

Chapter 21B

Lithuania

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I. Media Law

A. Sources

§ 1:1 Basic principles

In the Republic of Lithuania, the core principle of Media law is the right of an individual to seek, obtain, and disseminate information and ideas without any interference. This right, however, may not restrict the rights and freedoms of other individuals.¹ This right applies to all interferences, whether by state actors or non-state actors. Also, the Constitution provides that the freedom to express one's convictions and to impart information does not include freedom to engage in criminal actions like the incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.² Generally, the government may not restrict the right to express one's convictions and to obtain and disseminate information except if necessary to protect human rights, health, honor and dignity, private life, or community morals, or to defend the constitutional order. Another important principle is that government censorship of mass media is prohibited in Lithuania.³

§ 1:2 Constitutional sources

As in the most countries, the Lithuanian Constitution is the country's primary source of law.⁴ The Constitution has priority over all legislation adopted by the Lithuanian Parliament Seimas. Chapter II of Lithuania's Constitution grants basic human rights, such as the right of expression,⁵ the right to seek, receive and impart information and ideas,⁶ freedom of thought,

¹ Constitution of Lithuania. Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992 (hereinafter referred to as Lithuanian Constitution) Article 25 *"The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas. Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a human being, or to defend the constitutional order. Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation. The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions."*

² Constitution of Lithuania. Article 25 as above.

³ Constitution of Lithuania. Article 44 *"Censorship of mass information shall be prohibited. The State, political parties, political and public organizations, and other institutions or persons may not monopolize the mass media."*

⁴ Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992.

⁵ Constitution of Lithuania. Article 25.

⁶ Constitution of Lithuania. Article 25.

conscience, and religion.⁷ However, these rights are not without some limitations; rather, the government may hinder citizens from seeking, receiving or imparting specific information by the law. Generally, the Lithuanian Constitution protects human honor, dignity, and privacy.⁸ According to this constitutional provision, the press and mass media are prohibited from dishonoring any natural person. Specifically, Article 22 of the Lithuanian Constitution states that the law and the courts will protect everyone from arbitrary or unlawful interference in their private and family lives and from encroachment upon their honor and dignity. Various legal interpretations exist with regard to the encroachment of one's honor and dignity. However, precise grounds of responsibility for damage are not fully set in Lithuanian laws and practice. The court's judgment in the matter of defamation plays an important role due to the fact that a person may be found guilty of a crime and labelled a "criminal." If a person is so labelled without a relevant court decision, it constitutes dishonor and defamation. The Criminal Code of Lithuania prohibits defaming any person.⁹

It is also important to note that both civil and penal laws define the kind of information that is degrading to human honor and dignity, and there is no considerable difference in the substantive definition between the two bodies of law. However, the methods and procedures of defense in both cases are different. Therefore, it is crucial to determine whether penal or civil laws will be applicable in particular case.

§ 1:3 Codified sources

The main codified source in Lithuania that regulates the rights and restrictions of press and mass media is the Law on the Provision of Information to the Public, which governs

⁷Constitution of Lithuania. Article 26 "*Freedom of thought, conscience and religion shall not be restricted. Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief. No one may compel another person or be compelled to choose or profess any religion or belief. Freedom of a human being to profess and spread his religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, the public order, the health and morals of the people as well as other basic rights and freedoms of the person. Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.*"

⁸"*The private life of a human being shall be inviolable.*" - Constitution of Lithuania. Article 22.

"*Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a human being, or to defend the constitutional order.*" - Constitution of Lithuania. Article 25.

⁹Criminal Code of Lithuania, No. VIII-1968 (hereinafter referred to as Criminal Code), *Article 154.*

producers and disseminators of public information.¹⁰ Journalists are also governed in their activities by the Constitution and laws, international treaties of the Republic of Lithuania, and the principles of humanism, equality, tolerance, and respect for an individual person. In particular, journalists must respect freedoms of speech, creativity, religion, and conscience, and variety of opinion; adhere to the norms of professional ethics of journalists; support the development of democracy and public openness; promote civil society and state progress; enhance state independence; and develop national culture and morality.¹¹

The second important codified source concerning Media Law is The Civil Code of Lithuania.¹² The Civil Code of Lithuania regulates the right to a private life of the natural person (Article 2.23) as well as the protection of the person's honor and dignity (Article 2.24). Generally speaking, the Civil Code of the Republic of Lithuania governs property relationships and personal, non-property relationships, as well as family relationships. Additionally, the provisions established by the Civil Code apply to property relationships based on the legal subordination of persons to state institutions and directly result from their exercise of functions of state power (realization of subordination), or from the performance of persons' obligations towards the state established by laws or from the infliction of administrative or criminal sanctions established by laws. This includes relationships in the field of taxation and other obligatory payments or dues to the state or to its institutions, the state budget, and any other relationships governed by the provisions of public law to the extent that these relationships are not regulated by the relevant laws.

The Labour Code of the Republic of Lithuania¹³ is one of most influential codified sources of Media law in Lithuania. Article 35 requires employers, employees, and their representatives to comply with laws, observe the rules of communal life, and adhere to the principles of reasonableness, justice and honesty.

¹⁰ *This Law shall establish the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers, disseminators, participants therein, journalists and institutions governing their activities.*” Law on the Provision of Information to the Public. Article 1.

¹¹ The Law on the provision of information to the public. 2 July 1996 No. I-1418 (hereinafter referred to as the Law on the Provision of Information to the Public) Article 3.

¹² The Civil Code of Lithuania. 18 July, 2000 No. VIII-1864 (hereinafter referred to as Civil Code), Article 4.

¹³ The Labour Code of Lithuania 2002 June 4 d. Nr. IX-926 (hereinafter referred to as Labour Code).

The Law to Obtain Information from State and Municipal Institutions and Bodies guarantees individuals the right to receive information from government institutions and agencies and establishes procedures for implementing this law.¹⁴

The Law on Copyright and Related Rights regulates authors' rights in literary, scientific and artistic works, the rights of performers, producers, and broadcasting organizations in the first fixation of an audiovisual work, and the rights of makers of databases in their work.¹⁵ The Act also governs how authors may exercise and enforce their statutory rights.¹⁶

The Law on the Protection of Minors Against Detrimental Effect of Public Information establishes the criteria of public information, which might cause physical, mental or moral detriment to the development of minors, the procedure of making available to the public and dissemination thereof and also, the rights, obligations and liability of the producers, disseminators and their owners, journalists and institutions regulating their activities.¹⁷

The Law on Advertising regulates the dissemination of information about goods and services, the protection of consumer interests, and the protection from unfair business competition.¹⁸ Specifically, the Law on Tobacco Controls regulates the growing of tobacco, governs the manufacture, marketing, storing, transport, introduction, import, advertising, consumption, promotion and sponsorship of the acquisition and consumption of tobacco products and establishes the principles of State control of tobacco in the Republic of Lithuania.¹⁹ Similarly, the Law on Alcohol Control restricts the commercial promotion and advertisement of the sale of alcoholic beverages.²⁰

While not vested with the power of law, the Code of Ethics of Lithuanian Journalists and Publishers is another valuable source of regulations in Media Law. According to the Code of

¹⁴ The Law to obtain information from state and municipal institutions and bodies, 10 November, 2005. Article 1.

¹⁵ *The Law on Copyright and Related Rights. Article 1* "This law shall regulate: 1) copyright in literary, scientific and artistic works (copyright); 2) the rights of performers, producers of phonograms, broadcasting organizations and producers of the first fixation of an audiovisual work (film) (related rights); 3) the rights of makers of databases (*sui generis* rights); 4) exercise, collective administration and enforcement of copyright and related rights, as well as the exercise and enforcement of *sui generis* rights. 2. The provisions of this Law are harmonized with the legal acts of the European Union specified in the annex of this Law."

¹⁶ The Law on Copyright and Related Rights. 18 May 1999 No. VIII-1185 (hereinafter referred to as The Law on Copyright and Related Rights), Article 1.

¹⁷ The Law on the Protection of Minors Against Detrimental Effect of Public Information, September 10, 2002. No. IX – 1067, (hereinafter referred to as The Law on the Protection of Minors Against Detrimental Effect of Public Information), Article 1.

¹⁸ Law on Advertising. July 18, 2000. No. VIII-1871, (hereinafter referred to as the Law on Advertising), Article 3.

¹⁹ The Law on Tobacco Control. 1995 December 20. No. I – 1143, (hereinafter referred to as The Law on Tobacco Control) Article 1.

²⁰ The Law on Alcohol Control. 1995 April 18th Nr. I-857 (hereinafter referred to as the Law on Alcohol Control) Article 1.

Ethics of Lithuanian Journalists and Publishers, accession and dissemination of information is one of the fundamental human rights and must be respected, but its implementation must guarantee all other rights and freedoms. In view of the human rights inherent in those interactions, it is necessary to constantly seek the correct balance.²¹ Additionally, information must not be considered as a purchase and may not be bought or sold using money.²² Moreover, journalists must be sure that the information they are spreading is undoubtedly correct.²³

§ 1:4 Case law sources

Lithuania's laws are steeped in the legal tradition of continental Europe. Lithuanian courts, however, have enjoyed more influence on the country's legal system for the past few years. In Media Law, the Supreme Court of Lithuania established several important precedents regarding the rights and restrictions of the press. For instance, S.Đ & V.Đ v. "Lietuvos Rytas"²⁴ (the daily Lithuanian newspaper), the plaintiff alleged that the defendant breached its right to privacy, and the Supreme Court held that information about a person's private life may be published only with his or her oral or written consent. The Court reasoned that, doctrinally, the protection of privacy means that a person has the right to decide what information about his or her private life is publicly disclosed. Practitioners should note that the existence or absence of a consent agreement is an issue of fact that must be considered on a case-by-case basis. In A.S. v. UAB "Šilo bitė,"²⁵ the plaintiff brought a defamation claim against the defendant newspaper. The defendant argued that the information was just an opinion, and the Supreme Court of Lithuania clarified that the information provided in mass media should be judged whether the statements are based on facts and data or whether it is only a subjective opinion. In this case, the plaintiff asked the media defendant to deny all of the slanderous information, publicly apologize,

²¹ Code of Ethics of Lithuanian Journalists and Publishers, 2005 April, Article 1 "*The opportunity to receive and disseminate information, as one of the universal fundamental freedoms, shall be respected, but implementation thereof must ensure all other human rights and freedoms. Proper balance of the mentioned human rights shall be sought in view of the interaction of these rights.*"

²² Code of Ethics of Lithuanian Journalists and Publishers, 2005 April, Article 2 "*Organizers of public information should not consider information to be their own property or merchandise. The freedom of information is incompatible with buying information for money or other consideration unless this information is clearly published as commercials and/or advertising.*"

²³ Code of Ethics of Lithuanian Journalists and Publishers, 2005 April, Article 3 "*Respecting the human right to obtain truthful information, the journalists and public information organizers shall propagate true and correct news as well as a full range of opinions. While conveying diverse opinions, the journalists and public information organizers shall not disseminate opinions which are in breach of law and ethics.*"

²⁴ The Supreme Court of Lithuania Civil case number 3K-7-2/2008.

²⁵ The Supreme Court of Lithuania Civil case number 3K-3-193/2007.

and pay moral compensation of 10.000 litas. The plaintiff received the denial as well as the public apology, but the application for the moral compensation was rejected.

B. Regulatory Framework

§ 1:5 For publishing industry

Law of the Provision of Information to the public, the Law on Advertising and the Law on Copyright and Related Rights are the seminal pieces of legislation for Lithuania's publishing industry. The Law of the Provision of Information to the Public establishes the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers, disseminators, participants therein, journalists and institutions governing their activities.²⁶ The purpose of the Law on Advertising is to improve consumer information concerning goods and services, protect consumer interests, protect the freedom of honest competition, and create conditions for the development of advertising activity.²⁷ The Law on Tobacco Controls²⁸ and the Law on Alcohol Control²⁹ regulate the advertisement of tobacco and alcohol in the press. The purpose of the Law on Alcohol Control is to reduce the general consumption of alcohol, its availability, especially to minors, alcohol abuse, the damage caused by alcohol consumption to health and the economy and to establish the legal principles of granting economic entities the right to manufacture, sell, bring in, import and export the alcohol products. Practitioners should be aware of the fact that advertising of alcohol is prohibited in Lithuania, as stated in the Article 29 of the Law on Alcohol Control.³⁰ Generally, advertising of alcohol is understood as the information which is disseminated in any

²⁶ Law of the Provision of Information to the public. Article 1.

²⁷ Law on Advertising Article 1.

²⁸ The Law on Tobacco Control. Article 17.

²⁹ The Law on Alcohol Control. Article 29.

³⁰ The Law on Alcohol Control, Article 29, 1) on the outside covers of newspapers and independent supplements thereof, also outside covers of journals and books;2) in the newspapers, journals, books, television and radio programs aimed at children and adolescents;3) in programs broadcast by the broadcasters and re-broadcasters under the jurisdiction of the Republic of Lithuania, being broadcast from 6:00 to 23:00 (except for the international art, cultural or sports events broadcast or rebroadcast directly or continuously);4) at concerts, circus, discotheques, youth sport and leisure time events, other mass events, theatre presentations, movie and video film demonstration locations, except for the retail outlets located at sites of such events. At mass events (except for events intended for children and adolescents of up to 18 years of age) the name and (or) trade mark of the undertaking which is sponsoring the event and is the producer and seller of alcoholic beverages whose sales are permitted at mass events, may also be displayed provided that by their content and form they do not contradict the requirements of legal acts; 5) at education, science and training institutions;6) at all healthcare institutions;7) inside and outside of means of public transport;8) at petrol stations and areas thereof, except for the alcohol retail outlets located there;9) on postcards, envelopes and postage stamps.

form and through any means and that is connected with the commercial, economic and financial activities of undertakings and promotes the acquisition or consumption of alcohol products.

§ 1:6 For broadcasting industry

Like the publishing industry, the broadcasting industry is subject to the Law of the Provision of Information to the Public, which establishes the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers, disseminators, participants therein, journalists and institutions governing their activities.³¹ It is important to note that this law conforms to European Union legislation. This law also defines “broadcasting” as the production of programs and their initial transmission to the public by any type of terrestrial transmitter, cable, satellite or any other electronic communications network. It does not include communication services providing items of information, such as telescoping, electronic data banks or the like, or other messages on individual demand of a service recipient. Article 4 of this law states that every person has the right to freely express his or her ideas and convictions and that this right encompasses the freedom to maintain one’s opinion and to seek, receive and disseminate information and ideas in accordance with the conditions and procedure set out in the laws. The law further guarantees the unrestricted reception and re-broadcasting of television programs from EU member states and other European countries that have ratified the Council of Europe Convention on Transfrontier Television, broadcast in accordance with the requirements laid down in international treaties of Lithuania. It also provides that every person has the right to publish broadcasts or published works using his or her own name, pseudonym or anonymously. Broadcasting and re-broadcasting activities in the Lithuania must be licensed, except for the broadcasting of radio programs through electronic communications networks the main purpose of which is not program broadcasting and/or re-broadcasting and the broadcasting carried out by natural persons for non-commercial purposes through such networks. Persons who wish to engage in broadcasting and/or re-broadcasting activities must obtain a broadcasting/re-broadcasting license. Broadcasting and re-broadcasting licenses granting the right to establish and operate their own electronic communications networks, the right to use their own electronic communications networks for the broadcasting and/or re-broadcasting of programs, or the right to use the

³¹ The Law of the provision of information to the public. 1996 July 2; Article 1.

transmission services provided by a third party will be issued by the Radio and Television Commission in Lithuania.

In an effort to improve consumer information concerning goods and services, the Advertisement Law protects consumer interests and the freedom of honest competition and creates conditions for the development of advertising activity. This Law also establishes the requirements of the use of advertising, the liability of operators of advertising activity, and the legal basis for the control of advertising use in Lithuania.³² The law further states that advertising must be proper, accurate and clearly recognizable.

The Law on Copyright and Related Rights regulates the rights of performers, producers of phonograms, broadcasting organizations and producers of the first fixation of an audiovisual work,³³ and the Law on Tobacco Control³⁴ controls how tobacco may be shown in public broadcasts. Law on Tobacco Control³⁵ and the Law on Alcohol Control³⁶ regulate the advertisement of tobacco and alcohol. The Law on Tobacco Control regulates all facets of the tobacco industry, including the growing, manufacture, and marketing of the products.³⁷ Also, one of Lithuania's most important legal acts for the broadcasting industry is the Law on Electronic Communications, which regulates social relations pertaining to electronic communications services and networks, associated facilities and services, the use of electronic communications resources as well as social relations pertaining to radio equipment, terminal equipment, and electromagnetic compatibility.³⁸ This statute sets Tasks and Functions of the Government or Government Authorized Institution in the Field of Electronic Communications, among which the government approves the National Radio Frequency Allocation Table and the Strategy for Assigning Radio Frequencies to Broadcast and Transmit Radio and Television Programs. It also provides the rule that the Radio and Television Commission, together with Communications Regulatory Authority, makes the decisions related to the licensing of broadcasting/re-broadcasting activities. The law also establishes the Assignment and Use of

³² The Law on Advertising, 2000 July 18, Article 1.

³³ The Law on Copyright and Related Rights. 1999 May, 18; Article 1.

³⁴ The Law on Tobacco Control. Article 1.

³⁵ The Law on Tobacco Control. Article 17.

³⁶ The Law on Alcohol Control. Article 29.

³⁷ The Law on Tobacco Control. Article 1.

³⁸ The Law on Electronic Communications. Article 1 and 2.

Radio Frequencies (Channels) to Broadcasting and Transmission of Radio and Television Programs.³⁹

§ 1:7 For online services

Online services are subject to several pieces of legislation, including the Law of the Provision of Information to the Public⁴⁰ and the Law on Copyright and Related Rights.⁴¹ These laws regulate what kind of information and how that information may be published, including through online services. For example, the Law on Copyright and Related Rights grants the economic rights of authors. The author has the exclusive right to authorize or to prohibit broadcasting, retransmission of a work, as well as communication to the public of a work in any other way, including the public distribution of a work over computer networks (on the Internet). In the case of broadcasting, retransmission or another communication to the public of the work, including the public distribution of the work by means of computer networks (on the Internet), the author is entitled to receive a remuneration for both the broadcasting, retransmission or another communication to the public of a direct (live) performance of the work, and for the use of a phonogram or audiovisual fixation.⁴² Another piece of legislation with regard to this issue is the Law on Electronic Communications, which regulates social relations pertaining to electronic communications services and networks, associated facilities and services, use of electronic communications resources as well as social relations pertaining to radio equipment, terminal equipment, and electromagnetic compatibility.⁴³ Additionally, the law states that the regulation of electronic communications activities is based on the principles of effective management and use of limited resources, technological neutrality, functional equivalence, proportionality,

³⁹ Law on Electronic communications, Article 49 “*Radio frequencies (channels) shall be assigned to broadcast and transmit radio and television programs and shall be used according to the Strategic Plan approved by the Communications Regulatory Authority and the Radio and Television Commission of Lithuania. Radio frequencies (channels), which are designated in the Strategic Plan for analogue terrestrial radio and/or television, shall be assigned to broadcasters and/or re-broadcasters possessing a license issued by the Radio and Television Commission of Lithuania granting the right to establish and operate their own electronic communications networks as well as to transmission providers. Other radio frequencies (channels), which are designated in the Strategic Plan for radio and/or television, shall be assigned to transmission providers. The general procedure and conditions for using and assigning radio frequencies (channels) set out in this Law shall be applied with respect to the assignment*” and use of radio frequencies (channels) to broadcasting and transmission of radio and television programs to the extent that this Article does not establish otherwise.

⁴⁰ The Law of the provision of information to the public. 1996 July 2.

⁴¹ The Law on Copyright and Related Rights. 1999 May, 18.

⁴² The Law on Copyright and Related Rights. 1999 May, 18; Article 15.

⁴³ The Law on Electronic Communications, 15 April 2004 No. IX-2135 (hereinafter referred to as the Law on Electronic Communications), Article 1.

minimal necessary regulation, legal certainty in a dynamic market, economic development, ensuring effective competition, consumer rights protection, objectivity of regulatory criteria, conditions and procedures, transparency, and non-discrimination.⁴⁴

§1:8 Regulators and their core competencies

The press must comply with several laws to avoid legal liability in their publishing work, and are generally regulated by the Ethics Commission of Journalists and Publishers, which examines the violations of regulations committed in the course of providing information to the public. The Inspector of Journalist Ethics, a state officer appointed by the Lithuanian Parliament on the proposal of the Ethics Commission of Journalists and Publishers, investigates citizens' complaints that concern violations of their honor and dignity in the mass media and the professional claims of the subjects of mass media.⁴⁵ Radio, television and cable stations—with the exception of the national radio and television—must be licensed to lawfully operate. The Radio and Television Commission issues terminable licenses to radio and television stations for the transmission and relay of programs. The Commission creates regulations that address programs' contents, production and technical requirements, the number of required licenses, and fees. The Commission is the “watchdog” of any program's content, and the Commission recently imposed a warning to the “LNK” television for inappropriate content in one program. According to the Commission, “LNK” television breached The Law on the Protection of Minors Against Detrimental Effect of Public Information while translating the erotic content in the show (the show was broadcasted at 22:40). According to the statute, this kind of content may be shown only after 23:00 with a special sign “S” that indicates that the program is especially for adults. However, “LNK” television included the sign “N-14” that indicates that the program is appropriate for persons over 14 years old.

§1:9 Public sector in the media industry

Lithuania has established its own national television station—“Lietuvos televizija,” which includes LTV and LTV2 channels; and national radio station—“Lietuvos radijas,” which includes “Lietuvos radijas,” “Klasika,” and “Opus 3” radio channels. Lithuanian television and

⁴⁴ The Law on Electronic Communications, Article 2.

⁴⁵ The Law of the provision of information to the public

radio are financed from the state budget, and the Radio and Television Commission supervises their activities. Even though the state controls these stations, it generally does not intervene or censor content unless the programming threatens public morality.

§ 1:10 Split of legislative/regulatory authority between the federal government and individual states

Lithuania's government consists of three branches: legislative, executive and judicial. The legislative power, the power to make laws, generally rests with the Parliament of Lithuania (Seimas). However, Lithuania has some characteristics of a "semi-presidential republic"; therefore, some of the legislative powers are delegated to the executive branch of government. These three branches are tightly bound to one another in a so-called brakes and counterbalance system, where all of these powers are responsible to each other. In the context of media law, the Lithuanian parliament may propose acts of law regarding media law, and the president may sign the bill or reject it for further corrections. Lithuanian government may form the budget for the national translator. As for the judicial part of the government, it may analyze the cases regarding media law.

C. Defamation

§ 1:11 Main sources of law

Lithuania's Criminal Code and Civil Code govern defamation causes of action. Criminal defamation in mass media cases allows the government to arrest a violator for up to 2 years imprisonment, penalize with a fine, or punish with forced labor.⁴⁶ It is similar with the civil procedures.⁴⁷ If a person suffered from another's defamatory acts, he or she may bring a civil action to ask for the recall of the published information, require a public apology, or demand compensation.⁴⁸ As for the civil provisions, the defendant may be found guilty and would have to pay a moral compensation to the plaintiff. As for the criminal provisions, the plaintiff could be fined, arrested, or imprisoned for two years.

⁴⁶ Criminal Code of Lithuania. Article 154.

⁴⁷ Civil Code of Lithuania. Article 2.24.

⁴⁸ Civil Code of Lithuania Article 2.24.

The Civil Code of the Republic of Lithuania⁴⁹ states that a person has the right to demand refutation in judicial proceedings of the publicized data, which abase his or her honor and dignity and which are erroneous, as well as redress of the property and non-pecuniary damage incurred by the public announcement of the data. After a person's death, this right is passed on to his or her spouse, parents and children if the public announcement of erroneous data about the deceased person abases their honor and dignity as well. The data, which were made public, is presumed to be erroneous as long as the person who publicized them proves the opposite. If the erroneous data were publicized by a mass medium (press, television, radio etc.), the person about whom the data was publicized has the right to file a refutation and demand the given mass medium to publish the refutation free of charge or make it public in some other way. The mass medium will have to publish the refutation or make it public in some other way in the course of two weeks from its receipt. The mass medium will have the right to refuse to publish the refutation or make it public only in such cases where the content of the refutation contradicts good morals.

Additionally, the request to redress the property or non-property non-pecuniary damage is investigated by the court irrespective of the fact whether the person who has disseminated such data refuted them or not. Where a mass medium refuses to publish the refutation or make it public in some other way or fails to do it in the term, the person gains the right to apply to court. The court will establish the procedure and the term for the refutation of the data, which were erroneous or based other person's reputation. The mass medium, which publicized erroneous data abasing a person's reputation will have to redress property and non-pecuniary damage incurred by the person only in those cases when it knew or had reason to know that the data were erroneous and in those cases where the data were made public by its employees or the data was made public anonymously and the mass medium refuses to name the person who supplied the data.

The person who made a public announcement of erroneous data will be exempted from civil liability in cases when the publicized data is related to a public person and his or her state or public activities and the person who made them proves that his or her actions were in good faith and meant to introduce the person and his or her activities to the public. Where the court judgment that requires the refutation of erroneous data abasing person's honor and dignity is

⁴⁹ Civil Code of Lithuania. Article 2.24.

not executed, the court may issue an order to recover a fine from the defendant for each day of default. The amount of the fine is established by the court. It is recovered for the benefit of the defendant irrespective of the redress for the inflicted damage. It is crucial to note that the same rules are applicable to legal persons as well.

§ 1:12 Definition and significant subdivisions

According to the Criminal law, defamation is divided into libel⁵⁰ and insult.⁵¹ Libel occurs when a person spreads false information about another person that could arouse contempt for this person or humiliate him or her or undermine trust in him or her. This person may be punished by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to one year. Libel may also arise when person accusing another of committing a serious or grave crime or in the media or in a publication. If found guilty, a person is punished by a fine, by arrest, or by imprisonment for a term of up to two years. In both cases, the offender will be held liable for the acts provided for in a complaint filed by the victim or a statement by his or her authorized representative or at the prosecutor's request.

The second subdivision of defamation in the Criminal Code is the insult. Insult occurs when a person publicly humiliates a person in an abusive manner by an action, word of mouth, or in writing. This person may be punished by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to one year. The Lithuanian Criminal Code also foresees the situation when a person insults another in a non-public manner and is considered to have committed a misdemeanor. In this instance the person may be punished by community service, by a fine, or by arrest. In both of the situations of insult, a person may be held liable for the acts provided for in a complaint filed by the victim or a statement by his or her authorized representative or at the prosecutor's request.

Civil law, however, divides defamation into humiliation of a person's reputation⁵² or infringing another's honor and dignity.⁵³ The elements of the humiliation of a person's reputation are considered to be humiliation involving ones work, career, or profession. As for

⁵⁰ Criminal Code of Lithuania, Article 154.

⁵¹ Criminal Code of Lithuania, Article 155.

⁵² Civil Code of Lithuania . Article 2.24.

⁵³ Civil Code of Lithuania . Article 2.24.

the honor and dignity, it is considered to be more personal elements - defamation of a person's personal life - honor and dignity.

§ 1:13 Main factors or elements of claim

Under civil law, the defendant bears the burden of proof in a defamation case: the data, which were made public, will be presumed to be erroneous as long as the person who publicized them proves the opposite.⁵⁴ For a civil defamation action to succeed, the information must have been published (i.e., broadcasted to at least one other person), and it must be defamatory (i.e., infringing another person's honor and dignity).⁵⁵ For the criminal defamation action, it is necessary to show that a person spread false (not conforming the real facts) information that humiliates another person, or accused another person of committing a serious or grave crime (it may also be done through media or publication). In order to prove the insult, it is necessary to show that a person humiliated another person by action or by word or in writing and made it publically. If the "publically" element is not met, the person may expect a smaller fine.

§ 1:14 Types of relief available

If a person suffered from another's defamatory acts, he or she may bring a civil action to ask for the recall of the published information, require a public apology, or demand compensation.⁵⁶ A person, found guilty of defamation could be fined, arrested, or imprisoned for up to two years.⁵⁷

§1:15 Defenses available

Defendants have the power of Constitutional principles as their defenses, including the freedom of speech and expression. The court may also consider the public need for the information, such as the fact that the person is an important political figure or whether the information is true or merely an opinion. When in early 2009 the official statement was issued that recent President of Republic of Lithuania was connected with KGB, the President issued the official statement on its falsity and settled the issue through open dialog with the community.

⁵⁴ Civil Code of Lithuania. Article 2.24, par 1.

⁵⁵ Civil Code of Lithuania. Article 2.24.

⁵⁶ Civil Code of Lithuania. Article 2.24.

⁵⁷ Criminal Code of Lithuania, Article 154, 155.

However, if the person is a political figure, there is a social need for some information about the person. During the trial, the defendant bears the burden of proof on the issue of whether the statement was true or false: the data, which were made public, will be presumed to be erroneous as long as the person who publicized them proves the opposite.⁵⁸ However, the Court must assess whether the publication of the information breaches the plaintiff's expectations of privacy. The Lithuanian Criminal Code⁵⁹ prohibits the unlawful collection of information about a person's private life; therefore, if it is proved that a person (legal or natural) unlawfully collected information, he or she may be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to three years. The Lithuanian Civil Code also establishes the right of Privacy and Secrecy of the person. The Code further states that the privacy of natural person is inviolable. Information regarding a person's private life may be made public only with his or her consent. After a person's death, the consent may be given by the deceased's spouse, children and parents.⁶⁰

§ 1:16 Time period for asserting claim

According to the Civil Code,⁶¹ the statute of limitations for a defamation action is three-years. The time period for asserting a criminal claim is two years after the date of the defamation itself. Prescription starts its run from the day that the right to bring an action may be enforced. The right to bring an action arises from the day that a person becomes aware or should have become aware of the violation of his or her right.⁶²

D. Invasion of Privacy

§ 1:17 Main sources of law

According to Lithuania's Constitution⁶³, Civil Code⁶⁴ and Criminal Code⁶⁵ the private life of a human being is inviolable. Therefore, those legal acts are considered the main domestic sources of law with regard to Invasion of Privacy.

⁵⁸ Civil Code of Lithuania. Article 2.24.

⁵⁹ Article 167.

⁶⁰ Civil Code of Lithuania, article 2.23.

⁶¹ Civil Code of Lithuania . Article 1.125.

⁶² Civil Code of Lithuania . Article 1.127.

⁶³ Constitution of Lithuania. Article 22.

⁶⁴ Civil Code of Lithuania .Article 2.23.

⁶⁵ Criminal Code of Republic of Lithuania Article 165-168.

The Lithuanian Constitution states that personal correspondence, telephone conversations, telegraph messages, and other communications are inviolable. Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law. The law and the court will protect everyone from arbitrary or unlawful interference in his or her private and family life and from encroachment upon his or her honor and dignity.⁶⁶ The home of a human being is also inviolable. Without the consent of the resident, entrance into his or her home is not permitted except if by a court decision or the procedure established by law when this is necessary to guarantee public order, apprehend a criminal, or save the life, health, or property of a human being⁶⁷

The right of privacy and secrecy is also consolidated within Civil Code of the Republic of Lithuania. The law states that privacy of natural person is inviolable. The law further explains that information about a person's private life may be made public only with his or her consent. After a person's death, the consent may be given by the deceased's spouse, children and parents. Unlawful invasion of a person's dwelling or other private premises as well as fenced private territory, keeping his or her private life under observation, unlawful search of the person or his or her property, intentional interception of a person's telephone, post, or other private communications violation of the confidentiality of his or her personal notes and information, publication of the data on the state of his or her health in violation of the procedure prescribed by laws and other unlawful acts is deemed to violate a person's private life.⁶⁸ Additionally, the establishment of a file on another person's private life in violation of law is prohibited. A person may not be denied access to the information contained in the file except as otherwise provided by the law. Dissemination of the collected information on the person's private life will be prohibited unless, taking into consideration person's official post and his or her status in the society, dissemination of the information is in line with the lawful and well-grounded public interest to be aware of the information. It is crucial to note that the Lithuanian Civil Code states that the public announcement of facts about someone's private life, however truthful they may be, as well as making private correspondence public and the invasion of a person's dwelling without his or her consent except as otherwise provided by the law, keeping his or her private life under observation or gathering of information about him or her in violation of law and other

⁶⁶ Constitution of the Republic of Lithuania, Article 22.

⁶⁷ Constitution of the Republic of Lithuania, Article 24.

⁶⁸ Civil Code of Lithuania .Article 2.23.

unlawful acts, and infringing the right to privacy will form the basis for bringing an action for repairing the property and non-pecuniary damage incurred by the acts.⁶⁹ Those rules are applicable to all cases except where the acts are committed on the basis of reasoned judgment of the court.⁷⁰

The Criminal Code of the Republic of Lithuania also prohibits the invasion of a person's privacy. The Code states that a person who unlawfully, in a secret or open manner, by resorting to deceit or violence or otherwise against the will of an owner or the persons authorized by him or her, intrudes into another person's residential house, apartment or other residential premises or fixtures thereof, including the dwelling's guarded territory, is to be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to two years.⁷¹ A person will be held liable for acts in a complaint filed by the victim or a statement by his or her authorized representative or at the prosecutor's request. The Criminal Code also establishes the rules for the violation of the inviolability of a person's correspondence. The code provides that a person who unlawfully intercepts a postal item or package sent by post or via a provider of courier services, unlawfully intercepts, records, observes a person's messages transmitted by electronic communications networks, unlawfully records, wiretaps or observes a person's conversations transmitted by electronic communications networks, or otherwise violates the inviolability of a person's correspondence will be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to two years. This also applies to a legal entity that may be held liable.⁷² The Lithuanian Criminal Code states that a person who unlawfully collects information about a person's private life will be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to three years. This rule also applies to a legal entity.⁷³ According to the Lithuanian Criminal Code, a person who, without another person's consent, makes public or uses for his or her own benefit or for the benefit of another person information about the private life of another person, where he or she gains access to that information through his or her service or profession or in the course of performance of a temporary assignment or he or she collects it through the commission of an act will be punished by community service, by a fine, by restriction of liberty,

⁶⁹ Civil Code of Lithuania. Article 2.23.

⁷⁰ Civil Code of Lithuania. Article 2.23.

⁷¹ Criminal Code of Lithuania, Article 165.

⁷² Criminal Code of Lithuania, Article 166.

⁷³ Criminal Code of Lithuania, Article 167.

by arrest, or by imprisonment for a term of up to three years. This rule also applies to a legal entity.⁷⁴ A person may be held liable only subject to a complaint filed by the victim or a statement by his or her authorized representative or at the prosecutor's request.

These rights are constitutional, so other laws are built on the mentioned rights. Also, Lithuania has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and agreed to observe internationally binding provisions that prohibit improper invasions of privacy.

§ 1:18 Definition and significant subdivisions

An invasion of privacy is an illegal entrance into a residence or private, fenced area; illegal surveillance; illegal search of property, telephone calls, correspondence, and other confidential information; or the illegal publishing of personal, health-related data.⁷⁵ The Lithuanian Civil Code states that the following acts will form the basis for bringing an action for repairing the property and non-pecuniary damage incurred by these acts: (i) a public announcement of facts of private life, however truthful they may be, (ii) well as making private correspondence public and invasion of a person's dwelling without his or her consent—except as otherwise provided by the law, (iii) keeping his or her private life under observation, (iv) gathering of information about him or her in violation of law, and (v) other unlawful acts, infringing the right to privacy.⁷⁶

§ 1:19 Main factors or elements of claim

The right of privacy and secrecy is consolidated within Civil Code of the Republic of Lithuania as well as in the Criminal Code.

The Civil Code highlights the main factors and elements of the claim. The Civil Code explains further that information on a person's private life may be made public only with his or her consent. Therefore, a person's consent is one of the main elements of the claim. After person's death, the consent may be given by deceased's spouse, children and parents. Unlawful invasion of person's dwelling or other private premises as well as fenced private territory, keeping his or her private life under observation, unlawful search of the person or his or her

⁷⁴ Criminal Code of Lithuania, Article 168.

⁷⁵ Civil Code of Lithuania. Article 2.23.

⁷⁶ Civil Code of Lithuania. Article 2.23.

property, intentional interception of person's telephone, post or other private communications as well as violation of the confidentiality of his or her personal notes and information, publication of the data on the state of his or her health in violation of the procedure prescribed by laws and other unlawful acts are deemed to violate a person's private life.⁷⁷ It is important to note that such invasion must certify the illegality criteria. Therefore, if the police perform an invasion with the permission of a motivated court judgment, such an invasion is not considered a breach of a person's right to privacy and secrecy. Additionally, establishing a file on another person's private life is prohibited. A person may not be denied access to the information contained in the file except as otherwise provided by the law. Dissemination of the collected information on the person's private life is prohibited unless, after taking into consideration the person's official post and his or her status in the society, dissemination of the information promotes the lawful and well-grounded public interest in the information. The Lithuanian Civil Code states that the public announcement of facts of private life, however truthful they may be, making private correspondence public, the invasion of person's dwelling without his or her consent except as otherwise provided by the law, keeping his or her private life under observation or gathering of information about him or her in violation of law, and other unlawful acts that infringe the right to privacy will form the basis for bringing an action for repairing the property and non-pecuniary damage incurred by the acts.⁷⁸ These rules are applicable to all cases except where the acts are committed on the basis of reasoned judgment of the court.⁷⁹

The Criminal Code of the Republic of Lithuania also prohibits the invasion of a person's privacy. The Code states that a person who unlawfully, in a secret or open manner, by resorting to deceit or violence or otherwise against the will of an owner or the persons authorized by him or her, intrudes into another person's residential house, apartment or other residential premises or fixtures thereof, including the dwelling's guarded territory, is be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to two years.⁸⁰ This forms the necessary criteria for the claim, which includes unlawful invasion to person's residential house, apartment or other residential premises or fixtures thereof, including the dwelling's guarded territory against the will of the owner. A person will be held liable for an act

⁷⁷ Civil Code of Lithuania .Article 2.23.

⁷⁸ Civil Code of Lithuania. Article 2.23.

⁷⁹ Civil Code of Lithuania. Article 2.23.

⁸⁰ Criminal Code of Lithuania, Article 165.

filed by the victim or a statement by his or her authorized representative or at the prosecutor's request.

The Criminal Code also establishes the rules for the violation of the inviolability of a person's correspondence. The code provides that a person who unlawfully intercepts a postal item or package sent by post or via a provider of courier services or unlawfully intercepts, records or observes a person's messages transmitted by electronic communications networks or unlawfully records, wiretaps or observes a person's conversations transmitted by electronic communications networks or otherwise violates inviolability of a person's correspondence will be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to two years. This also applies to a legal entity, which may be held liable.⁸¹ The Lithuanian Criminal Code states that a person who unlawfully collects information about a person's private life will be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to three years. This rule also applies to a legal entity.⁸² Additionally, according to the Lithuanian Criminal Code, a person who, without another person's consent, makes public, uses for his or her own benefit or for the benefit of another person information about the private life of another person, where he or she gains access to that information through his or her service or profession or in the course of performance of a temporary assignment or he or she collects it through the commission of an act will be punished by community service, by a fine, by restriction of liberty, by arrest, or by imprisonment for a term of up to three years. This rule also applies to a legal entity.⁸³ A person may be held liable only subject to a complaint filed by the victim or a statement by his or her authorized representative or at the prosecutor's request.

§ 1:20 Types of relief available

As is common in the Lithuanian civil law procedures, a plaintiff may seek material as well as non-material compensation. A person may ask for a material compensation if he or she has suffered any material damage due to the invasion of privacy and secrecy. As for the non-material compensation, a person may receive it when he or she has suffered mentally or physically due to the invasion of privacy. It is also possible to ask for a restitution of the status

⁸¹ Criminal Code of Lithuania, Article 166.

⁸² Criminal Code of Lithuania, Article 167.

⁸³ Criminal Code of Lithuania, Article 168.

quo. For instance, if there was any damage to a person's reputation, he or she may ask the defendant to deny the provided information.

§ 1:21 Defenses available

According to the Constitution of Lithuania, everyone enjoys the freedom of speech and expression.⁸⁴ Lithuania also gives publishers and journalists a complete defense when they express an opinion or when they report particular facts. The line between invasion of privacy and expressing particular facts depends upon whether there is a social need for the particular information. The mass media may also defend its position upon the freedom of speech; however, practice indicates that the freedom of press is not an absolute right. The Supreme Court of Lithuania ruled that the information provided in the press must be judged as to whether the statements are based on knowledge or data or if it is only a subjective opinion. In the civil case,⁸⁵ the Supreme Court ruled that local magazine "Extra news" for the commercial interest breached the right to privacy when releasing the photographs of the plaintiffs on a nude beach without their consent. Each person was adjudged 15 000 LTL (4348 EUR) as a moral compensation. This sum is considered as adequate to non-material damaged suffered by the persons as well as interpreted as the "lesson learned" for the abuse of the freedom of the press.

§ 1:22 Time period for asserting claim

According the Civil Code of Lithuania,⁸⁶ the statute of limitations for an invasion of privacy claim is three years, starting after the person has realized or should have realized that his or her privacy was invaded.

E. Right of Publicity

⁸⁴ Constitution of Lithuania. Article 25

"The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas. Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a human being, or to defend the constitutional order. Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation. The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions"

⁸⁵ No. 3K-3-26/2009.

⁸⁶ Civil Code of Lithuania Articles 2.20 - 2.22.

§ 1:23 Main sources of law

According to the Civil Code of Lithuania, every person has the right to a name and right to the image.⁸⁷ The Lithuanian Civil Code states that every natural person enjoys the right to a name, which includes a right to a surname, name (names) and pseudonym. It is prohibited to gain rights and assume obligations under the cover of another person's name. A natural person has the right to use his or her full or abbreviated name (names) and request other persons not to use and not to act in his or her name without his or her authorization. The basis and the procedure for the change of name and surname is provided by law. Having changed his surname or name, a natural person must inform his debtors and creditors thereof. Where the person fails to perform this obligation he or she will run the risk of negative consequences ensuing after his or her failure to notify about the change of his or her name or surname.⁸⁸

The Lithuanian Civil Code details the protection of the right to a name, stating that a natural person whose right to a name has been infringed as a result of another person's unlawful acts in his or her name or some other mode of unlawful appropriation of his or her name or he or she is prevented from using it, has the right to apply to court and request the court to order the guilty person to discontinue the acts and redress the property and non-pecuniary damage incurred on him or her by such unlawful acts. After the death of a natural person, such claims may be presented by his or her spouse, parents, or children.⁸⁹

The Lithuanian Civil Code also establishes the principles of person's right to an image. It provides that a photograph (or its part) or some other image of a natural person may be reproduced, sold, demonstrated, or published and the person may be photographed only with his or her consent. Such consent after natural person's death may be given by his or her spouse, parents, or children. Where such acts are related to a person's public activities, his or her official post, request of law enforcement agencies or where a person is photographed in public places, consent of a person will not be required. A person's photograph (or its part) produced under the circumstances, however, may not be demonstrated, reproduced or sold if those acts were to abase a person's honor, dignity or damage his or her professional reputation. A natural person whose right to his or her image has been infringed enjoys the right to request the court to order the

⁸⁷ Civil Code of Lithuania. Article 2.20, 2.22.

⁸⁸ Civil Code of Lithuania Articles 2.20.

⁸⁹ Civil Code of Lithuania Articles 2.21.

discontinuance of the acts and redressing of the property and non-pecuniary damage. After a person's death, such claim may be presented by his or her spouse, children, and parents.

§ 1:24 Protection of right of publicity after death

The Fifth Book of the Civil Code of Lithuania regulates the law of inheritance. The issue of succession is regulated within the Civil Code where it details the principles of succession. The Lithuanian Civil Code states that succession is the devolution of property rights, duties and some other personal, non-property rights of a deceased natural person to his or her heirs by operation of law (intestate) or/and to successors by the will (testate). The code also establishes the rules of succession, which may apply to material objects (movable and immovable things) and non-material objects (securities, patents, trade marks, etc.) claims of patrimonial character and property obligations of the bequeather; in cases provided for by laws – intellectual property (authors' property rights to works of literature, science and art, neighboring property rights and rights to industrial property), as well as other property rights and duties stipulated by laws. The Lithuanian Civil Code also details the list of rights that are not subjected to succession, including personal non-property and property rights inseparable from the person of the bequeather (right to honor and dignity, authorship, right to author's name, inviolability of creative work, to the name of performer and inviolability of performance), right to alimony and benefit paid for the maintenance of the bequeather, right to pension.⁹⁰ Additionally, a natural person whose right to a name has been infringed as a result of other person's unlawful acts in his or her name or some other mode of unlawful appropriation of his or her name or he or she is prevented from using it, has the right to apply to court and request that the guilty person discontinue the acts and redress the property and non-pecuniary damage incurred on him or her by such unlawful acts. After the death of a natural person, such claims may be presented by his or her spouse, parents or children.⁹¹ With regard to right to image, a natural person whose right to his or her image has been infringed enjoys the right to request the court to order the discontinuance of the acts and redressing of the property and non-pecuniary damage. After the person's death, such claim may be presented by his or her spouse, children, and parents.

⁹⁰ Civil Code of Lithuania. Article 5.1.

⁹¹ Civil Code of Lithuania Articles 2.21.

§ 1:25 Main factors or elements of claim

According to the Civil Code of Lithuania, every natural person enjoys the right to a name, which includes a right to a surname, name (names), and pseudonym. It is prohibited to gain rights and assume obligations under the cover of another person's name. A natural person has the right to use his or her full or abbreviated name (names) and request other persons not to use and not to act in his or her name without his or her authorization. Therefore, one of the main factors of the claim at question is whether the authorization has been received.

The Lithuanian Civil Code states that a natural person whose right to a name has been infringed as a result of other person's unlawful acts in his or her name, or some other mode of unlawful appropriation of his or her name or he or she is prevented from using it, has the right to apply to court and request that the guilty person discontinue the acts and redress the property and non-pecuniary damage incurred on him or her by such unlawful acts. After the death of a natural person, such claim may be presented by his or her spouse, parents, or children.⁹²

The Lithuanian Civil Code also establishes the principles of a person's right to his or her image. A photograph (or its part) or some other image of a natural person may be reproduced, sold, demonstrated, published, and the person may be photographed only with his or her consent. Therefore, one of the main factors of the claim at question is whether the authorization has been received. Such consent/authorization after a natural person's death may be given by his or her spouse, parents, or children. The exception from the consent is foreseen in the situation where such acts are related to the person's public activities, his or her official post, request of law enforcement agencies or where a person is photographed in public places, consent of a person is not required. The person's photograph (or its part) produced under the circumstances, however, may not be demonstrated, reproduced or sold if those acts were to abase person's honor, dignity or damage his or her professional reputation. A natural person whose right to his or her image has been infringed enjoys the right to request the court to order the discontinuance of the acts and redressing of the property and non-pecuniary damage. After a person's death, such claim may be presented by his or her spouse, children, and parents.⁹³

⁹² Civil Code of Lithuania Article 2.21.

⁹³ Civil Code of Lithuania Article 2.22.

§ 1:26 Types of relief available

The Lithuanian Civil Code provides for the protection of the right to a name, stating that a natural person whose right to a name has been infringed as a result of another person's unlawful acts in his or her name, or some other mode of unlawful appropriation of his or her name or he or she is prevented from using it, has the right to apply to court and request that the guilty person discontinue the acts and redress the property and non-pecuniary damage incurred on him or her by such unlawful acts. After the death of a natural person, such claim may be presented by his or her spouse, parents, or children.⁹⁴ A natural person whose right to his or her image has been infringed enjoys the right to request the court to order the discontinuance of the acts and redressing of the property and non-pecuniary damage.⁹⁵

§ 1:27 Defenses available

According to the Constitution of Lithuania, everyone enjoys a freedom of speech and expression.⁹⁶ Therefore, the defenses available may include the right to have personal convictions and to freely express them. The defense regarding the usage of another person's name may hypothetically include an error. Even though a photograph (or its part) or some other image of a natural person may be reproduced, sold, demonstrated, published and the person may be photographed only with his or her consent,⁹⁷ the defense available might be the fact that this action is related to person's public activities, his or her official post, request of law enforcement agencies or where a person is photographed in public places and where consent of a person is not required.⁹⁸

§ 1:28 Time period for asserting claim

⁹⁴ Civil Code of Lithuania Articles 2.21.

⁹⁵ Civil Code of Lithuania Article 2.22.

⁹⁶ Constitution of Lithuania. Article 25

"The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas. Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a human being, or to defend the constitutional order. Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation. The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions"

⁹⁷ Civil Code of Lithuania Articles 2.22.

⁹⁸ Civil Code of Lithuania Articles 2.22.

According to the Civil Code of Lithuania,⁹⁹ the statute of limitations for a right of publicity infringement claim is three years, starting after the person has realized or should have realized that the infringement took place.

II. Advertising Law

A. Sources of Advertising Law

§ 1:29 Basic principles

The Law on Advertising regulates consumer information concerning goods and services, protection of consumer interests, protection of freedom of honest competition, and creation of conditions for the development of advertising activity¹⁰⁰ but this law does not regulate political and social advertising and announcements that are not linked to commercial, economic, financial, or professional activities. Generally, advertising must be accurate and be clearly labelled as advertising.¹⁰¹ The requirement of the Law on the State Language applies to the written and recorded text of advertising.¹⁰² “Advertising” is defined as the dissemination of information in any form or through any communication medium in connection with person’s economic commercial, financial, or professional activities in order to promote the supply of goods or services, including immovable property acquisition, assumption of property rights and obligations.¹⁰³ The Law on Alcohol Controls restricts the promotion or the sale of alcoholic beverages and limits its advertisement.¹⁰⁴ The Law on Tobacco Controls regulates growing, manufacturing, and marketing of tobacco products and also provides certain restrictions of this matter.¹⁰⁵

§ 1:30 Constitutional sources

Even though there are no specific provisions in the Constitution of Lithuania regulating the field of advertising, some constitutional principles regulate advertising indirectly, such as the right of speech and the right of seeking, receiving, and imparting information and ideas.¹⁰⁶ For

⁹⁹ Civil Code of Lithuania Articles 2.20 - 2.22.

¹⁰⁰ The Law on Advertising. Article 1.

¹⁰¹ The Law on Advertising. Article 3.

¹⁰² The Law on Advertising. Article 4.

¹⁰³ The Law on Advertising. Article 2.

¹⁰⁴ The Law on Alcohol Controls. 1995 m. April 18 d. Nr. I-857. Article 1.

¹⁰⁵ The Law on Tobacco Controls. 1995 December 20. No. I - 1143 Article 1.

¹⁰⁶ The Constitution of Lithuania. Article 25.

example, the Lithuanian Constitution establishes the main principles regarding the freedom to express one's convictions. A person must not be hindered from seeking, receiving and imparting information and ideas. The freedom to express personal convictions, to receive and impart information, may not be limited other than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a human being, or to defend the constitutional order. The freedom to express convictions and to impart information is incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation. A citizen has the right to receive, according to the procedure established by law, any information about him or her that is held by State institutions.¹⁰⁷

§ 1:31 Codified sources

The Lithuanian Civil Code introduces the concept of misleading advertising, where it is defined as any information related to economic-commercial, financial or professional activities that is promulgated in any form and by any means of conveyance with the aim to promote sales (supply) of goods or services, including sales (supply) of immovable property, rights and obligations, where such information in any way, including the manner of its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and which causes damage by reason of its deceptive nature.¹⁰⁸ Additionally, the Lithuanian Civil Code further details the determination of the misleading advertising, the subject and conditions of liability, and the prohibition and denial of misleading advertising.

The Criminal Code of Lithuania also establishes important rules in the field of advertising. The Criminal Code introduces penalties with regard to possession of pornographic material. A person who, for the purpose of distribution, produces or acquires pornographic material or distributes such material will be punished by community service, by a fine, by restriction of liberty, or by imprisonment for a term of up to one year. Additionally, a person who produces, acquires, stores, demonstrates, advertises or distributes pornographic material displaying a child or presenting a person as a child will be punished by a fine or by imprisonment for a term of up to two years. Further, a person who, for the purpose of distribution, produces or acquires or distributes a large quantity of pornographic material displaying a young child will be

¹⁰⁷ The Constitution of Lithuania. Article 25.

¹⁰⁸ Civil Code Article 6.301.

punished by imprisonment for a term of up to five years. Moreover, a person who demonstrates or advertises pornographic material will be considered to have committed a misdemeanour and will be punished by community service, by a fine, by restriction of liberty, or by arrest. A legal entity will also be held liable for the acts provided.¹⁰⁹

The Law on Advertising provides the basic principles in order to improve consumer information concerning goods and services, protect consumer interests, protect the freedom of honest competition, and create conditions for the development of advertising activity. This law also establishes the requirements for the use of advertising, the liability of operators of advertising activity, and the legal basis for the control of advertising use in the Republic of Lithuania.¹¹⁰

The Law on the Provision of Information to the Public establishes the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers, disseminators, participants therein, journalists and institutions governing their activities. It also requires that advertising, teleshopping, and teleshopping window be fair and honest.¹¹¹ The law prohibits the advertisement of tobacco products as well as the fact that advertising for medicinal products and medical treatment available only on prescription is prohibited in the media.¹¹² The Law on Alcohol Control restricts the commercial promotion and advertisement of the sale of alcoholic beverages.¹¹³

§ 1:32 Case law sources

There are very few court cases regarding Advertising Law. According to the Supreme Court of Lithuania, the fact that a sign with a celebrity's image is registered as a trademark does not exclude its' prohibition under the Law on Tobacco Control or the Law on Alcohol Control.¹¹⁴ The case does not have any further application beyond tobacco and alcohol advertising.

In another civil case,¹¹⁵ the Claimant stated that the Defendant published a picture of the Claimant and his name and surname in a magazine without Claimant's consent. The Claimant asked for relief of 10 000 LTL (2899 EUR) compensation. All the courts rejected the claim.

¹⁰⁹ The Criminal Code of Lithuania. Article 309.

¹¹⁰ Law on Advertising, Article 1.

¹¹¹ The Law on the Provision of Information to the Public, Article 39.

¹¹² The Law on the Provision of Information to the Public, Article 39.

¹¹³ The Law on Alcohol Control. 1995 April 18th. Nr. I-857. Article 1.

¹¹⁴ The Supreme Court of Lithuania. Civil Case 3K-3-337.

¹¹⁵ No. 3K-3-91/2003 m.

The Supreme Court in its final decision adjudged 1500 LTL (435 EUR) due to the fact that special agreement from the side of the claimant was not received. The Supreme Court stated that “if any doubts with regard to the consent occurs, it must be interpreted in the benefit of the holder of the particular right, not the obtainer.”¹¹⁶

B. False Advertising

§ 1:33 Main sources of law

The Law on Advertising¹¹⁷ states the main requirements for an advertisement to be permissible - the advertisement must be “proper and accurate” and “clearly recognizable.” Moreover, the Civil Code¹¹⁸ grants a cause of action for false advertising of the Republic of Lithuania. False or misleading advertising is actionable if the defendant disseminates information relating to commercial, financial, or professional activities that aims to promote goods or services in a way that misleads or may mislead the persons to whom it is addressed and it causes damage to the plaintiff.¹¹⁹ Also, the Parliament of Lithuania (Seimas) has recognized a few international directives that regulate false advertisement - The Directive of the European Parliament and Council 2005/29/EB (protecting business trade against misleading advertising and promulgating the conditions under which comparative advertising is permitted) and Council Directive 79/112/EEC (issuing rules on labelling and prohibiting the use of false or misleading advertising or attributing medicinal properties to foodstuffs).¹²⁰

§ 1:34 Definition and significant subdivisions

“False advertising” is advertising that deceives or is likely to deceive and, by reason of its deceptive nature, is likely to affect a person’s purchasing decisions, causing harm to another person’s capabilities in competition.¹²¹ The Law on Advertising¹²² states that the use of misleading advertising will be banned. “Advertising” is defined as the dissemination of information in any form or through any communication medium in connection with a person’s economic, commercial, financial, or professional activities in order to promote the supply of

¹¹⁶ No. 3K-3-91/2003 m.

¹¹⁷ Law on Advertising. Article 3.

¹¹⁸ Civil Code of Lithuania. Article 6.301.

¹¹⁹ Law on Advertising. Article 3.

¹²⁰ Council directive 79/112/EEC.

¹²¹ Law on Advertising. Article 2.

¹²² Law on Advertising. Article 5.

goods or services, including immovable property acquisition, assumption of property rights and obligations.¹²³ When judging whether or not advertising is misleading, account will be given to the accuracy, comprehensiveness and the following presentation criteria thereof:

1) claims presented in advertising are false, if the provider of advertising cannot substantiate accuracy of the assertion during the time of use. A decision regarding whether there is enough information substantiating the accuracy of the claims present in the advertising will be based upon the consideration of an individual case. The evidence and recommendations by persons whose competence is not linked with the content of the information being submitted will not be recognized as information substantiating the accuracy of claims being submitted;

2) the information supplied in the advertising is incomplete, if a certain part has been omitted the supplying whereof is, taking into account other information presented in this advertising, certainly needed in order to avoid misleading of the consumers of advertising. Information presented in advertising will also be regarded as incomplete if the material information that an average consumer needs to make an informed transactional decision is not disclosed, is hidden, or is provided in an unclear, unintelligible, ambiguous, or untimely manner and this causes or is likely to cause the average consumer to take such a transactional decision that he or she would not have taken otherwise. Where the medium used to convey advertising imposes limitations of space or time, these limitations, peculiarities, circumstances of a concrete case, and any measures taken by the supplier of advertising to make the information available to consumers by other means will be taken into account in deciding whether information has been omitted;

3) manner or form of supplying advertising are such that the consumer of advertising may perceive an understandable inaccurate (misleading) advertising claim.

When judging whether advertising is misleading, one must pay particular attention to the information contained therein regarding:

1) the supplier of the advertising or another person, their activities, head office, trade name (if he or she is a natural person – the name and surname of this person), legal status, assets, ownership of industrial or intellectual property rights, licenses (permits), qualification, affiliation or connection, awards and distinctions;

¹²³ The Law on Advertising. Article 2.

2) goods or services, place or origin of manufacture, date of manufacture, method of manufacture, purpose, quantity, composition, energy value, risks, fitness for purpose, usage, testing time, place, method and evaluation, method of use, conformity with a set standard, certification, official recognition of the goods or services and awards at fairs, exhibitions;

3) conditions of acquisition and use of goods (services) that is, the price or the manner in which the price is calculated, the existence of a specific price advantage, terms of payment, delivery, reimbursement, guarantees, terms and need for replacement, repair, service;

4) the extent of the supplier's of advertising commitments, the motives for the economic commercial, financial or professional practice and the nature of the goods or services sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the supplier of advertising or the goods or services;

5) consumers' rights, risks they may encounter and complaint handling.

When judging whether the advertising is misleading, it is regarded that consumers form an opinion about the accuracy of the claims presented in the advertising, comprehensiveness of the advertising, manner or form of presenting the advertising and adopt such decisions, which may be expected from an average consumer.

Where advertising is specifically aimed at a particular group of consumers of advertising, when judging whether the advertising is misleading, its impact will be assessed from the perspective of the average member of that group.¹²⁴

§ 1:35 Main factors or elements of claim

In Lithuania, the defendant advertiser bears the burden of proof in litigation. There is a basis to bring a claim on a defendant if the advertisement matches the criteria listed in §1:34 above: (1) the advertisement deceives or is likely to deceive (2) the persons to whom it is addressed or whom it reaches and, (3) by reason of its deceptive nature, is likely to affect their economic behavior or harm another person's ability to compete in the marketplace.¹²⁵ The Lithuanian Civil Code governs the subject of this liability. Damage resulting from misleading advertising will inflict liability on the advertiser, producer, intermediary or publisher of advertising. The advertiser will be liable unless he or she proves that the damage has resulted

¹²⁴ The Law on Advertising, Article 5.

¹²⁵ The Law on Advertising, Article 5.

not through his or her fault. The advertiser, intermediary in advertising, or publisher will be liable for damage resulting from misleading advertising only in that event that they knew or should have known that the advertising was misleading or that the consumers were deceived by their actions in producing and publishing the advertisement, or if the producer, the intermediary or the publisher of the advertisement fail to prove the identity of the advertiser (producer).¹²⁶ Condition for liability for the persons with regard to misleading advertising is presumed unless they prove that the published information corresponds to reality and that there is no fault of theirs in relation to the content or presentation of the information and the occurrence of damage.¹²⁷ Upon the request of the interested persons, the court hearing the case on the compensation for damage may order prohibition of further promulgation of misleading advertising or the prohibition of misleading advertising that has not yet been published but publication of which is imminent; the court may likewise order the defendant to publish an adequate denial of the misleading advertising.¹²⁸

§ 1:36 Examples of claims found false or misleading and claims found not false or misleading

The Supreme Court of Lithuania's decision in the civil case M. Vaupčas v. UAB "Kalba"¹²⁹ provides an example of a misleading advertisement claim and its procedural requirements. The Claimant states that the defendant (publisher "Kalba") published a brochure that supplied information about a trip and accommodations in the United Kingdom and that the brochure's information was incomplete due to the fact that the services of the "Kalba" did not correspond to the promised situation in the brochure and that the brochure itself was published in the English language. The Claimant, however, did not adequately plead his or her requirement to the Court, and the case was dropped due to the fact that Claimant cannot submit the claim without special requirements in it even if the aim of the claim was to secure the public interest. In order to secure the public interest, only a person or institution holding such right may submit

¹²⁶ Lithuanian Civil Code, Article 6.302.

¹²⁷ Lithuanian Civil Code, Article 6.303.

¹²⁸ Lithuanian Civil Code, Article 6.304.

¹²⁹ The Supreme Court of Lithuania. Civil case number 3K-3-32/2003, 27th January, 2003.

the respective claim (such as prosecutor). The Claimant in this case did not hold such a right. The Supreme Court transferred the case to the lower courts for second process.

In another Supreme Court Case,¹³⁰ the Claimant asked the court to recognize the advertisement as false and adjudge 20 000 LTL (5798 EUR) compensation because the Claimant concluded the agreement with mobile service provider “Omnitel,” upon which the Claimant received the mobile phone and 300 minutes of free conversations within 5 months. However, the received mobile phone was not working, and, during Easter, the Claimant could not reach his family and friends, causing the Claimant to suffer stress. The Supreme Court recognized that the service provider’s service was lower than the Claimant expected; however, defendant returned the payment for the mobile phone and applied the discount for their services. Therefore, the advertisement itself was considered not false, and the required compensation was not granted to the Claimant.

§ 1:37 Types of relief available

Pursuant to the Lithuanian Civil Code, damage resulting from misleading advertising will inflict liability either on the advertiser, producer, intermediary or publisher of advertising. The advertiser will be liable unless he or she proves that the damage has resulted through no fault of his or her own. The advertiser, intermediary in advertising, or publisher will be liable for damage resulting from misleading advertising only in that event that they knew or should have known that the advertising was misleading or that the consumers were deceived by their actions in producing and publishing the advertisement, or if the producer, the intermediary or the publisher of the advertisement fail to prove the identity of the advertiser (producer).¹³¹ Condition for liability for the persons with regard to misleading advertising is presumed unless they prove that the published information corresponds to reality and that there is no fault of theirs in relation to the content or presentation of the information and the occurrence of damage.¹³² Upon the request of the interested persons, the court hearing the case on the compensation for damage may order prohibition of further promulgation of misleading advertising or the prohibition of misleading advertising that has not yet been published but publication of which is

¹³⁰ No. 3K-3-297/2005.

¹³¹ Lithuanian Civil Code, Article 6.302.

¹³² Lithuanian Civil Code, Article 6.303.

imminent; the court may likewise order the defendant to publish an adequate denial of the misleading advertising.¹³³

§ 1:38 Defenses available

Because the defendant bears the burden in litigation, there are few “defenses” in the traditional sense of American litigation. Defendant advertisers, however, are responsible for the misleading advertisements only if they knew or should have known that the advertising was misleading or confusing consumers and may defend by asserting a lack of such knowledge. The Lithuanian Civil Code states that damage resulting from misleading advertising will inflict liability either on the advertiser, producer, intermediary or publisher of advertising. The advertiser will be liable unless he or she proves that the damage has resulted through no fault of his or her own. The advertiser, intermediary in advertising, or publisher will be liable for damage resulting from misleading advertising only in that event that they knew or should have known that the advertising was misleading or that the consumers were deceived by their actions in producing and publishing the advertisement, or if the producer, the intermediary or the publisher of the advertisement fail to prove the identity of the advertiser (producer).¹³⁴

§ 1:39 Evidence required to support advertising claims based on tests

When judging whether or not advertising is misleading, account will be evaluated as to its accuracy, comprehensiveness and the following presentation criteria thereof which are set in the law on Advertising:

1) claims presented in advertising are false, if the provider of advertising cannot substantiate accuracy of the assertion during the time of use. A decision regarding whether there are enough information substantiating accuracy of claims present in the advertising will be based upon the consideration of an individual case. The evidence and recommendations by persons whose competence is not linked with the content of the information being submitted will not be recognized as information substantiating the accuracy of claims being submitted;

2) the information supplied in the advertising is incomplete, if a certain part has been omitted the supplying whereof is, taking into account other information presented in this

¹³³ Lithuanian Civil Code, Article 6.304.

¹³⁴ Lithuanian Civil Code, Article 6.302.

advertising, certainly needed in order to avoid misleading of the consumers of advertising. Information presented in an advertising will also be regarded as incomplete, if the material information that an average consumer needs to take an informed transactional decision, is not disclosed, is hidden or provided in an unclear, unintelligible, ambiguous or untimely manner and this causes or is likely to cause the average consumer to take such a transactional decision that he or she would not have taken otherwise. Where the medium used to convey an advertising imposes limitations of space or time, these limitations, peculiarities, circumstances of a concrete case, and any measures taken by the supplier of advertising to make the information available to consumers by other means will be taken into account in deciding whether information has been omitted;

3) manner or form of supplying advertising are such that the consumer of advertising may perceive an understandable inaccurate (misleading) advertising claim.

When judging whether advertising is misleading, one must pay particular attention to the information contained therein regarding:

1) the supplier of the advertising or another person, their activities, head office, trade name (if he or she is a natural person – the name and surname of this person), legal status, assets, ownership of industrial or intellectual property rights, licenses (permits), qualification, affiliation or connection, awards and distinctions;

2) goods or services, place or origin of manufacture, date of manufacture, method of manufacture, purpose, quantity, composition, energy value, risks, fitness for purpose, usage, testing time, place, method and evaluation, method of use, conformity with a set standard, certification, official recognition of the goods or services and awards at fairs, exhibitions;

3) conditions of acquisition and use of goods (services) that is, the price or the manner in which the price is calculated, the existence of a specific price advantage, terms of payment, delivery, reimbursement, guarantees, terms and need for replacement, repair, service;

4) the extent of the supplier's of advertising commitments, the motives for the economic commercial, financial or professional practice and the nature of the goods or services sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the supplier of advertising or the goods or services;

5) consumers' rights, risks they may encounter and complaint handling.

When judging whether the advertising is misleading, it is regarded that consumers form an opinion about the accuracy of the claims presented in the advertising, comprehensiveness of the advertising, manner or form of presenting the advertising and adopt such decisions, which may be expected from an average consumer.

Where advertising is specifically aimed at a particular group of consumers of advertising, when judging whether the advertising is misleading, its impact will be assessed from the perspective of the average member of that group.¹³⁵

§ 1:40 Time period for asserting claim

According to the Civil Code of Lithuania,¹³⁶ the statute of limitations for a false advertising claim is three years, starting after the person has realized or should have realized that the claim arose.

C. Third Party Trademarks and Copyrights in Advertising

§ 1:41 Permissibility of using another party's trademark in advertising without that party's authorization

The Law on Trademarks¹³⁷ governs the rights of the trademark owner. The law states that the proprietor of the mark cannot prohibit a third party from using the following in the course of trade: his or her own personal name, surname and/or address; indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods and/or services; the mark, where it is necessary to indicate the intended purpose of a product and/or service, in particular as accessories or spare parts; the mark in comparative advertising. This may be applied only provided they are used in accordance with honest practices in industrial or commercial matters.¹³⁸

The Law on Advertising governs comparative advertising. Article 2 of the law defines comparative advertising as any advertising that explicitly or by implication identifies a competitor of the advertiser and the goods or services offered by the competitor. Comparative

¹³⁵ The Law on Advertising, Article 5.

¹³⁶ Civil Code of Lithuania Articles 2.20 - 2.22.

¹³⁷ Law on Trademarks. Article 39 .

¹³⁸ Law on Trademarks. Article 39.

advertising is permitted when the following conditions are met: it is not misleading; it compares goods or services meeting the same needs or intended for the same purpose; it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price; it does not create confusion between commercial operators, between the supplier of advertising and a competitor or between the supplier's of advertising trade marks, trade names, other distinguishing marks, goods or services and those of a competitor; it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, financial or any other status of a competitor; for goods and services with designation of origin, it relates to the goods and services with the same designation; it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing goods or services; it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

Should a specific offer be provided in the comparative advertising, the date of the validity cessation of the offer must be clearly indicated, and, if necessary, the advertiser must disclose that the offer depends on the quantity of the goods on hand or possibilities of providing the services. Should the offer be not yet valid at the time of the publication of the advertising, the date of its coming into force must be indicated.¹³⁹

§ 1:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization

According to the Law on Copyright and Related rights,¹⁴⁰ another party's copyrighted work in advertising without that party's authorization is possible only for the purpose of advertising the public exhibition or sale of artistic works—and only to the extent necessary to promote the event. The following acts will be permitted without the authorization of the author or other owner of copyright in a work:

1) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works of the same character, in cases where such use is not expressly reserved by the authors or other owners

¹³⁹ Law on Advertising, Article 6.

¹⁴⁰ Law on Copyright and Related Rights. Article 24 .

of the copyright in such works, and as long as the source, including the author's name, is indicated;

2) use of literary and artistic works the place of performance or display of which renders information on public events or current events in the press, radio or television, provided that such use is justified by the informatory purpose and constitutes additional information material, and the source, including the author's name, is indicated, unless this turns out to be impossible;

3) use in newspapers or periodicals, or communication to the public in any other mode of political speeches, reports, lectures or other works of a similar nature delivered in public, as well as speeches delivered during court proceedings, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this is impossible;

4) reproduction or communication to the public for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;

5) reproduction and communication to the public of a work in connection with the demonstration or repair of equipment.¹⁴¹

§ 1:43 Time period for asserting claim of trademark infringement or copyright infringement

According to the Civil Code of Lithuania,¹⁴² the statute of limitations for a trademark or copyright infringement is three years, starting after the person has realized or should have realized that the claim arose.

III. Entertainment Law

A. Sources

§ 1:44 Basic principles

Entertainment law in Lithuania encompasses a broad swath of enterprises, from theatres to museums, the book publishing industry to the visual arts. The main principles of Entertainment Law are formulated in the Law on Copyright and Related Rights, which regulate copyright in literary, scientific and artistic works (copyright); the rights of performers, producers

¹⁴¹ Law on Copyright and Related Rights. Article 24.

¹⁴² Civil Code of Lithuania 1.125.

of phonograms, broadcasting organizations and producers of the first fixation of an audiovisual work (film and related rights); the rights of makers of databases (sui generis rights); the exercise, collective administration and enforcement of copyright and related rights, as well as the exercise and enforcement of sui generis rights.¹⁴³

§ 1:45 Constitutional sources

One of the most common Constitutional rights is considered to be the right of speech and expression. The Lithuanian Constitution states that each person will have the right to have his or her own convictions and to freely express them. People must not be hindered from seeking, receiving and imparting information and ideas. The freedom to express personal convictions, to receive and impart information may not be limited other than by law, if this is necessary to protect the health, honor and dignity, private life, and morals of a person, or to defend the constitutional order. The freedom to express personal convictions and to impart information will be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.¹⁴⁴

§ 1:46 Codified sources

The main codified sources regulating entertainment industries are the Civil Code (regulating contracts), the Labour Code (regulating labor relations), the Law on Copyright and Related Rights, the Law of the Provision of Information to the Public, the Law on Advertising, the Law on Trademarks, and the Law on Gambling. On March 5, 2002, Lithuania passed the Law on Cinema, providing public management of the cinema, a mandate for national films, procedures for production, distribution, public screening and financing of national films, and procedures for distribution and public screening of foreign films in Lithuania. Additionally, the Cinema Council was established in 2002. The Cinema Council is a collegial, consultancy institution functioning under the Ministry of Culture. The Cinema Council is engaged in analyzing the issues of Lithuanian cinema development and dissemination, cinema programming and film production projects that are financed from the state budget. The Council submits its proposals on the issues described above to the Ministry of Culture, which is in charge of the

¹⁴³ Law on Copyright and Related Rights. Article 1.

¹⁴⁴ Lithuanian Constitution, Article 25.

State policy in the area of cinema.¹⁴⁵ In March 2003, the Ministry of Culture founded the European MEDIA Program Office to coordinate Lithuania's participation in the European Community's programs within the audiovisual sector.¹⁴⁶

§1:47 Case law sources

There are no case law sources for Entertainment Law in Lithuania.

B. Types

§ 1:48 Legal matters characterized as entertainment law

The Entertainment law field engages in various legal issues, such as contracts, employment relations, taxation, and many more. Therefore, many legal issues are related with regard to entertainment law. Generally, Entertainment Law encompasses any legal need within entertainment industries. To name a few it includes film: covering option agreements, finance, chain of title issues, talent agreements (screenwriters, film directors, actors, composers, production designers), production and post production and trade union issues, distribution issues, motion picture industry negotiations distribution, and general intellectual property issues especially relating to copyright and, to a lesser extent, trademarks; Music: including talent agreements (musicians and composers), producer agreements, and synchronization rights, music industry negotiation and general intellectual property issues, especially relating to copyright; Television and Radio: including broadcast licensing and regulatory issues, mechanical licenses, and general intellectual property issues, especially relating to copyright; Theatre: including rental agreements and co-production agreements, and other performance oriented legal issues; Multimedia, including software licensing issues, video game development and production, Information technology law, and general intellectual property issues; Publishing and print media issues, including advertising, models, author agreements and general intellectual property issues, especially relating to copyright; Visual Arts and Design including fine arts, issues of consignment of artworks to art dealers, moral rights of sculptors regarding works in public places; and industrial design, issues related to the protection of graphic design elements in products; Museums; Ethnic Culture and Cultural Heritage.

¹⁴⁵ Ministry of Culture, www.muza.lt.

¹⁴⁶ Ministry of Culture, www.muza.lt.

IV. Art Law

A. Sources

§ 1:49 Main sources of law relating to sale of artworks

The main sources of law relating to the sale of artworks are the Law on Copyright and Related Rights¹⁴⁷ and the Civil Code.¹⁴⁸ An author has the exclusive rights to authorize or to prohibit any of the following acts: 1) reproduction of a work in any form or by any means; 2) publication of a work; 3) translation of a work; 4) adaptation, arrangement, dramatization or other transformation of a work; 5) distribution of the original or copies of a work to the public by sale, rental, lending, or by any other transfer of ownership or possession, as well as by exporting and importing; 6) public display of the original or copies of a work; 7) public performance of a work in any form or by any means; 8) broadcasting, retransmission of a work, as well as communication to the public of a work in any other way, including the making available to the public of a work over computer networks (on the Internet). Any mode of the exploitation of the

¹⁴⁷ Law on Copyright and Related Rights. Articles 13-18.

¹⁴⁸ Civil Code of Lithuania. Article 6.353 “1. *The seller is bound to provide the buyer with the necessary, accurate and comprehensive information about the things offered for sale, indicating on their labels or otherwise: their price (inclusive of all taxes and charges), quality, method of use and safety, warranty period, period of fitness for use as well as other qualities of the things and characteristics of their use, having regard to the type of things, their purpose, personality of the consumer and requirements of retail trade. The seller who is in breach of the above obligation is bound to compensate for the damages suffered by the buyer for that reason. 2. The information about the things offered for sale shall not be misleading. 3. It shall be obligatory to indicate the selling price of every thing or of the things of one kind and the price of a suitable standard unit of the thing. The selling price of things or the price of a standard unit need not be indicated where the things: 1) are supplied in the performance of services; 2) are sold by auction or are objects of art or antiques. 4. The price of a standard unit of the things need not be indicated: 1) if these are things whose price does not depend on their weight or measurement; 2) if the price of the standard unit is the same as the selling price; 3) for things or groups of things the list whereof shall be approved by the Government or the institution authorized by it. 5. Only the price of the standard unit of things must be indicated if the things are not packaged and their quantity is ascertained in the presence of the customer. 6. The selling price and the standard unit price must be conspicuous, clearly legible, unambiguous and easily identifiable. 7. In any advertisement of the thing the indicated selling price must be accompanied by the standard unit price, save for the exceptions specified in paragraphs 3 and 4 of this Article. 8. The buyer shall be entitled to examine the products before entering into the contract and to demand that the seller inspect the things in his presence or demonstrate the way they are used, provided this is possible, bearing in view the character of the things and rules of retail trade. 9. In case of failure by the seller to promptly provide the buyer with an opportunity to obtain the information specified in paragraphs 1-7 of this Article at the place of sale of the things, the buyer shall have the right to claim from the seller compensation of damages for any loss occasioned by avoidance to conclude the contract or, where the contract has been concluded - to rescind the contract unilaterally within a reasonable time and to demand refund of the price paid and compensation of other damages. 10. The seller who fails to provide the buyer with an opportunity to receive the relevant information about the things shall be liable for the defects of the things which appeared after the delivery of the things to the buyer, if the buyer proves that the defects appeared because he did not possess the relevant information. 11. In the Republic of Lithuania the rules of marking and indication of prices of things exposed for sale shall be approved by the Government or the institution authorized by it.”*

original of a work or its copies without the permission of the author, his or her successor in title or the person duly authorized by him or her will be considered illegal (with the exception of the cases provided for in this law). The author has the right to receive remuneration for each mode of the exploitation of the work related to author's economic rights. In the case of public performance of a work, the author will be entitled to remuneration for both the direct (live) performance, and when the aforementioned acts are done with the help of a phonogram or audiovisual fixation, radio and television broadcasting or retransmission. In the case of broadcasting, retransmission or another communication to the public of the work, including the making available to the public of the work by means of computer networks (on the Internet), the author will be entitled to receive a remuneration for both the broadcasting, retransmission or another communication to the public of a direct (live) performance of the work, and for the use of a phonogram or audiovisual fixation. The amount of remuneration and the payment procedure thereof will be agreed upon in the copyright agreement, as well as in the licensing agreement negotiated between users of works and the authors or associations of collective administration of copyright. The author, after the transfer of his or her rental right in respect of a phonogram of his or her work to a producer of the phonogram, will retain an unwaivable right to obtain an equitable remuneration for the rental of such work. This remuneration will be paid by natural or legal persons to whom the right to rent phonograms or their copies has been transferred or granted by a producer of the phonogram. This right will normally be enforced through an association of collective administration of copyright. The exclusive right of rental and lending of the original or a copy of a work will not apply in relation to buildings and to works of applied art.¹⁴⁹

§ 1:50 Sources of law for artists' rights

The main sources of law for artists' rights are the Law on Copyright and Related Rights¹⁵⁰ and the Civil Code.¹⁵¹ The Civil Code provides the main principles of an author's right to his or her name, quotes, etc. According to the Civil Code of Lithuania, every person has the right to a name and right to the image.¹⁵²

¹⁴⁹ Law on Copyright and Related Rights, Article 15.

¹⁵⁰ Law on Copyright and Related Rights. Articles 13-18.

¹⁵¹ Civil Code of Lithuania. Article 1.114.

¹⁵² Civil Code of Lithuania. Article 2.20, 2.22.

The Lithuanian Civil Code grants to every natural person the right to a name, which includes a right to a surname, name (names), and pseudonym. It is prohibited to gain rights and assume obligations under the cover of another person's name. A natural person has the right to use his or her full or abbreviated name (names) and request other persons not to use and not to act in his or her name without his or her authorization. The basis and the procedure for the change of name and surname is provided by law. Having changed his or her surname or name, a natural person must inform his or her debtors and creditors thereof. Where the person fails to perform this obligation he or she will run the risk of negative consequences ensuing after his or her failure to notify about the change of his or her name or surname.¹⁵³

The Lithuanian Civil Code protects the right to a name, stating that a natural person whose right to a name has been infringed as a result of another person's unlawful acts in his or her name or some other mode of unlawful appropriation of his or her name or he or she is prevented from using it, has the right to apply to court and request that the guilty person discontinue the acts and redress the property and non-pecuniary damage incurred on him or her by such unlawful acts. After the death of a natural person, such claims may be presented by his or her spouse, parents, or children.¹⁵⁴

B. Relationships

§ 1:51 Relationship between dealer and artist

The relationship between the dealer and the artist can be regulated in a few ways. In one form of the relationship, the dealer buys the artwork directly from the artist. In this case, the contract is regulated by the main principles of contract law established in the Lithuanian Civil Code. Another type of regulation occurs when the artists agrees with the dealer that he or she will resell his or her work and the artist will receive the respective remuneration. The law on Copyright and Related Rights states that the author enjoys a right, which cannot be waived, to receive a royalty for any resale of an original work of art and an original manuscript of a literary or musical work (the resale right), subsequent to the first transfer of the right of ownership in them by the author. An "original work of art" means works of visual art, applied art and photographic works, provided they are made by the artist himself or herself. Copies of works of

¹⁵³ Civil Code of Lithuania Articles 2.20.

¹⁵⁴ Civil Code of Lithuania Articles 2.21.

art that have been made, numbered and signed or otherwise duly authorized by the artist himself or herself or under his or her authority, will be considered to be original works of art. The resale right applies to all acts of resale involving sellers, buyers or intermediaries salesrooms, art galleries, museums, antique shops, organizers of auctions of works of art, other persons selling works of art, intermediating in selling or assessing them. The intermediary will share liability with the seller for payment of the royalty.¹⁵⁵

§ 1:52 Relationship between purchaser and dealer

The relationship between the dealer and the purchaser can be structured in two different ways. If the dealer is the artist, then he or she may receive full price for the artwork. If the dealer is merely an owner, then artist will generally receive a percentage from the price and the rest of the profit goes to the dealer.¹⁵⁶

B. Art Auctions

§ 1:53 Laws relating to auctions and auction houses

The main law relating to auctions in Lithuania is the Civil Code.¹⁵⁷ Purchase and sale by auction means that the items are offered for sale to several persons through the intermediary - the auction manager, and the contract is considered concluded with the buyer - a participant of the auction, which offers the highest price for the items sold. The Lithuanian Civil Code establishes the rules for the price and conditions of the auction: the seller may fix the reserve price of the thing offered for sale and any other conditions of the auction. However, the conditions of the auction that have not been communicated to the bidders may not be set up against the bidders, save in the cases where the auctioneer announced the conditions to the bidders before receiving bids. The seller will have the right to refuse to disclose his or her identity but, if his or her identity is not disclosed to the successful bidder, the auctioneer will become bound by all the obligations of the seller to the successful bidder. The bidder will have no right to withdraw his or her bid. The contract of purchase-sale by auction will be deemed concluded when the auctioneer announces this by the fall of his or her hammer or any other customary action. If at the moment when the completion of the auction sale of the thing is announced by the fall of the

¹⁵⁵ the Law on Copyright and Related Rights. Article 17.

¹⁵⁶ the Law on Copyright and Related Rights. Article 27.

¹⁵⁷ Civil Code of Lithuania. Articles 6.419 - 6.424.

auctioneer's hammer, a new bid is received, the auctioneer will have the right to extend the auction or declare the thing sold for the last price bid before the fall of the hammer. Entry of the bid and the name of the successful bidder provide proof of the sale. In the absence of such an entry proof, testimony of the witnesses will be admissible. In case an immovable thing is sold at the auction, a contract in the form prescribed by law must be concluded within ten days from the sale between the seller and the buyer. The buyer must pay the price according to the procedure and within the time limits prescribed by the conditions of the auction.¹⁵⁸

C. "Stolen" Art Works

§ 1:54 Legal issues regarding "stolen" artworks

Stolen artworks problems would generally be regulated under the Lithuanian Criminal Code. There is no special piece of legislation regulating the issue of stolen artworks. In practice, civil relationships are regulated in accordance with the principles of equality of their subjects' rights, inviolability of property, freedom of contract, non-interference in private relations, legal certainty, proportionality, and legitimate expectations, prohibition to abuse a right, as well as the principles of comprehensive judicial protection of civil rights.¹⁵⁹ The Lithuanian Criminal Code states that a person who seizes another's property of a high value or the valuables of a considerable scientific, historical or cultural significance or seizes another's property by participating in an organized group may be punished by imprisonment for a term of up to eight years.¹⁶⁰

¹⁵⁸ Civil Code, Article 6.419- 6.424

¹⁵⁹ Civil Code, Article 1.2.

¹⁶⁰ Criminal Code, Article 178.