

Presumption of Innocence: procedural rights in criminal proceedings

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PART A. EXECUTIVE SUMMARY

The right to be presumed innocent in general: This right is enshrined in the Lithuanian Constitution and in the Code of Criminal Procedure. In transposing Directive 2016/343, the principle of *in dubio pro reo* was explicitly included in the Code of Criminal Procedure. This amendment codified a long-standing principle of criminal procedure, which was well established in the case-law of Lithuanian courts.

The interview data allow us to conclude that the different professionals are aware of the principle of presumption of innocence and implement it in their work. The principle of presumption of innocence is understood by members of different professional groups – police officers, judges, prosecutors, defence lawyers – as a principle where a suspect is considered innocent until the final court decision enters into force. However, even if different groups of professionals indicated that they applied the principle of presumption of innocence in their work, some interviewees referred to incidents when presumption of innocence has been violated by media coverage, symbolic demonstration of a defendant's guilt or comments of outsiders.

Public references to guilt: There are no explicit legal provisions on public references to guilt by public officials, but the obligation to abstain from such references is acknowledged in case-law. If an accused person presents an argument relating to public references of guilt by a public official, it has to be established whether such statements could have affected the independence and impartiality of the courts examining the case. The Law on the Provision of Information to the Public provides that it is prohibited to disseminate information which violates the presumption of innocence. The obligation to respect the principle of presumption of innocence is also included in Codes of Ethics, adopted by the self-regulation bodies of journalists and media.

Respondents of all professional groups emphasised the restricted communication that is allowed with mass media in order to preserve presumption of innocence. The main challenge indicated was the contradiction between preservation of the principle of presumption of innocence and society's right to be informed. The juxtaposed data indicate that there are cases when the principle of presumption of innocence is violated by providing information on a case to the public. Most of the interviewees described mass media as having a negative influence on the presumption of innocence in the eyes of the general public due to public references to guilt or due to the fact that media might not cover some information or might silence information favourable to a suspect about the end of the case. This means that if a case is discontinued or a defendant is acquitted, their reputation might be damaged by articles published previously in mass media.

The presentation of suspects and accused persons: The use of physical restraint measures on persons escorted to a court hearing is regulated by the Rules on Convoy. On 21 February 2020, the Seimas Ombudsperson's Office (National human rights institution) published a report criticising excessive use of handcuffing. The Ombudsperson concluded that Article 5 of Directive 2016/343 has not been properly transposed into the Lithuanian legal system.

During the interviews, handcuffs used during conveying and at the court proceedings were the measures most often referred to. The use of handcuffs is foreseen by the Rules of Convoy and therefore their use was interpreted as legitimate by interviewees. The main challenge concerning the presentation of suspects and accused persons is related to the excessive and not grounded use of handcuffs. Lawyers, judges and prosecutors raised the question of overuse of these measures in such cases when a suspect or accused person does not pose any risk to themselves or the officers. The lawyers, judges and prosecutors tended to emphasise the excessive use of these measures and

to perceive them as symbolic references to guilt. The police officers, however, saw their use as legitimised by regulations and used to guarantee safe transporting.

Burden of proof: In accordance with the provisions of the Code of Criminal Procedure, the prosecutor is obliged to prove that a criminal act has been committed, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence to prove that the criminal act has not been committed and that they are not guilty of its commission, but have the right to do so in the exercise of their right to defence. No new provisions were deemed necessary to transpose Directive 2016/343.

The collection of evidence was perceived by police officers and prosecutors as an obligation of the pre-trial investigator as is foreseen by the laws. The interviewed police officers and prosecutors believed that defence lawyers can and should also present some contra evidence or contra proofs to evidence collected by pre-trial investigators and prosecutors. The main challenge with respect to the burden of proof was indicated in the interviews with lawyers, as they interpreted this rather as a shift of burden of proving non-guilt, i.e. they argued that pre-trial investigators aim to collect evidence which proves guilt but pay less attention to evidence which proves innocence.

The right to remain silent and not to incriminate oneself: The right to remain silent is one of the long-standing principles of criminal procedure in Lithuania, and no negative inferences can be drawn from the fact that a suspect (accused) decides to exercise his/her right to remain silent. In transposing Directive 2016/343, minor amendments to the Code of Criminal Procedure were made, placing more emphasis on the right of suspects and accused to remain silent and (or) to refuse to give evidence.

The interviewees of different professional groups – police officers, prosecutors, lawyers, judges – described the application of the right to remain silent as clear and was exercised by them. A defendant might choose to remain silent during the pre-trial investigation but to give evidence in court. The interviewed professionals said that a defendant is not obliged to provide evidence against themselves since this is perceived as covered by the right to remain silent.

The right to be present at the trial and to have a new trial: Participation of the accused in the court hearing of the first instance court is both a right and an obligation. The only exception to when a hearing can take place without participation of the accused is when the accused is not in Lithuania and avoids appearing in court. If the trial takes place in the absence of the accused, the accused has a right to appeal even after the expiry of the statutory time limit for a regular appeal. No new provisions were deemed necessary to transpose Directive 2016/343.

The right to be present at the first instance court is enshrined in legislation and is enjoyed by defendants. The interviewed judges and lawyers believed that defendants are generally informed and are aware of the court proceedings. There are very limited cases when court proceedings can proceed *in absentia* of a defendant.

PART B. INTRODUCTION

In total, **12 eligible interviews** were carried out in the timeframe of 25 February 2020 to 30 April 2020. Interviews were conducted with four police officers, with two judges and two prosecutors and with four defence lawyers.

Three interviews were conducted face-to-face. Quarantine requirements due to Covid 19 pandemic were introduced in Lithuania on 16 March and included self-isolation and social distancing. Therefore, the remaining nine interviews were conducted by electronic means of communication or phone.

The interviews conducted via electronic means of communication or phone were as informative as face-to-face interviews since the time was agreed in advance and all interviewees set this time aside for the interview. There were minimum interferences such as outside phone calls. We experienced some moments of frozen video or short sound breaks due to a weakened internet connection during interviewing, but they were minor and did not affect the quality of the interview. The interviews conducted via electronic means of communication were carried out with video, so interlocutors could see each other's body language and emotions. The phone interviews had no technical interference. All interviews were audio recorded with oral and written consent of interviewees.

B.1 PREPARATION OF FIELDWORK

Instructions on the aims of the project, methodological approaches, instruments and ethics were provided for representatives of national teams, including a representative from the Lithuanian team, at the Fundamental Rights Agency premises in Vienna on 29 January 2020. The Lithuanian team met on 5 February at the Lithuanian Social Research Centre and had methodological training on the implementation of the research project 'Presumption of Innocence' in Lithuania. As the interviews were conducted by two experienced researchers, they did not need special training on the interviewing process, ethics or data analysis. However, the aim of the research and some aspects of conducting interviews with professional groups such as lawyers, police officers, judges and prosecutors were discussed and possible challenges in recruiting interviewees and managing the interview were considered. During this meeting the list of potential interviewees whose professional experience corresponded to the research requirements was drafted by team members (coordinator of the project, legal experts and social researchers).

The methodological research instruments were prepared by the FRA 'Presumption of Innocence' research team. In February 2020 the research instruments (questionnaires for different professional groups – lawyers, police officers, and prosecutors/judges), report templates, consent forms and privacy notice were translated into Lithuanian and sent for approval to the FRA 'Presumption of Innocence' team. The FRA 'Presumption of Innocence' team provided the Lithuanian research team with a support letter which explained the importance of this research and invited experts and institutions to support the research in Lithuania.

B.2 IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

On 5 February 2020 the Lithuanian team had a research project meeting at the Lithuanian Social Research Centre in Vilnius. During this meeting the list of potential interviewees was drafted. All the interviewees were from Vilnius, the capital of Lithuania. Potential interviewees from professional groups such as defence lawyers and judges were identified with their experience in criminal cases that attract public interest in mind. The recruitment process was less challenging than the researchers expected. The lawyers were contacted by email first and afterwards by phone. Two lawyers responded to emails promptly and the interview date was set via email correspondence.

One lawyer agreed to participate in the research only if they were allowed to read the completed interview template to ascertain whether the information provided was correctly recorded and this was done. This cooperation proved to be very helpful since the interviewee read the template closely and provided valuable comments and corrected some minor misunderstandings. The judge and the prosecutors from the drafted list were contacted by email and the dates for interviews were set without major difficulties. The police officers were identified and recruited with the help and permission of the Police Commissioner General. The interview data in this report is presented following the requirements of research ethics, i.e. in a way that interviewees could not be identified.

B.3 SAMPLE AND DESCRIPTION OF FIELDWORK

Police officers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4 (2 with judges, 2 with prosecutors)

Defence lawyers:

Requested: 4, completed: 4

Table 2: Sample professionals

Code	Group	Operational expertise on criminal investigations and trials	Experience with media	Gender
1	Police officer	Yes	Minor previous experience	Female
2	Police officer	Yes	No experience	Female
3	Police officer	Yes	Minor previous experience	Female
4	Police officer	Yes	No experience	Female
1	Lawyer	Yes	Some	Female
2	Lawyer	Yes	Some	Male

3	Lawyer	Yes	Some	Male
4	Lawyer	Yes	Some	Female
1	Prosecutor/Judge	Yes	Provided information about pre-trial investigations	Female
2	Prosecutor/Judge	Yes	Provided information about pre-trial investigations	Male
3	Prosecutor/Judge	Yes	Provided information about court verdicts	Female
4	Prosecutor/Judge	Yes	Provided information about pre-trial investigations	Male

The interviews varied in length: the shortest interview was with a police officer and lasted for 38 min 57 seconds, the longest interview with a lawyer lasted for 2 hours 30 minutes. The interviews with lawyers and judges/prosecutors were longer and more informative than the interviews with police officers. This is also explained by the fact that the questionnaires for lawyers and judges/prosecutors contained more questions than the one for police officers.

We believe the interview atmosphere was open and based on mutual trust. We also believe that because the research was initiated and supervised by the Fundamental Rights Agency, this led to a positive attitude towards the research. The interviewees were interested in the results of the research and in getting access to the final FRA report when it is ready.

B.4 DATA ANALYSIS

Each interview was transcribed word-for-word to ensure that the information provided during the interview was understood and presented correctly. The word-for-word transcription of one interview could take up to eight to ten hours of work. The transcribed interviews were then read closely and referred to while completing FRA's interview reporting templates.

The team aimed to reveal the differences and similarities among professional groups in regard to the application of the principle of presumption of innocence with particular focus on empirical examples from interviewees' professional experience. The data gained via research fieldwork are compared against the national legal framework and are also contextualised with the findings of mass media research in mind.

B.5 LEGAL FRAMEWORK

The most important national legal sources constituting the relevant legal framework are the Constitution and jurisprudence of the Constitutional Court, the Code of Criminal Procedure and case-

law. Other relevant sources are the Law on the Provision of Information to the Public, the Rules of Convoy, and Codes of Ethics adopted by self-regulation bodies of journalists and media.

Most of the standards enshrined in the directive had already been implemented in Lithuanian legal regulation prior to the adoption of the directive. The right to be presumed innocent was enshrined in the Lithuanian Constitution and in the Code of Criminal Procedure. The Code of Criminal Procedure also contained provisions on the burden of proof, the right to remain silent and mandatory participation of the accused in the court hearing at the first instance court.

Thus, transposition of the directive consisted of only minor amendments to the Code of Criminal Procedure: the principle of *in dubio pro reo* was explicitly included in the Code and the right to remain silent was rephrased as the right “to remain silent and (or) refuse to give evidence on the criminal offence that they may have possibly committed”.

PART C. MAIN REPORT ANALYTICAL STRUCTURE

C.1 The right to be presumed innocent in general

Presumption of innocence is enshrined in Paragraph 1 of Article 31 of the Lithuanian Constitution; it states that, “A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment”.¹

The Constitutional Court, when interpreting this constitutional provision, has held that presumption of innocence is a fundamental principle of the administration of justice in criminal proceedings and one of the most important guarantees of human rights and freedoms.²

The presumption of innocence has also been expressly incorporated into the Code of Criminal Procedure since its adoption in 2002. Paragraph 6 of Article 44 “Protection of a person’s rights during criminal procedure” provides that “Each person who is suspected or accused of committing a criminal offence shall be presumed innocent until proved guilty according to the procedure established by this Code and declared guilty by an effective court judgment”.³

In transposing Directive 2016/343/EU, Paragraph 6 of Article 44 of the Code of Criminal Procedure was supplemented by the principle *in dubio pro reo*: “All doubts and (or) uncertainties concerning

¹ Lithuania, [Constitution of the Republic of Lithuania](#), 25 October 1992 (with later amendments) (*Lietuvos Respublikos Konstitucija*).

Note concerning terminology: In the Lithuanian legal system, the presumption of innocence is connected with the court judgment becoming “effective”, and not with its finality. The term “effective court judgment” means that the judgment entered into force and is open for execution. The judgment of a first instance court becomes effective and final if, within 20 days, no appeal is lodged. The judgment of an appellate instance court becomes effective on the day it is announced, and final if no cassation complaint is lodged. If a cassation complaint is lodged and accepted, the final judgment is adopted by the cassation court (Lithuanian Supreme Court), unless the case is referred for reconsideration to the court of first or appellate instance. The cassation court, after accepting the case for consideration, has the right to stay the execution of the judgment, however, it is not automatic, but is at the discretion of the court.

² Lithuania, Constitutional Court (*Konstitucinis Teismas*), [No. KT3-N2/2017](#), 24 February 2017; Constitutional Court (*Konstitucinis Teismas*), [No. KT13-N5/2019](#), 18 April 2019.

³ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785.

the guilt of the accused or other circumstances which are relevant for fair settlement of the case and which cannot be eliminated in the course of criminal process by any procedural actions, shall be interpreted in favour of the accused”.⁴ This amendment codified a long-standing principle of criminal procedure, which was well established in the case-law of the Lithuanian courts⁵ and was aimed at full transposition of Paragraph 2 of Article 6 of the Directive.⁶

The presumption of innocence is also mentioned in the following laws:

- Law on Courts enlists the presumption of innocence as one of the principles for judicial hearings of cases.⁷
- Law on the Provision of Information to the Public provides that it is prohibited to disseminate information, which violates the presumption of innocence.⁸
- Law on Police provides that information which would violate the presumption of innocence of a person shall not be made public.⁹

Case studies

The two case studies selected for the research revealed that the media does not always follow the principle of presumption of innocence. In both cases, the media reported about the suspects as if they were guilty of the incriminated charges. One case has been referred to by the media as the “Judges Corruption case”, implying that the suspects in the case have committed corruption-related crimes, although the case has not yet come to court. In the other case, the media articles comprised statements from anonymous victims about the crimes committed by the suspect, although this case is still being adjudicated by the court. In the latter case, the Inspector of Journalism Ethics found that the said statements about the suspect’s guilt were degrading their honour and dignity and issued a decision for media outlets to retract these statements.

a. How are the different professions implementing the presumption of innocence?

The interviewed professionals of different groups are aware of the principle of presumption of innocence and implement it in their work. They said that they understand the principle of innocence as a principle where a suspect is considered innocent until the final court decision enters into force. However, even if different groups of professionals indicated that they applied the principle of presumption of innocence in their work, some interviewees referred to incidents when presumption of innocence is violated by the provision of information about some defendants to the media. This will be elaborated in the following paragraphs.

Some interviewed **police officers** regarded the question of presumption of innocence as not directly related with their work since they considered police officers as involved in the pre-trial investigation,

⁴ Lithuania, Law amending Articles 21, 22, 44, 188, 189, 272 and Annex to the Criminal Procedure Code ([Lietuvos Respublikos baudžiamojo proceso kodekso 21, 22, 44, 188, 189, 272 straipsnių ir priedo pakeitimo įstatymas](#)), 30 June 2018, No. XIII-1436.

⁵ Lithuania, Lithuanian Supreme Court (*Lietuvos Aukščiausiasis Teismas*), No. [2K-177/2009](#), 7 April 2009; Lithuanian Supreme Court (*Lietuvos Aukščiausiasis Teismas*), No. [2K-429/2013](#), 29 October 2013.

⁶ Lithuania, Ministry of Justice, Explanatory note on Draft law amending Articles 21, 22, 44, 188, 189, 272 and Annex to the Criminal Procedure Code, 2018 ([Aiškinamasis raštas Dėl Lietuvos Respublikos Baudžiamojo Proceso Kodekso 20, 21, 22, 188 ir 189 straipsnių pakeitimo ir Kodekso priedo papildymo įstatymo projekto](#)).

⁷ Lithuania, Law on Courts ([Teismų įstatymas](#)), 31 May 1994 (with later amendments)⁶, No. I-480, Art. 34(1).

⁸ Lithuania, Law on the Provision of Information to the Public ([Visuomenės informavimo įstatymas](#)), 2 July 1996 (with later amendments), No. I-1418, Art. 19(3).

⁹ Lithuania, Law on Police ([Policijos įstatymas](#)), 17 October 2000 (with later amendments), No. VIII-2048, Art. 7(2).

which does not directly address the decision on guilt. The interviewed police officers mainly describe the application of presumption of innocence as **the attitude of a suspect being seen as not guilty until the court decides otherwise**. The interviewees describe their attitudes and behaviours with suspects as regulated by the laws, shaped by presumption of innocence and therefore as “neutral” and “polite”. The interviewed police officer from Vilnius also indicated **wording used in procedural documents** as an important indicator of presumption of innocence. According to the police officer from Vilnius, they never write in the documents that someone is guilty, but instead use the wording “a person who possibly committed a crime” (Police officer, Lithuania):

“A person could be temporarily detained but is considered innocent until his/her guilt is recognised by a court and this is the meaning of presumption of innocence. The pre-trial investigation could be started and according to the pre-trial investigation data, persons could be detained and be alleged of having committed a criminal offence. Anyway, in such cases we never write in the documents that someone is found guilty, but instead “a person who possibly committed a crime”, since there are cases when the procedural situation of the person changes during the pre-trial investigation, e.g. from ‘a witness’ to a ‘suspect’ and vice versa.” (Police officer, Lithuania)

“Būna žmogus laikinai sulaikytas, bet ta nekaltumo prezumpcija, jįsai laikomas nekatu tol kol jo kaltės nepripažįsta teismas. Tai būna taip, kad turi būti pradėtas ikiteisminis tyrimas, pagal ikiteisminio tyrimo medžiagą ir esant duomenims, asmenys būna sulaikomi ir jiems būna pareiškiamas įtarimas dėl padarytos nusikalstamos veikos, bet niekada nerašom, “pripažįstamas kaltu”, rašom “galimai asmuo padaręs nusikalstamą”, “galimai”, nes būna taip, kad ikiteisminis tyrimas iš tų duomenų keičiasi ir procesinės padėty, kartais žmogus iš liudytojo gali tapti ir įtariamuoju ir atvirkščiai.”

The **prosecutors** stated that in practice the presumption of innocence is reflected in their procedural documents (e.g. the **wording used by pre-trial investigation officers and prosecutors in pre-trial proceedings**). They have to consider the principles of presumption of innocence (e.g. to avoid any statements, which could indicate any doubt about a person’s innocence) in public speeches or even in communications with other participants of the pre-trial investigation process. One interviewed prosecutor says that they do not use any accusatory words in the procedural documents:

“The presumption of innocence is reflected in the procedural documents (e.g. in the wording used by pre-trial investigation officers and prosecutors in pre-trial proceedings). Previously (20 or even 10 years ago) categorical wording was used (e.g. investigation found that somebody committed one or another crime), and now all the wording has changed (e.g. in the pre-trial investigation the officers avoid statements of factual circumstances).” (Prosecutor, Lithuania)

“Nekaltumo prezumpcija atsispindi jau dabar ir procesiniuose dokumentuose – formuluotėse, kurias naudoja ikiteisminio tyrimo pareigūnai ir prokurorai iki teismui tyrimo iki teismo sprendimo – tai jei anksčiau būdavo naudojamos tokios kategoriškos formuluotės, kad ikiteisminio tyrimo metu nustatyta tas ir tas padarė kažkokį nusikaltimą, o dabar iš esmės visos formuluotės pakito ir vengiama tokių faktinių aplinkybių konstatavimo ikiteisminiam tyrimo.”

The interviewed **judges** estimated that in Lithuania the presumption of innocence is respected in the judicial system in general and particularly in the courts and in each step of the process: **from the wordings and terms used during oral proceedings to the procedural documents**.

“The presumption of innocence is a very formal matter, so as long as a person has not been found guilty, s/he cannot be named as guilty. In the judicial system, I think, the Supreme Court and other courts try to comply with it [principle of presumption of innocence] starting from the use of terms in oral proceedings, calling a person and drawing up procedural documents.” (Judge, Lithuania).

„Nekaltumo prezumpcija yra labai formalus dalykas, kol asmuo nepripažintas kaltu priėmus apkaltinamąjį nuosprendį, jis negali būti įvardintas kaip kaltas. Tai teismų sistemų, aš manau, kad kaip ir Aukščiausiam teisme, taip ir kituose, pradedant terminų naudojimo žodiniuose procesuose, nuo kreipimosi į asmenį, nuo procesinių dokumentų surašymo, jos [nekaltumo prezumpcijos] stengiamasi laikytis.“

The interviewed judge said that if a violation of the presumption of innocence is disputed, the Supreme Court interprets the concepts and application of the principle of presumption of innocence referring to the jurisprudence of international courts, the Supreme Court, and the Constitutional Court. The courts are aware of the ECHR case-law and avoid wording which indicates the guilt of a person in procedural decisions, but this does not preclude it from estimating the validity of the allegations, charges, whether there is enough evidence for arrest or termination of some case, etc.

In general, the interviewed **lawyers** described the principle of presumption of innocence as **the principle where a client is seen as non-guilty as long as it is not decided otherwise by a court decision which enters into force**. The lawyers emphasise their very **responsible approach to communicating with mass media** and stress that any communication with the media is possible only with the permission of the client. Even the fact that a lawyer is representing a client can only be revealed with the client's permission. One interviewee noted the difference in how the principle of presumption of innocence is applied in a situation when they defend a suspect or accused person and represent a victim. The interviewed lawyer from Vilnius said that in the latter case they represent the rights of the victim and do not consider the presumption of innocence in regard to the suspect or accused person:

“I aim to follow the strict understanding of presumption of innocence, especially when I defend clients. As it is written in the Constitution, as long as there is no decision, which in accordance with our Constitution also has to enter into force, such a person is not considered as guilty and no institution or officer or I can and should not allow others to behave with them in a way as if they have conducted some criminal activities. This is my position. There is some difference if I represent a victim, since if you represent a victim (...) you think that if a prosecutor accuses somebody, there must be some evidence that the person conducted the criminal actions and you accept this and do not think of presumption of innocence in regards to that accused person, you think of the interests of your client” (Lawyer, Lithuania).

„Aš stengiuosi vadovautis griežta nekaltumo prezumpcijos samprata, ypač gindamas klientus, kad jie kol, kaip ir parašyta Konstitucijoje, kad kol nėra priimtas atitinkamas sprendimas, pagal mūsų Konstituciją jis dar turi ir įsiteisėti, toks asmuo nėra laikomas kaltu ir su juo jokia institucija ar pareigūnas ar juo labiau aš negaliu ir neturiu to leisti, niekas neturi sau leisti elgtis su juo tarytum jis būtų padaręs nusikalstamą veiką. Tai mano būtų tokia pozicija. Šiek tiek ji skiriasi jei atstovauju nukentėjusįjį, nes kai atstovauju nukentėjusįjį, tai gini jo teisėtus interesus, teises (...) nes jei prokuroras kaltina, jis laiko jį, kad yra duomenų, kad padarė šią nusikalstamą veiką ir tu priimi šį išėjies tašką ir iš esmės daugiau apie tą nekaltumo prezumpciją negalvoji, žiūri kaip apsaugoti savo kliento interesus.“

The interviewed lawyers indicated those cases where the media obtained information from other sources about detentions or transportation of a defendant to the courtroom and that violated the principle of presumption of innocence by presenting a defendant in mass media with some symbolic references to guilt before the final court decision. For example, one lawyer suggests that law enforcement institutions should be seen as violating the principle of presumption of innocence in cases where information on a defendant is provided to mass media in advertising the work of these institutions:

"(...) Mass media publishes, but mass media receives information from some sources. So, I would start from the law enforcement institutions that use mass media resources to provide information about concrete persons and accusations against them. In this sphere we see different press releases, press conferences, pompous reports about detained persons, pretty often they [detained persons] are shown [to public, i.e. their identity is revealed], their family names come out, the names of juridical bodies, this is the beginning of the road (...) We do not have the same power as governmental institutions, but in these situations we provide an alternative opinion and emphasise that at this stage we have only suspicions and a person's guilt is not proved, s/he is not convicted and this flow of information stigmatises a person of course, but does not reveal the real situation." (Lawyer, Lithuania)

"(...) Žiniasklaida rašo, bet žiniasklaida informaciją gauna iš kažkur tai, tai aš pradėčiau nuo to, kad turbūt teisėsaugos institucijos yra ta grandis, kuri daugiausia ir naudojasi žiniasklaidos priemonėmis pateikdami informaciją apie konkrečius asmenis ir konkreitiems asmenims pareikštus įtarimus, tai šioje grandyje mes matome įvairūs pranešimai spaudai, rengiamos spaudos konferencijos, pompastiškai pranešama apie sulaikytus asmenis, neretai jie yra parodomi, neretai išplaukia kažkaip ir pavardės, jei įtraukti kažkokie juridiniai asmenys, tai ir jų pavadinimai, tai yra kelio pradžia iš tikrųjų (...) Mes neturim tokių svirtų kaip valstybinės institucijos, bet ištikrųjų šioje vietoje mes teikiame tą nuomonę ir kalbam apie tai, kad na šioje situacijoje čia yra tik pareikšti įtarimai ir iš tikrųjų žmogus nėra pripažintas kaltu, jis nėra nuteistas ir tas srautas informacijos kuris yra pateikiamas, jis be abejo tą žmogų stigmatizuoja, bet ištikrųjų neparodo tikrosios situacijos."

b. Potential factors that have an effect on guaranteeing the presumption of innocence

The interviewees of the different professions believed that the presumption of innocence is applied equally to everyone.

The following factors that might impact the right to be presumed innocent in practice were pointed out by a few interviewees:

Former conviction was indicated as a factor that might influence the application of remand measures (*kardomosios priemonės*), i.e. according to some interviewed lawyers repetitive commitment of criminal activities and convictions might strengthen the attitude that a defendant might be guilty and according to three police officers could be followed by more strict conviction measures or according to a judge and prosecutor to a less lenient sentence. The interviewed lawyer commented on how a former conviction might affect presumption of innocence:

"Some recent case, there was a consideration regarding the detention of some person and there were data that the person had an earlier conviction. And the court used the argument of former conviction. Of course, this does not mean that the person is guilty in that particular case, but some characteristics of that person can influence the decision-making regarding some procedural questions including the main question regarding a guilt. If the court is

addressing a case, and if it has information about former convictions, I think this influences their opinion in advance and I think this really has some negative influence regarding presumption of innocence.” (Lawyer, Lithuania)

„Pastarasis įvykis, buvo sprendžiamas suėmimo klausimas ir yra duomenų, kad asmuo buvo teistas. Ir teismas kaip argumentą naudojo jog jis yra teistas, aišku tai nieko nepasako apie tai kad jis kaltas toj konkrečioj veikoj, bet tam tikri požymiai, apibūdinantys asmenį, charakterizuojantys, manau tikrai turi reikšmės sprendžiant įvairius procesinius klausimus, įskaitant ir pagrindinį klausimą dėl kaltės. Bylą nagrinėjantis teismas, turintis informaciją apie tuos ankstesnius teistumus, tikrai manau jis tam tikrą nuomonę jau formuojasi iš anksto ir tas manau tikrai turi neigiamos įtakos nekaltumo prezumpcijai.”

The interviewed lawyer said that if a **case attracts a lot of public attention** this might affect the presumption of innocence. In their opinion, in cases that attract a lot of public attention numerous people wish to comment publicly, and this affects the presumption of innocence negatively:

“Unfortunately in real life there is no equal application [of the principle of presumption of innocence]. In more simple cases there are less chances of violating [this principle]. However, in resonant cases many people wish to comment right away. Secondly, there are those willing to report and in as much detail as possible and thirdly – those who wish to report about their work. And all this is related with speaking about and exposing the person publicly. I think that those cases that attract the highest public attention are at the highest risk [of violating the principle of presumption of innocence].” (Lawyer, Lithuania)

“Deja, bet realiam gyvenime vienodo taikymo tikrai nesugauna, ir nesigauna dėl to, kad jeigu paprastesnėj byloj tiesiog turbūt šansų ją pažeisti yra mažiau, tačiau rezonansinėse bylose iš karto atsiranda norinčių daug komentuot, tai viena. Antra, norinčių daug pranešt ir kaip galima išsamiau ir trečia – norinčių atsiskaityt apie atliktą darbą ir visa tai yra susiję tiek su kalbėjimu, tiek su asmenų rodymu viešu. Ir dėl to tos bylos, kurios yra visuomenės dėmesio centre, jos yra, mano galva, didžiausioj rizikos zonoj.”

Access to a good lawyer was defined by interviewed lawyer as an important criterion affecting whether the principle of presumption of innocence is applied properly by pre-trial investigators, while state guaranteed legal aid was evaluated as not always effective. The interviewed lawyer commented in this regard:

“(…) this does not depend on the social status; this situation could be applied for different statuses. If a person does not use the help of a lawyer, of a defender or state guaranteed help, which [help guaranteed by the state] however is not always effective, then prosecutors sometimes feel less restricted and allow themselves to apply maybe more strict measures or maybe sometimes not to take into account the wishes of the person. When a lawyer enters the process, then the application of the rules is more consistent.” (Lawyer, Lithuania)

“(…) čia nuo statuso gal nepriklauso, ši situacija gali būti įvairiems statusams, kai asmuo nesinaudoja advokato pagalba, nesinaudoja gynėjo pagalba ar valstybės garantuojama pagalba, kur kitą kartą nebūna efektyvi ta pagalba, tai būna prokurorai žiūri sakykim taip laisviau ir leidžia sau na taikyt galbūt net griežtesnes priemones ar kitą kartą nelabai ir atsižvelgt į tai ko pageidauja tas asmuo. Na o kai įsijungia advokatas aktyviai į tą procesą, tai

toku atveju galbūt tas pasirengimas šiek tiek būna atidesnis požiūris, atidesnis normų taikymas.”

c. The role of prejudices and stigma

Roma were referred to by some interviewees of different professional groups as related with certain stereotypes and stigmas that affect presumption of innocence in the eyes of general public and, according to one interviewed lawyer, supposedly also during court trial. **Roma were related with stereotypes such as a group which is involved in thefts and as drug dealers in Vilnius.**

“(…) Roma nationality is immediately identified with theft and this comes from the ancient times, when, for example, if a horse disappeared, everyone looked around for a Roma person. Or, for example, in Vilnius there are many efforts to integrate Roma into society and resettle them out of the Kirtimai settlement, but society strongly resists it because of fear of increased theft in connection to the resettlement.” (Prosecutor, Lithuania).

“(…) romų tautybę iš karto tapatina su vagyste, pradėkim nuo senovės, kad dingo arklys, tai iš kart romo reikia ieškot apylinkėse, tai nuo to ir persidavė. Jeigu mūsų pastangos kažkokios juos integruoti ir iš taboro ištraukt Vilniuj ir kitur – tai baisinis papispriešinimas, kad mus apvogt.”

The interviewees did not address the way these prejudices influence presumption of innocence. For example, ethnicity (belonging to Roma) was indicated by one interviewed police officer as a certain stigma since Roma are stigmatised as being associated with certain criminal activities (such as distribution of drugs). However, the interviewee concludes that this probably corresponds with the real situation and in our opinion in this way demonstrates the non-reflexive attitude of the way prejudices affect presumption of innocence. The interviewed police officer from Vilnius says:

“As far as the ethnic group is concerned, the Roma nationality comes first as an example, since many of them are engaged in certain illegal activities such as drug distribution – this is not a secret and in fact, they are not very inclined to engage in other jobs, therefore there are drug distribution activities. There is an opinion and even not only an opinion, but opinion based on facts that they are constantly engaged in such activities, especially in Vilnius.” (Police officer, Lithuania)

“Kas liečia etninę grupę, tai čia galbūt, ne galbūt, pirmoj vietoj papuola romų tautybės ir kaip bebūtų liūdna vis tiek daug jų yra verčiasi tam tikra neteisėta veikla – tai nėra paslaptis ir faktiškai jie nelabai linkę užsiimti kitokiais darbais, už tat aišku atitinkamai yra veikla dėl narkotikų platinimo ir įtariamamasis kad romų tautybės, nu turbūt turi įtakos, nes yra tokia nuomonė, ne tik, kad nuomonė, bet ji yra pagrįsta konkrečiai faktais, kad jie tuo nuolatos tuo užsiima. Pagrindė Vilniaus mieste narkotines medžiagas platina romų tautybės asmenys.”

Gender was indicated by one interviewed police officer as related with certain stereotypes and prejudices. The interviewed police officer referred to gender in cases of domestic violence as related to some stereotypes. The interviewee means that in cases of domestic violence men are usually considered as physically stronger and therefore as more often guilty than women.

Social status was also said to be related to certain stereotypes and prejudices: if a family receives social support from the state, it is often related in the public imagination with alcohol addiction and unemployment. The interviewed prosecutor commented on the stereotypes related with social status as follows:

“It is not only nationality that is a stereotype, social status is also a stereotype. For example, if a family receives social support, society immediately treats them as alcohol addicted, unemployed or something else, even though it is a perfectly normal family.” (Prosecutor, Lithuania).

Tai čia tie stereotipai yra ir, sakyčiau, pagal tautybę ir pagal socialinę padėtį, nes jeigu šeima socialiai remtina, tai iš kart ją traktuoja, kaip girtuoklius, bedarbius ar dar kažką, nors tai yra visiškai normali šeima.”

d. Discussion of findings

The interview data allow us to conclude that the **different professionals are aware of the principle of presumption of innocence and implement it in their work**. The principle of presumption of innocence is understood by members of different professional groups – police officers, judges, prosecutors, defence lawyers – **as a principle where a suspect is considered innocent until the final court decision enters into force**. This attitude corresponds to the understanding of presumption of innocence recorded in the legal basis. The **police officers** described their work as based on laws and therefore neutral in regard to suspects: this was described as being revealed in their communication with suspects and accused as well as in the wording used in documents. The interviewed **prosecutors** emphasised the importance of proper wording, i.e. wording which does not refer to a suspect or defendant as guilty in their documents, in communication with defendants, or other officers of the pre-trial investigation. The interviewed **judges** believed that in Lithuania presumption of innocence is respected in the judicial system in general and particularly in the courts and at each step of the process: from the wording and terms used during oral proceedings to the procedural documents. The interviewed **defence lawyers** perceived the principle of presumption of innocence as basic in their professional activities. There were no remarkable differences in the ways interviewed interviewees of the same profession described application of the presumption of innocence in their work. However, the interviewed defence lawyers indicated various aspects in the work of other institutions (institutions of pre-trial investigation, mass media representatives) that violate the presumption of innocence of their clients.

Most of the interviewees of the different professional groups stated that factors such as **gender, ethnicity, social background** have no impact on the presumption of innocence or that they did not encounter this in their practice. A few interviewees indicated **ethnicity (Roma)** as affecting presumption of innocence in the eyes of the general public and, according to one interviewee, supposedly also during court trial; a few interviewees indicated former conviction as affecting presumption of innocence. The status of a case, i.e. whether it attracts public attention or not was indicated as a key factor in affecting presumption of innocence. The access to an effective defence was indicated as another important factor.

C.2 Public references to guilt

There are no explicit provisions in Lithuanian legislation referring to public references to guilt by public officials. However, the Lithuanian Constitutional Court, in interpreting Article 31(1) of the Constitution has held that all State institutions and officials have a general duty to refrain from referring to a person as a criminal until the person is proved guilty according to the procedure established by law and declared guilty by an effective court judgment.¹⁰

¹⁰ Lithuania, Constitutional Court (*Konstitucinis Teismas*), [No. 8/02-16/02-25/02-9/03-10/03-11/03-36/03-37/03-06/04-09/04-20/04-26/04-30/04-31/04-32/04-34/04-41/04](#), 29 December 2004; Constitutional Court (*Konstitucinis Teismas*), [No. 22/2008-31/2008-9/2010-35/2010](#), 7 July 2011.

The Law on the Provision of Information to the Public provides that it is prohibited to disseminate information, which violates the presumption of innocence.¹¹

Concerning guidelines for media, the obligation to respect the principle of presumption of innocence is also included in the Codes of Ethics adopted by self-regulation bodies of journalists and media. For example, it is stated in the Code of Ethics on providing information to the public of Lithuania that “Journalists, producers and the communicators of public information must respect the presumption of innocence. A person may only be found guilty by a valid ruling or the judgment of a court.”¹² In Article 34 of this Code it is stated that “Publishing the personal data of a person who is suspected of a crime, which could be used to identify that person, is forbidden. If publishing the surname of a person who is suspected of a crime, or is an accused or a defendant, is in the public interest but this fact of a crime is not proven later, the journalists, producers and communicators of public information must immediately inform the society that the said person has been found to be not guilty. Journalists, producers and the communicators of public information must not remind the public about the suspicions of a previous crime which were raised but were not confirmed, except where publishing such information is in the public interest. In such a case, it must be noted that the suspicions were not confirmed.”¹³ Though it is not stated explicitly in the Code, the requirement to immediately inform the society about an acquittal should be understood as a requirement to publicise this information immediately after a court judgment acquitting the person is announced.

Similar provisions are incorporated into the Lithuanian Code of Ethics for Journalists and Publishers.¹⁴

Accused persons who think that their presumption of innocence was violated due to public statements, may raise the issue in the context of their criminal case. In such cases it has to be established whether such statements could have affected the independence and impartiality of the courts examining the case.¹⁵ Should a higher court establish that public statements affected the independence and impartiality of the lower court, the judgment of the lower court may be annulled and the case may be returned for re-investigation or re-trial (however, not a single case with such a finding has been identified). In addition, a civil case for damages may be initiated. However, in a civil case all the conditions for civil responsibility (illegal acts, damages, causality and guilt) would have to be proved.

During the period under review, the main civil case concerning violation of the presumption of innocence due to public reference to guilt by a public official concerned a joint stock company charged with crimes of corruption. In 2018, the Chairman of the National Security and Defence Committee (NSDC) of the Lithuanian Parliament in an interview with a journalist stated that the activities of this company correspond to that of a criminal organisation and that this company caused damage to the State worth around EUR 500 million. Both the first instance and appellate courts found that these statements violated the presumption of innocence and infringed the reputation of the company. Declaration of a violation of the company’s rights was found to

¹¹ Lithuania, Law on the Provision of Information to the Public ([Visuomenės informavimo įstatymas](#)), 2 July 1996 (with later amendments), No. I-1418, Art. 19(3).

¹² Lithuania, [Code of Ethics in providing information to the public of Lithuania](#) (*Lietuvos visuomenės informavimo etikos kodeksas*), 29 February 2016, Article 31.

¹³ Lithuania, [Code of Ethics in providing information to the public of Lithuania](#) (*Lietuvos visuomenės informavimo etikos kodeksas*), 29 February 2016, Article 34.

¹⁴ Lithuania, [Lithuanian Code of Ethics for Journalists and Publishers](#) (*Lietuvos žurnalistų ir leidėjų etikos kodeksas*), 15 April 2005, Art. 37, 40.

¹⁵ Lithuania, Lithuanian Supreme Court (*Lietuvos Aukščiausiasis Teismas*), No. 2A-2/2003, 18 September 2003; Lithuanian Supreme Court (*Lietuvos Aukščiausiasis Teismas*), No. [2K-7-2/2007](#), 6 February 2007.

constitute sufficient satisfaction and no damages were awarded.¹⁶ The criminal case concerning crimes allegedly committed by this company is still pending before the court.

Case studies

In one of the case studies, public reference to guilt was made by the Prosecutor General during a press conference held to announce the commencement of the pre-trial investigation. The case concerned an alleged corruption network among judges, attorneys, suspects and other persons interested in the outcomes of cases. According to the Prosecutor General, “we also see, that in the attorney’s office there was a trade in justice happening”. However, later in the conference the Prosecutor General added that “today, we, of course, should also respect the presumption of innocence, and abstain from drawing conclusions that the judges are guilty, and other persons, and attorneys (...)”.

Responding to the media coverage of this case, the Lithuanian Lawyer’s Association issued [a public appeal](#) expressing concern in relation to public assessments of the case and urging that the presumption of innocence of the suspects be respected. The appeal was addressed to state officers and government institutions, and urged them to “respect the principle of presumption of innocence without exception, avoid expressing biased opinions and assessments and abstain from obstructing in this way the pre-trial investigation and the proper exercise of police officers’ and courts’ duties”. The Association further emphasised that “to ensure right to a fair trial, protect personal data and abstain from violation of presumption of innocence, it is forbidden to publish data from the pre-trial investigation, therefore [it] urges to refrain from publishing any pre-trial investigation data, except for discreet information on the investigation”.

a. How do the different professions liaise with the media?

Respondents of all professional groups emphasised the restricted communication that is allowed with mass media in order to preserve presumption of innocence. The main challenge indicated was the contradiction between preservation of the principle of presumption of innocence and society’s right to be informed. The juxtaposed data indicate that there are cases when the principle of presumption of innocence is violated by providing information on a case to the public. These aspects will be described in more detail in following paragraphs.

The interviewed **police officers** described their experience of communicating with mass media as **very limited** and as such had only happened a few times in their professional career or years ago when they were in a different position at the police department. The communication with mass media was depicted by all interviewed police officers as **restricted to special professionals in the department** and as such when **suspect’s or accused person’s identity is not revealed**. For example, the police precinct has media liaison officers who are mandated to communicate with the media. One interviewed police officer described the communication with the media as follows:

“We do not contact the journalists directly, but we have a media person in [XX] Commissariat. If we have a case which attracts public interest because a more serious crime has been committed, very rarely, a press officer meets the police officers and asks them for information. Police can inform the media liaison officer about the crime only with the permission of the prosecutor, and only then does the media representative inform the journalists.” (Police officer, Lithuania).

¹⁶ Lithuania, Vilnius regional court, No. [2A-1612-661/2019](#), 10 December 2019.

“Nepalaikom, labai retai būna, labai labai retai, kai jau būna kažkoks sunkesnis nusikaltimas sukėlęs visuomenėj atgarsį, tada gal būt, bet mes tiesiogiai su žurnalistais nesisiekiam, yra mūsų skyrius, vadinamas [XX], yra už tai atsakingas asmuo, kuris gali su mumis susitikti ir gali paklausti, kas per įvykis ir tik gavus prokuroro leidimą, mes galim juos informuoti apie nusikalstamą veiką ir jie jau informuoja žiniasklaidą.”

Three of four interviewed police officers expressed the opinion that media coverage of some cases also works as a preventive educational measure for society, i.e. in this way society learns that such crimes are investigated, and perpetrators found and punished. The interviewed police officer claimed that making a case public corresponds to society's right to be informed and also serves as a preventive measure for people inclined to commit a crime:

“I think that making a case public does not influence the court's decision. Whether society has a right to know what is going on – I think that it has (...) This brings nothing positive for a suspect. However, this is a means of educating society that those persons who might be planning some criminal activities they know that these activities are found out, the suspects are identified, and this becomes public. In Lithuania we still have this feeling of shame and fault against society, against acquaintances, this is a means of education, that ‘if I do something, I will be caught and people will hear of this’, I see this as positive side of making things public.” (Police officer, Lithuania).

“Manau kad įvykio pavišinimas teismo priimamam sprendimui ir nuosprendžiui įtakos neturi. Ar visuomenė turi teisę žinoti kas įvyksta, aš manau kad turi teisę žinoti. (...) pačiam įtariamajam tai turbūt nieko teigiamo nėra, bet visuomenei tai yra viena iš auklėjimo priemonių kad vis dėlto asmenims, kurie norėtų, planuotų tokį nusikaltimą daryti yra pavišinimas, kad yra tokie nusikaltimai išaiškinami, įtariamieji nustatomi ir kad tai yra pavišinama. Vis dėlto pas mus Lietuvoje yra tas kaltės ir gėdos jausmas prieš visuomenę, prieš pažįstamus, vis dėlto kaip auklėjamoji priemonė, kad jei aš padarysiu, mane pagaus ir sužinos, tai tokią aš įžvelgčiau informacijos, pavišinimo gerąją pusę.”

According to some interviewed police officers, the **media are also approached when the police need help** in identifying the owners of stolen commodities or victims of some criminal actions. The name or other private information of a suspect cannot be provided publicly since according to the laws, the anonymity of a suspect has to be preserved.

The interviewed **prosecutors** in Vilnius stated that during the pre-trial investigation, **information for the public is provided in a rather limited way**. Usually, if the pre-trial investigation attracts public attention, it is difficult or even impossible to avoid some kind of commentary and therefore some information is provided for media in an organised way. As the interviewed prosecutor stated, the information provided to the public does not violate the presumption of innocence, because officials know how to avoid accusing someone of a crime by the **wording which has already entered the language of the officials, e.g. “a person is suspected of having committed a crime” or that person “may have committed such an offence”**. According to the interviewed prosecutor, such **press conferences are held, depending on the situation, either in the Prosecutor's or Police Offices or the Financial Crime Investigation Service**. Most frequently they are held in the premises of the Prosecutor's office by the so-called **communication specialists, who present information instead of the prosecutors**, if they [the prosecutors] do not want to do it, but **the prosecutor decides how much information can be disclosed about the pre-trial investigation**.

In cases, **where the defendant is a minor/child, no data can be disclosed** according the Criminal Code, and only the first letters of the name and the surname of a defendant can be mentioned, or

the prosecutors refer to them according to their procedural status, for example, “the suspect”. However, according to the prosecutors we interviewed, if the case has attracted public attention the journalists usually know the names and surnames of the defendants and try to publish the information. In addition, when there is a public hearing – you cannot hide the name and surname of the defendant, because it is written in the schedule of court hearings hung on the doors of the court room. According to the interviewed Lithuanian prosecutor, **training on how to communicate with media** has started only very recently; previously they learned from their own mistakes.

Even if the interviewees at the institutions of pre-trial investigation described their communication with mass media as restricted and regulated by laws and internal rules, the interviewed lawyers and judges referred to some incidents when communication with mass media of representatives from law enforcement institutions violated the principle of presumption of innocence. The interviewed lawyers referred to the so called “case of judges”, i.e. alleged corruption network among judges, attorneys, suspects and other persons interested in the outcomes of cases. For example, the interviewed lawyer from Vilnius described the incident when the Prosecutor General used the wording that “some office was trading with justice”. According to the interviewed lawyer, it would have appeared to members of the public that the judges and lawyers were part of some organised network even if in reality some of them were suspected of committing very different and unrelated activities. The interviewee commented that the judges and lawyers were arrested and appeared in public with handcuffs and were paraded around in front of journalists and photographers. This was seen as referring to very negative tendencies with regard to the presumption of innocence, especially since the case itself is still ongoing. The interviewee said:

“In the so-called judges case, it is still not completed, but we saw people in handcuffs. What is even more strange is that they [defendants] could have been transported by car right to the doors or even to the inner yard and led via a corridor into the courtroom. Instead they or some of them had to walk from a car park near Senukai [a shop], around one hundred and fifty or two hundred metres from the court and there were journalists nearby with microphones and all of this was filmed and appeared in mass media ”
(Lawyer, Lithuania)

“Ta pati teisėjų byla, dar nesigirdi kad eitų link pabaigos, o tas žmonių tąsymas surakintais, surakintom rankom ir kas dar yra keisčiausia, galima privežti gi prie pat durų, ir net į vidinį kiemą įvežt ir įvest per koridorių, o juos vedė, kai kuriuos, iš aikštelės prie “Senukų”, tai vadinasi apie pusantro šimto, vos ne du šimtai metrų, kada šalia žurnalistai su mikrofonais ir visas tas laikas yra filmuojamas ir reportažuose eina.”

The **interviewed judges** stated that **judges cannot comment on any case until the case has been examined and a final judgment made**. Otherwise this would be considered both as an ethical violation and grounds for immediate removal of a judge from the case because of the judge's bias. The interviewed judge also stated that **judges can only comment on the rulings of their own cases** and the media liaison officer can comment on the cases of other judges if they do not want to do it themselves:

“(…) in Lithuania judges are actively encouraged to comment (...) but the judge can only comment on the ruling of their own case. If the judges do not want to comment on the ruling of their cases themselves, there is a media liaison officer who can comment on the ruling of the cases for the press. And while the trial is in progress, no comments can be given, since it is considered both an ethical violation and grounds for immediate removal of a judge from the case.” (Judge, Lithuania)

„(...) Lietuvoje labai skatinami teisėjai komentuoti (...), bet komentuoja jie savo nutartį, o jeigu nenori komentuoti yra teisėjai spaudai, kurie komentuoja nutarties ribose, taip primta, nes jei nutartis yra šimtą lapų, gali paprašyti spaudai, kad pakomentuoti pagrindinius motyvus, bet savo priimtą sprendimą, o kol vyksta teismo procesas jokių pareiškimų negali būti, nes tai ir etikos pažeidimas, nes nušalinimo pagrindas iš karto.“

The interviewed judge said that with the permission of the prosecutor, the pre-trial investigation data can be made public, except when a suspect or a victim is a minor/child. Anyone involved in the investigation process is aware and should be warned that pre-trial investigation data should not be disclosed, and that criminal liability is foreseen for violation. But when the case moves to the trial stage, all proceedings are public and open to the media and public older than 16 years; there are exceptions if cases are related to State secrets, trade secrets, or other sensitive aspects concerning the privacy of people as foreseen in Article 6 of the Convention, the Constitution and Article 9 of the Code of Criminal Procedure.

According to the judge, **journalists cannot film in the court room, except for the moment when the verdict is announced.** In addition, the court audio records the proceedings and other participants can make audio recordings, as well. According to the interviewed judge, journalists who report from courtrooms usually behave respectfully and know the principles of the presumption of innocence and are aware of such concepts as “suspects”, “accused”, “conviction”. The interviewed judge stated that they liaise with the media, because they think that **journalists should get accurate information in order to avoid any mistakes, which could violate the presumption of innocence.** The judge assesses each situation and decides how much to share with the media about the defendants: if the defendant is a vulnerable person, even if the case is public, the judge avoids speaking to the media, because they feel that any public considerations could harm that person and violate the presumption of innocence. The judge has an agreement with journalists that if a case attracts a lot of public attention their questions will only be answered when the final judgment is made. The judge said:

“I liaise with the media because I see it as ideological or educational purpose to explain the facts for the journalists in order that they do not distort the objective truth. As a judge, I know the criminal case very well, and if they get accurate information from me and if they have the time and desire to listen to me, I explain the criminal law to them in very elementary terms in order to avoid any mistakes, which could violate the presumption of innocence. However, I think that journalists write very fast and usually don’t want to listen. If I talk with media about my defendants, it depends on the situation: if the defendant is a vulnerable person, even if the case is public, but the situation is sensitive and I do not know the judgment until the final moment, I avoid speaking to the media, because, I think, that any public considerations could harm that person and violate the presumption of innocence, even though that I personally apply and follow the presumption of innocence.” (Judge, Lithuania)

“Kaip teisėja ryšius su žiniasklaida palaikau tam tikra idėjiška, švietėjiška iliuzija, kad jeigu aš paaiškinsiu, kaip yra ištikrųjų, žurnalistas neiškraipys objektyvios tiesos. Tai reiškia, kad jeigu iš manęs, kaip teisėjo žinančio geriausiai baudžiamąją bylą ir ten dirbančio tą informaciją jie gaus kuo tikslesnę, ir jei žurnalistai turi laiko ir noro manęs klausytis, tai aš jiems tokias baudžiamosios teisės pamokėles, abėcėlę paaiškinu, kad jie nepainiotų, nes tas painiojimas baigiasi, kad ir nekaltumo prezumpcijos pažeidimu, bet jiems reikia greitai, čia ir dabar ir jie klausytis nenori dažniausiai. Ar aš kabu su žiniasklaida apie savo kaltinamuosius – tai čia

priklauso nuo situacijos, tai jeigu yra pažeidžiamas kaltinamasis, net ir tuo atveju jeigu byla vieša, bet situacija yra jautri ir aš sprendimo nežinau iki galutinio momento ir aš nežinau kaip bus. Tokiose situacijose aš vengiu kalbėti, tai reiškia kad aš galiu savo samprotavimais tam žmogui pakenkti ir pažeisti tą nekaltumo prezumpciją, nors man asmeniškai ta nekaltumo prezumpcija toks postulat, kurio aš stengiuosi laikytis.”

The interviewed lawyers were highly reflective on the impact that the media has on the presumption of innocence of their clients and emphasised that their professional ethics requires them to keep information about their clients' secret and therefore it is not their usual practice to communicate with the media, instead aiming to resolve any issues by legal means. However, when a case attracts public interest, the media always want to get comments from the defendant's lawyer. The lawyer suggested that in such cases it is important to be aware of what can be or cannot be said publicly and some of them even referred to some previous training on this. Consequently, cooperation or exchange with the media were depicted by interviewed lawyers as not aimed for, and furthermore, **any exchange could only be done with the client's approval**. Some lawyers suggested that their words were not presented correctly in the media. Thus, communication with the media was depicted as having to be carried out in a very restricted and cautious manner. The interviewed lawyer said that in the cases that attract public interest mass media representatives obtain information about the case and lawyers from other sources. For example, one lawyer said that the moment they become a lawyer in some resonant case, they receive at least five phone calls from different media sources. The interviewees suggested that media representatives gain primary information from pre-trial investigation institutions and assessed this very negatively.

However, some interviewed lawyers noted that they react if the media presents incorrect information or the client wishes to have their alternative perspective presented publicly. **Cooperation with the media is also justified when there is a need to deny information that was presented publicly** in regards to the lawyers themselves, e.g. one interviewee referred to a case where a lawyer was detained and believes that this lawyer had no other choice than to cooperate with the media, since detention had very negative consequences for their [the lawyer's] reputation, so mass media made some aspects public and prevented their distortion or denial at later stages. The interviewed lawyer from Vilnius said:

“To tell the truth, generally I do not liaise with mass media, I do not employ mass media to solve some legal questions. I think that mass media, of course, helps a lot in some cases. In some cases, it generates huge public interest in a particular crime and here the presumption of innocence is violated since a person is indicated as a criminal before the trial. But in some cases, mass media has very big role, for example in this current case concerning the detention of a lawyer (...) yes, in their case there was no other way than to approach mass media. Since the detention, and the ensuing process negatively impacted their reputation, but it is very good that colleagues and advocacy supported this lawyer and I think that mass media played a very big role in this case” (Lawyer, Lithuania)

“Tiesą sakant ryšių aš praktiškai nepalaikau, iš esmės aš nepasitelku žiniasklaidos tam kad spręsti kažkokius teisinius klausimus. Aš galvočiau kad žiniasklaida aišku tam tikrais klausimais labai padeda. Vienais atvejais gal sukeldama labai didelį ažiotažą apie sakykim atitinkamus nusikaltimus, čia vėlgi pažeidžia ir tą nekaltumo prezumpciją nes kol žmogus prieina iki teisiamųjų suolo jis jau iš esmės įvardinamas nusikaltėliu. Bet tam tikrais atvejais žiniasklaida atlieka labai didelį vaidmenį, vat ir kad ir (...) tuo atveju (...) nu kitos išėities kaip kreiptis į žiniasklaidą nu praktiškai nėra. Nes visas tas sulaikymas, visa ta procedūra iš

tikrųjų kirto per reputaciją labai smarkiai, bet labai smagu kad NN ir kolegos palaikė ir advokatūra palaikė ir manyčiau kad žiniasklaida čia tikrai suvaidino labai didelį vaidmenį.“

b. Mapping of laws and guidelines

The Law on Legal Protection of Personal Data was referred to by one police officer as influencing police officers' communication with the mass media. Since the Law on Legal Protection of Personal Data entered into force, they are no longer allowed to provide a suspect's full name to mass media. Earlier such information could be provided, with the exception of suspected minors/children.

The interviewed **judge** referred to laws and guidelines such as the **Code of Ethics of Judges, Criminal, Civil Code, Code of Administrative Offences, and Law on Administrative Proceedings** of the Republic of Lithuania. The interviewed judge pointed out the **principles of judge impartiality**, which are regulated and defined by different laws or internal guidelines (code of ethics, criminal and civil codes, administrative process code, and administrative justice law).

Two interviewed **defence lawyers** referred to the **general regulation of advocacy** as shaping the way defence lawyers communicate with mass media. For example, the regulation of advocacy work indicates that a client's identity cannot be revealed publicly unless the client expresses such a wish, and this is a guiding rule for lawyers. The interviewee also referred to the **Code of Ethics for Advocates** which indicates that client data cannot be provided publicly.

c. Effects media has on presumption of innocence

The interviewees stated that media coverage have various effects on the presumption of innocence. The interviewed professional of different groups indicated that there were more negative than positive effects. Most of the interviewees believed that media coverage in general has negative outcomes for the presumption of innocence since the defendant's identity is often revealed and our society is seen to stigmatise people who are suspected or accused of a crime. However, some positive effects of media on the presumption of innocence were named.

Some interviewed professionals (prosecutor, judge, police officer) claimed that information provided in the media mainly affects public opinion, but could not affect the pre-trial investigation officers, prosecutors or judges since they are professionals who make decisions depending on the data collected in the criminal case. For example, the interviewed judge believed that judges are highly professional in Lithuania and therefore the media cannot influence their decisions:

“I will compare to the work of surgeons. Any surgeon will perform an operation to the highest professional capacity regardless of the requests or sentiments of the patient's relatives. Professionalism, professional resistance, guarantees of independence, Constitution, the instance court system, however, allows you to say that professional judges are unaffected, and if they are unable to do that job, then they should change their job profile.”
(Judge, Lithuania)

“Aš palyginsiu su chirurgu, kai verkia artimasis, tai kaip jūs geriau operuosit, ar blogiau, ne jūs eisit ir operuosit, ar čia verkia, ar neverkia, o jeigu neverkia, sakys, va, niekam jo negaila – tai galiu blogai operuoti. Profesionalumas, profesinis atsparumas, nepriklausomumo garantijos apie kurias aš jau čia nekalbėsiu. Sakau instancinė teismų sistema, vis tik leidžia teigti, kad teisėjai profesionalai yra neveikiami, o jei jie negali to darbo dirbti, tada turi keisti darbo profilį”.

The positive and negative effects of mass media scrutiny on the presumption of innocence that were indicated by interviewed professionals of different groups are listed below.

aa. Positive effects

The interviewed judge describes mass media coverings as **contributing to democracy** by guaranteeing that sentencing is transparent. The interviewed judge claimed that mass media enables judges to explain the main motives of the ruling. to the public This was seen as particularly important in cases when a ruling is explained over many pages.

Three interviewed police officers described mass media coverage of some cases as a **preventive and educational measure** for the general public. According to interviewed police officer:

“It is not mandatory to report about pre-trial investigations to the public, however sometimes some available information is provided when society is asked for some help, sometimes just as a demonstration of good practice of the police work or informing about potential threats to society because of certain crimes. This information serves as a preventive measure for society.” (Police officer, Lithuania)

“Jokio įpareigojimo pranešti nėra, kartais tai tiesiog paviešina informaciją, kai prašoma visuomenės pagalbos, suteikiant tam tikrą turimą informaciją, kartais tai grynai kaip parodyti teigiamą praktiką, darbą, kad iš tikrųjų pakeltą tą įvaizdį policijos, o kartais informuoti apie tam tikrą pavojų tų nusikalstamų veikų. Visuomenei naudinga šiuo atveju, kad tokį prevencinį darbą atliktų tie straipsniai.”

The interviewed lawyer suggested that in some cases media coverage “enables some issues to be solved that might not otherwise be solved”, i.e. can be seen as an **instrument to reach certain aims**. The interviewed lawyer stated that sometimes some questions are not resolved in a procedural way and when mass media becomes involved, these questions “are suddenly resolved”. This however was interpreted as an abnormal situation. The interviewee said:

“I could say from my own experience that some questions do not get solved in a procedural way, the mass media gets in and then it turns out that the questions are solved and in a completely different way than before (...) but in this place I would say that I wish this didn't happen, that there was no need to employ mass media to make officers apply laws, in my perspective this is not normal, but unfortunately this happens.” (Lawyer, Lithuania)

“Iš savo patirties galiu pasakyti, jog kai kai kurie klausimai nesisprendžia procesine tvarka, įsijungia žiniasklaida, pasirodo kad jie jau sprendžiami ir visai kitaip nei kad prieš tai buvo (...) Bet šitoj vietoj, kaip čia pasakyt, teigiamą, aš čia daugiau kaip NN sakysiu, aš norėčiau kad taip nebūtų, kad nereikėtų žiniasklaidos pasitelkti, kad staiga pareigūnai pradėtų vadovautis įstatymais, mano galva tai visiškai nenormalu, nu bet taip yra, deja.”

Media coverage was also described by the interviewed lawyer as a **means of self-protection and defence against incorrect information** presented publicly. The interviewed lawyer explained that mass media makes some aspects public and prevent them from being distorted or denied later.

bb. Negative effects

The interviewees of different professions emphasised that media coverage before the final court judgment enters into force **negatively affects the principle of presumption of innocence**. For example, the interviewed lawyer said:

“There are many problems with the mass media, I think that there are processes that are covered publicly without any reason, publicly announced family names, of course this is all

done under the pretext of public interest. I do not know, maybe everything depends on society, but I think that our society tends to stigmatise and if there is an announcement of a pre-trial investigation or some investigation against some person, then this person in the eyes of society is presumed guilty as long as the court does not decide differently.” (Lawyer, Lithuania)

„O su žiniasklaida šiaip yra labai daug problemų, nes mano galva yra tikrai nepagrįstai viešinamų procesų, viešinamų pavardžių, aišku prisidengiama viešu interesu (...) Na nežinau, čia gal nuo kiekvienos visuomenės priklauso, mano galva mūsų visuomenė yra pakankamai stigmatizuojanti ir jeigu jau pranešama apie pradėtą ikiteisminį tyrimą, neduok dieve apie konkretaus asmens atžvilgiu vykdomą tyrimą, tai toks asmuo visuomenės akyse jau faktiškai turi kaltumo prezumpciją, kol teismas nenusprendė priešingai.“

The media was described by lawyers as forming the opinion of society in general, and the interviewees described the case of the arrest and handcuffing of nine judges and lawyers in 2019, which was covered by mass media and which was described as violating the principle of presumption of innocence. It was suggested by the judge that the media are not able to show the process as a whole, only parts of it and society tends to perceive that person as guilty even before the final court decision.

According to interviewees, media coverage **makes the work of police officers, prosecutors and judges more difficult**. For example, the interviewed prosecutor stated that the media contributes to the creation of a preconception in society which makes the work of both judges and prosecutors very difficult. The police officers claimed that the provision of some information publicly, especially in the early stages of an investigation, might damage the pre-trial investigation. This opinion was supported by the interviewed lawyer who said that if a case attracts a lot of public attention, many people wish to comment on it or share some knowledge and this makes the work of investigators more difficult since this information is not always truthful and reliable. The media coverage was described by the interviewed lawyer as placing the court in a difficult situation since it was estimated as very difficult to acquit a person in case which has gained huge public attention. Two interviewed police officers said that media often does not present facts objectively. For example, the police officer stated that media distort the facts from public court hearings:

“(...) I am against any public hearing, because I experienced many times how facts were misinterpreted in the media and most often defendants provided these facts in outsourced media articles. Therefore, in such cases the trial itself, all the circumstances of the case and its hearing cannot maintain objectivity and are distorted.” (Police officer, Lithuania)

“(...) aš aplamai prieš tą viešą nagrinėjimą, nes esu susidūrusi ne vieną kartą su iškraipymais faktų, na mano atveju, tai buvo sakykim nu aišku užsakomieji straipsniai iš pačių kaltinamųjų pusės. Faktiškai iškraipomas pats teismo procesas, visos bylos aplinkybės ir jos nagrinėjimas, tai į vieną ar kitą pusę, nesvarbu, bet dažniausiai tų faktų pateikimas nebūna objektyvus”.

A few interviewees of different groups indicated negative effects of media coverage such as **damage done to a person’s reputation**. The interviewed police officer said that information provided about the pre-trial investigation in more serious cases could make a suspect person vulnerable, could harm them and damage their reputation, because the pre-trial investigation could be terminated and the case could be closed, but the names of the suspects are already in the public arena. The other police officer referred to a few cases where civil servants were suspected of some criminal activities and their names and surnames were mentioned in the media. The interviewee said that the investigation was later terminated, but negative public opinion was formed about those people which damaged

their careers in the public service. The interviewed lawyer said that non-verified data which is used in mass media can later be used against a person: the mass media publications might be used in assessing the person's eligibility to assume some State positions.

Has tremendous negative influence on defendant's psychological health. The interviewed lawyer says that if information on a pre-trial investigation or court case gets into the public domain, the person feels that they will no longer be trusted by society, they might have problems with their employer and encounter many other negative consequences.

d. Differences in media coverage concerning certain groups

Most interviewees felt that there was no difference in how the media covers different groups. However, some interviewees referred to **gender** and **ethnicity** as important criteria in how the media presents some crimes. **Children** were identified as a group which cannot be presented publicly.

aa. Men and women

The interviewees referred to **gender as well as parental status** (motherhood) as those criteria which might affect how the media presents some cases.

Gender was indicated as an important factor in shaping the way the media covers some crimes. The interviewed judge mentioned that in sexual offence cases female victims are usually blamed in the media for some incidents. The other interviewed judge and prosecutor mentioned that in cases of domestic violence, the woman is most often considered the victim and the man the perpetrator. The majority of interviewed lawyers suggested that there is no difference in how men and women are depicted in mass media. Two interviewed police officers suggested that there is no difference in how mass media depicts different genders but argues that statistically men commit more crimes than women, therefore it could be that men are portrayed more often in mass media.

One interviewed lawyer suggested that in **cases which also involve children's rights, women are depicted more negatively**. The police officer gave the example of the case of domestic violence when a boy was murdered by his parents and said that the media condemned both the child's mother and her cohabitant. Nevertheless, she thinks that the mother was perceived as more to blame by the public, because she was seen as not protecting her child. This opinion is echoed by an interviewed police officer who suggested that in cases involving harm to a minor, the woman/mother is condemned more than the man/father:

"I think that in the famous cases related to harm against children, when the defendants are the mother and father of the child, the woman, the mother, is condemned more than the man, the father. The prevailing attitude in society is that the mother's duty is to her child, while the father is not obliged to be involved in childcare and the mother is always guilty if anything happens." (Police officer, Lithuania)

"Aš manau, kad toli pavydžių ieškoti nereikia ir tos garsios bylos dėl nuskriaustų vaikų taip sakant, žiniasklaidos dėka, labiau motina buvo smerkiama. Buvo pavyzdžiui, kai motina ir tėvas įtariamieji, o smerktina labiau žiniasklaidoj buvo motina, matomai dėl tos pareigos, kad jiniai, dėl to požiūrio visuomenėje, kad motina visada privalo būti motina, o vyras, tėvas tai tėvas ne visada jis turi dalyvauti ir nori dalyvauti vaikų auklėjime, o kalta vis tiek motina."

bb. Children and adults

Interviewed lawyers indicated that **children are seen as a special category which cannot be presented publicly**, and the mass media were seen as following this principle. This opinion was supported by a judge who indicated that the media avoid publishing pictures of minors. An interviewed prosecutor indicated however, that in the resonant case of alleged paedophilia, information about a child was disclosed by some mass media.

cc. Nationals and non-nationals (including ethnic minorities, e.g. Roma)

The interviewed judge indicated **Roma** as a group which is depicted negatively in the mass media, especially in the coverage of cases relating to drugs.

Immigrants were indicated by interviewed lawyer as a group which might be depicted negatively in the mass media. The interviewee describes a case when their client's – an immigrant from a third country – café was destroyed, and there were negative comments about their non-local roots. However, the interviewee's answer does not clarify whether this was referred to in mass media publications or reader's comments.

dd. Persons with disabilities

No interviewee reflected on how this group is presented in mass media.

ee. Other groups

The interviewed judge stated that factors such as **education and place of residence** (urban, country) could have an influence on mass media coverage. S/He suggested that violent crimes are more often depicted as being committed by people with lower education and income and economic crimes are more often depicted as being committed by well-educated persons

LGBT people were described as encountering hate speech in the comments of some readers by interviewed police officer.

Persons in difficult economic situations were depicted by interviewed police officer as experiencing some kind of understanding and support from the broader public. For example, one police officer said that society might evaluate the actions of a perpetrator in a difficult economic situation differently. The officer said that society tends to feel sorry for a perpetrator who is in a difficult economic situation.

e. Discussion of findings

The interviewed pre-trial investigation officers described the cooperation with mass media as guided by strict rules which indicate who and under which conditions can communicate with mass media and what kind of information might be presented publicly so as not to violate the presumption of innocence and not to harm the pre-trial investigation. **Members of all professional groups emphasised the restrictions on communicating with mass media in order to preserve presumption of innocence. However, the interviewed lawyers and judges indicated that representatives of mass media obtain information on cases and indicated coverage in mass media and public comments that violate the presumption of innocence of defendants.** Interviewees referred frequently to the case of the alleged corruption network among judges and lawyers. The juxtaposed data allow us to conclude that **there are cases when the principle of presumption of innocence is violated by the provision of information on some cases to the public.**

The interviewed members of the professional groups referred to the following documents that regulate their communication with mass media. The interviewees referred to the Code of Ethics of Judges, Criminal, Civil Code, Code of Administrative Offences, and Law on Administrative Proceedings, Recommendations of the Prosecutor General for Pre-trial Investigators, Code of Ethics for Advocates and general regulation of advocacy.

Most of the interviewees described the mass media as having a **negative influence** on the presumption of innocence in the eyes of the general public due to the public references to guilt or due to the fact that media might not cover a case right up to the final court decision and in such cases if a defendant is acquitted, their reputation might be damaged by earlier articles in mass media. The mass media coverage was described as not always providing objective and truthful information and as having huge psychological and social impact on a defendant. The interviewed lawyer still felt that in cases that attract public interest the court might find itself in a difficult situation in making its final judgment due to public pressure.

The **positive effects** of mass media included the possibility to correct misinformation or present an alternative interpretation of some circumstances or event to that presented by pre-trial investigators, as a means to defend one's reputation, as well as a means to solve some legal issues if they are not solved in the normal way. Publicity was estimated as a sign of a democratic society and media coverage was estimated by some interviewees as guaranteeing society's right to be informed.

Gender and parental status (motherhood) were seen as dimensions that have some influence on media coverage. **Ethnicity (Roma)** was indicated as a category that is presented more negatively in mass media and LGBT as a group which experience bullying in reader's comments.

Positive practices mentioned during interviews - recently started training programmes for prosecutors on communicating with mass media which is probably reflected in the more cautious use of wording in documentation and public comments.

C.3 The presentation of suspects and accused persons

The only legal act relevant to the presentation of suspects and accused persons is the Rules of Convoy, which regulates the convoy (escort) of detained persons. They provide that handcuffs and restraint measures are used for the following categories: 1) extraordinary convoy (e.g. convoy of persons serving life sentences); 2) persons who are likely to escape, attack a convoy, injure themselves or others, or are suspected, accused or sentenced for a very grave crime; 3) while conveying persons in vehicles not equipped with cells.¹⁷ For persons belonging to the second category, handcuffs can be taken off only during the trial hearing and only with permission from the presiding judge, as well as while using the toilet. However, handcuffs should not be used when conveying pregnant women, persons with disability, and children under 14 years of age.¹⁸ Thus, it is usually the presiding judge who decides on whether handcuffs should be used during a court hearing, and the escorting officers decide on the necessity of handcuffs before and after a court hearing.

Anyone who feels that handcuffs were used without a proper reason, may file a complaint to a court and seek non-pecuniary damages. A complaint relating to the use of handcuffs during a court hearing should be submitted to the court of general jurisdiction; whereas a complaint relating to the use of handcuffs before and after a court hearing should be submitted to an administrative court.¹⁹

¹⁷ Lithuania, Rules on Convoy (*Konvojavimo taisyklės*), Approved by Order of the Minister of Justice and Minister of the Interior, 29 July 2005 (with later amendments), No. 1R-240/1V-246, paragraph 223.

¹⁸ Lithuania, Rules on Convoy (*Konvojavimo taisyklės*), Approved by Order of the Minister of Justice and Minister of the Interior, 29 July 2005 (with later amendments), No. 1R-240/1V-246.

¹⁹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), [No. AS-196-502/2017](#), 1 March 2017; Vilnius regional court, [No. 2A-1379-656/2017](#), 19 October 2017.

However, in Lithuanian case-law it is held that “a violation of presumption of innocence may not be declared solely due to the fact that during a court hearing the accused was handcuffed or placed behind bars.”²⁰

On 21 February 2020, the Seimas Ombudsperson’s Office (national human rights institution) published a report on the use of forcible measures by law enforcement officers. One aspect which was criticised in this report was the excessive use of handcuffs. The ombudsperson pointed out that a provision of the Rules on Convoy “handcuffs and restraint measures are used” is interpreted by police forces as indicating obligatory use of handcuffing for categories of persons indicated in the rules even in situations when there is no necessity for such a measure.²¹

The ombudsperson also stated that in practice there are cases when suspects are publicly escorted to court, filmed and photographed in handcuffs even when they are not resisting the police and do not pose any threat (a case of lawyers suspected of corruption served as an example). The ombudsperson concluded that Article 5 of Directive 2016/343 has not been properly transposed into the Lithuanian legal system and Lithuania is not taking appropriate measures to ensure that suspects and accused persons are presented as being not guilty, in court or in public, through the use of measures of physical restraint.²² On 18 May 2020 the Ministry of Justice of the Republic of Lithuania publicly declared that the rules of convoy will be amended so as to ensure that handcuffs and other measures that restrict movement are not used if that person is not likely to cause danger to themselves or others.²³

Case studies

In one of the identified case studies, publicly referred to by the media as the “Judges Corruption Case”, some of the suspected judges and attorneys were escorted to court in handcuffs by masked and armed officers; the Lithuanian Bar Association objected to this in their public appeal to the Minister of the Interior and Police Commissioner General. In their appeal, the Bar Association argued that there was no reason to handcuff the arrested attorneys and judges while they were being brought to court for pre-trial detention hearings. According to the Bar Association, handcuffs were used without any legal ground provided for by the Rules of Convoy. In the Bar’s opinion, their use in this case was excessive, and therefore infringed on the suspects’ presumption of innocence.

a. Measures used to present the accused and its impact on their presumption of innocence

Measures mentioned in interviews

The interviewed police officers indicated handcuffs as measures that are foreseen by the Rules of Convoy and are used to prevent possible escapes as well as possible damage/harm to officers or the suspects/accused themselves. One interviewed police officer makes a difference between the transportation of suspects and accused persons: a suspect is detained for 48 hours, if such a person is reliable, they might be brought without handcuffs. The status of accused differs and they are

²⁰ Lithuania, Vilnius regional administrative court (*Vilniaus apygardos administracinis teismas*), No. [I-737-815/2019](#), 10 January 2019, with references to previous case law of the Lithuanian Supreme Administrative Court.

²¹ Lithuania, Seimas Ombudspersons’ Office (*Seimo kontrolierių įstaiga*), Report on the use of force by law enforcement officers ([Ataskaita dėl jėgos naudojimo pareigūnų veikloje](#)), 21 February 2020, paragraph 4.2

²² Lithuania, Seimas Ombudspersons’ Office (*Seimo kontrolierių įstaiga*), Report on the use of force by law enforcement officers ([Ataskaita dėl jėgos naudojimo pareigūnų veikloje](#)), 21 February 2020, paragraph 4.3.

²³ Lithuania, Ministry of Justice of the Republic of Lithuania (Lietuvos Respublikos teisingumo ministerija), News. “The rules of conveying are changed – handcuffs are not obligatory” ([Naujienos. „Keičiamos asmenu konvojavimo taisyklės – antrankiai neprivalomi“](#)), 18 May 2020.

brought in handcuffs. Some interviewed police officers presumed that use of handcuffs does not have any influence on the presumption of innocence.

The **interviewed judges and prosecutors** mentioned measures used to present the accused such as **handcuffs, glass box, special isolated place**. These measures were seen as referring to the symbolic guilt of a defendant and not always used with good reason especially when the media show these images from the courtroom. However, it was argued by the interviewed judges that these measures do not affect the decisions of judges. When a person is brought to the courtroom, the court asks that they be handcuffed in front so that they can sit comfortably. In the convoy, the handcuffs are to the back. The handcuffs can be taken off in the courtroom at the request of the lawyer and with the permission of the presiding judge.

The interviewed **lawyers** most often mentioned **handcuffs** as measures used during conveying of a suspect/accused persons to the courtroom or for some procedural actions. One interviewed lawyer also mentioned the following measures that are foreseen by the Rules of Convoy – special gas, restraining shirts; however, s/he indicated that handcuffs are the most often used items of restraint. **The use of handcuffs was seen as standing in opposition with the principle of presumption of innocence.** The interviewed lawyer said:

“When a person is transported to court for a decision regarding their detention or extension of detention, they are usually in handcuffs and escorted by a police officer. So of course, these measures demonstrate that their freedom is restrained because of some criminal case against them. I think that this says everything, and we are back to the question of whether this has to be demonstrated” (Lawyer, Lithuania)

„Na, paprastai žmogus jei vedamas į suėmimą ar vedamas spręsti klausimo dėl suėmimo pratęsimo, tai paprastai jis yra vedamas su antrankiais, vedamas policijos pareigūno. Tai aišku jau pačios tos priemonės demonstruoja, jog jo laisvė yra suvaržyta būtent dėl kažkokio jo atžvilgiu vykdomo baudžiamojo persekiojimo. Tai man atrodo tuo viskas pasakyta, tai mes grįžtam prie to paties, kad iš tikrųjų ar tai galėtų būti demonstruojama.”

The overuse of handcuffs was indicated by members of professional groups such as lawyers and judges. For example, one interviewed lawyer estimates that nowadays generally everyone is brought to the courtroom in handcuffs even if this measure is foreseen only in such cases where a person could escape, may be a danger to themselves or others or is suspected of serious crimes.

The interviewed judge questioned whether the police have used the handcuffs for a purpose, because it is highly questionable whether in some cases these dangers were realistic, and the person was a risk to themselves or others:

“The police, for their part, were encouraged to revise their guidelines, but police assured their usefulness and argued that handcuffs have been used when a person could be a risk to themselves or others. In some cases, it is highly questionable whether these dangers were realistic.” (Judge, Lithuania).

„O policija savo ruožtu, buvo paskatinta peržiūrėti savo gaires, ir jie pasakė, kad jos yra tinkamos, ir antrankiai yra dedami tik tada, kai asmuo gali kelti pavojų arba aplinkiniams arba sau. Ir kai kuriose bylose labai abejotina, ar tie asmenys, kuriuos mes matom per televiziją vedamus surakintus galėjo kelti tokią grėsmę sau.”

The interviewees of the different professional groups said that defendants **can cover their faces during transportation**, but it has to be uncovered while in court. The interviewees were referring to situations when a defendant wishes to hide their face from mass media with clothes or paper.

The interviewed lawyers mentioned that in a court room the defendant is in a special place which was described as a **space with security grilles/bars** or space with some **barriers** (“užtvarai”). For example, the interviewed lawyer says that usually once a person is in the courtroom, they are in a separate space from others. While this was seen as having no influence on the judge, **it was seen as having a negative influence on the presumption of innocence in the eyes of the general public**. The interviewed lawyer assessed this very negatively and says that s/he is a follower of the German position which says that court is a place where a person must defend their rights and present their position without any restriction. And therefore, no symbolic attributes that influence our attitudes regarding a person’s guilt should be used. The interviewee considered that a professional judge should be able and probably is able to distance themselves from these visible symbolic attributes of guilt, but mass media coverage that show people in handcuffs does influence public opinion:

*“In reality there are different situations, however if we talk concretely about arrested people, suspected and accused persons, then they are brought and kept at the courtroom in handcuffs and in some cases, usually if there are those spaces, with barriers. I estimate this very negatively since I follow the German position that a court is a place where a person should be able to present their own position without restrictions, to defend their rights and that **exceptional attributes that unconsciously form our opinion should not be demonstrated.**” (Lawyer, Lithuania)*

„Iš tiesų yra įvairios tos situacijos, bet jei mes kalbame konkrečiai apie suimtuosius, įtariamuosius kaltinamuosius, tai jie teismo salėj yra atvedami ir laikomi deja su antrankiais ir kai kuriais atvejais dažniausiai, jei yra tos patalpos, na užtvaruose. Tai aš vertinu šį dalyką labai neigiamai, nes aš laikausi tos germaniškos pozicijos, kur teismas yra ta vieta, kur turėtų asmuo na nevaržomas stot prieš teismą, išsakyt savo poziciją, ginti teises ir kad nebūtų demonstruojama kažkokia išskirtinė, nuomonę pasamonėje formuojanti ta atributika. Aišku profesionalus teisėjas turėtų atsiribot nuo to ir spėčiau kad dažniausiai jam tai pavyksta padaryt, nes tiesiog įprasta yra tokia procedūra sakykim, bet jei kalbėsime apie visuomenę, tai reportažai apie tai kaip vedami su antrankiais, tai tirai didesnį įspūdį daro ir kenkia nekaltumo prezumpcijai, nes kyla nuomonė, kad jei jau su antrankiais, tai matyt kažkas tikrai blogai.“

Transportation of defendants to the courtroom

There were some differences in the opinions of the interviewed professionals estimated on whether the way defendants are transported to the courtroom meets the requirements of their minimal exposure to the public.

The interviewed police officers and prosecutor said that **defendants are brought to the court via the back entrance, rather than the main entrance**. The interviewed police officer said that this is done to **separate flows of people: those who come to the court just to submit some documents should not meet those who are suspects or have been arrested for a crime**. And the **waiting rooms at the court are also separated** since the judges of pre-trial investigations have separate courtrooms. This opinion was supported by another interviewed police officer who described the District Court of Vilnius as having a separate entrance and separate space for people who are waiting for proceedings:

“The district court of Vilnius city has an entrance and has a separate room in the court where transported people wait for the start of proceedings. (...) People are not brought via the main entrance, but they are transported via a side entrance and brought to a separate entrance via a yard. People can then (...) wait for the start of proceedings in a different room from that of other participants of the process, journalists or outsiders who follow the proceedings.” (Police officer, Lithuania)

“Vilniaus miesto apylinkės teismas turi įėjimą, ir turi patalpas pačiame apylinkės teisme, kur pristatyti į teismo posėdį žmonės laukia, kol bus posėdžio pradžia. (...) į patį pastatą neįvedami pro pagrindines duris, jie atvežami per šoninį įvažiavimą, per kiemą ir įvedami per atskirą įėjimą. Tai tam pristatytam į teismą asmeniui (...) sudaromos slygos laukti teismo posėdžio pradžios kitoje patalpoje, negu kad yra proceso dalyviai, žurnalistai ar kiti asmenys kurie stebi neviešą teismo posėdį“

However, the interviewed prosecutor suggested that Lithuanian courts do not meet the requirements to ensure that all participants of the proceedings, namely, judges, prosecutors, defendants, media and audience come from different corridors (as in the Berlin City Court s/he visited). The judge also suggested that the courts in Vilnius are not adapted to proper convoy, but they try to work out a solution in cooperation with the convoy chief. For example, usually the convoy truck reverses up to the door and the suspect is led immediately through the court doors to the corridor and thus journalists would not be able to take photos.

The interviewed judge indicated that according to the regulations of European convoy, detained and accused persons must be brought to the courtroom with minimal exposure to the public. However, the interviewee believed that these requirements are not followed, but if an accused person belongs to a group of vulnerable people, e.g. children, they are convoyed without revealing them to the public:

“I can talk a lot about the convoy, especially after the case of judges’ corruption [case of alleged corruption network among judges, lawyers and others], where the convoy rules were violated and I felt very angry because of that. There is an international legal act, namely the regulations of the European convoy. I was informed about this document by the Chief of the department of detention and convoy. This document clearly states that the detained and accused person must be brought to the courtroom with minimum exposure to the public and no one follows these rules.” (Judge, Lithuania).

“Konvojavimas, galiu ilgai šnekėti ta tema, įpatingai po teisėjų [tariamoms] korupcijos bylos, kur buvo pažeista [nekaltumo prezumpcija] ir aš dėl to buvau pikta kaip širšė. Yra toks tarptautinis teisišs aktas, Europos konvojavimo taisyklės, apie kurias man papasakojo areštinės ir konvojaus vadas ir ten aiškiai parašyta, kad sulaikytas ir apkaltinats asmuo turi būti pristatytas ir atvežtas į teismo salę minimaliai jį pristatant visuomenei – tai aš galiu pasakyti, kad tos taisyklės nesilaiko niekas.”

b. Clothing

The interviewed members of all the professional groups indicated that in Lithuania **defendants wear their own clothes**. The effect of clothing on the presumption of innocence was assessed differently, however, most of the interviewees did not see clothing as having an essential effect on the presumption of innocence.

The majority of interviewed **police officers** thought that clothing had no influence on the court's decision. However, clothing was seen as having an effect on the perceptions of the broader public:

"I think that clothing has an effect. For example, the last well-known trial, where the suspect was dressed in a suit. A suit is not an indicator that the defendant is a decent citizen, but for a certain part of society, public appearance can shape the attitude that this man is a decent one. Accordingly, it depends on the financial means and someone might not have the money for a suit and is dressed very simply and often the attitude could be that a person without good clothes is addicted to alcohol or drugs. In fact, the person simply has a low income and can't afford to buy a suit or decent clothes. The State and the prisons are not obliged to provide them with clothes and it depends on the person's wishes and means." (Police officer, Lithuania).

"Aš manau, kad turi. Pavyzdžiui net paskutinis žinomas teismo procesas, kur kaltinamasis buvo apsirengęs kostiumu, tas kostiumas ne rodiklis, kad jis padorus pilietis ir visa kita, bet daliai visuomenės, aš manau, susiformavo nuomonė, kad šis žmogus padorus. O atitinkamai nuo materialinės padėties priklauso, kažkas galbūt tam kostiumui neturi pinigų ir apsirengęs yra paprastai ir gali būti suformuota nuomonė, kad jis kažkoks pijokas, narkomanas ar pan. O, gal būt, tiesiog tas žmogus yra mažai uždirbantis ir negalintis leisti sau to kostiumo nusipirkti ir panašių padoresnių rūbų, bet valstybė nei kalinimo įstaigos tų asmenų aprūpinti neprivalo, čia nuo asmens priklauso."

The interviewed **judge and prosecutor** stated that clothes have no influence on the presumption of innocence in criminal proceedings or on the punishment:

"Whatever they want. The most popular clothes are sportswear, but sometimes suspects have come in shorts. Some others from Lukiškės [former name of prison in Vilnius], for example, came in suits, which they bought for the trial. No one pays attention to sportswear anymore. Of course, if a man came in a tuxedo, you could interpret it as an attempt to show his respect to the court, but the clothes would not affect the punishment. [XX], a famous criminal in Lithuania, always wore a suit in the courtroom but this did not prevent him from being handed down a life sentence." (Prosecutor, Lithuania).

„Kokius nori dabar, populiariausi, aišku, treningai, bet būna ir su šortais atvažiuoja, o kiti iš Lukiškių pavyzdžiui, su kostiumais atvažiuodavo specialiai tam įsigydavo. Į treningus tai tikrai niekas jau dėmesio nebekreipia, aišku, jeigu jau ateina ten su smokingu žmogus, tai aišku, jau matai, kad jis bando parodyt, kad jis teismą gerbia, bet kad bausmei tai turi įtakos - neturi. Bet čia reikia teisėjų klaust, ar jie pamatę kostiumuotą įtarimąjį jam bausmės atima. [XX] visa laiką su kostiumu būna teisme, bet jam vis tiek iki gyvos galvos davė."

Usually the defendants wear whatever they wore at home, at the moment of their pre-trial detention. According to the judge they can even be dirty or unwashed, after spending 24 hours in custody following the incident of e.g. domestic violence. At the same time, the judge pointed out that the pre-trial investigation process is not public and the wider society does not see the defendant. In addition, if a person is arrested and allowed visitors, the visitor usually brings a change of clothing.

The interviewed lawyer said that in their opinion the way a person looks has some influence on the subjective opinion of someone else. The other interviewed lawyer concluded it is difficult to assess what influence clothing has on presumption of innocence. However, the interviewee said that

generally how a person behaves, talks, how they look shapes people's attitudes even if they cannot assess whether this influences presumption of innocence. The other interviewed lawyer said that if a person does not choose their clothing thoughtfully for a court trial, this might have some negative influence on the presumption of innocence. The lawyer said that they usually think about how the client should look in the court. However, the lawyer noted that this does not mean that appearance/clothing alone can influence court decisions.

c. Presentation of vulnerable groups

Many interviewees identified **children** as a vulnerable group. The interviewed police officer noted that court proceedings regarding minors are always closed. The interviewed lawyer said that everybody is aware that by law minors cannot appear in front of the public, so they are never led via common corridors in the court building. Another interviewed lawyer said that children under 14 years old are never transported in handcuffs. According to the interviewed prosecutor, children are transported in a different manner to adults, but it depends on the child as well, because sometimes there are aggressive minors and it is extremely difficult to escort them to the court without handcuffs, but generally if such minors are suspects or accused, it is ensured that the media representatives respect the rights of such defendants. This means that the media can only inform about them from the courtroom without any public disclosure of personal data, no video is allowed or used, and the faces of minor children are not shown:

“There is a different approach to escorting underage children. Nevertheless, it depends on the child as well, because sometimes there are very aggressive minors and it is extremely difficult to escort them to the court without handcuffs, but most often if they are suspects or accused, it is ensured that the media representatives know and respect the rights of such defendants. Therefore, media can only inform about them from the courtroom without any public disclosure of personal data, no video is allowed or used, the faces of minor children are not shown.” (Prosecutor, Lithuania)

“Nepilnamečiams tai jau toks atskiras dėmesys, priklauso koks nepilnametis. Gali būti, kad nepilnametis labai agresyvus, ir nesugebėsi tu jo pristatyti į teismo salę be antrankių, bet dažniausiai, jeigu jie yra įtariamieji ar kaltinamieji, tai yra užtikrinama, kad žiniasklaida žinotų tas teises, kad faktiškai nedemonstruojami nei nepilnamečių veidai, iš teismo salės gali informuoti tik taikant tam tikras priemones, be jokių asmens duomenų, nenaudojama vaizdo, veidas uždengiamas.”

People with mental disabilities were referred to as those who are not usually escorted, and the process takes place *in absentia*; a defence lawyer is mandatory for them.

People with health problems were referred to as transported without handcuffs.

d. Reactions to presenting accused as being guilty

The interviewees referred to the following possible reactions when an accused is presented as being guilty through certain measures:

- **Possibility to apply for compensation** in accordance with the Code of Civil Procedure. The interviewed judge suggested this as a remedy if a person is named as guilty in a press conference, they can apply for compensation according to the Code of Civil Procedure. There is a special article regarding compensation for a person who suffered from the actions of subjects of Criminal Procedure. The interviewed prosecutor suggested that if your rights are unlawfully restricted, especially if a person is acquitted, they can apply to the court for

compensation of damages and the Ministry of Justice compensates violated rights if the court decides that such a violation has been committed.

- The defendants, even if the case is terminated due to time limitations, **can demand that it not be terminated and be examined till the end and final acquittal**. If the court recognises that the defendant has committed a criminal offence, then the criminal case would be terminated, but the court would use such formulations that the allegations were well established, e. g de facto guilty, but de jure cannot be named guilty. As an example, the interviewed judge presented the case of Ms. NNN vs Lithuania, where a woman complained that she was named guilty in a criminal case in which she was not involved. This was a big criminal case with a lot of defendants and suspects and the case was split into smaller stages and brought to the court. A case had been singled out against that woman and the rest of the case went to court where other people said that they were committing crimes with her. Finally, her case went to court and was terminated due to the time limitation and she did not contest it. She appealed to the European Court of Human Rights since she was named as a criminal with a company in a case she was not related to, but the ECHR said that in Lithuania there are sufficient remedies in the criminal proceedings, where a person could require both the removal of wording, a proper description and compensation for damages based on civil proceedings. And in this particular case the person had not taken advantage of these remedies.
- **Defendant can ask to change the composition of the court** (e.g. of biases).
- Defendants **can apply to the European Court of Human Rights**. The interviewed prosecutor stated that the judges should not comment on any details of the court process before the final judgment, but if any detail were disclosed then the defendants could use this fact in the Appeal Court, declaring that the court of first instance was biased. Additionally, the Supreme Court would return the case to the appeal court, because the decision was biased. However, in practice, there are not many such decisions, according to the interviewed prosecutor.

The interviewed **lawyers** were sceptical regarding available effective measures if an accused person is presented as guilty. The interviewed lawyers suggested the following hypothetical remedies:

- **Public presentation of alternative opinion**, i.e. one interviewed lawyer suggested that this might be the only possible action in situations when a defendant is publicly referred to as guilty.
- **Submission of a complaint against some actions of pre-trial investigators or prosecutors as foreseen by the Code of Criminal Procedure** was mentioned by one interviewee, but this was estimated as leading to no real results.
- **Request to use the measures of physical restraint proportionally/adequately or ask for compensation** was mentioned by two interviewed lawyers. According to one interviewee, this can be raised at the moment when these non-adequate measures are used. This opinion was supported by another lawyer who said that a lawyer can ask a question regarding the use of handcuffs during transportation, however, the answer might be that handcuffs are foreseen by the rules.

e. Discussion of findings

The presentation of defendants was discussed in regard to the measures used, transportation/entering the court building, placement of defendants in the court room. Handcuffs were the measures most often referred to during conveying and at the court proceedings. **The use**

of handcuffs is foreseen by the Rules of Convoy and therefore their use was interpreted as legitimate by interviewees. However, lawyers, judges and prosecutors raised the question of overuse of these measures in cases where a suspect or accused person is not a risk to themselves or officers. These measures were described by prosecutors, judges and lawyers as referring to the symbolic guilt of a defendant. The attitudes of professional groups such as police officers on the one hand and lawyers, judges and prosecutors on the other differed on this measure. The first group tended to emphasise the excessive use of these measures and to perceive them as symbolic references to guilt. The second group (police officers) rather saw their use as legitimised by regulations and as used to guarantee safe transporting.

The use of such restrictive measures is especially problematic when a case is covered by mass media and a defendant is presented in handcuffs or in other movement-restricting measures and is escorted by police officers or other officers in masks. **The transportation of a defendant to the court building is therefore seen as a key stage in regard to the presumption of innocence. The entrance to the court building was depicted as problematic and required good planning so that a defendant is not filmed by mass media representatives.** It was said that entry was conducted via side doors rather than the main door in order to protect a defendant from mass media attention. The court building in Vilnius was described as having separate waiting spaces for defendants so that they would not meet mass media representatives or other participants of the trial. However, interviewees referred to the so-called case of judges and lawyers [case of alleged corruption network among judges, lawyers and others] when suspects were led the long way to the court in handcuffs, by police officers and filmed by mass media representatives. Such incidents were portrayed as a violation of the principle of presumption of innocence and they clearly do not correspond to the way suspects should have been transported.

The interviewed members of all the professional groups indicated that in Lithuania **defendants wear their own clothes.** The effect of clothing on the presumption of innocence was assessed differently, **however most of the interviewees did not see clothing as having an essential effect on the presumption of innocence.** The interviewees **indicated vulnerable groups such as children under 14 years old, people with mental disabilities and people with serious health problems.** These groups are transported without handcuffs, the cases where children are involved are never public and no information is provided to mass media.

The interviewees named some possible reactions if a defendant is presented as guilty by using symbolic references to guilt and these measures included the possibility to apply for compensation, requirement to change the composition of some courts, apply to the European Court of Human Rights, submission of a complaint regarding actions of a pre-trial investigation or just presentation of alternative information in the media. However, most of the interviewed lawyers evaluated these possibilities as rather theoretical and often as leading to no real results.

Positive practices described in interviews – cooperation between judges and chief officers of conveying so that a defendant is conveyed to the court in a manner that is discreet and consequently not covered by mass media. This was described to in one interview with a judge and refers to the awareness of some professionals of the preservation of the principle of presumption of innocence.

C.4 Burden of proof

In accordance with the provisions of the Code of Criminal Procedure, the prosecutor is under an obligation to prove that a criminal act has been committed, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence and prove that the criminal act

has not been committed and that they are not guilty of its commission but have the right to do so in the exercise of their right to defence.²⁴

a. Exceptions to the burden of proof

According to the interviewed **police officers**, **there are no exceptions to the burden of proof** and the police must conduct its job to collect a sufficient body of evidence and the prosecutor must also contribute and help assess and advise on some additional evidence collection. Two police officers commented that where the police find smuggled or illegal goods, the very possession of some illegal commodities can lead to criminal or administrative responsibility, however, this does not prove that the person in possession of these goods is automatically responsible for smuggling.

“There are a lot of nuances, e. g. when a person lives in a rented house together with a large number of other people who rent the same house, for example like people who come from Ukraine. If somebody reported that [XX], while living together with those ten people in that house, kept smuggled cigarettes, however, this information did not provide enough evidence, because any of those 10 people could keep those cigarettes. (...) we have one investigation of the distribution of drugs where a search of the place of residence of a suspect was carried out. The suspect lived with their relatives. Police found smuggled cigarettes, but this did not affect the suspect and no additional article for a criminal offence was brought, because during the pre-trial investigation, police found out that these cigarettes belonged to another family member who lived with the primary suspect. This family member was punished separately based on the administrative proceeding.” (Police officer, Lithuania)

“Labai daug niuansų, nes jeigu žmogus gyvena išnuomotam name, kur gyvena daug žmonių, kaip pvz. būna atvykę iš Ukrainos. Jeigu būtų toks pranešimas, kad [XX] gyvenantis dar su dešimt žmonių tam name jisai laiko kontrabandinės cigaretės, to nepakanka, nes iš tų dešimt žmonių gali bet kuris laikyti. (...)mes turėjom tyrimą dėl narkotikų platinimo ir ten buvo atliekama krata jo gyvenamoje vietoje ir ten gyveno dar su savo artimaisiais ir buvo rastos kontrabandinės cigaretės – tai jam papildomo straipsnio už tai nebuvo, nes ikiteisminio tyrimo metu mes nustatėm, kad šitos cigaretės priklausė kitam šeimos nariui ir tas šeimos narys buvo atskirai nubaustas administracinio proceso tvarka, o jisai ne, nes ne jis realizuodavo ir įgydavo.”

The interviewed **judges and prosecutors** admitted that there are situations when it is more useful for the defence to present contra evidence. According to the interviewed prosecutors, **the burden of proving a person’s guilt should rest with the prosecutor. However**, the interviewed prosecutor suggested that **sometimes it is more useful for a defendant to present contra arguments or contra evidence and to defend themselves**. The defence has the right to go to the prosecutor or investigator and request to participate in search or other activities of the investigation and if the prosecutors do not agree with the request they have to write a reasoned decision, according to the other prosecutor.

A **judge** also expressed a similar opinion to the prosecutor. The judge suggested that the defence sometimes presents evidence to prove some case circumstances. According to the interviewed judge these actions are in line with ECHR case-law that in some tax cases or similar, it may require the defence to justify certain circumstances on which the defence is based, but that does not mean that the burden of proof shifts to the defence.

²⁴ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Articles 21(4), 22(3), 42, 44(6).

The **lawyers** said that even if, theoretically, the burden of proof should rest with prosecutors, **it is usually their responsibility to prove vice versa**. The interviewed lawyer suggested that theoretically there are no exceptions, however **in practice the prosecutor comes to the court with a “presumption of guilt” and the lawyer has to provide evidence to deny it:**

“(…) theoretically there are no exceptions, but in practice it is different (…) It is not unusual that instead of a presumption of innocence, a presumption of guilt is presented by a prosecutor and this has to be denied by the defender. Thus, the prosecutor does not have to prove that the accused is guilty, but the defender has to deny that the situation is different than the one presented by the prosecutor, so the process of proving innocence is upside down.” (Lawyer, Lithuania)

“na teoriškai išimčių nėra, bet praktiškai visaip yra. (....) neretai turbūt ir taip, kad vietoj tos nekaltumo prezumpcijos yra kaltumo prezumpcija su kuria prokuroras eina į teismą, ir kurią gynėjui reikia paneiginti, ne tai kad prokurorui įrodyti kad jis kaltas yra, bet tai ką jau pateikė teismui prokuroras, gynėjui reikia įrodinėti kad yra kitaip, šiek tiek yra apsivertęs aukštyn kojom šitas įrodinėjimo procesas.”

The interviewed lawyer indicated that usually the evidence which proves a defendant's guilt is collected by pre-trial investigators, but they do not collect evidence which denies guilt. The interviewee suggests that there is a tendency not to accept evidence which questions or denies a defendant's guilt. The interviewee also refers to the fact that lawyers have more limited possibilities to collect evidence than pre-trial investigators. Other lawyer said that it is the role of the prosecutor or pre-trial investigator to prove a person's guilt, but in the cases of suspected illegal enrichment (*neteisėtas praturtėjimas*) a defender has to present proof to deny it. The interviewed lawyer refers to cases when they and their clients had to look for various proofs to prove the legal origins of their property:

“Maybe I could think of presumption of innocence when we talk of the burden of proof of guilt, since this burden must be the responsibility of the accusers, and defenders might present some proof and arguments that deny the guilt. Yes, we have such a right and usually use it, but let's say that some crimes, some attitudes of the criminal code are formulated in such a way that raise doubts in regard to presumption of innocence. It is not a secret if I say that this is about illegal enrichment, i.e. to own some property if a person knew or could have known that it was gained via illegal incomes. So, if we do not prove legal incomes, then the property is seen as illegally gained. So, the law foresees such a rule of proof which violates the principle of presumption of innocence”. (Lawyer, Lithuania)

„Gal dar galėčiau galvoti apie nekaltumo prezumpciją matyt kalbant apie įrodinėjimo našta, vis tik čia įrodinėjimo našta turėtų būti kaltinamojo pusės, o gynyba iš savo pusės gali pateikti įrodymų ar argumentų, kurie paneigtų pareiktą kaltę, taip mes turime tokią teisę ir dažnai ta teise naudojames, bet sakykim net kai kurie nusikaltimai, kai kurios baudžiamojo kodekso nuostatos yra formuluojamos taip kad vertinant tą nekaltumo prezumpcijos požiūriu kai kurios tos nuostatos abejotinos. Čia turbūt nebus paslaptis jei pasakysiu apie neteisėtą praturtėjimą, tai inkriminuoja ką, inkriminuoja turėjimą turto jei asmuo žinojo arba galėjo žinoti kad tas turtas negalėjo būti įgytas teisėtomis pajamomis. Tai iš esmės jei kalbėt apie tai, tuomet galimų teisėtų pajamų

nesuradimas jau suponuoja mums turto neteisėtumą, ane, tai iš esmės įstatymas pats įvardija tokią įrodinėjimo taisyklę ir pažeidžia nekaltumo prezumpcijos principą.“

b. Confession

Police officers perceive confession as a positive action which eases the situation of an accused person. Confession is seen by some interviewed police officers as enabling the process of reconciliation to start in cases where the accused person does not have previous convictions. The accused also has to compensate or aim to compensate harm done to the victim and not to conduct any new criminal activities for a year. The interviewed police officers said that confession of a crime can be treated as a mitigating circumstance by the court and the court process can be thus less complicated with no court proceedings, no involvement of witnesses or victims and fewer expenses. According to the police officer, the confession makes the period of evidence collection shorter since there is no need to require witnesses to attend court, and consequently the case receives less publicity:

“In fact, if the accused person confesses their guilt, in the sense that if the circumstances of the offence are clear and they admit their guilt, it is easier for them, because the sentence is reduced by one third and less, respectively. In such case, a shortened examination of the evidence is possible, without inviting the participants to attend court, and as a result considerably less disclosure of personal information is made. The judge will hold a first hearing at which the accused confirms that s/he agrees to the procedure that the other participants will not be invited and the written procedure will be held. This kind of procedure contributes to less data being released into the public arena public by witnesses, and, accordingly, a more lenient penalty and less publicity.” (Police officer, Lithuania)

“Faktiškai, jeigu pripažįsta tai čia jiems palanki aplinkybė, ta prasme, tai jei yra nusikalstamos veikos aplinkybės aiškios ir jis pripažįsta savo kaltę – tai jisiai palengvina visų pirma sau, bausmė mažinama atitinkamai trečdaliu ir atitinkamai mažiau, t.y. galimas tas sutrumpintas įrodymų tyrimas ir faktiškai nekviečiant dalyvių savaime aišku mažiau paviešinimo gaunasi to paties asmens, teisėjas surengia pirmą posėdį, kuriame kaltinamasis patvirtina, kad jis sutinka, kad būtų nekviečiama kiti dalyviai ir nagrinėjama rašytinio proceso tvarka. Tai savaime aišku prisideda prie to, kad mažiau duomenų patenka į viešumą, iš tų pačių ir liudytojų ir atitinkamai gauna mažesnę bausmę ir viešumo.”

However, even if a person confesses during the pre-trial investigation, evidence is still collected to prove or deny the person's guilt since the suspect is not penalised for faulty evidence, and they can change their testimony:

“It is foreseen in the Criminal Code of Lithuania that a confession of the guilt, sincere regret is a mitigating circumstance. However, if a person confesses during the pre-trial investigation, evidence which proves or denies the person's guilt is nevertheless collected since the suspect has no responsibility if they provide false evidence, they can change their testimonies; one day they can confess and the next change their testimony. Therefore during pre-trial investigation all data is collected to prove or deny testimonies of participants of the process.” (Police officer, Lithuania)

„LR baudžiamajame kodekse yra numatyta, kad prisipažinimas kaltės, nuoširdus gailėjimasis yra lengvinanti aplinkybė. Tai kad asmuo prisipažįsta ikiteisminio tyrimo metu, vis tiek yra

surenkami įrodymai, pagrindžiantys ar paneigiantys asmens kaltę, nes vis tik įtariamasis yra proceso dalyvis, kuris neatsako už melagingų parodymų davimą tyrimo metu, parodymus jis gali keisti, tai vieną dieną jis gali prisipažinti, kitą dieną jau gali tuos parodymus pakeisti. Todėl vis dėlto ikiteisminio tyrimo metu surenkama įrodymų visuma pagrindžianti arba paneigianti visų proceso dalyvių parodymus.”

However, the confession has to be done by consciously by informing the defendant about their rights and this should be done in the presence of a lawyer, according to the two police officers. The confession has much more credibility, when it is done in the presence of the defence lawyer, according to the other police officer.

The interviewed **judge indicated certain positive aspects of confession**, such as: if the defendant compensates harm done and reconciles with the victim, the case may be terminated; if a defendant recognises that they have committed a crime and does not require further litigation, the length of examination of evidence might be reduced; the penalty might be reduced by one third in accordance with Article 6 of the Convention.

Confession **is not considered as an exception to the burden of proof by defence lawyers** who took part in the research since any confession has to be corroborated with evidence. There is slight variation in their interpretation of the choice to confess. The interviewed lawyer considers that if a person confesses, the data are not investigated as thoroughly and the confession is often accepted unconditionally. The other interviewed lawyer estimated **that the most important fact is the manner in which this confession is obtained**, and in cases that attract public interest and which are not based on strong evidence, a suspect or accused might be under pressure to confess. The lawyer also indicated that in cases of allegedly corrupt behaviour which are not based on strong evidence a person might decide to confess just to become eligible for a reduced punishment:

“I encountered not once at the cases on corruption (...) when nobody is caught with clues, just a conversation recorded a year ago, and here some person says that he needs money and the other says that they can consider this, we could give, but there are some problems, but we will consider (...) all the time the classical understanding of bribing meant that you cannot take/give a bribe for some mystical favour in the future. Now it is in the (criminal) code. So, you do not need anything, it is enough that somebody promises you some favour (...) In my opinion this is very dangerous, it is very easy to accuse someone. If one of those two in the conversation agrees to confess that we spoke of this, there is no way for the other to defend himself/herself (Lawyer, Lithuania)

„Korupcinėse bylose taip pat ne vieną kartą yra tekę susidurti (...) kur niekas nepagautas su įkalčiais, o viso labo yra prieš metus laiko įrašytas pokalbis, kuriame vienas žmogus sako, kad man reiktų pinigų, kitas sako nu mes galim pasvarstyti, galėtumėm duoti, bet tam yra tam tikrų problemų, nu bet pasvarstysime. (...) Ir jei visą laiką kyšininkavimo klasika reiškė, jog tu negali duoti-imti kyšio už kažkokį mistinį palankumą ateityje, tai dabar tai yra tiesiai šviesiai (baudžiamajame) kodekse. Ir vadinasi nieko nebereikia, užtenka kažkokios tai naudos pažadėjimo (...). Mano galva tai nepaprastai pavojinga, todėl žmogų labai yra paprasta, kad tas kuris iš dviejų pokalbio dalyvių sutiks pripažinti, kad mes kalbėjome apie tai, antram apsiginti jau be šansų.“

The second interviewed lawyer indicated that confession does not mean that officers should not investigate all the circumstances and collect evidence, since any confession can be false. However, according to the interviewed lawyer, if a person confesses, then s/he supports the presumption of guilt presented by the prosecutor. The interviewed lawyer also noted that if a person confesses, this confession eases the work of institutions that are involved in the pre-trial investigation:

“you know, if he or she confesses his/her guilt, of course the work of institutions of pre-trial investigation becomes much easier (laughs). But as I said, even if they confess their guilt, this has to be proved, since a person can confess guilt even without carrying out a crime, (...) in regards to those smuggled goods, it has to be proved, that these goods have been smuggled and that they were brought via the state border.” (Lawyer, Lithuania)

„žinot taip, jei jis/ji pripažįsta savo kaltę, savaime suprantama visiems tada labai palengvėja ikiteisminio tyrimo institucijoms (juokiasi)(...). Bet aš kaip sakiau, vis tiek nors ir pripažįsta savo kaltę, jo kaltė turi būti įrodyta, nes žmogus gali pripažinti kaltę ir nepadaręs nusikaltimo, (...) su kontrabandinėm prekėm, reik įrodyti, kad tai kontrabandinės prekės, kad jis vežė jas per sieną.“

The interviewed lawyer emphasises that confession is not enough, and the guilt has to be proved. The obligation that the guilt has to be proved was depicted as a safeguard by the interviewee. The other interviewed lawyer noted that a defendant’s lawyer has to explain the consequences of confessing to the defendant. For example, if a defendant is a vulnerable person and, as a lawyer they estimate that there is not enough evidence to prove guilt, they (the lawyer) might not agree with a decision to confess and aim to prove that the accused is not guilty.

c. Discussion of Findings

In accordance with the provisions of the Code of Criminal Procedure, the prosecutor is obliged to prove that a criminal act has been committed, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence and prove that the criminal act has not been committed and that s/he is not guilty of its commission, but has the right to do so in the exercise of his/her right to defence.²⁵ The descriptions of practices by interviewees of the different professional groups correspond to the framework set by legislation.

The collection of evidence was perceived by police officers and prosecutors as an obligation of the pre-trial investigator as is foreseen by the laws. The interviewed police officers and prosecutors stated that defence lawyers can and should also present some contra evidence or contra proofs to evidence collected by pre-trial investigators and prosecutors. The interviewed lawyers interpreted this rather as a shift of burden of proving non-guilt, i.e. expressed the opinion that pre-trial investigators aim to collect evidence which proves guilt but they ignore evidence which denies guilt. One interviewed lawyer stated that theoretically there are no exceptions, however, in practice the prosecutor comes to the court with a presumption of guilt and the defence lawyer has to provide evidence to deny it. The cases of allegedly illegal enrichment (*neteisėtas praturtėjimas*) were referred to by a lawyer as examples of when a defendant lawyer has to present proofs in order to deny suspicions.

²⁵ Lithuania, Criminal Procedure Code ([Baudžiamoji proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Articles 21(4), 22(3), 42, 44(6).

The interviewed police officers and prosecutors evaluated confession as a positive rather than a negative choice and indicated such positive outcomes as the possibility to start a process of reconciliation with a victim, less complicated court procedure which also leads to less publicity, shortened period of data collection and, possibility of reduced penalty. The action of confession though has to be conducted consciously and this is guaranteed by informing the defendant of their rights and this should be done in the presence of a lawyer. The interviewed lawyers were more cautious in their evaluation of this action and expressed the opinion that while confession eases the work of pre-trial investigators, at the same time it leads to a less thorough investigation of data and supports the presumption of guilt.

C.5 The right to remain silent and not to incriminate oneself

Paragraph 3 of Article 31 of the Constitution prescribes: "It shall be prohibited to compel anyone to give evidence against himself/herself, or his/her family members or close relatives."

In transposing Directive 2016/343/EU, in particular provisions of Article 7, the following amendments to the Code of Criminal Procedure were adopted:

- The right of a suspect or the suspect "to testify or remain silent" was rephrased as the right "to testify; remain silent and (or) refuse to give evidence on the criminal offence that he or she may have possibly committed".
- The right "to remain silent and (or) refuse to give evidence on the criminal offence that he or she may have possibly committed" was included into the list of procedural rights of the accused.
- The duty of pre-trial officers, prosecutors, pre-trial judges and judges presiding in the court hearings to clarify to the suspect (accused) his/her right "to remain silent and (or) refuse to give evidence on the criminal offence that he or she may have possibly committed" before proceeding to questioning, was explicitly established.

As the right to remain silent has been one of the long-standing principles of criminal procedure in Lithuania, and no negative inferences can be drawn from the fact that the suspect (accused) decided to exercise his/her right to remain silent, there were no public discussions concerning this right.

The right not to give evidence is reaffirmed in court practice. For example, there is relevant case-law of the Lithuanian Supreme Court relating to data obtained with the help of persons not revealing their identity (informers or officers acting under cover). It is held that methods used in the course of such actions (informal conversations) and data obtained, even though gathered in performing covert actions authorised by the court, do not correspond to the essence of those procedural actions. These actions violate the suspect's right to silence and not to incriminate oneself. The questioning of the suspect must be carried out in accordance with the procedure established by the CCP, respecting the rights of the suspect and ensuring his/her right to defend himself/herself. Thus, the use of informal conversations with persons not disclosing their identity is not permissible and the written records of such actions do not meet the standards of admissibility of evidence.²⁶

Another aspect of the right to remain silent was analysed in another recent case decided by the Lithuanian Court of Appeal. The Lithuanian Court of Appeal held that the first instance court was right in not admitting particular testimonies by the accused as evidence, because these testimonies were obtained in violation of a right not to incriminate oneself. In this case the accused, without being properly informed about the right to remain silent, during a court hearing were questioned by the prosecutor in relation to circumstances implying more serious drug-related crimes than the ones they had been officially accused of. According to the Court of Appeal, such a strategy equals deception in order to obtain information that could not be gained due to exercise of the right to be silent. In particular, the Court of Appeal stated that "a person can properly exercise his/her right to

²⁶ E.g. Lithuanian Supreme Court, decision in criminal case No. 2K-233-788/2016, 28 June 2016.

remain silent only if he or she is properly aware of his/her procedural situation, understands what issues he or she is being questioned on and possible implications of the questioning, and is able to evaluate everything from the standpoint of defence. The giving of incriminating testimony depends on the will of the suspect (accused). The choice of the suspect (accused) to exercise the right to remain silent and not to testify about a possible criminal act must be respected by the officials. Thus, it is not allowed to use deception or other means in order to obtain evidence from the suspect (accused) about the circumstances of a case, thus denying his/her right to remain silent. The right to remain silent and not to testify against oneself cannot be restricted on the basis of the public interest in the disclosure of criminal acts".²⁷ The appellate court held that the defendants could reasonably expect that they would not be tried for more serious offences than the ones they were indicted for, as the pre-trial investigation concerning these more serious offences (handling of a very large amount of narcotic materials) was discontinued. Moreover, during the pre-trial investigation, the suspects exercised their right to remain silent and did not give evidence concerning allegations on the handling of a very large amount of narcotic materials. The court held that such an investigative strategy, where defendants are questioned not only about the circumstances related to the indictment, but also about the circumstances relating to possible more serious charges during the trial, can be classified as deception aimed at obtaining information that previously could not be obtained due to the exercise of the defendants of their right to remain silent. Thus, the corresponding testimony did not correspond to the requirement of legality of evidence.

The main remedies that can be used where the right to be silent is violated are the following:

- Inadmissibility of certain information as evidence. To be recognised as evidence by the court, information has to be obtained by lawful means.²⁸ Thus, if it is established that the testimony of the suspect or accused was obtained in violation of the right to remain silent, data from such testimony cannot be admitted as evidence.
- Acknowledgement of a material breach of the Code of Criminal Procedure and annulment of the lower court's judgment by a higher court.

In addition, according to the Civil Code, people may claim compensation for damage suffered due to the unlawful actions of pre-trial officers, prosecutors, judges or courts (unlawful conviction, unlawful pre-trial detention or unlawful application of other restrictive measures).²⁹ Such claim may be submitted through civil proceedings, or an out of court settlement procedure may be employed. Thus, if a violation of the right to remain silent and not to incriminate oneself leads to an unlawful conviction or other outcomes mentioned above, a civil claim for damages may be filed or an out of court settlement procedure initiated. The procedure for out of court settlement with the government (represented by the Ministry of Justice) is regulated in the Law on Compensation of Damages Suffered due to the Unlawful Conduct of State Officials and on Representation of the State and Government.³⁰ However, the maximum amount of compensation that can be awarded through the out of court settlement procedure is EUR 2 900 for pecuniary damage and EUR 1 500 for non-

²⁷ Lithuanian Court of Appeal, decision in criminal case No. [1A-356-453/2019](#), 13 December 019.

²⁸ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 20(1).

²⁹ Lithuania, Civil Code ([Civilinis kodeksas](#)), 18 July 2000 (with later amendments), No. VIII-1864, Article 6.272.

³⁰ Lithuania, Law on Compensation of Damages Suffered due to Unlawful Conduct of State Officials and on Representation of the State and Government ([Žalos, atsiradusios dėl valdžios institucijų neteisėtų veiksmų, atlyginimo ir atstovavimo valstybei ir Lietuvos Respublikos Vyriausybei įstatymas](#)), 21 May 2002 (with later amendments), No. IX-895.

pecuniary damage.³¹ These limitations on the amount of compensation do not apply to civil proceedings in court.

a. The right to remain silent in practice

The interviewed professionals of different groups described the procedure of the choice to remain silent as a clear and well-followed procedure in their work. There were no essential disagreements on how interviewees described the procedure.

The interviewed **police officers** described the procedure of the choice to remain silent as **a clear and well-followed procedure conducted before the interrogation**. Before every interrogation the right to remain silent is explained to suspects by providing them with a two-three-page document with listed rights and the rights are explained by a police officer or a defence lawyer. A suspect or accused person makes a decision and this decision is recorded in writing. According to one of the interviewed police officers, the defendant can choose to remain silent during the pre-trial investigation but decide to testify in court. The interviewed police officers described this procedure as clear and followed well.

According to the **prosecutors**, before the first interrogation, the suspect is given a list of his/her rights (also about the right to remain silent) and s/he has to sign to say they have understood. If a defendant later says that s/he was unaware of that right and therefore could not exercise it, especially if s/he did not have a lawyer, then such actions will be treated as invalid and the court will reject them. The interviewed **judges** stated, that in general, before the first questioning a notification is handed to a defendant about suspicion; their rights, including the right to remain silent and not to incriminate oneself, are also explained to them. The judge from Lithuania said that the Supreme Court does not have to implement the right to remain silent in their work, since they examine the cassational appeals of civic and criminal cases and people are not questioned differently from other courts or the pre-trial investigation institutions. The difficulties arise, according to other judge, in cases where a defendant and a witness provide completely opposite versions of the evidence. In such cases judges ask control and cross-questions but the defendants have the right not to answer.

All interviewed **defence lawyers** explain the right to remain silent to their clients. The interviewees emphasised that they explain the negative and positive consequences of using this right and the defendant has to decide on whether to employ this right and that everything depends on the circumstances of a particular case. The interviewed lawyers explained that in some cases it is worth speaking and not to use the right to remain silent, e.g. in those cases where the evidence against a person is clear, it is not worth remaining silent, since silence precludes the possibility to complete the case with less negative outcomes for the person. Remaining silent precludes the possibility to explain some circumstances from his/her point of view and thus make the situation more favourable for the defendant.

b. How is information on the right to remain silent and not to incriminate oneself shared with the accused?

³¹ Lithuania, Law on Compensation of Damages Suffered due to Unlawful Conduct of State Officials and on Representation of the State and Government ([*Žalos, atsiradusios dėl valdžios institucijų neteisėtų veiksmų, atlyginimo ir atstovavimo valstybei ir Lietuvos Respublikos Vyriausybei įstatymas*](#)), 21 May 002 (with later amendments), No. IX-895, Article 4(1).

There were no essential disagreements in how interviewed professionals of different groups described the practice on how the accused is informed about their right to remain silent and not to incriminate themselves.

According to the interviewed **police officers and a prosecutor** the right to remain silent is described in the **annex of the protocol, based on the Code of Criminal Procedure**, which is **handed over immediately when the investigation process starts** and a suspect is approached. If a suspect does not understand Lithuanian, is not a citizen of the Republic of Lithuania and does not speak Lithuanian, s/he is handed the same list of rights written in Russian or Polish or other languages. The police officers said that when there is no language version suitable for a suspect, an interpreter must be present during proceedings with both suspects and witnesses to ensure his/her rights, according to the two police officers. One interviewee indicated that the interpreter is warned about false translation, because the interpreter must give the person as accurate a translation as possible. Psychologists and children's rights specialists as well as a representative of the child are present during the interrogation of a child. There are also interpreters for people with hearing or vision difficulties. The police officer said that defendants can familiarise themselves with the evidence in detail and only then provide a testimony; they can request a defence lawyer in order to prepare for the defence in the pre-trial investigation and for giving their testimony in court.

“A suspect has a choice and can refuse to testify before the trial or agree to testify only in a court. If s/he wants to testify in a court, then we ask pre-trial judges to interrogate a suspect, to fix it during the pre-trial investigation and it is normal.” (Police officer, Lithuania)

“Čia jo pasirinkimas atsisakyti duoti parodymus iki teismo arba jis iš vis pasako, kad neduosiu parodymų, o duosiu tik teisme. Jeigu sako, kad duos teisme parodymus, tai jie kreipiasi į ikiteisminio tyrimo teisėjus apklausai, kad būtų tai užtvirtinta ikiteisminiam tyrimui, tai yra normalu.”

The interviewed **lawyers** said that the right to remain silent is explained to the person before the first interrogation. The interviewed lawyer described the procedure as follows: **before the first interrogation a suspect is given a document which explains their rights**. They read the document and protocol and have to sign it. This is seen as the proper way to inform. The interviewee says that s/he has **never encountered a situation where a defendant was not given a document with their rights**. The interviewee says that now all these protocols are detailed, made in one form and they are always signed. **If there is no such protocol, then the consequences are such that any further procedural actions and collected evidence would be excluded from the process.**

The interviewed lawyers identified the following problems in the application of the right to remain silent. The interviewed lawyer suggested that **the right to remain silent is not usually explained in detail by police officers** and a lawyer is necessary in such situations. The other interviewed lawyer estimated that suspects and accused persons are always informed of their right to remain silent and suggested that the more important **question is whether the relatives of a defendant are informed that they too have the right to remain silent**. One interviewed lawyer indicated **a certain problematic period in the cases on corruption and the right to remain silent**. There is an ambiguous period between the first encounter with officers and the time when the suspects are given a list of rights. The interviewee described a situation when officers come early in the morning to conduct a house search. The person is not arrested yet, but a search is conducted at their house and the person is under some pressure from the officers to confess. Since they are not yet formally arrested, they are not given a list of rights. The interviewee thinks that this particular period is problematic.

When this person is in detention for 48 hours then their lawyer is present and all rights are explained in full.

c. Self-incrimination

The interviewed professionals of different groups believed that in general an accused person is not obliged to provide evidence that might affect presumption of innocence. However, interviewed judges and lawyers indicated certain problematic issues.

The interviewed **police officers** stated that an **accused person is not obliged to provide evidence that might affect presumption of innocence**. However, according to two of the police officers in such cases the **police can employ other measures foreseen by the laws to obtain this evidence**. For example, the interviewed police officer said that the police might be aware that a suspect person had stolen a phone and could suggest that they bring in this phone voluntarily. If they do not, the police can take actions that are foreseen by the laws, e.g. conduct a house search. The interviewed police officer suggested that a **defendant's choice to remain silent does not have any effect on the proceedings except for the fact that the process is longer because of the need to look for evidence**. The other interviewed police officer said that a suspect is not obliged to provide the password for their computer or mobile phone. However, if a crime has been committed using a computer or mobile phone, the police officers ask the suspect to cooperate, i.e. to switch on the computer or mobile phone and allow them to investigate the content together. However, a suspect is not obliged to cooperate. According to the prosecutor, the defendant can provide evidence or can refuse to do so.

According to the interviewed **judge**, prosecutors like to consider non-cooperation of a defendant with the justice system as evidence of guilt and vice versa, when a defendant is willing to give evidence and testifies, then they treat this as cooperation with the justice system and this is taken into account when deciding on the defendant's punishment. The judge stated, that in principle, this should not be the case if we follow the presumption of innocence. According to the interviewed judge, **the defendant is not obliged to do anything, except to obey legitimate instructions**. If a defendant is searched, incriminating data may be obtained, s/he is inspected, etc., but this is not the same as forcing them to give evidence. In drug-related cases when a person refuses to empty their pockets they will be searched:

"He is not obliged to do anything; he only has to obey legitimate instructions. If a defendant is searched, incriminating data may be obtained, it is natural that he is asked to show everything that is in his pockets, examined, etc., but this is not the same as being forced to give evidence." (Judge, Lithuania).

„Jis nieko neprivalo, jis privalo tik paklusti teisėtiems nurodymams. Jeigu pas įtariamąjį vyksta krata, tai prieš jį inkriminuojantys duomenys gali būti gauti, tai natūralu, kad paprašoma jo atiduoti viskas kas yra kišenėse, jis apžiūrimas ir pan., bet tai nėra tas pats, kas privertimas duoti parodymus.“

The **lawyers** suggested that a **person is not obliged to provide evidence that may affect their presumption of innocence** (however, their interpretations differed. The interviewed lawyer said that if a person is asked to provide a computer password, a phone pin number, s/he can refuse to do so. However, the interviewee says that if someone does not provide evidence, "prosecutors try to put forward some arguments, especially if they are trying to decide on the question of detention, saying the person is non-cooperative and is not helping investigators". The other lawyer perceives confession as evidence which might incriminate a person. The third lawyer stated that a defendant is

not obliged to provide their computer password, phone pin number and etc. since the right to remain silent is applicable not just to talk, but also to providing evidence or other information, and this also applies to examples for comparison.

One of the lawyers noted **the status of special witness (*specialusis liudytojas*) as very problematic in this context in Lithuania**. The interviewee noted that when the status of special witness is attributed, this is often done to make a person act against himself/herself. The interviewee said that the special witness could be asked to provide certain examples for comparison (*lyginamieji pavyzdžiai*). The special witness might not agree, but it is not clear if they can decline this request under the status of special witness. The interviewee suggested that this is a Constitutional question. The interviewee refers also to the case NN vs. Lithuania which was lost in Strasbourg and where the status of special witness was evaluated as close to the status of a suspect and therefore as having the rights of suspects. The interviewed lawyer said:

“In this context I wish to say that there is a specific problem in Lithuania with the presumption of innocence, with this privilege not to incriminate oneself, I mean the special witness. Special witness, there is something similar in France, but not in other countries. In other countries there is either a witness, or a suspect. Here this status is not clear, but in the criminal process the application of status of special witness rarely leads to making someone act against themselves. For example, imagine the status of special witness is granted and the witness is requested to provide examples – ‘now you give examples for comparison’. The special witness refuses to do so. ‘Why not? ‘I do not know, you gave me this status, maybe you think I am involved in some criminal actions even if you do not have enough evidence for suspicion. But you might use this information against me, I refuse to provide any information’. And the officer says – ‘you are not a suspect, you are a witness, so you are obliged to’. And here we have a conflict since what is the status of a special witness and whether s/he has a right to refuse.” (Lawyer, Lithuania)

„Bet šiame kontekste aš noriu jums pasakyti, kad yra specifinė problema Lietuvoje, su visa šita nekaltumo prezumpcija, savęs nekaltinimo privilegija, būtent dėl specialiojo liudytojo. Specialusis liudytojas, na yra kažkas panašaus Prancūzijoje, kitose valstybėse to nėra, yra arba liudytojas arba įtariamasis. Pas mus tas statusas kaip ir minėjau yra nelabai aišku kas čia, bet baudžiamajam procese suteikiant specialiojo liudytojo statusą, neretai mėginama priversti asmenį veikt prieš patį save. Na pavyzdžiui, suteikia specialiojo liudytojo statusą ir sako – dabar tu duok lyginamuosius pavyzdžius, specialusis liudytojas sako aš nepateiksliu. O kodėl? O ką aš žinau, man čia tokį statusą suteikt, gal turit pagrindo manyt kad aš kažkaip čia prisidėjau, nors nėra duomenų pakankamai kad tą įtarimą pateikti. Bet jūs gal panaudosit tą informaciją prieš mane, todėl aš atsisakau. Tada pareigūnas sako, ne tu nesi įtariamasis, tu esi tik liudytojas, todėl turi pateikt. Ir šitoje vietoje yra konfliktas, nes koks yra statusas specialiojo liudytojo ir ar jis turi teisę atsisakyti.“

d. Right to remain silent

There were some differences in how the interviewed professionals described the consequences of the implementation of the right to remain silent in practice. The interviewed police officers and prosecutors estimated that application of this right makes the pre-trial investigation more difficult. The interviewed lawyer indicated that use of this right might be interpreted as lack of cooperation by officers of the pre-trial investigation.

The **police officers** stated that they explain to a suspect that they have the right not to testify. The choice of a defendant to remain silent was described as making the pre-trial investigation more difficult, since investigators have to collect all the evidence, according to one police officer. At the same time, it was suggested that remaining silent makes the suspect's situation more difficult. On the other hand, if enough evidence is collected, silence does not affect police work. Two police officers stated that everything depends on the evidence gathered during the pre-trial investigation and if enough data are collected, the court assesses it, and if the accused does not give any explanation until the conviction, s/he is not stating anything about his/her guilt, but meanwhile everything is objectively collected.

"I stick to this position, it is better when a defendant remains silent if they do not choose to confess. First, collecting and describing the versions of a defendant delay the investigation. Secondly, when an investigator has gathered an objectively sufficient body of evidence for proving guilt, the right of a suspect to remain silent would be in their favour. The defendant will be familiarised with all the information and evidence of the case and then it would be better to confess about the crime rather sticking to a position which does not correspond to the evidence of that case. Defendants often take advantage of such a position without even stating their guilt because they have such a right. I think that it is the investigator's job to collect enough evidence and not to be guided by the confession or non-confession of that suspect." (Police officer)

Aš aplamai laikausi pozicijos, kad geriau, jeigu įtariamamsis nepasirinko prisipažinimo pozicijos, tai geriau, kad jisai visdėlto tylėtų. Pirma, jo versijų rašymas vilkina tyrimą, iš kitos pusės tarkim tyrėjui surinkus pakankamą visumą tų įrodomųjų duomenų, objektyviai pakankamą ir objektyviai įrodančių kaltę, ir vėliau, susipažinus su medžiaga ir teisiniame nagrinėjime, įvertinus situaciją, kad geriau prisipažinti, tai čia jo naudai būtų, negu jo kažkokia tai pozicija išsakyta visiškai neatitinkanti tikrovės, kuri bus vertinama kritiškai ir teisėjo ir prokuroro ir ikiteisminių tyrėjų. Dažnai pasinaudoja kaltinamieji tokia pozicija, net nepasisakę savo kaltės nes tokią teisę jie turi. Aš manau, kad čia tyrėjų darbas surinkti pakankamai įrodymų, o ne vadovautis ten prisipažinimu ar neprisipažinimu to įtariamojo."

According to the interviewed **prosecutors**, the choice to remain silent would impact the pre-trial investigation: it either complicates the work or makes it easier and it depends on the situation. If a person chooses not to remain silent but provides false testimony, this version would be checked. On the other hand, if a defendant gives correct testimony and discloses their criminal act, then they help the court to resolve the case and make a fair decision, as the prosecutor argued. The interviewed prosecutor also spoke of a case where a few suspects were giving evidence, but one remained silent. According to the prosecutor, s/he was not punished for that, but also would not be eligible for the lesser punishments that persons who confess receive:

"The impact is only on the pre-trial investigation: it either complicates the work or makes it easier and it depends on the situation. For example, if suspects are giving evidence and one of them remains silent, then that person is 'digging a hole for himself/herself', because everyone else already confessed, but they did not. They will not be punished for that as such, but will not get certain benefits. There are incentive measures in the law to motivate a person to confess or tell the exact details of the accident and say, that s/he did not want to do so, did it accidentally and this will be treated as a kind of confession. When a person remains silent, we inform them that they will not receive those benefits, but we never say

that the punishment will be more severe, because that would be a lie.” (Prosecutor, Lithuania).

“Poveikis tik toks, kad pasunkina tyrėjams kažkoku metu darbą, arba palengvina. Vėlgi priklausomai nuo situacijos, tarkim, jeigu visi kaltinamieji duoda parodymus, o vienas tyli, tai jis sau duobę kasa, nes visi jau bus prisipažinę, o jis – ne. Jis bus nenubaustas papildomai už tai, bet jis negaus tų visų lengvatų, kai gailimai, prisipažįstama, atlygina žalą ir t.t., nes yra visa eilė tokių paskatinamojo pobūdžio veiksmy įstatyme, kad žmogus jaustų stimulą prisipažinti, nebūtinai prisipažinti, bet parodyt bent jau įvykio aplinkybes daugmaž teisingas, būna kad detalės skiriasi, bet fakto žmogus neginčija, kad žmogus buvo tame įvykyje, sako, kad aš nenorėjau taip padaryti, netyčia taip gavosi, tai yra savotiškas prisipažinimas.”

According to the **judge**, the defendant is told that they have the right to remain silent. The defendant **can chose to remain silent until the end of the process, but then they cannot expect an easier punishment**. According to the other interviewed judge, **the decision to remain silent has no effect on the end of a case, but it affects the course of the proceedings**: if a defendant does not speak or does not give evidence, it means that the judges have to prove his/her guilt by calling witnesses, investigating the case data, providing expertise. For example, in the case of a suspected domestic violence case, if there is indisputable evidence that a person has been scratched by another person with their nails and we find the DNA of the victim under the nails of the accused, this is clear evidence of his/her guilt. In such case, if the accused testifies and admits their guilt, according to Article 64 (1) of the Criminal Code, the punishment would be shortened by one third. If not, the process will follow the usual procedures and there is no other regulation for establishing a defendants' punishment.

The interviewed lawyer says that when the extension of detention is addressed, the prosecutors might refer to the lack of cooperation if a defendant chooses to remain silent. The other lawyer refers to some ambiguous situation in cases that address presumably corrupt behaviour when a person is not informed of this right: The interviewee describes a situation when officers come early in the morning to conduct a search. The person has not been arrested yet, but a search is conducted at their house and they are under pressure from the officers to confess. Since they have not yet been formally arrested, they are not given a list of rights. The interviewee thinks that this particular period is problematic. When this person is in detention for 48 hours then their lawyer is present, and all rights are explained in full. The interviewed lawyer said:

“For the majority, this notification is submitted, in the majority cases there are no problems. However, (...) when the officers write their protocol (reaprovisional arrest), here are two time periods – the period when the protocol is written and the actual time of detention. So, you can write a protocol even after six hours since the moment of detention, you state that the time of detention was seven o'clock, but you will submit that list of rights after seven or six hours. And what happens in this period [period between the actual time of arrest and when the protocol is written and the list of rights are submitted] is problematic.” (Lawyer, Lithuania)

„Pagrindinei masei dabar tą pranešimą įteikia, didžiaja dalimi problemos nėra. Tam tikroj daly (...) (sulaikymo) protokolą kai rašo, ten yra du laikai – protokolo surašymo laikas ir faktinio sulaikymo laikas, vadinasi gali surašyt protokolą sulaikymo būstinėj praėjus kad ir šešiom valandom, nurodysi sulaikymo laiką septynios nulis nulis, bet teisių išaiškinimo protokolą surašysi ir tą teisių lapą įteiksi po septynių ar šešių valandų. Per tą laiką kas vyksta, vat čia yra ta vieta, kuri kelia rūpesčių.”

The third interviewed lawyer emphasised that these rights are properly explained only by lawyers: the interviewee does not think that the rights are explained in detail by police officers.

e. Discussion of findings

The interviewees of the different professional groups – police officers, prosecutors, lawyers, judges – said that the right to remain silent is implemented in their work and there is a clear procedure on how it is done. The interviewees described application of this right as following the legal framework. A suspect or accused is presented a protocol with a list of his/her rights including the right to remain silent. These rights are explained to them by a police officer or by a lawyer. A defendant might choose to remain silent during the pre-trial investigation but give evidence in court. If a suspect does not understand Lithuanian, is not a citizen of the Republic of Lithuania and does not speak Lithuanian, s/he is handed the same list of rights written in a language that they understand. The interviewees estimated that this right is preserved since otherwise the testimonies or data collected might be evaluated as not valid. The interviewed professionals said that a defendant is not obliged to provide evidence against themselves since this is perceived as covered by the right to remain silent. Two police officers said that if a person chooses not to provide evidence the police can employ other measures foreseen by the laws to obtain this evidence.

The use of the right to remain silent was described by a police officer as not having any consequences for the presumption of innocence. However, as the judge stated, if a person remains silent and his/her guilt is proved, there is no possibility to ask for an easier penalty, the proceedings become longer and more complicated, application of this right can be referred to when prosecutors decide on remand or more strict measures referring “to the lack of cooperation”.

The interviewees indicated certain problematic areas in the application of the right to remain silent:

- One interviewed lawyer suggested that the defendants are always informed of their right to remain silent, but the important question is whether their relatives are informed that they too have a right to remain silent and not to testify against the defendant.
- The interviewed lawyer indicated a certain problematic period in the cases on alleged corruption and the right to remain silent: s/he estimated that there is an ambiguous period between the first encounter with officers and the time when the list of rights is presented, e.g. during the house search when the person is not yet detained, so no rights are explained, but police officers are communicating with the person in question.
- One of the lawyers noted the status of special witness (*specialusis liudytojas*) as very problematic in this context in Lithuania. The interviewee noted that when the status of special witness is attributed to a person, this is often done to force the special witness to incriminate themselves.

The interviewees noted positive practices in the application of the right to remain silent and not incriminate oneself such as guaranteed language translators for those defendants who cannot communicate or do not understand documents on their rights in Lithuanian; the obligation to have a psychologist and children’s rights specialist in cases that involve children; and the availability of interpreters for people with hearing or vision difficulties.

C.6 The right to be present at the trial and to have a new trial

Participation of the accused in the court hearing of first instance court is both a right and an obligation of the accused. According to the provisions of the Code of Criminal Procedure, the participation of the accused in the court hearing of first instance is mandatory and has in principle to be ensured in all cases. The accused has to be present either in person or his/her participation

through means of audio and video remote transmission has to be ensured.³² If the accused fails to attend the court hearing, the hearing has to be adjourned. The court may order the accused who failed to attend the hearing to be brought by the police, and to impose a restrictive measure (e.g. house arrest or pre-trial detention).³³ Thus, the participation of the accused in hearings of first instance courts have to be ensured even when one or both circumstances provided in Article 8(2) of Directive 2016/343 are present.

The only exception to a hearing taking place without the participation of the accused is a situation when the accused is not in Lithuania and is avoiding appearing in court. In such situations, the participation of a defence lawyer (who may be appointed by the court) is mandatory.³⁴ The judgment is served to the defence lawyer.³⁵ If the trial takes place in the absence of the accused, the accused has a right to appeal even after the expiry of the statutory time limit for regular appeal (there is no mandatory time limit for lodging an appeal by an accused who was convicted *in absentia*). The accused may also indicate that s/he will participate in appellate proceedings. If the accused does not appear at the appellate hearing without good reason, the court may discontinue appellate proceedings or hear the case in the absence of the accused. If the accused disagrees with the evaluation of evidence on which the judgments of the first instance court is based, the appellate court must conduct a repeat examination of the evidence.³⁶

In court practice it is clarified that even when circumstances allowing a case to be heard in the absence of the accused are present (is not in Lithuania and avoids appearing in court), the court may decide that the participation of the accused is necessary in order to ensure a fair examination of the case. In such situations the hearing must be adjourned.³⁷

As the participation of the accused at the trial before a first instance court is mandatory (except if the accused is not in Lithuania and is avoiding appearing in court), violation of this requirement should be evaluated as a fundamental breach of the Criminal Procedure Code and lead to annulment of the judgment.³⁸ According to Article 369 of the Code of Criminal Procedure, breaches of the Code of Criminal Procedure are considered to be fundamental if they result in the restriction of the statutory rights of the accused or if they prevent the court from examining the case thoroughly and impartially and from adopting a fair judgment.³⁹ In addition, a civil claim for damages may be filed or an out of court settlement procedure initiated.

a. Consequences of non-appearance

³² Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 246.

³³ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. X-785, Article 247.

³⁴ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 435.

³⁵ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 437.

³⁶ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 438.

³⁷ Lithuania, Vilnius regional court (*Vilniaus apygardos teismas*), 18 November 2019, No. [1-01-2-00022-2018-9](#).

³⁸ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Articles 329 (1)(4), 369(3).

³⁹ Lithuania, Criminal Procedure Code ([Baudžiamojo proceso kodeksas](#)), 14 March 2020 (with later amendments), No. IX-785, Article 369(3).

The interviewed professionals of different groups stated that accused persons are informed in various ways of the dates of the trial. There are very limited cases when court proceedings can proceed in absentia of a defendant. There were no major differences in the way professionals of different groups described the procedures.

The interviewed **judges** suggested that **defendants are always aware of the time of proceedings** since they are informed in written form by sending them the indictment. The **interviewed prosecutor** explained that it is mandatory for the defendant to participate at the court of the first instance and **the trial does not proceed without the defendant. In higher instance courts, there are certain cases when a defendant is not obliged to participate, but even though s/he is not in court they must be represented by a lawyer.** The same rules are applied in the cassation instance court.

The interviewed judge stated that according to the Criminal Code **the judge can impose a measure of procedural coercion only when they are sure that the person is aware of the criminal case pending in the court.** The interviewed judge and prosecutor stated, that the court sends a registered letter to the defendant's residence informing them about the trial. If the letter is sent, then it is considered that the person has been informed and is expected to appear in court, if a letter is not sent – then s/he is contacted by phone, if the person does not speak the Lithuanian language, the letter is translated into a language s/he understands, according to the other prosecutor.

According to an interviewed judge, the **convoy department of Vilnius County conducts a search for the defendant, and if there are sufficient legal grounds for arrest, they issue an arrest warrant (pre-trial detention) and a stricter system of search follows (international warrants can come into play).** In addition, the judges can check all the records of a person: their workplace, the population register, their FB page. The interviewed judge explained:

“The convoy department does a lot: they search, ask neighbours at the place of residence of the defendant, they give an official report. If they do not bring the person to the courtroom, then they check all the records of that person, check the records about the workplace, the population register, FB page. <...> At the beginning we search in a friendly manner: by phone, in the places of residence. At the moment I have a drug addicted defendant, who does not have parents, just a grandmother and thus we called the grandmother and asked her to pass the message to her grandson. If those friendly methods don't work, then we initiate a search. The search department then starts looking for the person and if there are enough legal grounds of the crime to allow an arrest, we issue an arrest warrant (pre-trial detention) and a stronger system of search follows.” (Judge, Lithuania)

“Mes atvesdinam, atvesdinimo poskyris, tas pats konvojaus, padaro labai daug, nes jie apklausia kaimynus toj gyvenamojoj vietoj, jie paieško, duoda tarnybinį pranešimą. Jei neatvesdina, tada mes tikriname visus registrus žmogaus, tikriname sodrą ar dirbo, tikriname gyventojų registrą. FB veikia, <...> Pirmiausiai geruoju, telefonai, gyvenamosios vietos. Dabar turiu narkomaną, neturi tėvų, tik močiutę, tada mes skambinam močiutei ir sakom, kai pareis namo, kad ji įteiktų. Jei tie neveikia metodai, mes tada skiriam paiešką. Paieškos skyrius ieško, jei tas nusikaltimas, kuris leidžia suėmimą, mes skiriam suėmimą ir ieškom to žmogaus, tada įsijungia stipresnė paieškos sistema, oro uostai, anksčiau ar vėliau randam.”

According to one of the judges, **the right of a defendant to participate in a trial affects the length of the proceedings.** The judge thinks that this is a serious problem, because sometimes defendants do not realise the seriousness of a situation and do not understand why they must attend the trial. The problem is, according to the judge, when the crime is a minor and an arrest is not possible, then the

judges usually search until this person another crime. In addition, judges in Lithuania have cases where they search for defendants and these cases might remain unresolved for years and this means that the judges' work remains unfinished and they have to revise them from time to time.

There is a **different procedure when the process of *in absentia* is present in exceptional cases** based on following the EU Court and Directives, both Article 6 of the ECHR and our Code of Criminal Procedure. For example, a case in the first instance court named "January 13th" of 1991" closed on 27 March 2019; in this case 56 convicted persons did not attend the process. According to the prosecutor, such court proceedings were not possible in the past, but the changes extended the list of such cases *in absentia*, e.g. the cases where significant damage has occurred. However, according to the interviewed prosecutor, a person convicted *in absentia* may request a retrial of the case at any time, while normally, if the accused is present at the first instance court, they can only appeal to the high instance court within 20 days of the ending of the case; if a person is convicted *in absentia*, they can appeal up to 10 years later and request a retrial:

"It is mandatory for the defendant to participate in the first instance court. However, there is the so-called court process in absentia, when a defendant is not in Lithuania and the other state does not extradite this person. According to the interviewee, such court proceedings were not possible in the past, but the changes in 2010-2011 extended the list of such cases in absentia, e.g. cases where significant damage has occurred. However, a person convicted in absentia may request a retrial of the case at any time. For example, normally, if the accused is present at the first instance court, they can appeal to a high instance court within 20 days, but if a person is convicted in absentia, then can appeal for up to ten years after the case and request a retrial." (Prosecutor, Lithuania).

„Pirmos instancijos byloje toks dalyvavimas yra būtinas išskyrus tuos atvejus, kai yra taip vadinamas teismo procesas už akių, kai įtariamasis yra ne Lietuvoje, pats nevyksta, o kita valstybė neišduoda – anksčiau procesai tokie buvo negalimi, bet čia turėjom pakeitimus 2010-2011 m., kai tam tikrose bylose galimi procesai gali būti nagrinėjami už akių. Buvo praplėstas ir bylų sąrašas, pvz., kitos bylos kai padaryta didelė žala, kai galimas teisimas už akių. Bet ir nuteisus už akių nuteistasis asmuo nepaisant bylos duomenų, galės reikalauti bet kada bylos atnaujinimo, jeigu kaltinamasis dalyvauja pirmos instancijos teisme – tai turi dvidešimt dienų paduoti apeliacijai. Tai jei mes turim nuteisimą už akių tai tokiu atveju skundas gali būti paduotas net ir po dešimt metų ir reikalauti bylos peržiūrėjimo.“

The judge stated that in other European countries, judges have more opportunities to convict a defendant *in absentia* than in Lithuania. If judges take a risk and examine the case *in absentia* in Lithuania it may cause violations of specific norms of the Code of Criminal Procedure in certain cases.

The interviewed **lawyers** also explained **that defendants usually participate in the trial**. They are informed of the trial in advance, during first hearings e.g. a defendant must sign a document where all dates of future proceedings are listed. A defendant is also informed by sending them an official writ (*šaukimas*) to some procedural action. A defendant is informed of the consequences of non-appearance in court, i.e. this information is also included in the documents sent to a defendant's home.

There are **reasons that justify non-appearance in court**. The interviewees primarily referred to medical reasons. According to one of the interviewed lawyers if a defendant does not participate in the proceedings because of health problems, they must present a special medical form proving this. In some cases when the case goes on for a long time and there is no need for those who are not

related to particular hearings to be in court the court allows non-participation. **If an accused person does not appear at a trial without a reason, there are certain consequences and the interviewed lawyers mentioned the following actions: a defendant might be placed in detention, a defendant might be transported/escorted to the trial, and stricter remand measures might be applied. A search for a defendant starts and if they are not located, then a case might be started against them.**

b. What has been understood as “effective participation”?

The interviewees of the different professions related “effective participation” with possibility for a defendant to use all their rights efficiently.

The interviewed **prosecutors** described “effective participation” as being **when a person participates in criminal proceedings, can hear testimonies by witnesses and have a defence lawyer:**

“A person must participate directly in criminal proceedings, hear the witnesses and have a defence. A defence is guaranteed on his/her own initiative or with state aid, especially if s/he is a vulnerable person who cannot defend himself/herself, s/he then is not obliged to defend himself/herself. If a person is deaf, for example, or unable to speak, they will be provided with an interpreter, who will translate into sign language.” (Prosecutor, Lithuania)

„Asmuo privalo pats betarpiškai dalyvauti baudžiamajame procese, pats girdėti liudijimus ir turėti gynybą, jam ji užtikrinama savo iniciatyva ar valstybės pagalba, ypač jei yra pažeidžiamas, kuris pats negali apsiginti, jam privaloma valstybės gynyba nemokama ir tas ir yra veiskmingumas, kad asmuo pats dalyvauja. Jei asmuo kurčnebylys ar negalintis kalbėti, tai jam bus užtikrintas asmuo, vertimas, kuris vers j gestų kalbą.“

“Effective participation” is also related with the **provision of evidence by the accused person**, as one prosecutor said. According to the interviewed **judge, effectiveness is also related to the possibility to understand what is going on in the legal and real sense, this also includes the language of procedures.** There is also the question of the defendant **having legal aid.** Additionally, there are supplementary legal safeguards for a vulnerable person.

The interviewed **lawyers** described effective participation as being **when a defendant is able to use all their rights with the assistance of a defence lawyer.** For example, the interviewed lawyer described “effective participation” as being when active ways of defence are employed, i.e. a lawyer asks proper questions and presents evidence. The other interviewed lawyer describes “effective participation” as being when a lawyer’s request to collect some evidence is not declined. The third lawyer sees “effective participation” as legal help from a defence lawyer, i.e. making a defendant understand their rights. Similar to other opinions, the other interviewed lawyer describes “effective participation” as being when a person participates at a trial, has a defender, employs all their procedural rights, e. g. right to be heard, gives evidence, asks questions, requests expertise, invites witnesses.

The interviewed lawyers also indicated some technical aspects that must be taken in account in order to guarantee “effective participation”: a) any **linguistic barriers** to understanding procedures or documents **must be eliminated** with the help of translators, b) if there are **technical hindrances due to online measures**, these hindrances **must be eliminated**, c) if a person is in a “glass box” and

cannot follow the trial properly because they cannot hear speeches or testimonies, they are offered another place in the courtroom.

c. Vulnerable groups

The interviewees mentioned such vulnerable groups as:

- **Persons with disabilities.** In accordance with the Criminal Code, persons with hearing impairments are provided with sign interpreters, for blind persons, a defence lawyer is compulsory. If a person, e.g. a person who has physical or mental challenges cannot come to the court due to medical reasons, then the court decides whether they need to attend. But this decision is made with the circumstances of the particular case in mind, there are no special general rules. If the lawyer sees that such a person is tired or maybe in need of something, they are offered a break and the lawyer ascertains that they are alright and able to continue.
- **Persons with mental disabilities.** If a defendant has mental or intellectual disabilities or if a prosecutor or judge notice that the defendant doesn't understand what is going on, they recommend a defence lawyer; it is also suggested that a relative accompany such a person and participate during the interrogation of any witness. If a defendant is unable to attend the trial due to their mental condition, then their lawyer must attend. Psychiatrists can recommend that a patient not attend a trial at all. If a defendant has some psychic problems, medical expertise is sought regarding liability and then a completely different process starts.
- **Children.** According to one of the judges, if a defendant is a child, the information about the trial is sent to their parents or representatives. If children are in socialisation centres, care institutions or rehabilitation centres, the information is sent both to the defendants and to those centres as well, because in some programmes they must be accompanied when going out and the child has to be brought to the court by a social worker. According to the interviewed prosecutor, in cases with children, the psychologist interrogates the child and the prosecutor tells him via a headset what questions to ask. The interviews of a child must be filmed; specific experts should participate.
- **Migrants or locals who do not understand the state (Lithuanian) language.** The translator translates documents into a language which is understood by the defendant, oral translation is guaranteed during proceedings. The interviewed lawyer suggested that in regard to migrants in other states, there are mechanisms of international cooperation, and institutions guarantee submission of information, so at least in the EU the system works properly.

An effective defence with the help of a defence lawyer was named by interviewees as a key instrument in ensuring the rights of vulnerable persons. The interviewed lawyer said that sometimes due to mental disabilities a person cannot follow the trial and expressed the opinion that a State guaranteed defender is not always effective in ensuring their rights. According to the interviewed judge, **the involvement of a defence lawyer is one of the basic rules**, because legal aid is considered to be an essential prerequisite for all other rights of vulnerable persons.

“Yes, the involvement of a defence lawyer is one of the basic rules, because legal aid is considered to be an essential prerequisite for all other rights of vulnerable persons. Some of these processes are even regulated separately in Lithuania.” (Judge, Lithuania).

„Taip, būtinas gynėjo dalyvavimas, tai yra viena iš pagrindinių taisyklių, nes laikoma, kad teisinė pagalba didelė prielaida užtikrinti visoms kitoms pažeidžiamų asmenų teisėms, jeigu mes kalbam apie ypatingą pažeidžiamumą dėl amžiaus, dėl sveikatos, tai įgalioto atstovo

dalyvavimas paprastai būtinas specialisto dalyvavimas, tai šitie procesai pas mus yra net atskirai reglamentuoti kai kurie.“

d. Discussion of findings

The right to be present at the first instance court is enshrined in legislation and is enjoyed by defendants. The interviewed judges and lawyers estimated that a defendant is always informed and is aware of the court proceedings. The information about court proceedings is presented to them in written form at the start of proceedings or when a document on indictment is submitted. If a defendant encounters serious medical problems, they must submit a special medical form legitimating the causes of non-appearance. If a defendant does not show up to the court proceedings, they are searched for in various ways and might encounter more strict measures of coercion or might be brought to the court. There are very limited cases when court proceedings can proceed in absentia of a defendant. The interviewed judge indicated low awareness of some defendants that they are obliged to participate in court procedures.

The interviewees mentioned vulnerable groups such as people with physical disabilities, people with mental disabilities, children, people who do not understand the local language. The interviewees' referred to the help of professionals (translators, psychologists, lawyers) who ensure that vulnerable people are able to participate at the trial.

The interviewed judges, prosecutors and lawyers describe "effective participation" as being when a defendant with the help of a defence lawyer is able to use their rights, understands the procedures, makes sure that important evidence is collected and is able to participate at the trial without facing any linguistic or technical hindrances to understanding the proceedings.

C.7 Challenges and improvements

a. Challenges

Challenges identified by police officers

Some police officers could not think of any challenges, i.e. **presumed that in their work there are no challenges in regard to the presumption of innocence** since the police conduct pre-trial investigations and are not involved in making decisions regarding the guilt of suspects or accused persons. Some of the interviewed police officers **identified challenges such as protecting the accused person from publicity.**

Challenges identified by prosecutors and judges

The interviewed judges and prosecutors referred to the following main challenges:

- **Violation of presumption of innocence in coverage by mass media and by actions of persons** who are not involved in the criminal proceedings (e.g. politicians, some other outsiders, who provide information to the mass media).
- **New kind of fast media** which can broadcast trials online directly from the courtroom is identified by a judge and prosecutor as a new challenge:

“We have a particularly operational media with journalists sitting in the courtrooms and when a witness presents evidence, the journalists immediately broadcast testimony

online. However, the process requires objectivity which means that the witnesses should not know each other's testimonies." (Prosecutor, Lithuania)

"mes turime ypač operatyvią žiniasklaidą, kai žurnalistai sėdi teismo salėje ir liudytojas duoda parodymus, o jis iškarto transliuoja online į interneto svetainę, o proceso objektyvumas reikalauja, kad apklausti liudytojai nesusižinotų vienas kito liudijimo, kad nebūti įtakoti to, ką prieš tai pasakė žmonės."

The interviewed prosecutor is of the opinion that the hardest job is to balance between the desire to inform and crossing line by saying too much and forming a preconception.

- The challenge remains (though currently not so often) for law enforcement officers in criminal proceedings **to remember that the accused person is innocent until the court process ends and pronounces the conviction**, according to another prosecutor.

Challenges identified by defence lawyers:

- **Mass media coverage and publicity.** The main problem identified by some interviewed lawyers was the tendency of law enforcement institutions to use mass media to present their operations and provide other information in the early stages of an investigation. The interviewee referred to an incident when information on a case became public. Publicity is seen as a real challenge for the proper work of pre-trial investigators and other professionals.
- **Symbolic references to guilt used during transportation.** The interviewees referred to cases when a suspect or accused person is transported in handcuffs, surrounded by officials in masks, escorted to court by a long route during which mass media representatives film the scenes or try to ask questions. It is argued that all this strengthens the image that the person is guilty.
- **Public comments on some punishments by politicians/public officials.** The interviewee suggested that politicians should declare **that nobody can comment on a case until the final decision** of the court enters into force.
- **Confessions obtained during a pre-trial investigation in cases of alleged corruption.** The interviewed lawyer said that if such a confession is gained, there is no real opportunity afterwards to complain regarding the actions of pre-trial investigators.
- **Problematic status of a special witness** was cited by one interviewed lawyer: it is not clear what rights are applied to such a person and whether they can enjoy the right to remain silent.
- **The structure of the criminal process** when the court familiarises itself with the case file submitted by prosecutor before the court trial was indicated by interviewed lawyer. This is seen as shaping the judge's opinion in advance.
- **The application of procedural remand measures** (*kardomoji priemonė*) was assessed by one interviewee **as not always adequate** or balanced.
- **The distribution of burden of proof** – defence lawyers were described by interviewee as often expected to provide evidence that denies some guilt.
- There must be guarantees that a defendant's **right to participate at court trials** is guaranteed in all cases. The interviewee indicated a few cases recently when a trial proceeded without defendants who submitted medical documents providing a grounded basis for their non-participation.
- The interviewee stated that in cases of alleged corruption the situation worsened last year since the focus shifted to the wording used during some private conversation and not to the real evidence.

b. Improvements

The interviewed police officers referred to the following recent developments:

- The right to remain silent was established as well as the right to make a phone call.
- The law on the protection of personal data came into force.
- The requirements for the pre-trial investigation were strengthened as the decision to go to court should be based on strong evidence.

The interviewed judges and prosecutors referred to the following recent developments:

- Ethics requirements are now higher.
- The Code of Criminal Procedure guarantees very broad rights to defendants such as the right to information, the right to ask questions and the right to a defence lawyer.
- The right to be accompanied to the court trial was guaranteed for an accused child, i.e. a child has the right to be accompanied to a trial in order to ensure the best possible orientation and the right to have a companion to help them feel safe in court.
- Training on communicating with journalists and on public speaking is now provided to prosecutors so that the principle of presumption of innocence is not violated.

The interviewed defence lawyers referred to the following recent developments:

- The implementation of the Directive on the Right to Information; there is a requirement that a suspect or arrested person must receive a document with their rights listed.
- The general development/creation of a State ruled by laws, the Convention on Human Rights and Strasbourg practice, the new criminal code in 2003 and the general rising awareness of law enforcement institutions regarding the presumption of innocence were identified as positive developments during the last 10 years, since two-three years were estimated as too short a period for identification of important changes.

c. Suggestions

- The interviewed judge suggested the legal education of society by popular means, e.g. in social networks, media, or through educational games for students. According to the judge, Lithuanian society has a very limited legal education and all the problems with the presumption of innocence as well as with the legal system in general, emerge from this lack of knowledge:

“I think that all our troubles with the presumption of innocence as with all the law in general, emerge from the lack of knowledge in society. The legal education of society with popular means is needed, e.g. in social networks, media, or through games for students. I think that we have a very limited understanding of legal education. If we were to explain more to society what the presumption of innocence is, there would be less violations of it, as members of society would know what it is. For example, if you receive a letter from the court, it does not mean that you are guilty.” (Judge, Lithuania)

“Aš galvočiau, kad mūsų bėdos su nekaltumo prezumpcija kyla, kaip ir apskritai su visa teise, kyla iš visuomenės žinių stokos, tai ko gero teisinis švietimas visuomenės bendrų taisyklių populiariom priemonėm, paįskininimas, parodymas socialiniuose tinkluose, medijose, ar per žaidimus moksleiviams. Galvočiau, kad

teisinio šveitimo mes turim labai ribotą suvokimą. Jeigu mes daugiau aiškintumėm visuomenei, kas yra nekaltumo prezumpcija – tai mes mažiau ją ir pažeidinėtumėm kaip visuomenės nariai, nes žinotumėm, kas yra tokio. Pavyzdžiui, kad kai tu gavai laišką iš teismo – tai nereiškia, kad tu kaltas esi.”

- The interviewed prosecutor thinks that there is a need to standardise the procedural documents of pre-trial investigation officers, whose work is more routine, thus it would be obvious how to write the document without violating the presumption of innocence.

“We need to keep moving and improving the procedural documents. The prosecutors understand the principle and try to apply it, but it may be necessary to standardise it in documents, that it would be obvious how to write the document without violating the presumption of innocence. On the other hand, if a person is thinking more and is more conscious, they will not make mistakes regardless of the standardised procedures.” (Prosecutor, Lithuania)

„Nu tai, matyt, reikia nesustot tobulėti ir tobulinti procesinius dokumentus, o principus suvokiame suprantame ir stengiamės pritaikyti. Gal būt standartizuoti tai labiau reikia tuose dokumentuose, kad jau ir per daug nesukant galvos būtų akivaizdu, kad dokumentas būtų surašytas nepažeidžiant nekaltumo prezumpcijos, nors iš kitos pusės jei žmogus daugiau mąsto, daugiau suvokia ir daugiau sąmoningo veiksmo, tai nedaro klaidų, negu kai daro kažkokius standartizuotus veiksmus.“

- The interviewed lawyer suggested that the principle of competitiveness (adversarial proceeding, *rungtyniškumas*) has to be implemented not only when the case reaches court, but during the pre-trial investigation as well. The interviewee suggested that as long as this principle is not applied during the pre-trial investigation, a number of problems that also relate to the presumption of innocence persist. If you do not collect all the data during the pre-trial investigation, you will not be able to collect all the evidence during the court stage since some data are not archived for a long time.

PART D. GENERAL ASSESSMENT

The right to be presumed innocent in general: This right is enshrined in the Lithuanian Constitution and in the Code of Criminal Procedure. In transposing Directive 2016/343, the principle of *in dubio pro reo* was explicitly included into the Code of Criminal Procedure. This amendment codified a long-standing principle of criminal procedure, which was well established in the case-law of Lithuanian courts.

The interviews with members of the different professions – judges, lawyers, prosecutors, police officers – were carried out in the timeframe of 25 February 2020 to 30 April 2020. The interview material indicates that the **main challenge in regard to the right to be presumed innocent is the preservation of the principle of presumption of innocence at different levels of the law enforcement system as well as prevention of possible violation of this principle by outsiders (e.g. mass media, public officials)**. The interviewees did not reflect extensively on possible social factors or stigmas and prejudices that affect presumption of innocence. This should not necessarily be interpreted as revealing that there are no problems but might point to low awareness and low levels of discussions on how certain prejudices might affect application of the presumption of innocence.

The interviewed professionals of the different groups – police officers, prosecutors, judges, lawyers – apply the principle of presumption of innocence in their work and define it as the attitude that a

person is not considered guilty until the final court decision enters into force. The application of this principle was described as reflecting in general the attitude and communication with a suspect, proper wording in documents and public discourse which must not refer to a suspect as guilty. Even if the professionals of different groups indicated application of the principle of presumption of innocence in their work, interviewees nevertheless referred to incidents when presumption of innocence is violated by some media coverage, symbolic demonstration of a defendant's guilt or comments of outsiders. These situations were referred to as revealing that mass media and outsiders have access to information on some accusations or some cases. Therefore, disregarding the evaluation that the principle of presumption of innocence is applied evenly in the work of professionals of law enforcement institutions, the situations of public coverage referred to indicate that there are still some problems in the full preservation of presumption of innocence.

Public references to guilt: There are no explicit legal provisions on public references to guilt by public officials, but the obligation to abstain from such references is acknowledged in case-law. Should the accused present an argument relating to public references of guilt by a public official, it has to be established whether such statements could have affected the independence and impartiality of the courts examining the case. The Law on the Provision of Information to the Public provides that it is prohibited to disseminate information, which violates the presumption of innocence. Obligation to respect the principle of presumption of innocence is also included in Codes of Ethics, adopted by self-regulation bodies of journalists and media.

The main challenge indicated was the contradiction between preservation of the principle of presumption of innocence and society's right to be informed. The juxtaposed data indicate that there are cases when the principle of presumption of innocence is violated by the provision of information to the public. Members of all professional groups emphasised restricted and regulated ways of communicating with mass media in order to preserve the presumption of innocence. However, at the same time they indicated that representatives of mass media obtain information on cases and pointed out instances of coverage in mass media and public comments that violate a defendant's presumption of innocence.

Most of the interviewees described mass media as having a negative influence on the presumption of innocence in the eyes of the general public due to the public references to guilt or due to the fact that media might not cover the case right to the end and in such cases if a defendant is acquitted, their reputation might be damaged by earlier articles in mass media. The mass media coverage was described as not always providing objective and truthful information and as doing huge psychological and social damage to a defendant. The positive effects of mass media included the possibility to refute some incorrect information or to present an alternative interpretation of some circumstances or event to that presented by pre-trial investigators.

The presentation of suspects and accused persons: The use of physical restraint measures on persons escorted to a court hearing is regulated by the Rules on Convoy. On 21 February 2020, the Seimas Ombudsperson's Office (National human rights institution) published a report criticising excessive use of handcuffing. The Ombudsperson concluded that Article 5 of Directive 2016/343 has not been properly transposed into the Lithuanian legal system.

The main challenge in regard to the presentation of suspects and accused persons is related with the excessive and not grounded use of handcuffs. The use of measures such as handcuffs was seen as legitimate by police officers since they are foreseen in the regulations. However, use of handcuffs was estimated by judges, prosecutors and lawyers as a reference to symbolic guilt and violation of the principle of presumption of innocence especially in cases when a defendant is not a risk to themselves or others. The use of these measures was seen as especially problematic in cases that are covered by mass media. Therefore, it was suggested/indicated as a good practice that bringing a

handcuffed defendant to the courtroom should be conducted via the back of the building to avoid mass media representatives; keeping them in separate waiting rooms in Vilnius court building was also depicted as a preventive measure. Nevertheless, interviewees referred to cases and incidents (e.g. the so-called case of alleged corruption of judges and lawyers covered by mass media) when defendants were in handcuffs and not protected from the media.

Burden of proof: In accordance with the provisions of the Code of Criminal Procedure, the prosecutor is obliged to prove that a criminal act has been committed, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence to prove that the criminal act has not been committed and that they are not guilty of its commission but has the right to do so in the exercise of their right to defence. No new provisions were deemed necessary to transpose Directive 2016/343. The descriptions of practices by interviewees of the different professional groups correspond to this framework set by legislation.

The main challenge in regard to this aspect of presumption of innocence was indicated in the interviews with some lawyers who estimated that there is a certain shift in the burden of proof when pre-trial investigators focus on collection of evidence which grounds the accusation, but ignore or do not pay proper attention to exculpatory data. It was stated by that in this situation defence lawyers might find themselves in a position “to deny presumption of guilt“. For example, the cases of allegedly illegal enrichment (*neteisėtas praturtėjimas*) were referred to by a lawyer when a defence lawyer has to present proof to deny suspicions.

The right to remain silent and not to incriminate oneself: The right to remain silent has been one of the long standing principles of criminal procedure in Lithuania, and no negative inferences can be drawn from the fact that the suspect (accused) decides to exercise his/her right to remain silent. In transposing Directive 2016/343, minor amendments to the Code of Criminal Procedure were made; these amendments emphasised the right of suspects and accused to remain silent and (or) to refuse to give evidence.

The right to remain silent and not to provide evidence against oneself was described by the interviewees of the different professions as clear and well exercised. Some interviewed judges and lawyers expressed the opinion that in some cases the pre-trial investigation officers interpret application of this right as lack of cooperation and refer to this supposed lack in deciding about the remand measures during the pre-trial investigation period. **However, the main challenges might lie with particular aspects indicated by some interviewees: whether the right to remain silent is explained in full to the relatives of a defendant, application of this right to a defendant in some ambiguous period during the search of their home, when the person has not yet been arrested but is nevertheless communicating with officers; whether this right is applicable to persons who have the status of special witness.**

The right to be present at the trial and to have a new trial: Participation of the accused in the court hearing of the first instance court is both a right and an obligation. The only exception to a hearing taking place without participation of the accused is when the accused is not in Lithuania and is avoiding appearing in court. If the trial takes place in the absence of the accused, the accused has a right to appeal even after the expiry of the statutory time limit for a regular appeal. No new provisions were deemed necessary to transpose Directive 2016/343.

The right to be present at the first instance court is enshrined in legislation and is enjoyed by defendants. The interviewed judges and lawyers agreed that defendants are always informed and are aware of the court proceedings. The information about court proceedings is presented to them in written form at the start of proceedings or when a document on indictment is submitted. If a defendant encounters serious medical problems, they must submit a special medical form

confirming the reasons for non-appearance. If a defendant does not show up at court proceedings, they are searched for in various ways and might encounter more strict measures of coercion or might be escorted to the court by police officers. It is only in very limited circumstances that court proceedings can proceed *in absentia* of a defendant. **The main challenge in the application of this right might be caused by low awareness of some defendants that they are obliged to participate in court proceedings.**

The interviewed judges, prosecutors and lawyers describe “effective participation” as being when a defendant, with the help of defence lawyer, is able to use their rights, understands the procedures, makes sure that important evidence is collected and is able to participate in the trial without facing any linguistic or technical hindrances to understanding the proceedings.

PART E. CONCLUSIONS

The right to be presumed innocent in general: This right is enshrined in the Lithuanian Constitution and in the Code of Criminal Procedure. In transposing Directive 2016/343, the principle of *in dubio pro reo* was explicitly included in the Code of Criminal Procedure. This amendment codified a long-standing principle of criminal procedure, which was well established in the case-law of Lithuanian courts.

The interview data allow us to conclude that the different professionals are aware of the principle of presumption of innocence and implement it in their work. The principle of presumption of innocence is understood by members of the different professional groups – police officers, judges, prosecutors, defence lawyers – as a principle where a suspect is considered innocent until the final court decision enters into force. This attitude corresponds to the understanding of presumption of innocence recorded in the legal basis.

The interviewed professionals estimated that this principle is applied in their everyday work. The professionals described the application in the recording of proper wording where there is no reference to presumed guilt in records and documents, in public discourse or communication with other professionals. The interviewed defence lawyers perceived the principle of presumption of innocence as basic in their professional activities. There were no remarkable differences in the ways interviewees of the same profession described application of presumption of innocence in their work. However, the interviewed defence lawyers indicated various aspects in the work of other institutions (institutions of pre-trial investigation, mass media representatives) that violate the presumption of innocence of their clients.

Even if the professionals of the different groups indicated that the principle of presumption of innocence in their work is applied, interviewees nevertheless referred to incidents when presumption of innocence is violated by some media coverage, symbolic demonstration of a defendant’s guilt or comments of outsiders. These situations were referred to as revealing that mass media and outsiders have access to information on some accusations or some case. Therefore, disregarding the assessment that the principle of presumption of innocence is applied evenly in the work of professionals of law enforcement institutions, the situations of public coverage referred to indicate that there are still some problems in the full preservation of presumption of innocence.

The majority of interviewees of the different professional groups stated that factors such as gender, ethnicity and social background have no impact on the presumption of innocence or that they did not encounter this in their practice. A few interviewees indicated ethnicity (Roma) as affecting presumption of innocence in the eyes of the general public; a few interviewees indicated a former conviction as affecting presumption of innocence. The status of a case, i.e. whether it comes to the attention of the public or not was indicated as a key factor in affecting presumption of innocence.

Access to an effective defence was indicated as another important factor. The brief discussion on the role of stigma and different social factors that affect presumption of innocence might point to limited awareness of different professionals of how different social factors and stereotypes affect the application of presumption of innocence.

Public references to guilt: There are no explicit legal provisions on public references to guilt by public officials, but the obligation to abstain from such references is acknowledged in case-law. If an accused person presents an argument relating to public references of guilt by a public official, it has to be established whether such statements could have affected the independence and impartiality of the courts examining the case. The Law on the Provision of Information to the Public provides that it is prohibited to disseminate information which violates the presumption of innocence. The obligation to respect the principle of presumption of innocence is also included in Codes of Ethics adopted by self-regulation bodies of journalists and media.

The juxtaposed data indicate that there are cases when the principle of presumption of innocence is violated by provision of information to the public. Pre-trial investigation officers who were interviewed said that cooperation with mass media is guided by strict rules which indicate who and under which conditions can communicate with mass media and what kind of information might be presented publicly in order not to violate the presumption of innocence and not to damage a pre-trial investigation. Members of all professional groups emphasised the restricted communication that is allowed with mass media in order to preserve presumption of innocence. However, interviewed lawyers and judges indicated that the media obtain information on cases and indicated coverage in mass media and public comments that violate a defendant's presumption of innocence. The case most often referred to by interviewees was the case of an alleged corruption network among judges and lawyers.

Most of the interviewees described the mass media as having a negative influence on the presumption of innocence in the eyes of the general public due to the public references to guilt or the fact that media might not cover a case to the end and in such cases if a defendant is acquitted, their reputation might be damaged by earlier stories in the media. The mass media coverages were described as not always providing objective and truthful information and as doing huge psychological and social harm on a defendant. One of the lawyers suggested that in cases that attract public interest, the court might find it difficult to make a final judgment due to public pressure. The positive effects of mass media included the possibility to refute incorrect information or to present an alternative interpretation of some circumstances or event to that presented by pre-trial investigators as a way of defending one's reputation, as well as a way to solve legal issues if they are not solved in the procedural way. Publicity was seen as a sign of a democratic society and media coverage was seen by some interviewees as guaranteeing society's right to be informed.

The presentation of suspects and accused persons: The use of physical restraint measures on persons escorted to a court hearing is regulated by the Rules on Convoy. On 21 February 2020, the Seimas Ombudsperson's Office (National human rights institution) published a report criticising excessive use of handcuffing. The Ombudsperson concluded that Article 5 of Directive 2016/343 has not been properly transposed into the Lithuanian legal system.

During the interviews, handcuffs used during conveying and at court proceedings were the measures most often referred to. The use of handcuffs is foreseen by the Rules of Convoy and therefore their use was interpreted as legitimate by interviewees. However, lawyers, judges and prosecutors raised the question of overuse of these measures in cases when a suspect or accused person is not a risk to themselves or officers. These measures were described by judges, prosecutors and lawyers as referring to the symbolic guilt of a defendant. It should be noted that police officers on the one hand

and lawyers, judges and prosecutors on the other had different opinions on this. The lawyers, judges and prosecutors tended to emphasise the excessive use of these measures and perceive them as symbolic references to guilt. The police officers, however, rather saw their use as legitimised by regulations and used to guarantee safe transporting.

It was indicated that the use of such restrictive measures is especially problematic when a case is covered by mass media and a defendant is presented in handcuffs or other movement-restricting measures and escorted by police officers or other officers in masks. The placement of a defendant in a special court space referred to as a space with security grilles/bars, space with some barriers (*užtvarai*), special isolated place, or “cages” (*narvai*) during the court trial was indicated as negatively affecting the presumption of innocence by the interviewed lawyers, judges and prosecutors. The transportation of a defendant to the court building is therefore seen as a key stage in regard to the presumption of innocence. The entrance to the court building was depicted as problematic and requiring good planning so that a defendant is not filmed by the mass media. It was noted that suspects were normally brought in via the side doors in order to protect them from media attention. However, interviewees referred to the so-called case of alleged corruption among judges, lawyers and other interested persons when suspects were led to court in handcuffs and escorted by police officers and filmed by the media. Such incidents were depicted as violation of the principle of presumption of innocence and they clearly do not correspond to the way defendants should be transported and escorted.

The interviewees indicated vulnerable groups such as children under 14-years old, people with mental disabilities and people with serious health problems. These groups were transported without handcuffs, the cases where children are involved are never public and no information is provided to mass media. The interviewees named some possible reactions if a defendant is presented as guilty by using symbolic references to guilt and these measures included the possibility to apply for compensation, the requirement to change the composition of a court, apply to the European Court of Human Rights, submission of a complaint regarding actions of the pre-trial investigation or presentation of alternative information in the mass media. However, most of the interviewed lawyers assessed these possibilities as rather theoretical and often as leading to no real results.

Burden of proof: In accordance with the provisions of the Code of Criminal Procedure, the prosecutor is obliged to prove that a criminal act has been committed, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence and prove that the criminal act has not been committed and that s/he is not guilty of its commission but has the right to do so in the exercise of his/her right to defence. No new provisions were deemed necessary to transpose Directive 2016/343. The descriptions of practices by interviewees of the different professional groups interviewed correspond to this framework set by legislation.

The collection of evidence was perceived by police officers and prosecutors as the obligation of the pre-trial investigator as is foreseen by the laws. The interviewed police officers and prosecutors believed that defence lawyers can and should also present some contra evidence or contra proofs to evidence collected by pre-trial investigators and prosecutors. The interviewed lawyers interpreted this as a shift of burden of proving non-guilt, and some interviewees argued that pre-trial investigators aim to collect evidence which proves the guilt but ignore evidence which denies guilt.

The interviewed police officers, judges and prosecutors said they saw confession as a more positive than negative choice and indicated positive outcomes such as the possibility to start a process of reconciliation with a victim, less complicated court procedure which also leads to less publicity, shortened period of data collection and possibility of reduced penalty. The action of confession though has to be conducted by properly informing the defendant about their rights and in the presence of a lawyer. The interviewed lawyers were cautious in their evaluation of this action and

suggested that confession eases the work of pre-trial investigators, but at the same time often leads to a less thorough investigation of data and supports the presumption of guilt presented by prosecutors.

The right to remain silent and not to incriminate oneself: The right to remain silent has been one of the long-standing principles of criminal procedure in Lithuania, and no negative inferences can be drawn from the fact that the suspect (accused) decides to exercise their right to remain silent. In transposing Directive 2016/343, minor amendments to the Code of Criminal Procedure were made, placing more emphasis on the right of suspects and accused to remain silent and (or) to refuse to give evidence.

The interviewees of the different professional groups – police officers, prosecutors, lawyers, judges – described the application of the right to remain silent as clear and exercised by them. A suspect or accused is presented a protocol with a list of their rights including the right to remain silent. A defendant might choose to remain silent during the pre-trial investigation, but to give evidence in court. The interviewed professionals said that a defendant is not obliged to provide evidence against themselves since this is perceived as covered by the right to remain silent.

The use of the right to remain silent was described as not having any consequences for the presumption of innocence, however this choice has certain consequences for the trial itself and for the defendant. For example, if a person remains silent and is proved guilty, it is not possible to ask for an easier penalty, (the proceedings are longer and more complicated due to the necessity to collect full evidence). According to some lawyers, application of this right can be referred to when prosecutors are deciding on remand measures and more strict measures might be applied by referring “to the lack of cooperation”.

The interviewed lawyers indicated certain problematic areas in the application of the right to remain silent: there is the important question of whether their relatives are informed that they too have a right to remain silent and not to testify against the defendant ; there is an ambiguous period between the first encounter with officers and the time when the list of rights is submitted, e.g. during the search of their home, when the person has not yet been arrested but is nevertheless communicating with officers; the status of special witness (*specialusis liudytojas*) is described as highly problematic in this context in Lithuania, i.e. it is not clear whether a special witness can use the right to remain silent.

The right to be present at the trial and to have a new trial: Participation of the accused in the court hearing of a first instance court is both a right and an obligation. The only exception to when a hearing can take place without participation of the accused is when the accused is not in Lithuania and is avoiding appearing in court. If the trial takes place in the absence of the accused, the accused has a right to appeal even after the expiry of the statutory time limit for a regular appeal. No new provisions were deemed necessary to transpose Directive 2016/343.

The right to be present at the first instance court is enshrined in legislation and is enjoyed by defendants. The interviewed judges and lawyers believed that defendants are always informed and are aware of the court proceedings. The information about court proceedings is presented to them in written form at the start of proceedings or when a document on indictment is submitted. If a defendant has serious medical problems, they must submit a special medical form confirming the reasons for their non-appearance. If a defendant does not show up for the court proceedings, they are searched for in various ways and might encounter more strict measures of coercion or might be brought to the court. There are very limited cases when court proceedings can proceed *in absentia* of a defendant.

ANNEX 2 – Case studies

Case study – 1

- [1]. For the purposes of this project, **‘case study’** is defined as a descriptive analysis (using the below template) of a pending or finalised criminal court case dealing with the subject material of Directive 2016/343/EU (especially on the topics covered in the interviews).
- Cases should constitute examples of actual court practice and should have been at least decided by a first instance criminal court (but could still be subject to appeal).
 - If FRANET contactors have difficulties identifying cases decided by the first instance court, they should discuss with FRA the possibilities of presenting ongoing cases.
 - All references to personal data or other data enabling the identification of the parties to the proceedings should be removed.

Member State case study/ media coverage #1		
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)	Referred to by the media as „The Judges’ Corruption Case“ or „The Judges’ Corruption Scandal“.
2	Brief description of the case	On 20 th of February 2019, Prosecutor General and the Director of the Lithuanian anti-corruption agency Special Investigations Service (SIS) announced during a joint press conference that a pre-trial investigation has been launched in relation to an alleged corruption network that functioned among judiciary, attorneys, suspects and other persons interested in the outcomes of cases. The President, based on the Prosecutor General’s motion, issued decrees lifting immunity and allowing for criminal prosecution of 8 judges. Based on the charges of large scale corruption, trading in influence, graft and abuse of office, a total of 24 persons were arrested, including 8 judges and 5 attorneys.
3	Timeline of events (briefly outline major events in order to capture the nature of the case)	20 February 2019. A joint press conference is held by the Prosecutor General and the Director of SIS. During the conference, it is announced that a major criminal investigation has been started in relation to an alleged corruption network among judiciary, attorneys, suspects and other persons. It is announced that 24 persons have been arrested, including 8 judges and 5 attorneys. 21 February 2019. Prosecution’s motions for pre-trial detention are granted in relation to 5 judges who

		<p>are all detained for 10 days. 2 attorneys are also placed in pre-trial detention – one for 14 days, the other – for 1 month. Pictures in the media show that at least some of the judges and attorneys were being led to court hearings in handcuffs.</p> <p>22 February 2019. Lithuanian Bar Association appeals to the Minister of Interior and Police Commissioner General, arguing that there was no reason to handcuff arrested attorneys and judges while they were being led to court for pre-trial detention hearings. According to the Bar Association, handcuffs were used without any legal ground provided for by the Rules of Convoy. In Bar’s opinion, their use in this case was in excess, and therefore infringed on the suspects’ presumption of innocence.</p> <p>21 March 2019. Lithuanian Bar Association decides not to suspend the suspected attorneys. The Bar bases its decision on the presumption of innocence and the lack of information on substantial evidence. 1 attorney is suspended by his own request.</p> <p>9 August 2019. The Judges’ Council issues a decision recommending the President to remove 3 suspected judges from their office. In relation to 2 judges, recommendations to remove are not issued. In relation to the reminding 3 judges, the decision is postponed until the end of summer.</p> <p>9 August 2019. The President expresses regret that the Judges’ Council refused to allow the removal of 2 judges. The President claims he has no doubt, that the actions of these judges will be swiftly and objectively evaluated by respective law enforcement institutions.</p> <p>20 August 2019. The President’s adviser presents to the media a decree on removal of 1 of the suspected judges and claims that the President’s Office received information that the said judge „tolerated offers of compensation for judgments favourable towards persons having an interest in the outcome of the case“.</p> <p>12 September 2019. Seimas (Lithuanian Parliament) approves the President’s proposal to remove 2 suspected judges from their office on the grounds of degrading the name of the judge.</p> <p>24 September 2019. Seimas approves the removal of 2 more suspected judges from their office for degrading the name of the judge.</p>
4	Media coverage (how did the media	The case has been widely covered by various media outlets, including online news media and TV. The

	<p>refer to the suspects? How were the suspects presented, e.g. handcuffed, in prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>suspects were usually referred to as “suspects”, however, the case itself has been commonly referred to as “The Judges’ Corruption Case” or “The Judges’ Corruption Scandal”, which implies that the suspects are deemed guilty of corruption charges. There were several publications identified, mainly in the news outlet www.delfi.lt, which implied that the suspects were guilty of the incriminated crimes, for example, one of the headlines read “Trade in justice: a bribe for which the judge had to bow down to the criminal, who joined the gang from police ranks”. Another headline in the same outlet read “The judges’ corruption scandal made a huge blow: now a rare (person) would dare to offer a bribe”, whilst one more read “Corruption in the cases of suspected judges – bribes for which justice was sold”.</p> <p>Some of the suspects, including judges and attorneys, were led to the court by masked and armed officers and in handcuffs, which was later protested by the Lithuanian Bar Association in their public appeal to the Minister of Interior and Police Commissioner General.</p> <p>On 20 February, 2019, a joined press-conference was held by Prosecutor General and Director of SIS to inform of the commencement of the pre-trial investigation. During the press-conference Prosecutor General announced of the „exceptional, major criminal investigation” into large scale bribery, trade in influence, graft, and abuse of office in the judiciary. According to the Prosecutor General, “we also see, that in the attorney’s office there was a trade in justice happening”. However, later in the conference the Prosecutor General added that “today, we, of course, should also respect the presumption of innocence, abstain from drawing conclusions, that the judges are guilty, and other persons, and attorneys (...)”.</p>
5	<p>Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)</p>	<p>One of the key issues in the coverage of the case was that the case was commonly referred to as “The Judges’ Corruption Case” which implies guilt on charges of corruption. Another key issue related with presumption of innocence was the use of handcuffs whilst leading the suspects to court, which Lithuanian Bar Association publicly denounced as excessive and without legal grounds, thus not in compliance with presumption of innocence.</p>
6	<p>Key consequences or implications of the case with regard to the presumption of innocence (with a focus on public reaction to publications in the media which might lead to a public debate)</p>	<p>On 6 March 2019, the Lithuanian Lawyer’s Association issued a public appeal expressing concern in relation to public assessments of the case and urging to respect presumption of innocence of the suspects. The appeal was addressed to state officers and government institutions, and urged to „respect the principle of presumption of innocence without exceptions, avoid expressing biased opinions and assessments and abstain from obstructing in this way the pre-trial investigation and the proper exercise of police officers’ and courts’ duties“. The Association further emphasized that “to ensure right to a fair trial, protect personal data and abstain from violation of presumption of</p>

		innocence, it is forbidden to publish data from pre-trial investigation, therefore [it] urges to refrain from publication of any pre-trial investigation data, except discreet information on the investigation”.
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?	The case has not reached the court yet.

Case study – 2

[2]. For the purposes of this project, ‘**case study**’ is defined as a descriptive analysis (using the below template) of a pending or finalised criminal court case dealing with the subject material of Directive 2016/343/EU (especially on the topics covered in the interviews).

- Cases should constitute examples of actual court practice and should have been at least decided by a first instance criminal court (but could still be subject to appeal).
- If FRANET contactors have difficulties identifying cases decided by the first instance court, they should discuss with FRA the possibilities of presenting ongoing cases.
- All references to personal data or other data enabling the identification of the parties to the proceedings should be removed.

Member State case study/ media coverage #1		
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)	The case was not publicly referred to in any specific way.
2	Brief description of the case	On 9 August 2018, media reported that a woman, an owner of a beauty parlour, was arrested based on suspicions of theft and fraud. The headlines of the publications mentioned the suspected woman’s name and surname. The media reported that the court ordered a remand measure for the suspect – home arrest for two months. On 14 February 2020, a trial hearing was held, parts of which, upon the defendant’s request, were not public.
3	Timeline of events (briefly outline	09-08-2018. Media reports that a woman has been arrested based on theft and fraud suspicions.

	<p>major events in order to capture the nature of the case)</p>	<p>20-09-2018. The suspected woman submits a complaint to the Inspector of Journalist Ethics regarding several media outlets, claiming that they published information diminishing her reputation and degrading her honor and dignity.</p> <p>11-02-2019. Inspector for Journalist Ethics issues a decision that publications in several media outlets which reported of the arrest degraded the suspect's honor and dignity.</p> <p>27-01-2020. Media reports that the trial has started, but the accused could not attend the hearing due to personal reasons. The accused is still obliged to wear electronic tracking device as a remand measure.</p> <p>14-02-2020. Another trial hearing takes place, with the accused attending, however, part of the hearing takes place behind closed doors on the request of the accused. The accused refuses to answer questions from journalist.</p>
4	<p>Media coverage (how did the media refer to the suspects? How were the suspects presented, e.g. handcuffed, in prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>The publications in question were amended after the decision issued by the Inspector of the Journalist Ethics, however, the original publications included the following information:</p> <p>09-08-2018, „Arrested [name] [surname]: by (using) others' names withdrew thousands“, lrtytas.lt. The publication contained information from police and anonymous statements from alleged victims, such as „stole money from clients“, „15, 18 or 20 girls became victims in a similar way“, „pulled out passports, bank card from the handbag“, „withdrew 15 thousand euros from several banks. After a week, in some way again withdrew around 17 thousand euros“, „from another girl in the exact same way took, it seems, 12 thousand euros“.</p> <p>09-08-2018, „In Palanga, an owner of a beauty parlor [name] [surname] arrested on suspicions of fraud and theft“, 15min.lt. The publication contained the following statements: „defrauded her clients, stole money from employees“, „used other persons' IDs, passports, and has been going on vacations to friends“.</p> <p>09-08-2018, „Police arrested a well-known make up specialist because of thefts and fraud“, delfi.lt. The publication contained statements „stole“, „emptied bank accounts“.</p>

		The Inspector for Journalist Ethics found that the statements in the publications were not verified and were incriminating, therefore degraded the claimant's honour and dignity. The Inspector ordered the media outlets to publish a denial of the said statements.
5	Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)	The above mentioned publications contained a number of statements directly incriminating the suspect, without emphasizing that these were allegations made by the alleged victims. However, the Inspector for Journalist Ethics, although mentioning presumption of innocence in its decision, found that the statements in the publications were degrading the claimant's honour and dignity. Therefore, formally, even though the case clearly concerned presumption of innocence, the violation of presumption of innocence has not been established in this case.
6	Key consequences or implications of the case with regard to the presumption of innocence (with a focus on public reaction to publications in the media which might lead to a public debate)	There was no public reaction to the above mentioned publications. The only response was from the suspected person herself, who filed a complaint with the Inspector of Journalist Ethics.
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?	The case is currently being adjudicated by a first instance court.