

Law on Using Polygraph in Lithuania – Latest Developments and its Impact

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Abstract

Lithuania is one of the very few countries where the use of the polygraph is regulated by a dedicated law adopted by the highest legislative authority: the Lithuanian Parliament. This year marks the 25th anniversary of the adoption of the Law on Using Polygraph.

This article provides a brief overview of the latest developments concerning the Law on Using Polygraph and the newest draft, as well as its potential impact on the use of the polygraph in Lithuania.

Key words: lie detector, polygraph, polygraph examination, lie detection, polygraph law, polygraph sub-law, polygraph legislation in Lithuania

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The Law on Using Polygraph of the Republic of Lithuania (hereinafter – Polygraph Law) has now been in force for a quarter of a century.

Development of the polygraph legislation began around 1999, when the first drafts were prepared. The Polygraph Law was adopted on 29 August 2000, but came into full force almost two years later, when on 12 July 2002 the Rules of Polygraph Examinations were adopted by the Government of the Republic of Lithuania.

It must be noted that the Polygraph Law alone did not constitute a sufficient basis for commencing polygraph examinations – adoption of the Rules of Polygraph Examinations was necessary.

The Polygraph Law has undergone several revisions in 2012, 2015, 2016, 2019 and 2020. One of the most substantial revisions – introduced in 2015 – involved amendments to the definitions of “polygraph” and “polygraph examiner”, as well as updates to the list of institutions authorised to conduct polygraph examinations and to the cases in which the polygraph may be used (Article 4 of the Polygraph Law). Article 5 (Purpose and cases of polygraph examinations) was also enacted in a new version. Furthermore, a new version of the Rules of Polygraph Examinations was adopted by the Government of the Republic of Lithuania was also adopted in 2015.

Before 2015, the examinations were applied to civil servants, sworn officers, servicemen, and candidates for the above positions. Following the 2015 amendments, the category of examinees was expanded to include contracted personnel, as well as human sources of intelligence and criminal intelligence.

Prior to the changes enacted in 2015, Article 4 contained paragraph 3, which provided that designated institutions were required to establish special polygraph units, whose chain of command was directly subordinated to the heads of those institutions. After 2015, this regulation was repealed.

In addition, Article 5 (“Purpose and cases of polygraph examinations”) was adopted in a new version. In the revised version of Article 5, paragraph 2 concerning the object of the examination was deleted, and the former paragraph 3, regulating the cases of polygraph examinations, became paragraph 2. Its content was also amended; in particular subsection 2 stating that polygraph examinations could be conducted during disciplinary checks, and internal or criminal intelligence investigations was replaced with three new subsections. Under the amended provisions, polygraph examinations may be conducted during counterintelligence activities; in

the course of checking criminal intelligence sources and of information provided by such sources; and in relation to officers involved in the protection of dignitaries.

In addition to the above amendments, the Government of the Republic of Lithuania adopted a new version of the Rules of Polygraph Examinations in 2015.

Though the detailed amendments to the Polygraph Law and Rules could serve as a topic for a separate discussion, this article focuses on the most recent revisions of the Polygraph Law.

In reviewing the latest developments of the Polygraph Law, the author does not necessarily share the same views and vision as the legislator regarding the future direction of the Polygraph Law. Nonetheless, the author will explore the implications of the forthcoming amendments for the scope of polygraph use and consider their potential impact on national security, the workload of polygraph examiners, and other related matters.

In this article, the author seeks to provide an overview of the substantial upcoming amendments to the Polygraph Law.

Speaking broadly, the proposed changes will dramatically expand the use of the polygraph in Lithuania and may result in a considerable increase in the number of examinations conducted. Such an expansion is likely to contribute to the strengthening of the national security regime in Lithuania.

The Article 4(2) in the draft of the Polygraph Law [Lietuvos Respublikos. Poligrafo naudojimo įstatymo], extends the existing categories of examinees (civil servants or employees, officers and military personnel, or candidates for these positions, as well as clandestine participants in criminal intelligence and intelligence cooperators) also to employees of suppliers, suppliers being natural persons, and candidates for cooperation with intelligence services.

This amendment substantially strengthens the ability of Lithuanian intelligence services to test their human intelligence sources and even candidates for such roles, thereby increasing operational effectiveness and serving as an important safeguard against penetration and infiltration by foreign agents.

The next substantial and entirely new amendment (proposed Article 4(3) of the Polygraph Law) authorises the State Security Department of the Republic of Lithuania to conduct polygraph examinations on foreigners for the purpose of controlling their residence in Lithuania and during transit. This effectively allows the

use of the polygraph in relation to nearly 50,000 individuals annually (according to statistics, more than 49,000 immigrants from non-EU countries arrived in 2023) [Migration in numbers].

The proposed amendment to the new Article 4(3) is closely linked to the new Section 1(3) of Article 5 of the draft Polygraph Law, which provides an additional case in which the polygraph may be used: *foreigners may be examined in order to assess whether they pose a threat to national security*. Assuming conservatively that only 1% of such immigrants would be tested, this would amount to more than 400 polygraph examinations per year.

Another significant amendment concerns Article 5(2)(1). Its current version states that testing may be enforced in cases where a security clearance procedure is ongoing and there are grounds to believe that the person has concealed information or provided misleading biographical data about themselves or their environment.

The draft version states that testing may be enforced *in order to examine whether a person has concealed or provided misleading data concerning areas due to which they may be deemed untrustworthy or disloyal to the Lithuanian State*.

This amendment is new in essence and broadens the applicability of the polygraph. It removes the previous requirement of a mandatory ground (stipulating the need for reasons to believe that a person concealed or misrepresented biographical information). Under the proposed amendment, the authorities responsible for vetting will no longer need “grounds to believe” and will be allowed to use the polygraph simply “in order to examine whether...”.

Here we observe the application of *the presumption of guilt* – a legal principle that contrasts with the fundamental principle of criminal justice, namely, *the presumption of innocence*, set out in Article 31(1) of the Constitution of the Republic of Lithuania, adopted by the citizens of the Republic of Lithuania in the referendum on 25 October 1992 [Lietuvos Respublikos Konstitucija].

Presumption of guilt is, however, widely practised in certain legal fields (such as administrative offences). For instance, no one today questions the rule that refusal by a driver to undergo alcohol testing is treated as grounds for sanction, in order to prevent road accidents caused by intoxicated drivers.

In the author’s view, this amendment will increase the numbers of cases in which the polygraph may be applied and will thus contribute to enhancing national security.

The final substantial amendment appears in the new version of Article 10, which provides that refusal to undergo polygraph examination will automatically result in failure to obtain a security clearance or in its termination. In the case of foreigners, refusal to be examined will result in the automatic presumption that such a person poses a threat to national security.

Current legislation does not impose such strict consequences for refusal to be tested.

Here again we observe the application of the presumption of guilt principle. Given the current geopolitical situation and the serious threat of invasion, all the proposed amendments to the Polygraph Law may certainly be regarded as adequate measures which maintain a reasonable balance between the supervision of human rights and national security interests.

As the amendments remain in the adoption phase, it is difficult to predict which of the proposed regulations will ultimately enter into force.

Conclusions

The proposed amendments to the Polygraph Law introduce substantial changes to the use of the polygraph in the national security sector and are expected to strengthen it.

Some of the amendments rely on the presumption of guilt, which, in the current geopolitical context, constitutes a proportionate measure.

Use of the polygraph in the vetting process is becoming increasingly common and, in light of growing threats to the independence and freedom of Lithuania, constitutes an adequate administrative action that cannot be considered a violation of personal privacy.

The author is confident that non-cooperation with state agencies (e.g. refusal to undergo polygraph examination) and the consequent non-issuance or revocation of security clearance, or treating a foreigner as posing a threat to national security, represents a well-balanced measure in the present geopolitical circumstances.

The amendments will provide Lithuanian intelligence agencies with stronger powers and robust tools to counter rising national security threats.

As regards the number of polygraph examinations and the workload of examiners, a dramatic increase is expected.

Finally, the proposed amendments remain a draft and must be finalised, adopted, and promulgated before they can be assessed in real-world application.

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