among other persons additionally supported in labour market are: persons with established 0-25 percent of workability or severe level of disability; persons with established 30-40 percent of workability or medium level of disability; and persons with established 45-55 percent of workability and slight level of disability.
- [33]. The Law establishes active means of employment policy, including but not limited to State's support in providing employers' subsidy for the salary and covering the establishment and adapting of working places when they employ people with disabilities. Subsidies for salaries are paid to employers up to 12 month employing persons with

²⁴ Equality, Diversity and Enlargement. Report on measures to combat discrimination in acceding and candidate countries. Employment and Social affairs, European Commission, 2003.

²⁵ The Law on Support for Occupation of the Republic of Lithuania (Lietuvos Respublikos užimtumo rėmimo įstatymas), No. X-694 // State News, 2006, No. 73-2762. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=349684&p_query=&p_tr2=

established 45–55 percent of workability and slight level of disability; and subsidies for the salaries are term less when persons with established 0-25 percent of workability or severe level of disability or persons with established 30–40 percent of workability or medium level of disability are employed.

- [34]. Subsidy for establishment the new or adapting of existing working places is paid when employing the persons with severe level of disability, registered at the Labour Exchange as searching the job; and for other persons with disabilities (medium or slight) when registered at the Labour Exchange as unemployed for term less employment.
- [35]. The Law on Social Enterprises of the Republic of Lithuania²⁶ was adopted on 1 June, 2004, and came into force from 19 June, 2004. The scope of this law is to establish the status of social enterprises²⁷, basis of its functioning, rights and obligations. Social enterprises has the main purpose to employ special focus groups of people, foreseen in the law, that had lost their professional or general working capacity, are not economically active, and cannot compete on equal basis in the labour market, to promote social integration, return of those people to the labour market and decrease of their social exclusion. The law provided that one of such special focus group is unemployed people with disabilities, having disability groups I, II or III or severe or medium level of disability, or disabled person having established less than 55 percent of workability (both, registered and not registered with the Labour Exchange). The law also provides for a special kind of social enterprises – Social enterprises of people with disabilities, wherein people with disabilities constitute at least 50 percent of its annual average number of employees, from which people in disability groups I and II or with severe or medium level of disability, or disabled person having established less than 55 percent of workability make at least 40 percent.
- [36]. State support for social enterprises include partial compensation of the employee's salary and social insurance; subsidies for the establishment of working places and the adaptation of working places for people with disabilities; and subsidies for training of special focus groups. Additionally, State support will be provided for social enterprises of people with disabilities, a separate type of social enterprise foreseen in the new law. This will include subsidies for

²⁶ The Law on Social Enterprises of the Republic of Lithuania (Lietuvos Respublikos socialinių įmonių įstatymas), No. IX-2251//State News, 2004, No. 96-3519. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=312125

²⁷ Social enterprise – according to the law established juridical person, that meets the requirements for getting the social enterprise status, at least 40 percent of people employed are form one of the special targeted groups (disabled, long-term unemployed people, persons after coming back from the prisons, etc.)

adapting the working environment, working and leisure premises for people with disabilities; subsidies to compensate additional administration and transportation expenses; and subsidies to compensate assistant's (sign language, translator's) expenses. This is particularly important, since the position of job coach for the first time is foreseen in Lithuanian legislation.

3. Specific Fundamental Rights

- [37]. International human rights law is based on the fundamental principle that all people should be protected equally under the law. Lithuania has ratified most major international human rights instruments, including those with provisions relating specifically to the rights of people with disabilities. It should be noted that international treaties take precedence over national legislation²⁸.
- [38]. Lithuania has acceded to the Universal Declaration of Human Rights, adopted by the United Nations in 1948, which declares in Article 1 that "all people are free and equal in rights and dignity" and two legally binding United Nations treaties: the International Covenant on Civil and Political Rights (ICCPR)²⁹ and the International Covenant on Economic, Social and Cultural Rights³⁰ (ICESCR). Both the ICCPR and ICESCR protect individuals against discrimination on the basis of race, colour, sex, language, religion or other status, but none of the convention proclaims that discrimination on the basis of disability is unlawful. Also Lithuania has ratified all fundamental conventions of the International Labour Organisation.
- [39]. Lithuania has ratified European Convention for the Protection of Human Rights and Fundamental Freedoms, though it has not signed or ratified Protocol No. 12 to the mentioned Convention. Also it has ratified the Revised European Social Charter of 1996³¹ and the

²⁸ The Constitution (Article 138) and the Law on International Treaties define the main principles concerning the effect of international conventions, treaties and agreements. International treaties ratified by the Parliament (Seimas) become constituent parts of the legal system of Lithuania. If the standards defined by international treaties ratified by Lithuania differ from the ones set in its legislation, the standards of those international treaties must take precedence over Lithuanian legislation. Legislation and other legal acts of Lithuania must be coordinated with the norms set in these treaties. K. Jovaiša, Commentary of the Lithuanian Constitution (Part 1), Law Institute, Vilnius, 2000.

²⁹ International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 171. Available on the UNHCR website at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

³⁰ International Covenant on Economic, Social and Cultural Rights (CESCR), 3 January 1976, 993 U.N.T.S. 3. Available on the UNHCR website at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

³¹ Revised European Social Charter, 1 July 1999, C.E.T.S. 163. Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> .

European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The European Union Charter is also very important since it sets out a range of civil, political, economic and social rights. However, legal status of the Charter is indeterminate yet.

- [40]. The United Nations Standard Rules on Equalisation of Opportunities for People with Disabilities³² served as a source of reference for the preparation and adoption of the National Program for Social Integration of People with Disabilities in 2002.
- [41]. The Constitution of the Republic of Lithuania provides equality before the law for all, but there is no specific prohibition against discrimination on the grounds of disability.
- [42]. Furthermore, in line with European Union Council Directive 2000/43/EC and Council Directive 2000/78/EC the Law on Equal Opportunities of the Republic of Lithuania was adopted. The purpose of this Law is to ensure the implementation of human rights laid down in the Constitution of the Republic of Lithuania, and to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. Thus, this law includes a specific prohibition against discrimination on the grounds of disability.
- [43]. The Law on Social Integration of People with Disabilities of the Republic of Lithuania is the main legislative basis for Lithuanian disability policy. It aims, *inter alia*, to implement the rights of disabled. The Law proclaims that the disabled shall be entitled to the same rights as other residents of the Republic of Lithuania. It should be mentioned that Lithuania has an officially recognised disability policy – “The National Programme for the Social Integration of People with Disabilities 2003-2012”, which seeks to promote equal opportunities for people with disabilities.
- [44]. The Law on Mental Health Care of the Republic of Lithuania prohibits discrimination based on a person’s former or existing mental disorders. It establishes all political, economic, social and cultural rights to patients with mental disorders as well.
- [45]. Provisions on sanctions for the infringement of human rights can be found in the Criminal Code of the Republic of Lithuania³³. The

³² United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, A/RES/48/96, 20 December 1993.

³³ The Criminal Code of the Republic of Lithuania (Lietuvos Respublikos baudžiamasis kodeksas), No. VIII-1968//State News 2000, No. 89-2741. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=349789&p_query=&p_tr2=

Criminal Code is a uniform criminal law having the purpose of defending human and citizen's rights and freedoms, public and the state's interests against criminal acts by criminal law means.

- [46]. The case law database does not provide specific mental disability related cases, therefore it is impossible to confirm the existence of relevant cases with respect to each fundamental right.

3.1. The Right to life

- [47]. Article 19 of the Constitution of the Republic of Lithuania states that:

“The right to life of a human being shall be protected by law”.

This provision describes the belief that every human being has an essential right to live, particularly that a human being has the right not to be killed by another human being. The concept of a right to life also includes the issues of capital punishment, euthanasia, self defence, abortion and war.

- [48]. In Lithuania capital punishment was abolished in December 21, 1998, by the Parliament of the Republic of Lithuania (Seimas).

- [49]. The issues of person's birth are regulated by the Civil Code of the Republic of Lithuania. It is laid down in the Article 2.2. of the Civil Code of the Republic of Lithuania that:

“Passive civil capacity of a natural person shall begin at the moment of his birth and end at the moment of his death.

The beginning of rights prescribed by law to a conceived but yet unborn baby shall depend on the act of its birth.

In the event of the impossibility to establish whether a baby was born alive or dead it shall be presumed that it was born alive”.

Thus, it means that some civil rights for a person are recognised for yet unborn baby, with a condition that he or she will be born alive. Yet unborn babies are mentioned in a list of persons who have capacity to inherit:

“In succession by operation of law: natural persons who survived the bequeather at the moment of his death, children of the bequeather who were born after his death, likewise the State of Lithuania;

In succession pursuant to a will: natural persons who survived the testator at the moment of his death, likewise those who were conceived while the testator was still alive and were born after his death; persons named in the will before their conception – upon their birth”.

However, according to Lithuanian law, all human rights are recognised for a born human being.

- [50]. Article 2.3 of the Civil Code regulates the moment of birth of natural persons:

“The first independent breath shall be considered to be the act of birth of a natural person.

- [51]. It should be mentioned, that the Law on Determination of Child’s Birth Moment of the Republic of Lithuania³⁴ regulates that the birth of a child should be considered as a moment of foetus expulsion of a women’s body. According to the mentioned law, the breath and the heart beats are considered to be the acts of birth of a natural person. Thus, in Lithuania two laws come into collision while providing the moment of birth of natural persons.

- [52]. Illegal abortion is forbidden by the Criminal Code of the Republic of Lithuania in the Article 142:

“A doctor who has the right to perform abortions and performs an abortion at the request of a patient, in the presence of contraindications or in the event of performing it not at a health care establishment shall be punished by community service or by deprivation of the right to be employed in a certain position or to engage in a certain type of activities or by restriction of liberty or by imprisonment for a term of up to two years.

A health care specialist who does not have the right to perform abortions and performs an abortion at a health care establishment at the request of a patient shall be punished by community service or by deprivation of the right to be employed in a certain position or to engage in a certain type of activities or by restriction of liberty or by imprisonment for a term of up to three years.

A person who does not have the right to perform abortions and terminates pregnancy at the request of a pregnant woman shall be punished by arrest or by imprisonment for a term of up to four years”.

- [53]. Compelling a woman to have an illegal abortion is also forbidden. In the Article 143 of the Criminal Code of the Republic of Lithuania:

“A person who compels a pregnant woman to have an illegal abortion by exerting a mental coercion on the victim or persons close to her

³⁴ The Law on Determination of Child’s Birth Moment of the Republic of Lithuania (Lietuvos Respublikos vaiko gimimo momento nustatymo įstatymas), No. IX-837//State News, 2002, No. 43-1602 . Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=165029&p_query=&p_tr2=

shall be punished by a restriction of liberty or by arrest or by imprisonment for a term of up to three years”.

- [54]. Self-Defence as the issue of the right to life is also regulated by Lithuanian law. The Criminal Code of the Republic of Lithuania provides that persons have the right to self-defence, regardless of whether he or she had the possibility of avoiding the attempt or applying for assistance to other persons or authorities. Moreover, according to the Criminal Code a person is not held liable under this Code where he or she, while acting within the limits permitted by self-defence, committed an act formally having the features of a crime or misdemeanour provided for in a criminal law when defending himself or another person, property, inviolability of a dwelling, other rights, interests of society or the State against an initiated or imminent dangerous attempt.
- [55]. The experts could not access specific mental disability related case law with respect to the right to life through the national database.

3.2. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- [56]. Article 21 of the Constitution of the Republic of Lithuania declares that:
- “The person of the human being shall be inviolable.
The dignity of the human being shall be protected by law.
It shall be prohibited to torture, injure a human being, degrade his dignity, subject him to cruel treatment as well as establish such punishments.
No human being may be subjected to scientific or medical experimentation without his knowledge and free consent”.
- [57]. The Criminal Code of the Republic of Lithuania in Article 103 provides sanctions for causing bodily harm to, torture or other inhuman treatment of persons protected under International Humanitarian Law:
- “A person who, in time of war or during an armed international conflict or under the conditions of occupation or annexation and in violation of norms of international humanitarian law, inflicts a serious bodily harm to or an illness upon or tortures the wounded, the sick,

seamen of a sinking warship, prisoners of war, civilians or other persons protected under international humanitarian law, conducts a biological or medical experiment with them, in lawfully takes their organ or tissue for transplanting purposes, unlawfully takes their blood or subjects them to other inhuman treatment, imposes upon them criminal penalties without a judgement of an independent and impartial court or without guarantees of defence in court or commits an outrage on the remains of the fallen shall be punished by imprisonment for a term of three up to twelve years”.

- [58]. None of laws include specific provisions securing the mentally disabled persons from torture or cruel, inhuman or degrading treatment or punishment, except for the mentioned general regulations.
- [59]. The experts could not access specific mental disability related case law with respect to the right to freedom from torture or cruel, inhuman or degrading treatment or punishment through the national database.

3.3. The right to freedom from exploitation

- [60]. The right against exploitation provides for two provisions, namely the forced labour and the abolition of trafficking in human beings.
- [61]. Article 21 of the Constitution of the Republic of Lithuania declares that:

“The person of the human being shall be inviolable”.
- [62]. Article 48 of the Constitution of the Republic of Lithuania proclaims that:

“Each human being may freely choose a job or business, and shall have the right to have proper, safe and healthy conditions at work, to receive fair pay for work and social security in the event of unemployment”.

In Lithuania forced labour is prohibited. However, military service or alternative service performed in place of military service as well as citizens’ work in time of war, natural disaster, epidemics, or other extreme cases is not considered forced labour. Work performed by persons convicted by court, the work being regulated by law, is not considered forced labour, either.

- [63]. The Criminal Code in Article 147(1) provides sanctions for use for forced labour:

“A person who, by using physical violence or threats or by otherwise depriving of a possibility of resistance or by taking advantage of a person’s dependence unlawfully forces him to perform a certain work shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

A person who commits the act indicated in paragraph 1 of this Article by forcing a person to work under the conditions of slavery or under other inhuman conditions shall be punished by arrest or by imprisonment for a term of up to eight years.

A legal entity shall also be held liable for the acts provided for in this Article”.

[64]. Article 9 of the Law on Mental Health Care provides: the labour activity of mentally ill persons hospitalised in a mental health facility must be voluntary, having a therapeutic and rehabilitative effect and helping them to return to the community. Labour activity must be recommended and controlled by the psychiatrist. It shall be prohibited to force a mentally ill person to work.

[65]. In Lithuania trafficking in human beings is forbidden by law. The Criminal Code in Article 147 provides:

“A person who sells, purchases or otherwise conveys or acquires a person or recruits, transports or holds in captivity a person by using physical violence or threats or by otherwise depriving him of a possibility of resistance or by taking advantage of the victim’s dependence or vulnerability or by resorting to deceit or by paying or granting other material benefit to a person who actually has the victim under his control, where the offender is aware of or seeks involvement of the victim in prostitution or gaining profit from this person’s prostitution or using him for pornography purposes or forced labour shall be punished by imprisonment for a term of two up to ten years.

A person who commits the act provided for in paragraph 1 of this Article in respect of two or more victims or by participating in an organised group or seeking to acquire the victim’s organ, tissue or cells shall be punished by imprisonment for a term of four up to twelve years.

A legal entity shall also be held liable for the acts provided for in this Article”.

[66]. The experts could not access specific mental disability related case law with respect to Disclaimer: The national thematic studies were commissioned as background material for the comparative report on *Fundamental rights of persons with intellectual disabilities and persons with mental health problems* by the European Union Agency for Fundamental Rights (FRA). The views expressed in the summaries compiled from the national thematic studies do not necessarily reflect

the views or the official position of the FRA. These summaries are made publicly available for information purposes only and do not constitute legal advice or legal opinion. They have not been edited.

- [67]. o the right to freedom from exploitation through the national database.

3.4. The right to liberty and security

- [68]. Article 20 of the Constitution of the Republic of Lithuania declares:

“The freedom of a human being shall be inviolable.
No one may be arbitrarily detained or held arrested. No one may be deprived of his freedom otherwise than on the grounds and according to the procedures which have been established by law.
A person detained in *flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of the detainee, on the validity of the detention. If the court does not adopt a decision to arrest the person, the detainee shall be released immediately”.

- [69]. The prohibition to restrict the freedom of a natural person is enshrined in the Civil Code of the Republic of Lithuania as well. The Article 2.26 provides that:

“Freedom of a natural person shall be inviolable. A capable person may be placed under any supervision or imposed any restrictions only after his consent has been given as well as in other cases prescribed by law.

Where a person’s life is endangered or he has to be hospitalised to protect the public interests person’s consent to the medical care shall not be required.

Psychiatric examination of a person may be conducted only with his consent or after the authorisation of the court has been granted. Consent to conduct psychiatric examination of an incapable person may be given by his guardian or by the court. Where a person’s life is seriously endangered urgent psychiatric care may be taken without person’s consent.

A person may be confined in a psychiatric institution only with his consent and after the authorisation of the court has been granted. Where a person is seriously ill with a mental disease and where there is a real danger that his actions may cause considerable damage to his or other people’s health or life and property, the person may be hospitalised in a compulsory manner for the period not exceeding two days. Compulsory hospitalisation may be extended only after the

authorisation of the court in accordance with the procedure prescribed by law has been granted. Where a person is incapable, his guardian may give his consent to the said person's compulsory hospitalisation for the period not exceeding two days. Compulsory hospitalisation of an incapable person may be extended only after the authorisation of the court following the procedure prescribed by law has been granted. Persons who unlawfully imposed restrictions on the freedom of a natural person shall have to redress property and non-pecuniary damage incurred on the said person".

[70]. The Criminal Code establishes sanctions for crimes against human liberty. Article 146 of the Code declares that:

"A person who unlawfully deprives a person of his liberty, in the absence of characteristics of hostage taking, shall be punished by a fine or by arrest or by imprisonment for a term of up to three years.

A person who commits the act provided for in paragraph 1 of this Article by using violence or posing a threat to the victim's life or health or by holding the victim in captivity for a period exceeding 48 hours shall be punished by arrest or by imprisonment for a term of up to four years.

A person who unlawfully deprives a person of his liberty by committing him to a psychiatric hospital for reasons other than an illness shall be punished by arrest or by imprisonment for a term of up to five years".

[71]. The experts could not access specific mental disability related case law with respect to the right to liberty and security through the national database.

3.5. The right to fair trial

[72]. The right to fair trial is seen as an essential right respecting the rule of law. Article 30 of the Constitution of the Republic of Lithuania states that:

"Any person whose constitutional rights or freedoms are violated has the right to apply to court".

[73]. Thus each individual is entitled to file a lawsuit in order to defend his or her rights or legitimate interest that has been infringed or contested. Also the Constitution states that compensation for material and moral damage inflicted upon a person shall be established by law.

[74]. The right to fair trial is laid down in the procedural codes of the Republic of Lithuania as well. Article 6(2) of the Code of Criminal

Procedure of the Republic of Lithuania³⁵ proclaims that justice is administered in criminal proceedings based on the principle that all persons are equal against the law and the court, irrespective of origin, social/property status, nationality, race, gender, education, language, religious or political views, type and nature of occupation, place of residence and other circumstances. Granting privileges or imposing restrictions on the grounds of any circumstances and personal qualities or social/property status of the individual is prohibited. Article 5 of the Code of Civil Procedure of the Republic of Lithuania³⁶ guarantees that every human being has the right to file a lawsuit in order to defend his or her rights. Furthermore, Article 6 of the Republic of Lithuania Law on Administrative Proceedings³⁷ establishes that justice in administrative proceedings is only dispensed by the courts taking guidance from the principle of all individuals' equality before the law and the court irrespective of gender, race, nationality, language, origin, social status, faith, views or convictions, type and nature of occupation, place of residence and other circumstances.

[75]. The right to fair trial is also enshrined in the Law on Courts of the Republic of Lithuania³⁸. According to this Law nationals of the Republic of Lithuania have the right to judicial remedy against encroachment on their rights and freedoms laid down in the Constitution of the Republic of Lithuania and the laws, as well as in the international agreements to which the Republic of Lithuania is a party. Furthermore, everyone is entitled to a fair hearing by an independent and impartial court established by law and the court, in all its activities, must ensure that hearing of a case shall be fair and public and within a reasonable time. The Law on Courts provides that all persons are equal before the law and the courts – a person's rights may not be limited nor may he been given any privileges on account of his sex, race, nationality, language, origin, social position, religious belief, convictions, views or any other circumstances.

[76]. However, it should be noted that neither the said laws nor other laws governing the procedure for filing lawsuits, hearing cases, passing and

³⁵ The Code of Criminal Procedure of the Republic of Lithuania (Lietuvos Respublikos baudžiamojo proceso kodeksas), No. IX-785//State News 2002, No. 37-1341. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319053&p_query=&p_tr2=

³⁶ The Code of Civil Procedure of the Republic of Lithuania (Lietuvos Respublikos civilinio proceso kodeksas), No. IX-743//State News 2002, Nr. 36-1340. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205&p_query=&p_tr2=

³⁷ The Law on Administrative Proceedings of the Republic of Lithuania (Lietuvos Respublikos administracinių bylų teisenos įstatymas), No. VIII-1029 //state News, 1999, Nr. 13-308. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=347059

³⁸ The Law on Courts of the Republic of Lithuania (Lietuvos Respublikos teismų įstatymas), No. I-480//State News, 1994, No. 46-851. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=343547&p_query=&p_tr2=

execution of court decisions contain any provisions that could create opportunities for the discrimination of disabled persons.

- [77]. The experts could not access specific mental disability related case law with respect to the right to fair trial through the national database.

3.6. The right to privacy, including the access to one's own confidential medical records

- [78]. The Constitution in Article 22 states that:

“The private life of a human being shall be inviolable. Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable. Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law. The law and the court shall protect everyone from arbitrary or unlawful interference in his private and family life, from encroachment upon his honour and dignity”.

- [79]. The right to privacy is also enshrined in the Civil Code in Article 2.23. It is laid down:

“Privacy of natural person shall be inviolable. Information on person's private life may be made public only with his consent. After person's death the said consent may be given by person's spouse, children and parents. Unlawful invasion of person's dwelling or other private premises as well as fenced private territory, keeping his private life under observation, unlawful search of the person or his property, intentional interception of person's telephone, post or other private communications as well as violation of the confidentiality of his personal notes and information, publication of the data on the state of his health in violation of the procedure prescribed by laws and other unlawful acts shall be deemed to violate person's private life. Establishment of a file on another person's private life in violation of law shall be prohibited. A person may not be denied access to the information contained in the file except as otherwise provided by the law. Dissemination of the collected information on the person's private life shall be prohibited unless, taking into consideration person's official post and his status in the society, dissemination of the said information is in line with the lawful and well-grounded public interest to be aware of the said information.

Public announcement of facts of private life, however truthful they may be, as well as making private correspondence public in violation of the procedure prescribed in paragraphs 1 and 3 of the given Article as well as invasion of person's dwelling without his consent except as otherwise provided by the law, keeping his private life under observation or gathering of information about him in violation of law as well as other unlawful acts, infringing the right to privacy shall form the basis for bringing an action for repairing the property and non-pecuniary damage incurred by the said acts.

Where the said acts are committed on the basis of reasoned judgement of the court, restrictions imposed on the publication and collecting of information about the person which are laid down in the provisions of paragraphs 1 and 3 of the given Article shall not be applied".

- [80]. The Law on Mental Health Care in Article 14 provides that "patients shall have the right to confidentiality with regard to information concerning their health. The psychiatrist, other medical doctor, nurse and other staff members, the administration of a health care facility must guarantee the above-stated right of the patient in compliance with the laws of the Republic of Lithuania and according to the requirements of medical ethics. Information concerning the patients' state of health shall be furnished to other persons in compliance with the procedure established by the laws of the Republic of Lithuania". Article 15 of this Law states that "patients shall have the right to confidentiality with regard to information concerning their health. The psychiatrist, other medical doctor, nurse and other staff members, the administration of a health care facility must guarantee the above-stated right of the patient in compliance with the laws of the Republic of Lithuania and according to the requirements of medical ethics. Information concerning the patients' state of health shall be furnished to other persons in compliance with the procedure established by the laws of the Republic of Lithuania". According to the Law, a decision regarding the restrictions to the access of the patient to his medical record, extracts from his medical record shall be taken by the psychiatrist who shall make an appropriate recording in the patient's medical record. In the cases where the patient's right to get access to his medical record, extracts from his medical record is restricted, the appropriate information shall be communicated to a representative of the patient. The said information shall be communicated to the patient as soon as the risk of causing the said harm to the patient by the notification of such information is eliminated.
- [81]. The experts could not access specific mental disability related case law with respect to the right to privacy, including the access to one's own confidential medical records through the national database.

3.7. The right to marry, to found a family and to respect of family life

[82]. The right to marry, to found a family and to respect of family life is enshrined in the Constitution. Article 38 proclaims:

“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.
The State shall register marriages, births, and deaths. The State shall also recognise church registration of marriages.
In the family, the rights of spouses shall be equal”.

[83]. However, persons with mental disorders or intellectual disability, who are declared fully incapable by the court, lose the right to marry, enjoyed by other adults.

[84]. The experts could not access specific mental disability related case law with respect to the right to marry, to found a family and to respect of family life through the national database.

3.8. The right to have children and maintain parental rights

[85]. The right to have children and maintain parental rights is laid down in the Constitution in Article 39, which proclaims that “the State shall take care of families that raise and bring up children at home, and shall render them support according to the procedure established by law. The law shall provide to working mothers a paid leave before and after childbirth as well as favourable working conditions and other concessions”. The Constitution also lays down the provision in Article 38 that the right and duty of parents is to bring up their children to be honest people and faithful citizens and to support them until they come of age and the duty of children is to respect their parents, to take care of them in their old age, and to preserve their heritage.

[86]. None of the laws establish the right to have children or maintain parental rights specifically for mentally disabled persons. General provisions are applied, however, it should be noted, that the right to have children and maintain parental rights is complicated to realize for

people with mental disorders or with intellectual disability and who are declared fully incapable by the court.

- [87]. The experts could not access specific mental disability related case law with respect to the right to have children and maintain parental rights through the national database.

3.9. The right to property

- [88]. The right to property is a constitutional provision and is laid down in Article 23 – “property shall be inviolable”. The Constitution also provides that the rights of ownership are protected by laws and property may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for.

- [89]. However, persons with mental disorders or intellectual disability, who are declared fully incapable by the court, have no possibilities to realise their right to property by themselves.

- [90]. The experts could not access specific mental disability related case law with respect to the right to property through the national database.

3.10. The right to vote

- [91]. The right to vote is enshrined in the Article 34 of the Constitution:

“Citizens who, on the day of election, have reached 18 years of age, shall have the electoral right.

The right to be elected shall be established by the Constitution of the Republic of Lithuania and by the election laws.

Citizens who are recognised incapable by court shall not participate in elections”.

- [92]. The Law on Presidential Elections of the Republic of Lithuania³⁹ in Article 4 regulating universal suffrage states that „citizens of the Republic of Lithuania who on the election day are 18 years of age or over shall have the right to vote for the President of the Republic. Citizens of the Republic of Lithuania who have been declared incapable by court shall not participate in elections”.

³⁹ The Law on Presidential Elections of the Republic of Lithuania (Lietuvos Respublikos prezidento rinkimų įstatymas), No. I-28//State News, 1993, Nr. 2-29. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=342310

- [93]. The Law on Elections to Municipal Councils of the Republic of Lithuania⁴⁰ in Article 2 has laid down that „the right to elect municipal councillors shall be enjoyed by permanent residents (voters) of that municipality, who are 18 years of age on election day. Persons who have been declared legally incapable by the court shall not participate in elections”.
- [94]. The Law on Elections to the Seimas of the Republic of Lithuania⁴¹ in Article 2 provides – “citizens of the Republic of Lithuania who, on the election day, are 18 years of age shall have the right to vote. Citizens who have been declared legally incompetent by the court shall not participate in elections”.
- [95]. The Law on Elections to the European Parliament of the Republic of Lithuania⁴² in Article 3 proclaims that “citizens of the Republic of Lithuania as well as citizens of other Member States of the European Union, permanently residing in Lithuania, who, on the election day, are 18 years of age shall have the right to vote in elections to the European Parliament. Citizens who have been declared legally incompetent by the court shall not participate in elections”.
- [96]. It should be emphasised that in Lithuania, according to all the mentioned laws, citizens who are recognised fully incapable by the court are not allowed to participate in elections.
- [97]. The experts could not access specific mental disability related case law with respect to the right to vote through the national database.

⁴⁰ The Law on Elections to Municipal Councils of the Republic of Lithuania (Lietuvos Respublikos savivaldybių tarybų įstatymas), No. I-532//State News, 1994, Nr. 53-996. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=342330

⁴¹ The Law on Elections to the Seimas of the Republic of Lithuania (Lietuvos Respublikos Seimo rinkimų įstatymas), No. I-2721//State News, 1992, Nr. 22-635. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=342389

⁴² The Law on Elections to the European Parliament of the Republic of Lithuania (Lietuvos Respublikos rinkimų į Europos Parlamentą įstatymas), No. IX-1837//State News, 2003, Nr. 115-5192. Access at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=342311&p_query=&p_tr2=

4. Involuntary placement and Involuntary Treatment

- [98]. On June 25, 2009, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published the report on its April, 2008, visit to Lithuania. The report has been made public at the request of the Lithuanian authorities⁴³.
- [99]. During the 2008 visit, the CPT reviewed the measures taken by the Lithuanian authorities to implement the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police holding facilities. The CPT's delegation also examined in detail various issues related to prisons, including the situation of juvenile and life-sentenced prisoners. Further, for the first time in Lithuania, the Committee's delegation visited a forensic psychiatric hospital and a social welfare institution. The CPT's delegation visited a forensic psychiatric hospital (Rokiškis Psychiatric Hospital) and, for the first time in Lithuania, a social welfare institution (Skemai Residential Care Home). The former is administered by the Ministry of Health and the latter by the Ministry of Social Security and Labour.
- [100]. The CPT's report states that the legal framework governing involuntary placement in a psychiatric establishment has not changed since the visit in 2004. In the report on the 2004 visit, the CPT made several recommendations concerning safeguards surrounding the involuntary placement of a civil nature in a psychiatric establishment. The information gathered by the delegation during the 2008 visit suggests that some of those recommendations have not yet been implemented by the Lithuanian authorities. In particular, patients were apparently still not heard in person by the court in the context of civil involuntary placement procedures. Also, it remained unclear to what extent courts now seek an opinion from a psychiatrist outside the hospital concerned during civil involuntary placement procedures.
- [101]. Pursuant to the relevant provisions of the Civil Code and the Law on the Mental Health Care, emergency placement – i.e. up to 48 hours –

⁴³ Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2008. Access at <http://www.cpt.coe.int/documents/ltu/2009-22-inf-eng.htm>

of a person in a psychiatric establishment without his consent may take place if he is severely mentally ill and endangers the life or health of himself or others. If a person's consent to hospitalisation and treatment is not obtained within 48 hours, he must be released, unless a court authorises the prolongation of hospitalisation and treatment. CPT mentioned in its report, that "procedure for non-emergency situations, whereby a patient could be hospitalised against his/her will after a court decision has been taken, is apparently not provided for".

- [102]. In term of long term care for persons with mental disabilities Lithuanian legislation does not provide for an involuntary placement procedure in social welfare establishments. Residents are admitted on their own application or that of their guardian. An agreement is signed between the applicant and the authorised representative of the local government for an indefinite period. CPT report, nevertheless argues that it appears that even legally competent residents admitted on the basis of their own application were not always allowed to leave the home when they so wished, since their discharge could only take place by decision of the social affairs unit. This is due to the need to ascertain that discharged residents had a place and means for them to live in the community; nevertheless, this meant that such residents were *de facto* deprived of their liberty (on occasion for a prolonged period).
- [103]. Specific reference is made to the situation of residents deprived of their legal capacity in the report. Such persons could be admitted to the social care home solely on the basis of the application of their guardian. However, they are considered to be voluntary residents, even when they opposed such a placement. In the CPT's view, placing incapacitated persons in a social welfare establishment which they cannot leave at will, based solely on the consent of the guardian, entails a risk that such persons will be deprived of essential safeguards.
- [104]. CPT reports about its delegation's astonishment to learn that in the majority of cases, all the persons deprived of their legal capacity within the visited social welfare establishment were placed under the guardianship of the home, and the existing guardianship arrangements had been terminated by a court decision upon admission to the establishment and guardianship of the person concerned entrusted to the home.
- [105]. Within the report CPT stresses that one aspect of the role of a guardian is to defend the rights of incapacitated persons *vis-à-vis* the hosting social welfare institution. Obviously, granting guardianship to the very same institution may easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. The

CPT reiterates its recommendation that the Lithuanian authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.

[106]. Other recommendations included in the report for Lithuanian authorities with regards to ensuring rights of persons with mental disabilities in the institutional settings are:

- To take steps – including of a legislative nature – to distinguish clearly between the procedure for involuntary placement in a psychiatric institution and the procedure for involuntary psychiatric treatment, in the light of the above remarks. Further, all patients (and, if they are deprived of their legal capacity, their legal representatives) should be provided systematically with information about their condition and the treatment prescribed for them, and doctors should always seek the patient’s consent to treatment prior to its commencement. Relevant information should also be provided to patients (and their legal representatives) during and after treatment;
- To take steps in all psychiatric/social welfare establishments in Lithuania to ensure that means of restraint are applied in strict compliance with the concrete requirements (in particular as regards the supervision of patients under restraint).
- To take steps to ensure that all psychiatric/social welfare establishments in Lithuania are visited, on a regular basis, by a body which is independent of the health/social affairs authorities.

[107]. On September 15, 2009, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published the responses of the Government of Lithuania to the report on the CPT's most recent visit to Lithuania, in April, 2008. The response has been made public at the request of the Lithuanian authorities⁴⁴.

4.1. Legal Framework

[108]. A number of legal acts regulate the involuntary placement and involuntary treatment of mental health care system’s patients. Among the most important of them are the Civil Code and the Law on Mental Health Care. The Civil Code came into force on July 1, 2001. In

⁴⁴ Responses of the Lithuanian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Lithuania. Access at <http://www.cpt.coe.int/documents/ltu/2009-24-inf-eng.htm>

Lithuania the Civil Code regulates all the property and other related non-property relationship, also family relationship and other civil relationship among the parties. The Law on Mental Health Care is a special law in his nature, since it regulates all the issues and relationship that happen in providing mental health care within the mental health care institutions, including involuntary placement and involuntary treatment. The Law on Mental Health Care was adopted and came into force on June 6, 1995. In the year 2005 this law was amended with an important provision on the compulsory legal aid provided for persons with severe mental illness when deciding their involuntary placement and involuntary treatment.

- [109]. Lithuanian legislation does make a distinction between involuntary placement and involuntary treatment in the terms used in the laws. The Law on Mental Health Care in Article 16 requires that “no treatment shall be given to a patient without his consent [...] The patient may be subjected to involuntary treatment only if he has been hospitalised in a compulsory manner in an inpatient mental health facility”. A patient shall be informed of prescribed involuntary treatment. It means that Lithuanian legislation does not provide opportunity for the patient to reject the treatment when being involuntarily hospitalised, and does not organise involuntary placement without treatment.
- [110]. The purpose of the Law on Mental Health Care is to establish the rights of the persons who are provided with mental health care, the procedure and supervision of mental health care. According to the definitions provided in the law in Article 1, 2 the purpose of the mental health care is “to render the psychiatric support (to diagnose, to treat the disturbed psychiatric functions, timely prevent exacerbations of psychiatric illnesses), to help the person to adapt to the life of society and return to it”.
- [111]. Lithuanian legislation does not specifically stipulate and describe what aftercare should follow involuntary placement or treatment. After termination of the involuntary placement and treatment the patient is usually treated with his/her consent.
- [112]. The Law on Mental Health Care does have a special clause on the treatment of the minors. It requires in Article 17 that in case a minor has not been emancipated by the court, he may be given treatment with the written consent of at least one of the parents or the guardian (curator). If one of the parents or the guardian (curator) refuses treatment prescribed by the psychiatrist and this is likely to result in irreparable damage being inflicted on the minor’s health, the psychiatrist must immediately apply to the court and obtain its authorisation for giving the minor treatment without the consent of

one of the parents or the guardian (curator). Minors shall be hospitalised and given treatment separately from adult patients.

- [113]. The issue concerning involuntary hospitalisation and involuntary treatment of mentally ill persons who have committed an act dangerous to the public and have been recognised as being of diminished responsibility shall be decided by court in accordance with provisions of the Law of Mental Health Care and the Criminal Code.
- [114]. Article 98 of the Criminal Code establishes that “the persons who are recognised by a court as being legally incapacitated or of diminished capacity as well as the persons who, after committing a criminal act or having been imposed a penalty, start to suffer from a mental disorder rendering them incapable of understanding the nature of their actions or controlling them may be subjected by the court to the following compulsory medical treatment measures”. A court shall not fix any period of time for compulsory medical treatment. It shall be applied until the person is cured or his mental state improves and he no longer represents a danger. At least once every six months, a court must make a determination on the basis of the findings of a health care establishment as regards extension of compulsory medical treatment, change of type thereof or discontinuation thereof.

4.2. Criteria and Definitions

- [115]. The Law on Mental Health Care indicates very concrete criteria for an involuntary hospitalisation which restricts person’s freedom to be legitimate. It establishes that, a person who has a severe mental illness and refuses hospitalisation may be admitted involuntarily to the custody of the hospital only if there is real danger that by his actions he is likely to commit serious harm
- to his health or life; or
 - to the health or lives of others.
- [116]. The Civil Code in its Article 2.26 indicates one additional base for involuntary placement of the patient in a case of the real danger that by his actions he or she is likely to commit serious harm to the property. Such different pre-conditions for involuntary placement set in two legal acts may cause differences in practical application. Nevertheless, the Law on Mental Health Care is a special act and is followed by the authorities when imposing involuntary hospitalisation.

- [117]. Only when all three criteria: severe mental illness, refusal of the hospitalization and real danger of serious harm to happen, involuntary placement is lawful. Patient not meeting at least one of the criteria should not be placed involuntarily to the hospital.
- [118]. The Law on Mental Health Care does not specifically suggest any other less intrusive alternatives to be adopted before involuntary placements. There is only the general principle of ensuring that the treatment and nursing conditions offer the least restrictive environment. But the restrictions may be applied in case of involuntary hospitalisation.
- [119]. Upon the involuntary placement patient's opinion is considered, since it is one of the criteria to be met – refusal of the hospitalisation. In a case the patient gives his or her consent he or she is hospitalised voluntarily. With regards to patient's opinion on the treatment issues, it is not taken into account if a person is hospitalised on an involuntary basis. Being involuntarily placed in the hospital the patient is imposed to involuntary treatment.
- [120]. Lithuanian legislation does not provide and define explicitly the risk level of danger requested for involuntary hospitalization to proceed. It does only establish that real danger for commitment of serious harm should exist in the person's actions. This is an evaluative criteria and therefore may create differences in its practical application.
- [121]. The Law on Mental Health Care provides that there should be specific regulations adopted by the Government for detailing procedure of involuntary hospitalisation. Nevertheless until now such regulations are not adopted.

4.3. Assessment, Decision Procedures and Duration

- [122]. Primary psychiatric screening and assessment may be performed in case of reasoned suspicion of severe psychiatric illness.
- [123]. In case when person refuses hospitalisation the authorisation for the patient's involuntary treatment must be obtained in accordance with the procedure laid down in the Law on Mental Health Care. The main authority to decide on involuntary hospitalisation is the court. Until the court grants the authorisation for involuntary placement, the patient may, upon the decision of two psychiatrists and one doctor-representative of the mental health facility administration, be

subjected to involuntary hospitalisation and involuntary treatment for not longer than 48 hours.

- [124]. According to the Law on Mental Health Care Article 30 a mentally ill person who is being involuntarily admitted to a mental health facility as a patient must acknowledge by his signature that he has been informed by the mental health facility administration about his involuntary hospitalisation and his rights at the mental health facility. If the mentally ill person refuses or is unable to put his signature, the fact of his having been informed about his involuntary hospitalisation shall be testified in writing by two witnesses who may be mental health facility staff members but not psychiatrists.
- [125]. Involuntary hospitalisation is legal up to 2 days without the court's permission.
- [126]. Court issues decisions on involuntary hospitalisation upon the request of administration of the mental health facility. Court's decision is obligatory to involuntarily hospitalise the person or extend his hospitalisation in the psychiatric institution. If the court decision is not received during 2 days involuntary hospitalisation and treatment of the patient should be terminated. Following the psychiatrist's recommendations the administration of a mental health facility shall have the right to terminate the patient's involuntary hospitalisation and involuntary treatment prior to the expiry of the term.
- [127]. When a patient is hospitalised in a compulsory manner, the administration of a mental health facility must appeal to the court not later than within 48 hours. Having considered the recommendations of the psychiatrists, the court shall have the right to make a decision regarding the extension of the patient's involuntary hospitalisation and involuntary treatment period, but for no longer than one month from the beginning of the involuntary hospitalisation (Article 28 of the Law on Mental Health Care). Usually the judge decides on involuntary hospitalisation and treatment only considering recommendations of the psychiatrists, without even seeing the patient. This obviously violates the rights of the patient – both the right to fair trial and the right to receive appropriate treatment (since decision is made based only on the information provided by the professional, and not considering the patient's opinion)⁴⁵.
- [128]. Should it be necessary to prolong involuntary hospitalisation and involuntary treatment of the patient, the administration of a mental health facility must apply to the court regarding the said extension. The court may, based on the conclusions of the mental health facility,

⁴⁵ Human rights monitoring in closed mental health care institutions, 2005. Access at http://www.hrmi.lt/downloads/structure//psi_ataskaita_170x245.pdf

either prolong or terminate the patient's involuntary hospitalisation and involuntary treatment, but each time for a period not exceeding 6 months. These conditions must be met in order for a person's involuntary hospitalisation to be lawful.

- [129]. Article 18 of the Law on Mental Health Care provides: mentally ill persons may be prescribed only the approved methods of treatment. Methods of treatment which have irreversible harmful effect on health may not be applied to incompetent mentally ill persons. Clinical experimental methods of treatment, psychosurgery may be applied with respect to mentally ill persons only for the purpose of treatment under the supervision of the medical ethics commission. Clinical experimental methods of treatment, psychosurgery may be applied only with the written informed consent of the mentally ill person certified by two witnesses and the head physician of the mental health facility. Approval of the medical ethics commission must also be received.
- [130]. Article 13 of the Law on Mental Health Care provides: patients' health care conditions shall be determined by the psychiatrist, seeking to ensure that the treatment and nursing conditions offer the least restrictive environment. The actions of a mentally ill person may be subject to restrictions only provided that the involuntary hospitalisation is applied. A recording to the effect must be promptly made in the clinical record. Nevertheless there are no requirements for proper documentation of such recording. The Law on Mental Health Care does not also establish regulation of use and practice of other coercive measures as it is indicated in the Council of Europe's Committee of Ministers Recommendation Rec (2004)10.
- [131]. Article 22 of the Law on Mental Health Care indicates: the patient or his representative shall have the right to be present and be heard out at the administration of a mental health facility, the Ministry of Health Care or the court when the issues concerning his involuntary hospitalisation and treatment, treatment, etc. are being decided. Nevertheless, in practice patient does not have possibility to participate and be heard by the court, besides the court decision which imposes involuntary hospitalisation for the person, according to the Code on Civil Procedure (Article 582, paragraph 6) is not complaint able in appellate order and stands up since day of rendition. Importance and urgency of issues decided are taken as an explanation for such provisions, nevertheless the right to appeal is taken away for the persons concerned. This is in contradiction with the provisions endorsed in the Article 25 of the Council of Europe's Committee of Ministers Recommendation Rec (2004)10. Only after the patient is discharged from the hospital upon termination of his involuntary

hospitalisation he can address to the court following the general civil procedures to defend his/her rights that were violated.

- [132]. In 2005 Article 28 of the Law on Mental Health Care was supplemented with part 4, which established: “when solving issues regarding involuntary hospitalisation and involuntary treatment of mental patients, the administration of a mental health facility must apply for provision of secondary legal aid, if such person is not represented by his representative”. This gives a possibility for a patient to receive free legal support during the involuntary hospitalisation procedure. Nevertheless, it does not necessarily guarantee proper representation of his or her interests.
- [133]. With regards to the court practises on involuntary hospitalisation and treatment, it is argued that when deciding questions of involuntary hospitalisation of the patients real danger with regards to their actions should be proven⁴⁶.
- [134]. The same position is provided in the decision of the Lithuanian Supreme Court on March 20, 2006. The Court argued that involuntary hospitalisation is permissible and justifiable only in case of real danger. „There should be enough data, proving the reality of danger presented. Suicidal thought or mood variations are not sufficient basis for involuntary hospitalisation“⁴⁷.

⁴⁶ R. M. Levy and L. S. Rubenstein Rights of people with mental disabilities, Southern Illinois University press, 1996, p. 29-32.

⁴⁷ Lithuanian Supreme Court decision 2006-03-20. Civil case No. 3K-3-200/2006.

5. Competence, Capacity and Guardianship

- [135]. „Human rights and freedoms shall be innate“, “all persons shall be equal before the law, the court, and other State institutions and officials” state the Constitution of the Republic of Lithuania, what means that all people should enjoy the same human rights in equal measure. “The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views” details the Constitution. It should be taken into consideration that disability is not mentioned in the list of possible grounds of discrimination in the Lithuanian Constitution. However, discrimination on the grounds of disability is prohibited by the Law on Equal Opportunities.
- [136]. In Lithuania protection regime is provided for adults, who are no longer able to care for their personal interests or their property and affairs. Article 3.279 of the Civil Code provides for cases when at the request of a natural person of full active capacity incapable of exercising his or her rights or of performing his or her duties due to health reasons may be placed under curatorship. Nevertheless, this legal provision is only relevant to persons with milder physical disabilities or other health disorders. This provision is not applicable for persons with mental disorders or persons with intellectual disabilities since disability is not a ground for recognising limited capacity of an individual and for enabling him or her independently exercise at least some of his or her rights. Moreover, mental illness and intellectual disability are regarded as indications when starting the procedure of establishing full incapacity. Therefore, adults who due to their mental illness, intellectual disability, and insufficiency of personal faculties are incapable of making, in an autonomous way, decisions concerning any or all of his or her personal or economic affairs, or understanding, expressing or acting upon such decisions, and who consequently cannot protect their rights, may be declared incapable.
- [137]. In Lithuanian legal framework the term „capacity“ is used to describe person’s ability to fully exercise all the civil rights and assume civil obligations.

- [138]. Issues of capacity in Lithuania are regulated under the Civil Code. Article 2.5 of the Civil Code provides a definition of civil capacity of natural persons. According to the mentioned article, a person who has attained full age, i.e. when a natural person is eighteen years of age, he or she, by his or her acts, shall have full exercise of all his civil rights and shall assume civil obligations. The same article details that where the law provides for the possibility of a natural person to enter into marriage before he or she is eighteen, the person, who has not yet come of the given age, shall acquire full active civil capacity at the moment of entering into marriage. If at a later date this marriage is dissolved or nullity of marriage is declared for reasons not related to the age of the parties to marriage a minor shall not lose his or her full active civil capacity.
- [139]. In Lithuania procedure of declaration of incapacity of the person is initiated in a case an individual is considered unable to comprehend the significance of, or to control, his or her actions, due to mental or intellectual disability. Conditions of acknowledgement of legal incapacity are proclaimed in Article 2.10 of the Civil Code. The mentioned article states that “natural person who as a result of mental illness or imbecility is not able to understand the meaning of his actions or control them may be declared incapable”. It must be emphasised that Lithuanian law still uses offensive term “imbecility”, which, in author’s of this study opinion, is outdated and considered as extremely stigmatic.
- [140]. According to Lithuanian law mental illness and/or intellectual disability and inability to understand the meaning of actions or control them are regarded as indications when starting the procedure of establishing full incapacity. Full incapacity means that individuals lose all the civil, economic, political and other rights usually enjoyed by other adults. For instance, this includes the right to work – individuals are not able to sign a work contract, thus they cannot be legally employed and are technically legally prohibited from working. The laws in Lithuania do not recognise that people with mental disorder and intellectual disability can be capable to a certain extent to use at least some of their rights or freedoms according to their understandings or abilities, as well as act at their own discretion.
- [141]. Nevertheless, it should be mentioned that Lithuanian law provides limited incapacity, but such limitation of person’s capacity may be imposed where natural persons abuse alcoholic beverages, drugs, narcotic or toxic substances. Upon imposition of a limitation on a person’s capacity he/she may enter into contracts related to the disposition of his/her property, receive his/her salary, pension or any other income and dispose of it only with the consent of his/her guardian, with the exception of contracts, which he/she concludes to

meet his/her ordinary and usual needs. Person whose capacity has been imposed limitations may not without the consent of his/her guardian: borrow and lend money, when the sum exceeds two average monthly wages (without deductions); extend a guarantee or offer a surety to other person; conclude contracts of alienation or encumbrance of rights to his property; conclude an arbitration agreement; file a statement of claim related to that part of his/her active civil capacity where his/her active capacity is limited; come into inheritance or disclaim an inheritance; conclude a contract for the construction of a building (apartment) or major repairs; conclude a contract of tenancy or a loan-for-use contract. A person of full age who has limited capacity shall be alone liable for his/her contractual and non-contractual obligations.

- [142]. Article 3.279 of the Civil Code provides for an option in which a physically able person can be assigned curatorship upon request, if the person cannot carry out his or her rights or duties due to the state of their health. Nonetheless, only persons with physical or other medical disabilities can make use of this opportunity established by the law. The law requires plenary guardianship in the case of mental disorder and intellectual disability.
- [143]. As protective systems, meant to safeguard the human rights of vulnerable people lacking capacity, guardianship and curatorship exist in Lithuania. It is laid down in the Article 3.277 of the Civil Code that an adult person declared legally incapable by the court shall be placed under guardianship by a court judgement. The mentioned article also regulates that an adult person declared by the court to be of limited active capacity shall be placed under curatorship, but this provision is not applicable for persons with mental disorders or persons with intellectual disabilities since disability is not a ground for recognising limited capacity of a person. Therefore, guardianship is significant human rights issue affecting incapable individuals today in Lithuania, because it has a profound effect on the lives of those placed under its protective status.
- [144]. According to Lithuanian law (Article 3.238 of the Civil Code), guardianship is established with the aim of exercising, protecting and defending the rights and interests of a legally incapable person. Guardianship of a person subsumes guardianship of the person's property, but if necessary, an administrator may be designated to manage the person's property. Only individuals, who as a result of mental illness or intellectual disability are not able to understand the meaning of their actions or control them and therefore declared incapable, shall be placed under guardianship.

- [145]. Article 3.239 of the Civil Code provides that curatorship shall be established with the aim of protecting and defending the rights and interests of a person of limited active capacity. Curatorship of a person subsumes curatorship of the person's property, but if necessary, an administrator may be designated to manage the person's property. Natural persons can be placed under curatorship after their capacity has been imposed limitations due to their abuse to alcoholic beverages, drugs, narcotic or toxic substances. It should be emphasised that natural persons, who as a result of mental disorder or intellectual disability are not able to understand the meaning of their actions or control them and therefore declared incapable, cannot be placed under curatorship.
- [146]. The guardian and the curator represent their wards under law and defend the rights and interests of legally incapable persons or persons of limited active capacity without any special authorisation. The main difference between the guardian and the curator is that guardian is entitled to enter into all the necessary transactions in the interests and in behalf of the represented legally incapable ward and whereas the curator gives consent for the ward of limited active capacity to enter into a transaction the ward would not be permitted to enter into independently and also helps the ward of limited competence to exercise his or her other rights and duties as well as protect his or her interests against third parties.
- [147]. In Lithuania procedure to declare a natural person with mental disorder and intellectual disability incapable and place him or her under guardianship can be initiated by several subjects. The right to file a request to declare a person incapable and place him or her under guardianship is laid down in Article 2.10 of the Civil Code. According to the mentioned article, the spouse of the person, parents, adult children, care institution or a public prosecutor have the right to request the declaration of person's incapacity by filing a declaration to the given effect. It should be emphasised that only the same subjects are able to apply to the court requesting the declaration of person's capacity.
- [148]. Under the Lithuania laws, only the court is competent, after having examined the health certificates, to declare person to be incapacitated. Also only the court is competent to place the incapable person under guardianship. The Code of Civil Procedure regulates the process by which the courts can place a person under guardianship. In particular, it states that, when hearing such a case, the court must designate psychiatric expertise and examine all relevant medical documents. Thus, in making a decision on an individual's legal capacity, the court mostly takes documentation into account, though other factors and evidence are also important. It must be emphasised that, according to

the Article 467 of the Code of Civil Procedure, the court is able to cite a concerned person and to examine him or her itself, but in practice this is an exception rather than a rule.

- [149]. In Lithuania only the court is competent to place the incapable person under guardianship. Article 3.242 of the Civil Code regulates that the court after having declared a person legally incapable shall designate the person's guardian without delay. In accordance with the Civil Code, guardianship is established with the aim of exercising, protecting and defending the rights and interests of a legally incapable person. A guardian is assigned to exercise and protect all the rights and interests of the ward. Guardianship of a person also subsumes guardianship of the person's property, but if necessary, an administrator may be designated to manage the person's property. Thus, in accordance with the Civil Code, in cases where a legally incapable person has movable or immovable property in need of constant care (an enterprise, land, facility, etc.), the court shall issue an order for the appointment of an administrator of the property. The administrator may be the guardian or any other person. The powers of the administrator shall come to an end with the end of the guardianship, also on the issue of the court order relieving the administrator of the relevant functions.
- [150]. Guardianship institutions are municipal or regional institutions, which are responsible for the continuous supervision and control of designated guardians in matters relating to the proper performance of their duties. If a guardian is not fulfilling guardianship duties properly, if he or she does not ensure the protection of the rights and interests of the ward or if he or she abuses the rights of the ward, guardian can be relieved of guardianship. If the guardian's actions have inflicted harm on the ward, the ward must be compensated for this. The procedure for going to court to request removal of a guardian is undertaken by the authorities at a care institution or by the prosecutor. Also only the court may relieve the guardian of his or her duties if he or she is unable to perform these duties due to his or her illness or the illness of his or her close relatives, his or her financial situation or other important reasons. Guardianship ends when the court judgement declaring the person legally incapable becomes *res judicata*.
- [151]. In accordance with the Code of Civil Procedure, the court decision on incapacity may be appealed by the ward or by other individuals involved in the case. This can be done within 30 days of the court's decision. However, it must be highlighted, that the person concerned does not have the right of cassation to overrule the court's final decision that determines his or her incapacity and places him or her under guardianship. Thus, when the decision comes into force, the ward cannot appeal to the court, since such individual can no longer

represent himself or herself under the law. The Code of Civil Procedure indicates that the court may certify a person as no longer requiring a guardian if the condition requiring guardianship no longer exists, or if the health condition improves. Unfortunately, for people with mental disorders and intellectual disabilities, this almost never happens in practice.

- [152]. The Civil Code provides particular requirements for the guardian itself. Only a legally capable natural person may be assigned as a guardian. The person to be appointed as a guardian must also give a written consent to that effect. The moral and other values of the guardian, his or her ability to carry out the duties of the guardian, his or her relationship with the ward, the wishes of the ward and other relevant circumstances should be taken into account at the time of the designation of the guardian. The functions of guardianship and curatorship in respect of the inmates of medical, educational or guardianship institutions that have been declared legally incapable or of limited active capacity by the court shall be performed by the respective medical educational or guardianship institution until a permanent guardian is appointed.
- [153]. There are no requirements provided in legal framework for periodical reviews on decisions of incapacity and guardianship itself.
- [154]. Currently amendments of civil and civil procedural laws are being drafted in order to decrease the number of legally incapable persons by treating some of such persons (e.g. mentally disabled) as persons of limited active capacity having regard *inter alia* to opinions of social workers to be presented to the court when resolving the issue of legal capacity of a person. The status of persons of limited active capacity is going to provide such persons with wider possibilities to realise their rights independently as compared to legally incapable persons.

6. Miscellaneous

- [155]. On April 4, 2007, implementing The World's and European values system based principles on modern mental healthcare, Lithuanian Parliament (Seimas) adopted Lithuanian Mental Health Strategy (Psichikos sveikatos strategija)⁴⁸, and on June 18, 2008, Lithuanian

⁴⁸ Seimas decision on approval of Mental health strategy No. X-1070 //State news, 2007-04-14, No. 42-1572.

Government adopted plan for implementation of State Mental Health Strategy for 2008-2010⁴⁹.

- [156]. A year earlier Vilnius city decided to start a breakthrough both in Lithuania and East and Middle European region by implementing European Mental Health Declaration and Action Plan adopted in 2005 and Vilnius city council adopted decision on Vilnius City Mental Health Strategy for 2006-2010.
- [157]. Lithuanian example is creditable for trying to follow and adhere to the latest developments within the European mental health policy expressed in the WHO ministerial conference in 2005 and EC Green Paper on Mental Health in 2005. Lithuania was one of the first countries that adopted national Mental Health Policy. This policy may be seen as the first political document of such kind with the critical analysis of existing system of services, and clear vision with modern public health principles and priorities, such as introduction of modern approaches in MH promotion/prevention, development of community based services; involvement of civil society and protection of human rights; implementation of monitoring, evaluation and research of system's; promotion and implementation of principle of autonomy and participation; development of a new system of funding of mental health services with effective incentives for deinstitutionalisation, involvement of primary care and intersectorial cooperation, etc.
- [158]. Both Vilnius city Mental Health Strategy and State Mental Health Strategy see establishment of human rights protection as one of their most urgent priorities. "Protection of human rights principle means that individuals with mental disorders and their family members human rights should be assured and that could be independently observed" (Paragraph 22 of the Mental Health Strategy).
- [159]. According to the Annual National Report, 2009, on Pensions, Health and Long-term Care for Lithuania⁵⁰ it is regrettable that since adoption of those policy papers little has happened.
- [160]. In terms of mental health care provision services for patients with mental health problems remain largely hospital linked. Local sources suggest that there is little or no joint working between the Ministry of Health and the Ministry of Social Security and Labour on this issue, and that this is reflect at service delivery level as well. This is despite

⁴⁹ Government decision on approval of the plan for implementation of State Mental Health Strategy for 2008-2010 No. 645//State news, 2008-07-05, Nr. 76-3014

⁵⁰ Peter B Gross. Annual National Report 2009 on Pensions, Health and Long-term Care for Lithuania, May 2009. European Commission DG Employment, Social Affairs and Equal Opportunities.

an Order (4 July 2007⁵¹) requiring joint working at all levels, including setting up of teams consisting of nurses, psychiatric nurses, social workers, and their assistants.

- [161]. Long-term care in Lithuania is provided both by the health service and by municipalities (in this case the policy body is the Ministry of Social Security and Labour. There are no strategies to reform institutional care or to increase deinstitutionalisation, other than the Mental Health Strategy.
- [162]. Lithuania is rather ‘stuck with’ the number of people in long-term care institutions. While costs for institutions may be reduced, and renovations may be put on hold (even when using EU Structural Funds to improve institutions, co-payments are required), given the relative absence of alternative community-based care this client group cannot simply be discharged from institutions in order to save funds.
- [163]. Non-governmental organisations working in the field of mental health fear that due to the economic crisis situation cuts in spending for mental health care will lead to a freezing of mental health services development. Apart from the Mental Health Strategy being stuck in its implementation, there are dangers that certain specific pilot programmes may also face funding cuts. Given estimates that the care of persons in large-scale residential institutions costs, on average, 15 times as much as community care, this may in fact have a counterproductive financial effect (apart from the damage long-term institutional care does to the residents of those institutions).
- [164]. But the biggest questions remain in relation to human rights in mental health, in particular on guardianship and involuntary hospital admissions.

6.1. Subsection level 1

- [165]. In representing the interests of persons with mental disorders and intellectual disabilities there function several “user organisations” (Lithuanian Welfare Society for Persons with Mental Disabilities “Viltis” (HOPE), National Welfare Society for Persons with Mental Disabilities “Giedra”, others). Disability associations (such as Lithuanian Disability Forum) and non-governmental organisations working in the area of mental health (Global Initiative on Psychiatry)

⁵¹ Law on Joint Working of Nursing and Social Services (Slaugos ir socialinių paslaugų bendro teikimo tvarkos aprašas), No V-558/A1-183//State News, 2007. No. 76-3029 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=301549&p_query=&p_tr2=

are also well known in health policy and services planning. The influence of mentioned organisations to political decisions is constantly increasing.

- [166]. In supporting of human rights of persons with mental disorders an innovative service of Patient's person of trust is being introduced and developed in Vilnius city.
- [167]. Patient's person of trust (POT) – a person working independently from mental healthcare institution and providing the following patient's POT services: (1) mediation and client representation in cases of complaints, (2) informing clients regarding their legal rights, (3) identifying and reporting deficiencies in healthcare institution.
- [168]. The idea of independent patient's person of trust (POT) came to Lithuania from the Netherlands. It was started in Vilnius in 2006 within the framework of Vilnius city Mental Health Strategy. The short term goal of the strategy is to establish in the city structure of mental healthcare institutions that would help effectively and rationally strengthen public mental health and provide wide range assistance to persons with mental and behavioural disorders. Patient's person of trust program should guarantee patients' representation and their human rights. The program is coordinated by a non-profit organisation "Global Initiative on Psychiatry" (Globali iniciatyva psichiatrijoje). The purpose of the program is to create and establish exemplary model of mental patients rights protection, seek for equal opportunities for persons with mental disorders to integrate to society and contribute to construing a chain of mental healthcare services in Lithuania according to the priorities adopted in National Mental Health Strategy.
- [169]. In the course of 4 years since establishment of patient's POT institution in Vilnius city it turned out to be sufficiently effective human rights observance and support organ. It is worth noticing that patient's POT institution works (receives financing) only via and within the framework of annual approval required Vilnius city council project. Not only it cannot guarantee the continuity of the project but it also disallows to provide for stable and independent monitoring of fundamental rights of persons with mental disorders in mental healthcare institutions.
- [170]. Political will emerged to legitimise patient's POT status on national level once Lithuania adopted State Mental Health Strategy. Securing provision and monitoring of human rights are underlined as top priorities in the strategy as well as its essential goal. Patient's POT services are designated only to those mental healthcare services users who receive ambulatory and institutional treatment.

Annexes-Case Law

In different Sections of the Guidelines, experts have been asked to refer to case law. Please present the case law reference in the format below

I.

Case title	Re recognition of the permission for involuntary hospitalisation as being unlawful, compensation of damage.
Decision date	March 20, 2006
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas). Civil case No. 3K-3-200/2006
Key facts of the case (max. 500 chars)	The applicant brought a lawsuit requesting to be returned to the job, recognition of the permission for involuntary hospitalisation as being unlawful and compensation of moral damages.
Main reasoning/argumentation (max. 500 chars)	Involuntary hospitalisation in accordance with the Art 27 of the Law on Mental Health Care is legitimate, when the person has a severe mental illness and refuses hospitalisation, and when there is a real danger that the person due to his actions may cause a substantial damage to others life or health. The first instance and appellate courts ascertained first condition – severe mental illness confirmed by the psychiatric expertise. Nevertheless, the conclusion of the courts about applicant causing a danger for her life and health did not conform to the factual circumstances.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court of Lithuania partially changed the decisions of the first instance court and appellate court. Involuntary hospitalisation is legitimate and justifiable only if the real danger exists. In the case applicant thoughts about the end of life and suicide is not the basis for predication of existence of the real danger, but only evidence the medium level of depression. In the event of unlawful involuntary hospitalisation, applicant is entitled to the compensation of moral damages caused. The compensation is of amount of (10 minimal monthly salary) and is estimated considering the severity of the illness, and duration of the unlawful involuntary hospitalisation.
Proposal of key words for data base	Involuntary hospitalisation, real danger, moral damage.

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

II.

Case title	Re compensation for moral damages.
Decision date	February 11, 2004
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Lithuanian Supreme Court decision (Lietuvos Aukščiausiasis Teismas). Civil case No. 3K-3-110/2004
Key facts of the case (max. 500 chars)	The applicant sought an order from the defendants - Lithuanian Ministry of Health and Žiegždriai psychiatric hospital for the 500 minimum monthly salaries for non-material (moral) damages, for being involuntary hospitalised and kept in psychiatric hospital 40 days in violation of the legal regulations. The court of first instance and appellate court both dismissed the case.

Main reasoning/argumentation (max. 500 chars)	The Supreme Court of Lithuania stated that the applicant was involuntary hospitalised and treated in the hospital for 40 days in breach of the provisions of the Law on Mental Health Care. A person who has a severe mental illness and refuses hospitalisation may be admitted involuntarily to the custody of the hospital only if there is a real danger that by his actions he is likely to commit serious harm to his health or life; or to the health or lives of others. Otherwise he can be hospitalised only with his consent. From the Act of expertise it can be seen that the applicant does not have mental illness. The fact of starvation and testimonies of witnesses' confirms the applicant's disagreement to treatment, which is considered as involuntary in this case. Without the permission issued by the municipality mental health commission for involuntary hospitalisation, that applicant should not have been involuntary hospitalisation longer then 72 hours.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court issued new decision. The application is partially granted, ordering from psychiatric hospital to pay in an amount of 10 minimum monthly salaries for moral damages.
Proposal of key words for data base	Involuntary hospitalisation, moral damage.

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

III.

Case title	Re compensation of moral harm.
Decision date	November 9, 2000
Reference details (reference number; type and title of court/body; in original language and English)	Decision of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis teismas). Civil case No. 3K-3-1049/2000

[official translation, if available])	
Key facts of the case (max. 500 chars)	Applicant K. N. applied to the court requesting an order from the psychiatric hospital 500 minimum monthly salaries of moral damages, for his involuntary hospitalisation in violation of the provisions of the Law on Mental Health Care. Court of first instance by its decision dismissed the action. After evaluating the evidence gathered the court did opinion that K. N. was hospitalised at the emergency order. Kaunas Regional Court left Kaunas District Court's decision unchanged. The panel agreed with the court of first instance Conclusions.
Main reasoning/argumentation (max. 500 chars)	According to the Art 5 of the European Convention of Protection of Human Rights and Fundamental Freedoms in restricting the freedom of the person with mental disorders provisions of national legislation should be followed. Person with intellectual disability being a victim of unlawful restriction of his freedom, the right to receive moral compensation should be guaranteed. There is not enough data for conclusion on the critical state of person's health, endangering his life. The court may not follow the contradictory testimonies of witnesses and base its decision on assumptions.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In order to establish the questions regarding facts, there is a need for independent medical expertise.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court of Lithuania repealed decisions of the first instance court and appellate court and referred the case to the first instance court.
Proposal of key words for data base	Involuntary hospitalisation, moral damage.

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

IV.

Case title	Re criteria, peculiarities of evidences for declaring person's incapacity
Decision date	11 July, 2008
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis teismas). Civil case No. 3K-3-370/2008
Key facts of the case (max. 500 chars)	The applicant Kaunas City Municipality Administration, Department of Social Affairs, Health Division request the court to declare the person's incapacity. The person has mental illness – schizophrenia. Because of the illness he was treated in a hospital few times, he has established 30 percent of workability. His conditions very much deteriorated when he stopped using medication. He has hallucinations, is afraid to walk in the street, and became aggressive, no critical to his condition. The courts of the first and appellate instance satisfied the applicant's request.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court of Lithuania stated that the courts inappropriately applied Art 2.10 paragraph 1. The courts did not establish and did not assessed the subsequence of the disease for the person's social life, health, interests, security of others, did not clarified reasons of person's anxiety, aggression, leaving the home and other aspects oh his behaviour. Thus the courts did not meet the requirements and rules of gathering and assessment of evidences, and did not meet with very strict criteria to be followed in these matters. Besides, procedural equality principle of the parties was violated, since the person interested did not participate in the trial and was not heard.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Declaring persons incapacity, procedural requirements for participation of the persons interested
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court of Lithuania repealed decisions of the first instance court and appellate court and referred the case to the first instance court.

Proposal of key words for data base	
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

V.

Case title	Re declaring the person's incapacity
Decision date	11 September, 2007
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis teismas). Civil case No. 3K-3-328/2007
Key facts of the case (max. 500 chars)	The applicant requested to declare his mother legally incapable. He stated, that since 2000 his mother has mental illness, but was never referred to the doctors. The illness shows itself through the language disorders, deep depression, irritability and aggression. She has no job, has suspicious friends, big debts, does not let no one in her apartments, does not read her correspondence. The courts of the first and appellate instance satisfied the request.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court of Lithuania stated that the courts infringed the right of the persons concerned to get information on the date and place of the court proceeding. Besides, other fundamental procedural rights were infringed (the rights to make requests, others), that secure the rights to fair trial. The court also infringed the right to appeal the decisions taken for her outpatient and later on inpatient psychiatric expertise. When not delivered the decision of the first instance court the rights to appeal was violated. Although jurisprudence of ECHR admits, that there may be some lawful restrains of the rights to fair trial for persons because of the mental illness, these should not explicitly take away the person's right to fair trial (Golder v. United Kingdom, Winterwerp v. Netherlands, Lacarcel Menendez c. Espagne).

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Right to be informed about the case; right to fair trial
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court of Lithuania repealed decisions of the first instance court and appellate court and referred the case to the first instance court.
Proposal of key words for data base	Incapacity, right to fair trial

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

VI.

Case title	Re declaring the person's incapacity
Decision date	26 June, 2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis teismas). Civil case No. 3K-3-311/2009
Key facts of the case (max. 500 chars)	The applicant requests to declare her mother incapable. The applicant stated that because of coma her mother have got disorders in the brain blood circulation, she does not speak, move, can not take care bout herself and needs care. On November 17, 2008, the court suspended the case hearing since because of the coma the psychiatrist is not able to perform psychiatric expertise of her condition. On December 11, 2008, the person interested addressed the court with the request to renew the case haring and to declare her mother incapable. The courts repealed

	the request.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court of Lithuania stated that the court has to obligatory use psychiatric expertise as the basis for declaring person's incapacity (Art 465). In the case during the coma there is no possibility to perform the psychiatric expertise in order to diagnose some mental illness and on the basis on this to declare person's incapacity. Thus the first instance court reasonably suspended the case hearing.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Psychiatric expertise obligatory in the case of incapacity.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court of Lithuania left the decision of the appellate court unchanged.
Proposal of key words for data base	Incapacity, psychiatric expertise

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).