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The Presidential pardon in Lithuania and Poland: comparative analysis

Abstract

The article revealed and compared the concept of pardon and the scope and of its application to individuals and punishments (as well as other penal measures) in Lithuania and Poland. In addition, the article analyzed the regulation of the process of granting pardon and its features in these countries, revealed the competence of the Clemency Commission in Lithuania as well as the competence of other state institutions in Poland (for example, Public Prosecutor General, courts, etc.) in the process of granting pardon by the heads of states – presidents. Moreover, the article discussed the significance of pardon for the criminal policy pursued by Poland and Lithuania. To achieve the objectives of the article, the following legal research methods were used: legal analysis and systemic and comparative analysis. Authors came to a conclusion, that in both countries, pardon is mainly analyzed in criminal justice and constitutional law. It is usually described as an institution of exceptional nature or an instrument aimed at helping to implement the principles of humanism and justice. On the other hand,

Lithuania and Poland have introduced different models of pardon proceedings. Irrespective, it is only the President in both these countries who decides whether to grant a pardon. It is understood as part of the national criminal policy. However, the statistics of pardon applications in both states only confirmed the exclusivity of this institution and its minor influence on the criminal policy.

Keywords: pardon, clemency, criminal policy, Lithuania, Poland

Introduction

The term¹ “pardon” often refers to an official act of grace or showing mercy or forgiving an individual who has committed a crime, thus releasing them from its legal consequences.² Sometimes, pardon is described as a tool that helps to implement the principles of humanism and justice.³ According to O’Donnell, clemency allows the criminal justice system to respond to circumstances that developed since the trial, for example, take into account the rehabilitative efforts of the convict.⁴ On the other hand, pardon is also called “legal escape” from punishment,⁵ viewed as outdated, an anachronism in regimes dedicated to the rule of law, the antithesis of the values the legal process holds dear,⁶ described as a relic of monarchy,⁷ regarded in contemporary legal and criminological literature as a somewhat peripheral aspect of criminal justice.⁸

In the past, pardon given by the sovereign represented an act that showed his mercy upon their subjects.⁹ In the modern legal system, the power of pardoning is

1 The terms *pardon* and *clemency* are used as synonyms in this article.

2 For example: I.O. Ndamungu, *The Paradox of the Presidential Power of Pardon: Tanzania*, “Perspective. International Journal of Scientific and Research Publications” 2020, Vol. 10, No. 9, p. 199; D.T. Kobil, *Should Clemency Decisions be Subject to a Reasons Requirement?*, “Federal Sentencing Reporter” 2000–2001, Vol. 13, No. 3–4 (Pardon Power and Sentencing Policy), p. 150.

3 A. Abramavičius et al., *Baudžiamoji teisė. Bendroji dalis*, Vilnius 2001, p. 465.

4 I. O’Donnell, *For and Against Clemency*, in: O’Donnell, *Justice, Mercy, and Caprice: Clemency and the Death Penalty in Ireland*, Oxford 2017, pp. 72–76, <https://doi.org/10.1093/oso/9780198798477.003.0003> (access: 10.02.2025).

5 J. Warylewski, *Prawo karne. Część ogólna*. 6th edition, Warsaw 2015, p. 527.

6 M.E. Barkow, M. Osler, *Clemency*, “Annual Review of Criminology” 2024, Vol. 7, p. 312.

7 E. Šileikis, *Alternatyvi konstitucinė teisė*, Vilnius 2005, pp. 559–563.

8 D. Tait, *Pardons in Perspective: the Role of Forgiveness in Criminal Justice*, “Federal Sentencing Reporter” 2000–2001, Vol. 13, No. 3–4 (Pardon Power and Sentencing Policy), p. 134.

9 B. Arifi, *The Legal Reasoning of the President’s Right to Issue Pardons*, “SEEU Review” 2017, Vol. 2, No. 2, p. 32.

enshrined in various legal systems, each with unique procedures. It continues to constitute an important competence of the head of state. It is frequently discussed within the framework of criminal and constitutional law. However, its actuality extends even further, for example, into areas of ethics, governance, politics, etc. Public interest in it varies from country to country. For example, the President of the USA, Donald Trump, once inspired a discussion when he tweeted about his potential to pardon himself: "As has been stated by numerous legal scholars, I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong? <...>".¹⁰ In one of the most famous Polish cases, the President of Poland, Andrzej Duda, granted pardon to two politicians, which raised a discussion among scholars about whether pardon can be exercised before a final conviction (whether the so-called "individual abolition" can be applied in Poland) and this question has also been addressed by Polish courts, passing conflicting rulings.¹¹

In Lithuania, the theme of pardon does not seem to be raising much interest. In the monograph¹² published in 2017, which systematically examined the General part of the Criminal Code of Lithuania in the context of legislative history, academic analysis, and court practice, it was noted that the institution of pardon received little attention both in scientific literature and in legislation since the adoption of the Criminal Code in 2000. There are only few publications that address pardon, e.g. Baranskaitė's work,¹³ an analysis by Prapiestis and Piesliakas (in criminal law textbooks)¹⁴, Švedas's mention of pardon in the context of criminal politics¹⁵ or Sakalauskas, Bikėlis, Nikartas, and Čepas – in the context of life imprisonment,¹⁶

10 *Trump tweets he has "absolute right" to pardon himself, but says he wouldn't use it*, 4.06.2018, CBS News, <https://www.cbsnews.com/news/trump-tweets-he-has-absolute-right-to-pardon-himself-but-says-he-wouldnt-use-it/> (access: 15.04.2025).

11 P. Kusik, *International Media Coverage of Domestic Legal News: The Case of the Dispute over the Presidential Pardon Power in Poland*, "International Journal for the Semiotics of Law – Revue Internationale de Sémiotique Juridique" 2024, Vol. 37, p. 2433.

12 G. Švedas et al., *Lietuvos Respublikos baudžiamoji kodekso bendrosios dailies vientisumo ir naujovių suderinimo iššūkiai*, Vilnius 2017, p. 205.

13 For example: A. Baranskaitė, *Amnestijos ir malonės institutai baudžiamajo teisinio poveikio priemonių sistemoje pagal dabar galiojantį ir naujajį Lietuvos Respublikos baudžiamuosius kodekus*, "Teisė" 2001, Vol. 41, pp. 7–18.

14 For example: V. Piesliakas, *Lietuvos baudžiamoji teisė. Pirmoji knyga. Antroji pataisyta laida*, Vilnius 2009.

15 For example: G. Švedas, *Baudžiamosios politikos pagrindai ir tendencijos Lietuvos Respublikoje*, Vilnius 2006, p. 211; G. Švedas, *Criminal Law in Lithuania*, Netherlands 2022, pp. 175, 306–307.

16 For example: S. Nikartas, A. Čepas, *Laisvės atėmimo iki gyvos galvos bausmė Lietuvoje (I): refleksija žmogaus teisių standartų kontekste*, "Teisės problemos" 2014, Vol. 2, No. 84, pp. 16–17, 21; G. Sakalauskas, S. Bikėlis, *Laisvės atėmimu iki gyvos galvos nuteisto asmens lygtinis paleidimas*:

etc. There is also occasional media attention¹⁷ to the topic and we have seen a recent lawyers' commentary, but mainly due to the pardon affairs in the USA.¹⁸

The aim of this article is to present and compare pardon regulations and its practical application in Lithuania and Poland. These neighbouring countries share similar legal traditions and both are member states of the European Union; on the other hand, they also demonstrate notable differences in the context of pardon regulation.

The objectives of the article are to present the regulation of the proceedings of pardoning in both countries and identify their differences; to examine the possible scope of granting pardons in Poland and Lithuania; and to analyse pardon application there in the context of criminal policy. To achieve the objectives of the article, standard legal research methods were used: legal analysis and systemic and comparative analysis methods.

1. Pardon proceedings

Pardon is defined practically identically in Lithuania and Poland; it is an act of mercy consisting of the mitigation or remission of punishment lawfully imposed for a criminal act. Pardon is an act that concerns a specific, named and identified individual.¹⁹ Furthermore, this institution is mentioned in both constitutions. In

tarptautiniai standartai, užsienio šalių patirtis ir pasiūlymai Lietuvai, "Teisės problemos" 2008, Vol. 4, No. 62, pp. 46, 48–49.

17 For example, there was a scandal during Grybauskaitė's presidency when the President granted a pardon to a person convicted of sexually abusing a young girl. It was later revealed in the press that the Pardon Commission had been provided with inaccurate information about the individual and his crimes. As a result, the president revoked the decree (more: *D. Grybauskaitė dėl malonės suklaidinibus teisininkės išėjo iš darbo Prezidentūroje*, 2013, BNS, <https://www.tv3.lt/naujiena/lietuva/d-grybauskaite-del-malone-suklaidinibus-teisininkes-isejo-is-darbo-prezidenturoje-n755587> (access: 06.02.2025). During the presidency of A. Brazauskas, K.J., who had been serving a prison sentence for murder, was granted clemency. However, a few years after his release, he began committing new crimes and was called the "highway maniac" (more: *D. Sinkevičius, Reikėjo laukti net 20 metų: "Pakelių maniakas" Jonaitis atsiprašė už sukeltą skausmą*, Delfi dienos naujienos, 2021, <https://www.delfi.lt/news/daily/lithuania/reikejo-laukti-net-20-metu-pakeliu-maniakas-jonaitis-atsiprase-uz-sukelta-skausma-88830563> (access: 06.02.2025)).

18 For example: V. Zeppa-Priedite, J. Dobelnieks, D. Raulušaitis, U. Nasvytė, *Reflections on News from the USA on the Criminal Conviction of Mr Donald Trump*, "The Baltic Times" 2025, https://www.baltictimes.com/reflections_on_news_from_the_usa_on_the_criminal_conviction_of_mr_donald_trump/ (access: 06.02.2025).

19 For example: A. Marek, *Prawo karne*. 8th edition, Warsaw 2007, pp. 384–385; G. Švedas, J. Prapies-tis, A. Abramavičius, *Lietuvos baudžiamoji teisė. Bendroji dalis. Antroji knyga*, Vilnius 2020, p. 237.

Lithuania, pursuant to Article 77 of the Constitution,²⁰ the President is the head of state, and he or she performs all the duties with which that office is charged by the Constitution and other laws.²¹ The power to grant pardon is one of the President's functions provided for in Article 84 of the Constitution. As stated on the official website²² of the President's Office: “<...> the head of state is addressed as the last institution of truth and humanism. An act of clemency mitigates the fate of convicts and harmonizes the provision of mercy and justice <...>”. It should be noted that the current constitutional regulation of pardons in Lithuania has practically not changed since the provisions of the interwar Constitutions. For example, the 1922 Constitution of Lithuania²³ provided that “the President of the Republic has the right to pardon a punishment. The President of the Republic may pardon a punishment for Ministers who have been convicted of crimes during their service only with the consent of the Seimas.” The 1928 Constitution²⁴ already stated that “the President of the Republic has the right to pardon a punishment and, in cases specified by law, to restore rights that have been deprived or restricted by a court.” Meanwhile, the 1938 Constitution²⁵ defined the right of pardon by the President of the Republic even more precisely, stating that “the President of the Republic may pardon a punishment imposed by a court decision or part thereof or replace it with a lighter punishment. In cases established by law, the President of the Republic may restore rights deprived or restricted by the court.”

As Baranskaitė stated, pardon is not purely a criminal law institution since its regulation by criminal law norms is minimal. What is more, usually, the practical implementation of criminal law is regulated by the law of criminal procedure; however, in the case of Lithuania, the pardon's practical implementation procedure is not determined in the criminal procedure law, so it does not fall within the scope of criminal procedure law, either. Moreover, pardon is not a purely constitutional law institution since it concerns persons who have committed a crime, and its practical application is carried out not by state administration but by law enforcement bodies. According to Baranskaitė, it is a complex legal institution.²⁶ Further analysis shows that in the case of Lithuanian, the procedure for applying for pardon

20 Constitution of the Republic of Lithuania (Valstybės žinios (State Gazette), 1992, No. 33–1014).

21 J. Spaičienė et al., *Introduction to Lithuanian Criminal Law*, Vilnius 2011, p. 63.

22 Official website of the President of Lithuania, <https://lrp.lt/lt/malone> (access: 06.02.2025).

23 V. Andriulis, R. Mockevičius, V. Valeckaitė (eds.), *Lietuvos valstybės teisės aktai* (Register of Legal Acts) 1918.02.16–1940.06.15, Vilnius 1996.

24 *Ibidem*, p. 17.

25 *Ibidem*, p. 30.

26 A. Baranskaitė, *Amnestijos ir malonės institutai...*, pp. 7–9.

and examining applications is laid down in the provisions for the examination of requests for pardon. These have practically not changed since the interwar period: the 1930 Pardon Law of Lithuania²⁷ regulated the procedure for filing, deciding on, and executing a pardon application that a convicted person or his or her guardians could submit. Currently, the aspects mentioned above are practically in the same way regulated by the Procedure for Examining Clemency Applications approved by the President.²⁸ Convicts serving their sentences submit their requests through the correctional facility administration, which forwards the requests to the President's Office along with final court rulings, reports on the convicts' work and behavior, records on the compensation of damages caused by the criminal act, and other relevant materials. Persons serving a prison sentence or ordered to pay fine submit pardon requests themselves. The Clemency Commission examines the materials prepared by the competent specialists of the President's Office.²⁹

In Poland, the power of pardon is a presidential prerogative provided for in Article 139 of the Constitution.³⁰ Moreover, Article 144 lays down that the President of Poland, exercising his or her constitutional and statutory competence, issues official acts. For them to be valid, they must be signed by the Prime Minister. However, such a signature requirement does not apply to the institution of pardon. As stated on the official website³¹ of the President's Chancellery, the act of clemency is used primarily when the consequences of the judgment are excessively burdensome, and their repressive nature significantly exceeds the level intended by the court when considerations of humanity and justice so require. According to Waltoś, unlike the laws of many other countries, constitutional law in Poland leaves the determination of the scope and content of the right to pardon to constitutional practice.³² As Pracki mentions, the right to pardon is not only an institution of constitutional and state law but also a part of criminal and criminal procedural law.³³ According to

27 Lietuvos valstybės teisės aktai..., pp. 37–38.

28 Decree of the President of the Republic of Lithuania of 9 January 2020 on the amendment of the Decree No. 1K-181 of the President of the Republic of Lithuania 2020 on the establishment of the Clemency Commission and approval of regulations for the examination of clemency requests (TAR (Register of Legal Acts), 06.01.2025, No. 98).

29 G. Švedas, J. Prapiestis, A. Abramavičius, *Lietuvos baudžiamoji teisė...*, p. 239.

30 Constitution of the Republic of Poland of 2 April 1997 (Dz. U. (Journal of Laws) No. 78 item 483 as amended).

31 Official website of the President of Poland, <https://www.prezydent.pl/prezydent/kompetencje/prawo-laski> (access: 03.04.2025).

32 S. Waltoś, *Proces karny. Zarys systemu*. 10th edition, Warsaw 2009, p. 574.

33 H. Pracki, *Funkcjonowanie prawa łaski w Polsce i innych krajach europejskich*, Warsaw 2003, p. 9.

Rogoziński³⁴, the granting of pardon is not carried out in a vacuum but requires the existence of certain procedures, with particular importance of norms of criminal procedural law established in the Polish Code of Criminal Procedure.³⁵

The comparison of the two systems reveals some interesting aspects. First, requests for pardon in Lithuania can be examined only after receiving convicts' personal requests. Requests from other persons, for example, defense attorneys, close relatives, etc., cannot serve as a basis for considering a request for clemency. An application can be made by a person sentenced to any kind of punishment (and of any amount).³⁶ There is no doubt that such a categorical association only with the convicted person can cause some practical issues, for example, in the case of a minor whose parents (or legal representatives) do not have the right to file a pardon request on behalf of their child (although in other areas they have such a right). In the past it was not only convicted persons that could apply for a pardon. There was a period when an enacted law provided that pardon was *usually* granted at the personal convicts' request. There were also regulations laying down that in addition to pardon requests, the Clemency Commission examined materials on persons sentenced to death penalty, even those who had not filed pardon requests.³⁷ Such a provision was associated with the general requirement that the death penalty in Lithuania could be carried out only after exhausting all legal means (including pardon), allowing for the assessment of the legality and justice of the imposition of this punishment. It may also be mentioned that legal scholars and commentators of Lithuanian criminal law and criminal procedure raise no questions about granting clemency to a deceased applicant because, according to Article 3 of the Code of Criminal Procedure of Lithuania,³⁸ in such a case the criminal procedure (including execution of the judgment and punishment) must be terminated. Secondly, Lithuania has established a Clemency Commission, which reviews requests for pardon applications and provides recommendations to the President. It is a collegiate, advisory, non-remunerated institution that helps to evaluate the circumstances related to each person requesting clemency, preliminarily considers

³⁴ P. Rogoziński, *Instytucja ułaskawienia w prawie polskim*, Warsaw 2009, pp. 485, 487.

³⁵ Act of 6 June 1997. Code of Criminal Procedure (consolidated text, Dz. U. (Journal of Laws) of 2025 item 46).

³⁶ V. Piesliakas, *Lietuvos baudžiamoji teisė...*, p. 410.

³⁷ Annex to Decree No. 9 of the Acting President of the Republic of Lithuania of 11 January 1993, on the Procedure for the Examination of Clemency Requests (Valstybės žinios (State Gazette), 1993, No. 3–60).

³⁸ Criminal Procedure Code of the Republic of Lithuania (Valstybės žinios (State Gazette), 2002, No. 37–1341).

all clemency requests, and submits its conclusions and recommendations to the President regarding the appropriateness of granting clemency to each individual, as well as potential clemency options, for example, release from further punishment execution, etc.³⁹ The President's decision to grant pardon or not remains discretionary. At the moment, there are nine members in this Commission: Legal Advisor to the President (Chairman of the Commission), Representative of the Lithuanian Bar Association, Representative of the Lithuanian Caritas, Chairman of the Supreme Court of Lithuania, Chairman of the Court of Appeal of Lithuania, Minister of Justice of Lithuania, Prosecutor General of Lithuania, a representative of the Lithuanian Association of Criminologists and a representative of the Lithuanian Prisoners' Welfare Society. The Legal Advisor to the President chairs the meetings of the Clemency Commission. In the opinion of the authors of this article, the current structure of the Clemency Commission, where the representatives of different legal professions are present, is optimal.

In Poland, the process of granting a pardon is regulated by Chapter 59 (Articles 560–568) of the Code of Criminal Procedure of Poland. After analyzing these provisions, different types of proceedings can be distinguished. However, in none of them does a pardon commission like the one established in Lithuania exist. The Public Prosecutor General⁴⁰ and the courts adjudicating the convicted person's case are involved in the pardon procedure. The first type of proceedings is the proceedings initiated upon submission of a request for pardon. The exhaustive list of persons who may apply for clemency of a convict is specified in Article 560(1) of the Code of Criminal Procedure. The list is materially more extensive than in Lithuania. First of all, a request for pardon can be filed by the convict himself or herself. As Rogoziński states, the concept of a "convict" in the context of Polish pardon proceedings has a specific meaning, as its scope is broader than that directly derived from the Code of Criminal Procedure provisions. For example, it can be someone whose criminal proceedings have been conditionally discontinued. As the author states, this is someone to whom clemency can potentially be applied.⁴¹ Secondly, a request for pardon may be submitted by a person authorized to file appeals on behalf of the convict, such as the convict's defense attorney, the legal representative of a convicted minor or an incapacitated person, the person under whose supervision such a convict remains, and the prosecutor. Finally, requests for a pardon can

³⁹ See more: V. Piesliakas, *Lietuvos baudžiamoji teisė...*, p. 411; G. Švedas, J. Prapiestis, A. Abramavičius, *Lietuvos baudžiamoji teisė...*, pp. 238; G. Švedas et al., *Lietuvos Respublikos baudžiamojos kodekso komentaras. Bendroji dalis (1–98 straipsnių)*, Vilnius 2004, p. 427.

⁴⁰ Note that the Public Prosecutor General is formally the Minister of Justice in Poland.

⁴¹ P. Rogoziński, *Instytucja ułaskawienia...*, p. 591.

be submitted by direct relatives (for example, parents, grandparents, etc.), adoptive parents or adoptees, siblings, spouses, and a person living with a convict.⁴² Polish scholars debate whether a dying person can be granted clemency. According to some authors, in such a case, the right to clemency would not apply to the convict themselves but could have consequences for their family members, especially if the punishment included the loss of property. The general definition of the right to clemency in the Constitution, according to some authors, allows for such an interpretation. According to others, proceedings are discontinued at the moment of the convict's death.⁴³

Article 561 of the Code of Criminal Procedure provides that the request is *submitted* to the court that issued the judgment at the first instance. Therefore, the regulation raises questions, as it does not directly indicate to which body a request for clemency should be *filed*. According to some scholars, the request may be addressed to one of the authorities involved in the pardon proceedings, for example, the court, Public Prosecutor General, or President⁴⁴; however, regardless of who it is filed at, a request for pardon is *submitted* to the court that issued the judgment in the first instance. The court shall consider the request for clemency in the same composition that ruled on the case and, if possible, include judges and lay jurors who participated in issuing the judgment. As the Polish commentary mentions, "they are able to recall the profile of the convict, which has a significant impact on clemency".⁴⁵ According to Rogoziński, where a request for pardon was ruled on by the court of first instance and where it issues a positive opinion concerning the pardon request – the court sends the case files or necessary parts thereof to the Public Prosecutor General together with its opinion and in the absence of grounds for issuing a positive opinion – it leaves the request without further action. Where it is the court of appeal that ruled on the request for pardon, the court of first instance sends it the files or necessary parts thereof together with its opinion. The court of appeal leaves the request without further action only if it issues a negative opinion and such an opinion has already been issued by the court of first instance. In other cases, the court of appeal sends the files and opinions to the Public Prosecutor

⁴² These are considered to be individuals of the opposite sex who are not married but share a household and have spiritual, physical, and economic bonds. Furthermore, the existing features of their relationship should indicate that it is intended to continue and that, in addition to these bonds, they intend to remain in this relationship (cohabitation) (P. Rogoziński, *Instytucja ułaskawienia...*, pp. 600–601).

⁴³ H. Pracki, *Funkcjonowanie prawa łaski w Polsce...*, p. 9.

⁴⁴ J. Warylewski, *Prawo karne...*, p. 529.

⁴⁵ S. Waltoś, *Proces karny...*, p. 575.

General. If the request for pardon has received a positive opinion from at least one of the mentioned courts, the Public Prosecutor General shall submit a request for clemency to the President together with the case files and his or her own opinion. The final decision shall be taken by the President.⁴⁶ As Rogoziński states, many legal scholars in Poland hold the view that the regulation mentioned above introduces a reasonable selection process for requests and ensures that the President deals only with those that have the highest chances of a favorable outcome, and it cannot be replaced by the expansion of the President's Chancellery as that would not serve the transparency of the procedure. He also notes that there have been discussions on whether it would not be reasonable to entrust the review of applications to a pardon commission, as such a model has some positive aspects, for example, unification of the criteria for reviewing applications, conducting a coherent pardon policy or easier coordination of activities between the President's Chancellery and the body issuing the opinion. On the other hand, it was stated that the case is undoubtedly best known to the adjudicating courts, which have previously had personal contact with the convict. What is more, courts have more possibilities of collecting evidence concerning opinions on requests. Finally, a separate body would have to consider thousands of requests per year, requiring staff, logistical support, finances, etc.⁴⁷

The second type of proceedings is ex officio proceedings. It is sometimes called a kind of proceedings that should be considered exceptional concerning the primary type of proceedings conducted upon request. Article 567 of the Code of Criminal Procedure of Poland allows different paths of ex officio proceedings. For example, one of the possible paths is an initiation of an ex officio case by the Public Prosecutor General on his or her own initiative with a request for the opinion of the adjudicating courts or without requesting the opinion of the adjudicating courts. The course of such action is left to the discretion of this authority. However, Polish legal writers mention that the option of requesting the opinion of the courts involves a more thorough examination of the justification for clemency both in terms of evidence and in considering a broader range of perspectives from various institutions.⁴⁸ Another possible option is initiating ex officio proceedings by the President by instructing the Public Prosecutor General to initiate proceedings with or without a request for the opinion of the adjudicating courts. In practice, the President always specifies in his or her decision whether it is necessary to request court opinions. The clemency proceedings initiated upon the President's decision,

⁴⁶ The process is analysed in detail in P. Rogoziński, *Instytucja ułaskawienia...*

⁴⁷ *Ibidem*, pp. 494–498.

⁴⁸ *Ibidem*, p. 680.

with a request for the opinions of the courts, are conducted in the same way as proceedings initiated *ex officio* by the Public Prosecutor General, and opinions must be requested from both the court ruling in the first instance and the court in the second instance. Analyzing the possibility of *ex officio* proceedings, it should also be mentioned that the President may instruct the Public Prosecutor General to present the case file only. Such a situation may arise in practice when the President learns – whether through the media or other means – of a particular case that may require clemency intervention. This procedure aims to quickly bring the case files to the President when the head of state sees the need to make an immediate decision regarding clemency.⁴⁹

To sum up, Lithuania and Poland have introduced different models of pardon proceedings. Lithuania has implemented only a one-way model where only the convict can file a pardon request. The Clemency Commission analyzes such requests and its opinion afterward is presented to the President, who makes the final decision. In Poland, there are a few types of proceedings. There is no pardon commission, but courts play an essential role as opinion-giving entities. Moreover, pardon requests can be filed not only by the convicts themselves. Finally, in Poland, the President can start pardon proceedings even *ex officio*, which is impossible in Lithuania. Generally, a comparison of the clemency institution in Lithuania and Poland allows us to conclude that in the former the examination of clemency application is more orientated towards a political decision-making procedure, while in the latter, it is formal and mainly legal, based on the rules of criminal procedure.

2. The scope of pardon

In Lithuania pardon can be granted to anyone convicted by Lithuanian courts for any criminal act and only after the judgment becomes final and the convict starts serving the sentence or detention. It can be applied only in those cases where a punishment has been imposed but has not yet been fully served at the time of pardon granting. Otherwise, that would be rehabilitation.⁵⁰ Moreover, pardon may also be granted to a person who is conditionally released from a correctional institution, as a conditional release is a form of serving a sentence.⁵¹ Pardon can be granted regardless of the category of the committed criminal act, i.e., whether it was a crime

⁴⁹ *Ibidem*, pp. 691, 698.

⁵⁰ A. Baranskaitė, *Amnestijos ir malonės institutai...*, p. 13.

⁵¹ G. Švedas, *Bausmių vykdymo teisė. Bendroji dalis (2-oji papildyta ir pataisyta laida)*, Vilnius 2013, pp. 65–66.

(regardless of the severity) or a misdemeanor. It cannot release a person from criminal liability or from imposed penal or reformatory measures. When pardoning, the President cannot change the type of punishment, replace the imposed punishment with a more lenient one, impose any obligations, requirements, or prohibitions, or annul a conviction (criminal record).⁵² On the other hand, historical analysis shows that there used to be times when pardon could be granted by 1) replacing the death penalty with imprisonment, 2) completely or partially releasing from both the main and additional punishments or 3) replacing the unserved part of the imprisonment with a milder punishment.⁵³ Moreover, there was a period in the past when, after granting a pardon, a probationary period could be set for the person concerned. However, no legal acts established a control mechanism, thus such a condition was just a formal thing that did not bring about any consequences.⁵⁴

The restriction that “requests for clemency from persons sentenced to life imprisonment may be considered no earlier than after 10 years of imprisonment have been served”, may be regarded as inconsistent with the provisions of Lithuanian law. Meanwhile, the Constitution and the Criminal Code of Lithuania⁵⁵ do not provide for a prohibition on examining requests for clemency from persons sentenced to life imprisonment submitted before serving 10 years of imprisonment (although, at the same time, these laws do not oblige the decision-making authority to issue a favorable decision on such a pardon request).

It should also be noted that in 2019 an amendment of Article 79 of the Criminal Code entered into force.⁵⁶ Since then, “the President of the Republic may grant clemency to a *convict* even in cases where, by agreement with a foreign state, it is sought to return to the Republic of Lithuania a Lithuanian citizen who, acting in the interests of the Republic of Lithuania, *has been convicted* in a foreign state or *is subject to criminal prosecution*.” The current wording suggests that in such cases a pardon can be applied not only to convicts. The latter amendment is described as aligning with national security interests and a necessity to have legal mechanisms

52 G. Švedas, J. Prapiestis, A. Abramavičius, *Lietuvos baudžiamoji teisė...*, p. 238.

53 Annex to the Decree No. 9.

54 A. Baranskaitė, *Amnestijos ir malonės institutai...*, p. 12.

55 Law of 25 October 2000. Criminal Code of the Republic of Lithuania (Valstybės žinios (State Gazette), 2001, No. 89-2741, as amended), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/asr> (access: 13.04.2025).

56 Law of 11 November 2019 amending Article 79 of the Criminal Code of the Republic of Lithuania (TAR (Register of Acts), 11.11.2019, No. 18050), <https://www.e-tar.lt/portal/lt/legalAct/8bf36700047911ea9d279ea27696ab7b> (access: 13.04.2025).

that help to protect Lithuanian citizens.⁵⁷ During the preparation of the amendment, it was mentioned that the regulation would create prerequisites for granting pardons to persons convicted of espionage, allowing, by agreement with a foreign state, the return of a Lithuanian citizen who is being criminally prosecuted in that foreign state for acting in the interests of Lithuania's national security.⁵⁸

Moreover, taking into account the provisions of international law (for example, the Council of Europe Convention on the transfer of sentenced persons,⁵⁹ etc.), as well as EU and national legal acts,⁶⁰ which regulate the transfer of convicts to another country for further execution of their punishment; the President can also grant pardon to persons sentenced by the courts of foreign countries whose punishment execution has been taken over by Lithuania.

In Poland, pardon may be granted to all Polish citizens convicted by Polish courts (except those convicted by the Tribunal of State). It cannot be applied to individuals convicted by other countries' courts, except in cases where such a person has been transferred to Poland to serve their prison sentence.⁶¹ According to Brodowski, the authority to grant pardon to perpetrators of specific crimes may be subject to limitations arising from the obligation to fulfill commitments contained in international agreements by which the state is bound. For example, pardon cannot be applied to crimes that, due to their serious nature, have been recognized as international crimes and are subject to universal jurisdiction and to the absolute duty to prosecute the perpetrators (for example, grave breaches of the Geneva Conventions of August 12, 1949; crimes against humanity, as defined in Article 6 of the Statute of the International Military Tribunal in Nuremberg (1945); genocide, as described in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), etc.). Granting pardon to perpetrators of international

⁵⁷ G. Švedas, J. Prapiestis, A. Abramavičius, *Lietuvos baudžiamoji teisė...*, p. 239.

⁵⁸ See more: Conclusion of the Main Committee of 17 October 2019 on Draft Law No. XIIIP-3991 – Amending Article 79 of the Criminal Code of the Republic of Lithuania (No. 102-P-55).

⁵⁹ According to Article 12 of the Council of Europe Convention on the transfer of sentenced persons: "Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws" (Convention of 21 March 1983 – Council of Europe Convention on the Transfer of Sentenced Persons (Valstybės žinios (State Gazette), 1995, No. 42–1022).

⁶⁰ For example, Lithuanian law on mutual recognition and enforcement of decisions of EU Member States in criminal cases provides a rule that "a convicted person can be released from serving a punishment by the order of pardon or amnesty, according to the national law of another European Union member state that adopted the decision on imprisonment and according to the laws of the Republic of Lithuania." (Law of 21 November 2014 on the Recognition and Enforcement of Judicial Decisions in Criminal Matters of the European Union Member States (TAR (Register of Legal Acts), 21.11.2014, No. 17299).

⁶¹ H. Pracki, *Funkcjonowanie prawa łaski w Polsce...*, p. 8.

crimes, due to binding international agreements and Article 9 of the Constitution of Poland (which states that Poland respects the international law binding upon it), according to the same author, would result in a violation of the principle of *pacta sunt servanda*.⁶² Moreover, Poland and Lithuania have ratified the Rome Statute of the International Criminal Court.⁶³ Article 110 of the Rome Statute provides that “the State of enforcement shall not release the person before expiry of the sentence pronounced by the Court. The Court alone shall have the right to decide any reduction of sentence and shall rule on the matter after having heard the person.” Considering these provisions of the Rome Statute, neither state can grant clemency to those convicted persons who are serving a punishment imposed by the International Criminal Court in Poland or Lithuania.

Since the process of granting pardon is not regulated in detail in the Constitution of Poland, specific questions arise. For example, the Constitution does not answer whether the President may exercise the right of pardon even before the conviction becomes final. In other words, can a president apply a so-called “individual abolition”? Article 139 of the Constitution only states in the abstract that “the President of the Republic shall have the power of pardon”. The official website⁶⁴ of the President of Poland mentions that pursuant to Article 139 of the Constitution, a pardon may be granted even before the conviction becomes final. Scholars sometimes also express such opinions.⁶⁵ On the other hand, many arguments against such a position can be found. As Kardas and Giezek note, Article 139 of the Constitution does not determine whether the pardon can be applied to persons before they are finally convicted, so the supporters of this possibility point out that the Constitution does not exclude it directly. However, according to the same authors, something that is often forgotten is the fact that the article mentioned is not an “isolated island”, and it is merely one provision of the fundamental law.⁶⁶ The Constitution cannot be too casuistic. Its individual provisions should be interpreted in the context of its other provisions, especially constitutional principles, which should be implemented to

62 L. Brodowski, *Ustrojowy charakter prawa łaski i amnestii w kontekście instytucji ekstradycji*, “Przegląd Prawa Konstytucyjnego” 2023, No. 3, pp. 82–84, 86.

63 More: Rome Statute of the International Criminal Court, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (access: 13.04.2025).

64 Official website of the President of Poland, <https://www.prezydent.pl/prezydent/kompetencje/prawo-laski> (access: 03.04.2025).

65 For example: S. Waltoś, *Proces karny...*, p. 574.

66 P. Kardas, J. Giezek, *Konstytucyjne podstawy prezydenckiego prawa łaski a możliwość stosowania tzw. abolicji indywidualnej*, “Palestra” 2016, No. 1/2, p. 25.

the broadest extent possible.⁶⁷ What is more, it is sometimes noticed that Article 139 of the Constitution consists of two sentences: the first states that “the President of the Republic shall have the power of pardon”, while the second states that “power of pardon may not be extended to individuals convicted by the Tribunal of State”. According to Radajewski, there is no doubt that the purpose of the second sentence was to exclude the possibility of mitigating the sentences of the Tribunal of the State, which adjudicates on the liability for violating the law by the highest state officials (e.g., the Prime Minister, ministers), including the President. Since this sentence refers to “convicted individuals”, it means that the first sentence also refers only to them. Otherwise, this provision would be absurd - it would not allow pardoning persons convicted by the Tribunal of the State but would allow the President to pardon them before they are convicted.⁶⁸ According to Adamus, it cannot be forgotten that until the time of a legally binding conviction, the accused is considered innocent, and pardoning a formally innocent person is, in principle, internally contradictory because why does an innocent person need a pardon? Moreover, a pardon before a conviction becomes final prevents the defendant from demonstrating his innocence and clearing his good name. Furthermore, a conviction in a criminal case can be very important for victims of crime.⁶⁹ As mentioned by Kardas and Giezek, a pardon must relate to a decision that establishes the consequences arising from the imposition of punitive responsibility (i.e., related to the commission of a crime). It is these consequences for a specific individual that the President revokes by exercising this power. However, in the absence of a final conviction, there are no legal consequences to be lifted. Moreover, granting a pardon to a person who has not been finally convicted in the form of an individual act of abolition would be contrary to the principle of a democratic state governed by the rule of law.⁷⁰ Kędzierski adds that when the President exercises the right of clemency, it is as if judicial power passes into the hands of the Nation, and it is the Nation that, in

⁶⁷ M. Radajewski, *Czy Prezydent RP może ulaskawić osobę nieskazaną prawomocnym wyrokiem sądu*, Strefa Prawna Uniwersytetu SWPS, <https://web.swps.pl/strefa-prawa/artykuly/17103-czy-prezydent-rp-moze-ulaskawic-osobe-nieskazana-prawomocnym-wyrokiem-sadu#:~:text=Prawo%20%C5%82aski%20zosta%C5%82o%20przewidziane%20w%20art.%20139%20Konstytucji,stosuje%20si%C4%99%20do%20os%C3%B3b%20skazanych%20przez%20Trybuna%C5%82%20Stanu%E2%80%9D> (access: 21.02.2025).

⁶⁸ *Ibidem*.

⁶⁹ R. Adamus, *Prawo łaski, skąd się wzięło, jak je stosowano na ziemiach polskich i co dziś może zrobić prezydent – analiza profesora prawa*, 2024, wyborcza.pl, <https://wyborcza.pl/7,162657,30593846,prawo-laski-skad-sie-wzielo-jak-je-stosowano-na-ziemiach-polskich.html> (access: 21.02.2025).

⁷⁰ P. Kardas, J. Giezek, *Konstytucyjne podstawy prezydenckiego prawa łaski...*, pp. 28, 35.

effect, grants the convicted person a pardon. However, serious doubts arise whether the Nation truly desires judicial proceedings to be disrupted, preventing the normal course of determining guilt, as happens with the application of the so-called individual abolition.⁷¹ Finally, it should be mentioned that the Supreme Court of Poland stated that the President had no power to issue such a pardon because the administration of justice in Poland is the exclusive domain of the courts, and applying pardon at an earlier stage of criminal proceedings does not allow the adoption of a final court decision, which means the release of a person not so much from a specific punishment, but from the possibility of criminal liability itself. However, later on, the Constitutional Tribunal of Poland ruled that the Supreme Court of Poland did not have the right to exercise legal control over presidential pardons and found that “individual abolition” was undoubtedly part of the power of pardon.⁷²

In Poland and Lithuania, pardon may consist of a full pardon or a reduction of the punishment. Moreover, there are other forms of pardon in Poland; for example, some penal measures are also subject to pardon; it is possible to grant a pardon in the form of a conditional suspension of imprisonment or fine or of a conditional release, etc.⁷³ According to Waltoś, the President is bound by the lower and upper limits of a given type of punishment or a penal measure and cannot change it to a punishment or penal measure not provided for in the Penal Code of Poland.⁷⁴ The right to clemency cannot cover educational and corrective measures because they are not repressive measures.⁷⁵ A pardon cannot change the judicially determined civil law obligations, nor does it cover the manner of execution of the punishment; for example, it cannot soften the regime of serving a sentence.⁷⁶

Current principles established in Lithuania dictate that when granting a pardon, consideration is given to the nature and severity of the criminal act committed, the personality of the offender, his behavior, employment and health, the length of the sentence served so far, compensation for material and non-material damages caused by the criminal act, the opinions of the correctional facility administration, other law enforcement institutions, social organizations, workplaces, and individuals maintaining social ties with the convict and the achievement of the purpose of the punishment. It is also mentioned that the list is not exhaustive,

⁷¹ J. Kędzierski, *Prawo łaski a tzw. abolicja indywidualna – rozważania pro publico bono*, “Palestra” 2016, No. 1/2, p. 45.

⁷² P. Kusik, *International Media Coverage...*, pp. 2439–2443.

⁷³ S. Waltoś, *Proces karny...*, p. 574.

⁷⁴ *Ibidem*, p. 574.

⁷⁵ H. Pracki, *Funkcjonowanie prawa łaski w Polsce...*, pp. 9–11.

⁷⁶ S. Waltoś, *Proces karny...*, pp. 574–575.

and other circumstances relevant to granting a pardon are also considered.⁷⁷ The historical analysis shows that the list of circumstances to be taken into account by different presidents was clarified by heads of state from time to time but, in any case, remains non-exhaustive. According to Baranskaitė, it is essential to take into account whether the convict understands and admits his or her guilt and regrets the motives of a criminal act. For example, a person who killed someone during a domestic conflict has more chances of receiving a pardon than a convicted person who had planned the murder in advance.⁷⁸

In the case of Poland, according to Article 563 of the Code of Criminal Procedure, when examining an application for clemency, the court shall, *inter alia*, take into account the behavior of the convict after the adoption of the sentence, the length of the punishment already served, the state of health of the convict and his or her family circumstances, compensation for the damage caused by the crime, etc. According to Smaga, special events after the judgement was issued are crucial to be considered. However, this is an open catalog of circumstances that should be considered. The President is not obliged to grant clemency even if the specified conditions are met, and it is solely up to the head of state to decide under what circumstances clemency will be granted.⁷⁹ According to Waltoś, these are just the most typical premises and pardons may also be granted for other reasons, such as to achieve reciprocity in international relations.⁸⁰ As Pracki states, among the most common reasons for granting clemency are those that arose only after the final court decision, circumstances that could not have been considered when imposing the punishment (for example, health issues, worsening family or living conditions, the occurrence of unfavorable life events, etc.).⁸¹ Justice, humanitarianism and rationalism are sometimes said to be the criteria for granting clemency.⁸²

To sum up, in Lithuania a pardon may be granted to anyone convicted of any criminal act (crime or misdemeanor) but only after the judgment becomes final (with one exception for a Lithuanian citizen prosecuted in a foreign country for the protection of Lithuania's national interests); meanwhile, in Poland it may be exercised even before the conviction becomes final. In Lithuania clemency may only

⁷⁷ Decree of 9 January 2020.

⁷⁸ A. Baranskaitė, *Amnestijos ir malonės institutai...*, p. 11.

⁷⁹ A. Smaga, *Sytuacja prawnia osoby ułaskawionej przez Prezydenta Rzeczypospolitej Polskiej*, "Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego" 2023, Vol. XVIII, No. 20 (1), p. 161.

⁸⁰ S. Waltoś, *Proces karny...*, p. 574.

⁸¹ H. Pracki, *Funkcjonowanie prawa łaski w Polsce...*, p. 7.

⁸² S. Waltoś, *Proces karny...*, p. 574.

involve a full pardon or a reduction of punishment. In Poland there are other forms of pardon too. For example, some penal measures are also subject to a pardon; it is possible to grant pardon in the form of a conditional suspension of execution of imprisonment or fine or a conditional release, etc. In both countries, circumstances considered while analyzing whether to grant a pardon or not are similar and enacted in law. However, in both countries, the President is not obliged to grant a pardon even if the specified conditions are met, and it is solely up to the head of state to decide under what circumstances a pardon will be granted. Generally, a comparison of the scope of the clemency institution in Lithuania and Poland allows us to conclude that its scope is significantly broader in Poland since a wider range of subjects can submit a clemency request and clemency can be applied not only to punishment but also to penal measures, etc.

3. Pardon in the context of the criminal policy of a state

The basis of criminal policy is criminal law, which must establish criminal liability for criminal acts and the consequences of committing such acts. Traditionally, in Lithuania, criminal policy is associated not only with legislators' activities but also with the application of criminal laws.⁸³ As Rogoziński states, when analyzing whether pardon should be considered a part of the Polish state's criminal policy, the answer should be affirmative.⁸⁴

The range of forms of criminal liability enforcement and the conditions of their application are determined by the direction of the state's criminal policy. The objectives of criminal liability can be achieved even without the actual execution of the punishment imposed. Currently, the Criminal Code of Lithuania provides a few forms of criminal liability implementation (for example, imposition of punishment (sentencing), release from criminal liability, suspension of execution of the punishment, etc.), or a release from punishment (for example, a pardon).⁸⁵

Scholars are sometimes said not to dispute the value of using clemency to serve justice; however, they disagree over whether this should be clemency's only function.⁸⁶ In the context of criminal politics, pardon is sometimes viewed as a tool helpful to balance criminal policy; on the other hand, this institution brings a long

⁸³ G. Švedas, *Baudžiamosios politikos pagrindai ir tendencijos...*, pp. 22–23.

⁸⁴ P. Rogoziński, *Instytucja ułaskawienia...*, p. 414.

⁸⁵ G. Švedas, *Atleidimo nuo baudžiamosios atsakomybės instituto reikšmė Lietuvos baudžiamajai politikai*, "Teisė" 2024, Vol. 133, pp. 27–28.

⁸⁶ R.E. Barkow, M. Osler, *Clemency...*, p. 312.

list of questionable aspects. For example, criminal policy implemented in Lithuania from 1995 to 2003 was described as inconsistent and unbalanced in terms of its severity with a substantial number of incarcerated people. This policy partially tried to be mitigated by amnesty acts and pardons.⁸⁷ According to O'Donnell, if one accepts that the law can be too severe on occasion (even if correctly applied), executive clemency is an elegant way to mitigate its effects.⁸⁸ The Presidium of the Supreme Council of the Republic of Lithuania⁸⁹ in 1990–1992 granted pardons to 391 out of 2,686 applicants, which amounted to about 14.6%.⁹⁰ Between 1993 and 2000 it was given to 1,843 out of 32,890 persons, accounting for approximately 5.6% of applications, and as Baranskaitė states, comparing the periods of 1990–1992 and 1993–2000, it can be seen that the number of pardon requests granted compared to the number of pardon requests submitted decreased almost three times, which allows an observation that this institution was used only in exceptional cases, corresponding to the exceptional nature of pardon.⁹¹

President Brazauskas granted a pardon in 4.7% of clemency requests while President Adamkus granted about 7.7%.⁹² From 2014 to 2018, clemency was awarded to 45 convicts according to the Press Service of the President of Lithuania.⁹³ Statistics show that the percentage of pardons granted in Lithuania stayed low even in later years. The authors of this article agree with Rogoziński, who states it is important for the head of state to conduct a rational pardon policy, which primarily means carefully considering each case (taking into account opinions issued through procedural channels), using this power with restraint as a measure of last resort (*ultima ratio*), and granting clemency only when there is a specific, unquestionable, and significant reason for doing so.⁹⁴

Some countries use clemency to fight the prison overcrowding problem as a prison management tool. For example, the King of Thailand pardons between one-third and one-half of the prison population every year on his birthday to

⁸⁷ G. Švedas, *Baudžiamosios politikos pagrindai ir tendencijos...*, pp. 210–211.

⁸⁸ I. O'Donnell, *For and Against Clemency...*, p. 74.

⁸⁹ In that period in Lithuania pardon was granted not by President but by the Presidium of the Supreme Council of the Republic of Lithuania.

⁹⁰ G. Švedas, *Baudžiamosios politikos pagrindai ir tendencijos...*, p. 211; A. Baranskaitė, *Amnestijos ir malonės institutai...*, p. 11.

⁹¹ A. Baranskaitė, *Amnestijos ir malonės institutai...*, p. 11.

⁹² *Ibidem*, p. 12.

⁹³ G. Švedas, J. Prapiestis, A. Abramavičius, *Lietuvos baudžiamoji teisė...*, p. 240.

⁹⁴ P. Rogoziński, *Instytucja ułaskawienia...*, p. 423.

address prison overcrowding.⁹⁵ As Novak and Pascoe state, coronavirus has also reactivated the pardon power in many jurisdictions. It has not created an entirely new paradigm; however, what was different this time is the sheer scale of mass releases within particular jurisdictions and the simultaneousness of clemency granted worldwide, thereby providing national executives the chance to learn from and imitate each other's policies. Covid-19 has re-legitimized clemency as a policy tool, at least in some jurisdictions. The mass releases witnessed during 2020 serve to sharpen the focus in individual jurisdictions on other reforms necessary to combat over-incarceration, such as progressive prosecution policies, sentencing reforms, liberalizing parole eligibility, and compassionate release statutes as, after all, executive clemency serves only as a very "back-end" measure of discretion.⁹⁶ In Lithuania, none of these practices of pardon application happened.⁹⁷ The statistical analysis shows that, in general, not many persons are released from prisons in Lithuania each year due to pardons. For example, in 2018 and 2020–2023 no convicts were released from prison due to pardons, and only two persons were so released in 2019. The pardon institution is also not often applied in cases of arrest punishment. For example, in 2018, 2019, and 2021–2023, no convicts were released from arrest due to clemency, and only one person in 2020.⁹⁸ On the other hand, in the context of prison overcrowding, it is worth mentioning that until 2019 pardon had been the only opportunity for those sentenced to life imprisonment to be released earlier. However, in practice, it had been rarely applied. 2012 recorded the only case until now when the President granted a pardon to a life-sentenced prisoner. President Grybauskaitė changed life imprisonment to fixed-term imprisonment of 25 years.⁹⁹ As mentioned earlier, pardon was granted considering the progress made and the practices of European countries where punishment reviews are more humane. It was also said that the prisoner to whom pardon was applied had spent more than 16 years in confinement, obtained an education while serving the

95 R.E. Barkow, M. Osler, *Clemency...*, p. 315.

96 A. Novak, D. Pascoe, *Executive Clemency During the Coronavirus Pandemic: A Global Analysis of Law and Practice*, "International Criminology" 2022, Vol. 2, pp. 84, 92–93, <https://link.springer.com/article/10.1007/s43576-022-00047-0> (access: 10.03.2025).

97 G. Sakalauskas, *Non-custodial Sanctions and Measures in Lithuania: a Large Bouquet with a Questionable Purpose and Unclear Effectiveness. Promoting Non-discriminatory Alternatives to Imprisonment across Europe. Non-custodial sanctions and measures in the member states of the European Union*, Coimbra 2021, p. 14.

98 Lithuanian Prison Service Annual Reports 2018–2024, <https://kalejimai.lrv.lt/lt/administracine-informacija/ataskaitos/metu/> (access: 02.02.2025).

99 Decree No. 1K-1060 of the President of the Republic of Lithuania of 9 May 2012 on granting clemency.

punishment, was employed, and had demonstrated willingness to change through behavior.¹⁰⁰ The law changed during Grybauskaitė's presidency, specifying the minimum period after which convicts sentenced to life imprisonment can apply for pardon. A 10-year period was established changing it from the previous rule of 20 years. What is more, in 2019, in response to the European Court of Human Rights' judgment in the Matijošaitis case, in which violation of Article 3 of the Convention of Human Rights¹⁰¹ was found, amendments to the criminal laws of Lithuania were made. Currently, Article 51 of the Criminal Code of Lithuania allows prisoners serving life imprisonment, after twenty years of punishment having been served, to apply to the court for his or her life imprisonment to be changed to fixed-term imprisonment.

The number of pardon requests submitted annually in Poland ranges between 8,000 and 10,000. Moreover, this is lower than, for example, in the early 1970s when it reached 18,000–20,000 cases yearly.¹⁰² According to Rogoziński, only about 4% of clemency requests submitted to district courts are forwarded to the President for a final decision. The remaining cases are mostly left without consideration, dismissed, or resolved differently. In the case of regional courts' rulings in the first instance, only around 1.5% of requests received by these courts are presented to the head of state. This highlights the significant role of the courts in screening clemency requests and illustrates the practical challenges the President's Chancellery would face if courts were deprived of the authority to halt clemency proceedings due to finding the requests unjustified. The number of cases initiated *ex officio* by the Public Prosecutor General on its own initiative or at the President's request on average ranges from a few to several dozen per year, with the vast majority of these cases involving requests for opinions from the courts.¹⁰³ Warylewski raises a question of how merciful the presidents of Poland are. For example, President Wałęsa (1990–1995) pardoned 3,454 people while President Kwaśniewski pardoned 3,295 persons during his first term, meaning there were more than two acts of clemency per day. During his second term, Kwaśniewski pardoned 993 persons. President Kaczyński (2005–2010) pardoned 201 persons.¹⁰⁴

¹⁰⁰ More: *Prezidentė suteikė malonę trims kaliniams, tarp juų ir nuteistam iki gyvos galvos*, 2012, Balsas.lt, <https://www.tv3.lt/naujiena/lietuva/prezidente-suteike-malone-trims-kaliniamstarp-ju-ir-nuteistam-iki-gyvos-galvos-n596975> (access: 10.03.2025).

¹⁰¹ Seemore: *Lithuania amends law allowing review of life sentences*, 07.06.2019, CoE, <https://www.coe.int/en/web/execution/-/lithuania-amends-law-allowing-review-of-life-sentences> (access: 10.03.2025).

¹⁰² P. Rogoziński, *Instytucja utaskawienia...*, p. 414.

¹⁰³ *Ibidem*, p. 415.

¹⁰⁴ J. Warylewski, *Prawo karne...*, pp. 529–530.

Presidents' decisions worldwide occasionally spark controversy, especially when pardons are perceived as politically motivated. It is said that the president should not apply a pardon in cases of a person close to him as it may lead to reducing the authority of the President's Office in such situations.¹⁰⁵ In this context, even the possibility of self-pardoning arises. According to Foster, whether the President may pardon himself or herself is an unresolved legal question in the USA. Foster reads that proponents of the view that the President may pardon himself or herself tend to emphasize the lack of limitation in the constitutional language, and those stating that the President lacks such power emphasize that the constitutional text establishes power to "grant" pardons, and "a grant is something given to another person".¹⁰⁶ According to some lawyers, no law prohibits the Lithuanian President from pardoning himself or herself. However, as emphasized by the same authors, the President must avoid conflicts of public and private interests as enshrined in the Law on the Adjustment of Public and Private Interests.¹⁰⁷ Granting a pardon to himself or herself would be regarded as a breach of the requirements of this law. For such infringement of the law, a person may not be promoted, recruited, appointed, or elected to an equivalent or higher post for one year from the date the decision of the Chief Official Ethics Commission was taken.¹⁰⁸ On the other hand, we believe that a situation in which the President could grant himself or herself a pardon could not arise in Lithuania because, according to Article 86 of the Constitution, "the person of the President of the Republic shall be inviolable: while in office, he may neither be arrested nor held criminally or administratively liable." Thus, punishment for a crime could only be imposed on a former President because he or she would have to be removed from the President's office before criminal prosecution and sentencing.

Furthermore, it should be mentioned that the role of media and public opinion is often mentioned in the context of criminal politics, as well. The latter's role as a significant factor influencing the formation of criminal policy is no longer disputed among researchers of social processes. In the broadest sense, the simplified logical sequence of this influence can be described as follows: information provided by the media about crimes generates a specific public response and shapes public opinion. In turn, public opinion creates pressure on politicians, encouraging them

105 R. Adamus, *Prawo łaski...*

106 M.A. Foster, *Presidential Pardons: Overview and Selected Legal Issues*, "Congressional Research Service" 2020, <https://www.congress.gov/crs-product/R46179> (access: 14.02.2025).

107 Law of 16 July 1997 on the coordination of public and private interests of the Republic of Lithuania (Valstybės žinios (State Gazette), 1997, No. 67–1659).

108 V. Zeppa-Priedite, J. Dobelnieks, D. Raulušaitis, U. Nasvytė, *Reflections on news...*

to propose or adopt specific decisions in the field of criminal policy.¹⁰⁹ According to O'Donnell, when legislative reform is slow, politicians can respond to the public's desire to change the law by mitigating its consequences by exercising clemency. The exercise of pardon upholds public confidence in the political process, if not the law, by providing a space to express community sentiment where the criminal law is uncompromising.¹¹⁰ It is sometimes said that a pardon applied unjustly has a negative social impact, fostering a sense of impunity in the offender and conflicting with the principles of sound criminal policy. On the other hand, pardon applied in the appropriate case has a positive effect, particularly in terms of special prevention and sometimes even general prevention.¹¹¹ Whether or not the President should inform the public about the reasons for granting a pardon and how much knowledge on this he should make public is something to consider. Some scholars believe that for the same reasons that judges are required to explain punitive sentences, the president should voluntarily explain pardons, and public information needs to be recognized as critical to public confidence in the administration of justice.¹¹² As Rogoziński states, broad discretion in operating a legal institution cannot, however, mean a potentially unlimited scope of action in this regard. Adopting such a position would directly lead to the conclusion that the right of pardon could be exercised entirely arbitrarily, for any reason or no reason at all. If such an assumption were accepted, the right of pardon would essentially be an instrument of nihilism rather than law. Rogoziński goes on to emphasize that the concept of a democratic state governed by the rule of law involves, among other things, adherence to the principle of legality – which implies that constitutional norms bind the legislature, the executive and the judiciary are bound by law, while all public authorities are bound by international norms that the state has committed to respecting. From the individual's perspective, this ensures legal stability and predictability of state decisions.¹¹³ However, as Kardas and Giezek state, “<...> interpreting Article 139 of the Constitution in a purely linguistic manner and treating it as an isolated “lonely island” detached from context – one will not find any explicit constitutional basis

¹⁰⁹ G. Sakalauskas, S. Bikėlis, A. Pocienė, V. Kalpokas, *Baudžiamoji politika Lietuvoje: tendencijos ir lyginamieji aspektai*, “Teisės Institutas” 2012, pp. 131, 138.

¹¹⁰ I. O'Donnell, *For and Against Clemency...*, p. 73.

¹¹¹ P. Rogoziński, *Instytucja ułaskawienia...*, p. 418.

¹¹² D.J. Freed, S.L. Chanenson, *Pardon Power and Sentencing Policy*, “Federal Sentencing Reporter” 2000–2001, Vol. 13, No. 3–4, p. 123, <https://www.jstor.org/stable/10.1525/fsr.2000.13.3-4.119?seq=1> (access: 02.05.2025).

¹¹³ P. Rogoziński, *Instytucja ułaskawienia...*, p. 433.

requiring the President to justify their decision <...>¹¹⁴ A similar statement can be said in the context of Lithuania; for example, a former member of the Clemency Commission, E. Paulionis, indicated that “this is a Clemency, not a Justice Commission; one should not seek justice here, as mercy cannot be motivated”.¹¹⁵ Analyzing the practice of both countries, it should be noted that the presidents tend to disclose more or less the reasons for granting clemency in the public sphere. As Smaga states, according to statements published on the President’s official website, circumstances analyzed while pardoning often include the incidental nature of the offense, the convict’s health, age, positive social opinion, a long time passing since the commission of the offence, leading a stable lifestyle, or a difficult personal situation, etc.¹¹⁶ When reviewing some examples of Lithuanian presidential decrees (for example, in the period 2019–2020), one can see clear similarities with Poland, for example, the convict’s age, poor health, physical disability, financial situation, positive character traits, impeccable behavior while serving the punishment, an extremely low risk of reoffending, strong motivation to change behavior, efforts to participate in social rehabilitation programs actively, impeccable behavior during incarceration, other resocialization changes demonstrating their commitment to reintegration into society, family circumstances (the presence of young children and efforts to care for them or severely poor health of family members requiring care, etc.). In some cases, decisions may be informed by the fact that it was a first-time crime or that the criminal acts were committed due to the perpetrator’s desperate situation, or psychological or physical violence, etc.

Finally, it is sometimes said that it is not overuse but underuse of the pardon power that is a problem. According to some scholars: “<...> if there were some way of making the President less solely responsible for the implications of the pardon, it would improve the use of the pardon power more generally <...>”.¹¹⁷ Rogoziński proposes considering creation of an advisory body within the Chancellery of the President of Poland, which would be socially representative, and in more critical matters, especially when there are divergent opinions, it would present its proposals at the request of the President. The legal basis for creating and operating such a potential body should rely on internal regulations of the President’s Chancellery,

¹¹⁴ P. Kardas, J. Giezek, *Konstytucyjne podstawy prezydenckiego prawa łaski...*, p. 28.

¹¹⁵ A. Baranskaitė, *Amnestijos ir malonės institutai...*

¹¹⁶ A. Smaga, *Sytuacja prawnia...*, p. 161.

¹¹⁷ B. Meyer, *Stanford’s Bernie Meyler on Presidential Pardons: The History, the Controversy, and the Realities. Q&A with Professors Richard Thompson Ford and Pam Karlan*, 18.12.2024, SLS, <https://law.stanford.edu/2024/12/18/stanfords-bernie-meyler-on-presidential-pardons-the-history-the-controversy-and-the-realities/> (access: 10.02.2025).

not on provisions of generally applicable law.¹¹⁸ In Lithuania, as the historical analysis shows, the number of members of the Clemency Commission and their types changed many times under different presidents. For example, President Nausėda made not one but a few such changes during his two terms. In 2020, a representative of the Lithuanian Association of Criminologists replaced the representative previously delegated by the Lithuanian Lawyers' Association.¹¹⁹ In 2023, a Lithuanian Caritas representative was added to the list, and a Lithuanian Crime Victims Support Association representative was excluded.¹²⁰ In 2025, a Representative of the Lithuanian Bar Association was added to the list.¹²¹ As the official website of the institution provided,¹²² changes to the provisions for examining clemency petitions were made to make decisions regarding requests for clemency more transparent. During the term of President Adamkus, two of his legal advisors were members of the said Commission.¹²³ There were times when the Head of the Legal Department of the Seimas of Lithuania served as a member of the Clemency Commission (temporarily, until the election of the President).¹²⁴ Moreover, there was a period when the Head of the Chancellery of the Presidential office, the Minister of the Interior and the Chaplain of the Police were in the composition.¹²⁵

To sum up, pardon may be understood as a part of criminal policy carried out by the state in both countries. It is sometimes described as a tool that can help balance criminal policy (especially by reducing the problem of prison overcrowding) but lacks transparency. On the other hand, a pardon is rarely used in Lithuania;

¹¹⁸ P. Rogoziński, *Instytucja ułaskawienia...*, p. 498.

¹¹⁹ See more: Decree of 9 January 2020.

¹²⁰ See more in Decree Decree No. 1K-1366 of the President of the Republic of Lithuania of 13 June 2023 amending Decree No. 1K-181 of 9 January 2020 on the establishment of the Clemency Commission and approval of regulations for the examination of clemency requests (TAR (Register of Legal Acts), 13.06.2023, No. 2023-11733).

¹²¹ See more in Decree No. 1K-195 of the President of the Republic of Lithuania of 6 January 2025 amending Decree No. 1K-181 of 9 January 2020 on the establishment of the Clemency Commission and approval of regulations for the examination of clemency requests (TAR (Register of Legal Acts), 06.01.2025, No. 98).

¹²² Official website of the President of Lithuania, <https://lrp.lt/lt/malone> (access: 06.02.2025).

¹²³ See more in Decree of the President of the Republic of Lithuania Decree of 15 February 2007 on the establishment of the Clemency Commission and its regulations (Valstybės žinios (State Gazette), 2007, No. 22-23); Decree of the President of the Republic of Lithuania of 15 October 2009 amending Decree No. 1K-880 of 15 February 2007 on the establishment of the Clemency Commission and its regulations (Valstybės žinios (State Gazette), 2009, No. 123-5283).

¹²⁴ See more in Annex to Decree No. 9.

¹²⁵ See more in Decree No. 20 of the President of the Republic of Lithuania of 26 March 1993 on the Clemency Commission (Vyriausybės žinios (State Gazette), 1993, No. 11-271).

therefore, it has practically no impact on criminal policy. Meanwhile, in Poland, it is used significantly more often; hence, its influence on the state's criminal policy is more profound. Generally, the statistics on the application of pardon in both states only confirm the exclusivity of this institution and its minor influence on criminal policy.

Conclusions

1. In both countries, the institution of pardon means an act of mercy consisting of mitigation or remission of a punishment lawfully imposed for a crime on a specific individual. Pardon is mainly analyzed in criminal justice and constitutional law. It is usually described as an institution of exceptional nature, an instrument aimed at helping to implement the principles of humanism and justice.
2. Lithuania and Poland have introduced different models of pardon proceedings. Lithuania has implemented only a one-way model where pardon requests can be filed only by convicted persons. These requests are later analyzed by the Clemency Commission and its opinion is presented to the President. Meanwhile, in Poland, pardon requests can be submitted not only by the convicts. There are also not one but a few types of pardon proceedings; for example, the President can start pardon proceedings *ex officio*, which is impossible in Lithuania. In none of the types of pardon proceedings in Poland, pardon commissions exist, but as opinionating subjects, courts play an essential role in Poland. Despite the different pardon proceedings in both countries, it is the President who decides whether to grant pardon both in Vilnius and Warsaw.
3. Whether a pardon can be granted before a conviction becomes final is a subject of significant debate in legal science in Poland.
4. In Lithuania a pardon may consist of only a full pardon or a reduction of the punishment. In Poland, there are also other forms; for example, some penal measures are also subject to pardon; it is possible to grant pardon in the form of a conditional suspension of execution of an imprisonment punishment or fine, and also possible conditional release, etc.
5. In Lithuania and Poland pardon is understood as a part of the state criminal policy. However, the statistics of pardon applications in both states only confirm the exclusivity of this institution and its minor influence on their penal policy.

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Prawo łaski prezydenckiej na Litwie i w Polsce: analiza porównawcza

Streszczenie

W artykule przedstawiono i porównano pojęcie ułaskawienia oraz zakres i granice jego stosowania na Litwie i w Polsce. Ponadto przeanalizowano regulację procesu udzielania ułaskawienia i jego cechy na Litwie i w Polsce, wskazano kompetencje Komisji ds. Ułaskawień na Litwie, a także kompetencje innych instytucji państwowych (np. Prokuratora Generalnego, sądów) w Polsce w procesie udzielania ułaskawienia przez głowy państw – prezydentów. Ponadto w artykule omówiono znaczenie instytucji ułaskawienia dla polityki karnej obu państw. Aby osiągnąć cele artykułu, wykorzystano następujące metody badań prawnych: analizę prawną oraz analizę systemowo-porównawczą. Autorzy doszli do wniosku, że w obu krajach ułaskawienie jest analizowane głównie w prawie karnym (karnym procesowym) i prawie konstytucyjnym. Zwykle jest ono opisywane jako instytucja o charakterze wyjątkowym, instrument mający na celu pomoc w realizacji zasad humanizmu i sprawiedliwości. Z drugiej strony Litwa i Polska wprowadziły różne modele postępowania ułaskawieniowego. Pomimo różnych procedur w obu krajach w każdym przypadku tylko prezydent decyduje o ułaskawieniu. W obu krajach ułaskawienie jest rozumiane jako część państwowej polityki karnej. Jednak statystyki stosowania ułaskawienia w obu państwach potwierdziły jedynie wyłączność tej instytucji i jej niewielki wpływ na politykę karną państw.

Słowa kluczowe: prawo łaski, polityka karna, Polska, Litwa

CYTOWANIE

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